

The Implementation of Justice Collaborator at The Investigation Stage in East Java Regional Police

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Abstract—Some criminal cases that have been accrued lately in the jurisdiction of east java which relate to Criminal Act. Especially narkoba, ranmor, are interesting to study more deeply regard to the determination of assisted the investigator or justice collaborator, by using empirical legal research or by interviewer the member of particular criminal justice of east java (Reskrimsus Polda jatim) to get clarity of issues regarding to status granting of Justice Collaborator and conduct analysis.

From the result of the study by using of FGD it is obtained the result that investigation act is also investigation, where at investigation stage may also provide the status of perpetrator in collaboration with the investigator to reveal the perpetrator in a larger or major crime. As well as in the implementation the giving status of justice collaborator at the stage of criminal investigation done by POLRI need to be regulated in the law so that is no abuse of authority

Keywords—Justice Collaborator, Investigation, Police

I. INTRODUCTION

Determining criminal offenses and the perpetrator as well in a criminal event must be based on law (as in legality principle). When a criminal offense can be detected, the main challenge of law enforcement is the aspect of proof. The proof becomes the key point to gain confidence in a crime with the perpetrator, so that the law enforcers do not violate one's human right. As the principle of *daad dader strafrect*, means that criminal law constitution which we goodance acknowledges the existence of the criminal act and the perpetrator of the crime, the proof of a bic case such as corruption, drugs, and other committed by a syndicate, or network that makes disclosure of a crime and behavior becomes difficult.

Justice Collaborator or it is said witnesses of actors who cooperate with law enforcement officers to reveal larger offenders, are normatively new in Indonesia. The birth of a law that facilitates the cooperation of witnesses of the collaborator [justice collaborator) with law enforcers was first introduced in the United States in the 1970s. The facility is none other than to confront the mafia, which has long since adopted the *omerta* (Oath to keep silence is also the oldest law in the world of Mafioso Sisilia).

In Indonesia alone, the idea of development of Justice Collaborator actually started from the provisions of article 37 Paragraph (2) United Nations Convention Against Corruption in the year of 2003 set as follows “Each nations shall consider, giving a possibility in certain cases to reduce the punishment of a principle who provides substantial cooperation in the investigation or prosecution of a crime applied in this convention. Whereas in Paragraph 3 states that each state or nation shall consider the possibility in accordance with the fundamental principles of its domestic law to provide the immunity from prosecution for persons who provide substantial cooperation in the investigation and prosecution (Justice Collaborator) of a criminal act that established under this convention.

Hereinafter under Article 10 Paragraph 2 of Constitution number 13 year of 2006 concerning the Protection of Witnesses and the Victim states that: a witness who is also a suspect in the same case can not be exempt from criminal prosecution if he or she is proved legally convincingly, but testimony can be made consideration to the judge in lighten up criminal case.

In this writing, the authors focuses on the implementation of Justice Collaborator at the level of investigation conducted by East Java Regional Police. The purpose is to seek an activity of the investigator that has not been regulated by the norm so that it is hoped that in the future it will be made up of the norm.

In accordance with the background above then the autor focuses on legal issues as follows: How the implementation of Justice Collaborator at the level of investigation in the East Java Regional Police ?

II. LITERATUR REVIEW

According to Article 1 point 5 from KUHP mentions that “The investigation is a series of investigative action to seek and find an event that is suspected as a criminal offense to determine whether or not an investigation is conducted according to the provisions of the law or constitution. Based on the explanation above it is known that the investigation act is carried out in order to determine the stage or initial step for conducting the investigation in

criminal case, in which the investigation effort is intended to find or search for an event that related to criminal offense.

Investigation is essentially an inseparable part, in other words prior to the investigation it is necessary to do investigation in the first place, this because the investigation is one of investigation methods functions that precede other actions that conducted of other actions, namely: The act of arresting, searching, checking and many more¹.

Prior to any investigation that it will be taken, investigation must be taken at the first place to find criminal events, so that the investigation can be carried out. Meanwhile Article 3 point 2 KUHAP states that "Investigation is a series of actions which are carried out by the investigators in the matters and the ways which are regulated in the constitution to seek and collect the evidence, whereby the evidence makes clear the crime and to find the suspect."

The effort to conduct investigation and investigate concrete crimes can be cited as rigorous investigation after the commission of a crime obtain information relating to what crime of criminal act is committed, when criminal act of offense is committed, where a criminal act of offense is committed and by what a criminal act is committed. So it can be said that the process of investigation is the first step taken to find and seek criminal act that allegedly as a criminal action, in the investigation process that is being investigated can not be ascertained whether the criminal act is crime or not.

