



A Juridical Study on the Role of Justice collaborators in the Criminal Justice System for Drug Cases with the Death Penalty Threat

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Abstract

The increase in drug abuse among adults has been rising significantly. This can be observed through reports in electronic and print media, which daily cover the arrests of drug abusers. Authorities responsible for combating drug abuse include the National Narcotics Agency and the Indonesian National Police. Internationally, there are several conventions governing the use and distribution of narcotics issued by global organizations such as the United Nations, including the Single Convention on Narcotic Drugs 1961 (United Nations Conference for Adoption of a Single Convention on Narcotic Drugs 1961), the Convention on Manufacture and Distribution of Narcotic Drugs (Geneva 1931), and the Convention for the Suppression of Illicit Traffic in Dangerous Drugs (Geneva 1936). Furthermore, it is important to note that drug traffickers involved in the production, import, export, or distribution of Class I and II Narcotics can face the death penalty if the amount of narcotics distributed exceeds certain limits. The death penalty can also be applied to traffickers who engage in activities such as offering narcotics for sale, selling, purchasing, receiving, acting as an intermediary in transactions, exchanging, or delivering Class I and II Narcotics when the quantity exceeds a specified amount. In relation to law enforcement efforts, the term justice collaborator refers to a criminal offender who is willing to cooperate with law enforcement to expose certain organized criminal cases that pose a serious threat. These offenses include corruption, terrorism, narcotics, money laundering, human trafficking, and other organized crimes. In Supreme Court Circular (SEMA) Number 4 of 2011, a justice collaborator is also referred to as a cooperating witness.

Keywords: legal analysis, narcotics, justice collaborator

INTRODUCTION

Drug crime cases in Indonesia continue to increase from year to year. Based on a report from the National Narcotics Agency (BNN), in 2022, there were 851 cases of narcotics and illegal drug abuse recorded. This figure shows an increase of 11.1% compared to 2021, where the number of cases reached 766.

The number of drug abusers among adults continues to increase, which can be seen from news reports in electronic and print media that report the arrests of perpetrators almost every day. Authorities tasked with combating drug abuse, such as the National Narcotics Agency (BNN) and the Indonesian National Police (POLRI), are actively handling various related cases. Drug abuse has penetrated various groups, covering all levels of society, from the upper to the lower classes, involving children, teenagers, youth, adults, to the elderly, and affecting individuals from various levels of education, both high and low.

Based on the reality in society, drug abuse and illicit trafficking have reached a very dangerous level, not just worrying. In the last five years, there has been a significant increase

in cases of drug abuse and illicit trafficking in Indonesia. According to a survey by the National Narcotics Agency (BNN) and the University of Indonesia Health Research Center in 2017, the number of drug addicts reached 1.5% of the total population of Indonesia, or around 3.25 to 4 million people. (Laowo, 2021).

In the period from 2019 to 2021, the prevalence of drug users reached 1.95 percent of the total population, or around 3.6 million people. However, during the period from 2021 to 2023, the figure decreased to 1.73 percent, or around 3.3 million people. (Ministry of Transportation's Bureau of Communication and Public Information, 2024). Of these, around 800,000 are addicts who share needles, which increases the risk of spreading the HIV/AIDS virus. Therefore, more intensive handling measures are needed to overcome drug abuse and distribution.

Article 54 of Law No. 35 of 2009 concerning Narcotics states that a victim of drug abuse is someone who uses narcotics unintentionally due to persuasion, fraud, coercion, or threats from another party. Anyone who is proven to have used narcotics will be subject to criminal sanctions in accordance with existing legal provisions. Criminal sanctions in the Narcotics Law for drug users are divided into several categories. In addition, in the discussion related to the criminal aspects of drug abuse, it is explained that narcotics or psychotropic dealers are those who distribute or hand over narcotics, either for trade, non-trade, or transfer purposes, which are aimed at health services and the development of science. Such actions are categorized as drug distribution.

In conclusion, the act of taking, transporting, moving narcotics, and handing them over to other parties can be indicated as narcotics distribution. The punishment for people who distribute narcotics is regulated in Article 115, Article 120, and Article 125 of the Narcotics Law, with different sanctions based on the class of narcotics and the amount of narcotics involved.

It should be noted that drug dealers involved in the production, import, export or distribution of Class I and II narcotics can be subject to the death penalty if the amount of narcotics distributed reaches a certain limit. (Mulyadi, 2012). Drug dealers who are involved in actions such as offering for sale, selling, buying, receiving, being an intermediary in buying and selling transactions, exchanging or handing over Class I and II narcotics, can also be sentenced to death if the amount of narcotics distributed exceeds a certain limit. (WP, 2019).

The application of the death penalty for drug dealers is not considered a violation of human rights because it does not conflict with the International Convention on Civil and Political Rights (ICCPR), so the punishment can still be applied in Indonesia. In addition, the death penalty has also been regulated in the Criminal Code and Law Number 35 of 2009 concerning Narcotics. In cases of narcotics crimes, justice collaborators are protected under Article 10A paragraph (1) and (2) of the Witness and Victim Protection Law. This regulation stipulates that cooperating witnesses can receive special treatment during the examination process as well as awards for their testimony.

Article 10 Paragraph 1 states that "Witnesses, victims, witnesses of perpetrators, and/or reporters cannot be prosecuted either criminally or civilly for testimony or reports that have been given, are being given, or will be given, unless the testimony or report is submitted in bad faith." In the Circular of the Supreme Court (SEMA) Number 4 of 2011 concerning actions for Reporters of Criminal Acts and Witnesses of Perpetrators Who Cooperate in Certain Criminal Acts, there is a requirement that the whistleblower must know and report the crime without being part of the perpetrator of the crime. This SEMA also guarantees that if the whistleblower is reported back, then the processing of the whistleblower's report case will be initiated, and the lawsuit against the reported party's report will be withheld until the case reported by the whistleblower is decided by the court with a decision that has permanent legal force.

Justice collaborator, basically, occurs in cases of organized crime, where a crown witness provides information about the crime in the form of accompaniment. In general, the initiative to provide testimony usually comes from the legal actor, such as the investigator or public prosecutor, not from the suspect. This is different from a justice

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collaborator, who voluntarily provides information related to the crime and cooperates with the legal actor. Crown witnesses are often applied by investigators or public prosecutors in cases of accompaniment to the crime, where the perpetrators have been identified.

The objectives of this study are divided into two, namely objective and subjective. Objectively, this study aims to determine, understand, and analyze the role of Justice collaborators in the criminal justice system, especially in narcotics cases with the threat of the death penalty, and to identify the obstacles faced in its implementation. Subjectively, this study aims to apply theoretical knowledge obtained during lectures, especially in the field of criminal law, and to deepen understanding related to narcotics cases and the role of Justice collaborators in legal practice in Indonesia.

So based on the description of the problem above, the formulation of the