In accordance with Article 11, 12, 13 the Regulation of Chief Police (hereinafter referred to Perkap) number 14 year of 2012 on the management of criminal act investigation, the first action at the time of incident happened at the the first place carried out by the investigator of law by conducting investigation. Before there is Police Report or complaints of investigation activities are conducted to find and seek criminal act offenses. However, if there is a Police Report or complain in the frame of investigation, so the investigation activities is a part of or one way to conduct investigation:

- (1) Determine a case is crime or not
- (2) Make a clear of the case to determine perpetrator
- (3) It is used as basis for carrying out a force effort.

Such investigation activities above include: a. The processing of the place of the case (TKP), b. Observation, c. Interview, d. Surveillance, e. Undercover, f. Tracking, g. Research and document analysis. Meanwhile the target of investigation involved: a. Person, b. Things or stuff, c. Places, d. Event and e. Activity.

Furthermore, the notion of Justice Collaborator is originally Indonesian criminal procedure law is not familiar with the concept of Justice Collaborator, but in reality this

concept is born in the judicial practice in Indonesia. Basically, the idea of the Justice Collaborator is derived from Article 37 paragraph (2) of the United Nations Convention Against Corruption which Indonesia has ratified by Law No. 7 of 2016 on the Ratification of the United Nations Conventions Against Corruption (2003) .

Article 37 paragraph (2) affirms: "Each State Party shall consider providing the possibility in certain cases to lessen the punishment of an offender who provides substantial cooperation in the investigation or prosecution of an offense established under this Convention"

Then Article 37 Paragraph (3) of the KAK Act of 2003 states that "each State Party shall consider the possibility in accordance with the fundamental principles of its domestic law to impart immunity from prosecution for persons cooperating substantially in investigation and prosecution".

III. RESEARCH METHOD

Kinds of Study which is used in arranging the study is empirically formed that is the role of investigator in applying Justice Collaborator in the stage of at Ditreskrimun Polda Jatim. The study of empirically law which is usually called sociological law study or field study qualitatively

The study that has been conducted by author used juridical and empirical approachment in that conducted by combining law material (which is secondary) with primary data which is accepted in the field it is the applying of Justice Collaborator by investigator at Ditreskrimsus Polda Jatim by conducting Focus Group Discussion toward some investigator member which was conducted on August 24th 2017.

IV. FINDING AND DISCUSSION

An offender can be said as Justice Collaborator if it has a very significant testimony and evidence to capture an offense of criminal act, not the main actor, revealing the offenders who has a larger role and he / she os willing to return the asset from the action. The witness and victim protection Legislation year of 2014 provides space for law enforcement official to give Justice Collaborator's status since the investigation process.

However, some investigators' views will require the status of Justice Collaborator to be given after the candidate of Justice Collaborator conveys information as a witness in the court. For measuring the implementation of Justice Collaborator at the level of investigation is to conduct Focus Discussion Group with some members of the investigator from Reskrimsus Polda Jatim and members of Polrestabes Surabaya Police², which then will be examined

¹ M Yahya Harahap, "Pembebasan Permasalahan dan Penerapan KUHAP Pemeriksaan Sidang Pengadilan, Bandingan Kasasi dan Peninjauan kembali, Sinar Grafika, Jakarta, 200, hal 101

² FGD was conducted on Thursday, August 24th 2017 at Rm Agis Jl. A Yani no 112-114 Surabaya, the members who followed FGD consists of 8 persons: Iptu Mulyono, SH.MH, Iptu Aris Harianto, SH.MH, Iptu Slamet Wahyudi, SH.MH Bripka Nanang Sumartono, SH.MH,

philosophically and sociologically, by asking the following questions:

TABLE I. WHEN JUSTICE COLLABORATOR IS APPLIED IN THE INVESTIGATION ?

The Answer
<ul style="list-style-type: none"> - During the investigation process to find evidence and legal subject for liability of criminal act: <ul style="list-style-type: none"> a. Investigation with discretion or the principle of expediency. b. Investigation by appealing to the court for the case that big perpetrator was caught because the helping of JC applicant - Justice Collaborator is given if the crime happened in the long sequence and the investigator has not been able to find other evidences so that the suspect has been appointed to open a criminal event widely. - It applied when the suspect is conducted an investigation at the police level, it can be also when the defendant has been in the house of detention and it is a requirement free parole or get remission. - When there is acknowledgment from one of perpetrators in the particular criminal case offense or base of his own initiative.

The result of interview as follow that there are some different opinions about the question When Justice Collaborator applied in investigation ? it may be different because in investigation process there will be investigating, so that among the perpetrators who helps law enforcer (investigator) may different. The investigator realizes that designation someone as justice collaborator should through the suspect's application process or the defendant to the judge, after that the assessment is conducted on the case and its role against the main perpetrators of a criminal act, meanwhile different opinion is in the investigation stage which determine that Justice Collaborator status no need to get the determination from the judge but only police investigators who knows better the role of the perpetrators in criminal act.

TABLE II. HOW IS THE MECHANISM OF IMPLEMENTATION OF JUSTICE COLLABORATOR AT THE LEVEL OF INVESTIGATION ?

The Answer
<ol style="list-style-type: none"> 1. Making request letter to the attorney for the role of perpetrator at the lower level in order to get the perpetrators / the leader of criminal act 2. The perpetrator convey to the investigating officer TP event will be opened, then the perpetrator apply to investigating officer then to LPSK and to the court and the person will be protected. 3. The mechanism when the suspect in the investigation process, the suspect can prove, and the investigating officer gets a bigger case, so the investigating officer informs to JPU and by the leader of court the letter will be reported in the case file. 4. For the mechanism of implementation of investigation is still carried out deepening of the result from explaining from JC by not rulling out the criminal act that had already happened before. 5. At the level of investigation it is certainly based on investigating officer's assesment in investigating process then it will be reported in every level to the leader of investigating officer to receive definite letter from the leader of investigating officer.

Brigadir Genta Saputra SH,MH, Brigadir Anggara Setiawan SH.MH, Brigadir Pramono Dwi Setiadi SH.MH and Brigadir Andra Purnomo Putra SH.MH

From the answer above the author found that there is no different the view about the mechanism application of Justice Collaborator, it means that it has been arranged in Witness protection act and others role Act or Investigating officer is normatively has conducted according to the mechanism.

The different of view, the mechanism normatively should be taken to the court, however, there is opinion that it is enough by the leader of investigating officer. In this study the methodological aspect put more emphasis on ways or methods to disclosure the main actor of a crime.

TABLE III. HOW IS THE EFFECTIVENESS OF JUSTICE COLLABORATOR IN DISCLOSURING CRIMINAL CASE THAT YOU ARE HANDLING ?

The Answer
<ul style="list-style-type: none"> - I've never been in the investigation level, however in the investigation with discretion and law enforcement by the purposing of expediency, although in Indonesia state, the principle of legality in the case of law enforcer is also use conscience. - In the case of TPPU and corruption, if Justice Collaborator is used it will be effective because based on information from JC so the investigating investigator can follow up with investigation. - It is very effective and make easier to the investigating officer in disclosing a bigger criminal act case like narcotic case. - It is very effective in revealing a network of criminal act offense and a larger network too, - The effectiveness of Justice Collaborator are : <ul style="list-style-type: none"> a. It can reveal the case of a network in particular case b. It will make easier the process of investigation. c. It will make easier to dismantle other hidden network

From answering of the question the investigating officer able to differentiate the determination when an offender is at the level of examining and investigating, at the examining level justice collaborator is used as a means to disclose the main perpetrator whose role is larger or main actor, and the form of relief that will be accepted can be liberation, and the application of the less section, but at the level of investigating to obtain Justice Collaborator status must be taken to the court.

In the level of examining the perpetrator activity who can help investigating officer to reveal bigger crime it will be the most effective however normatively it has not been arranged in act rule. So it may possibility there will be changes in arranging the status of perpetrator

V. CONCLUSION

From discussion above it can make a conclusion as follows:

1. That the understanding of East Java provincial police investigators relates to the perpetrator of criminal act which assist law enforcers in revealing the main perpetrators is the same: That when the application of Justice Collaborator at the stage of investigating and the mechanism of recognition of Justice Collaborator investigating officer have the same understanding,
2. That by the existence of philosophical and sociological the perpetrators who assists investigating officer to reveal the main perpetrators in the big case, it is considered very effective however because there has been no rule it is very susceptible to levies.

3. Suggestion as a recommendation as follows that for the usefulness of perpetrators who helps investigating officer to reveal the main perpetrator in the case must be made norms in order not to occur illegal levies, in addition it can complete or add clauses in Kapolri rule so that what the investigating officer done there is legal basis.

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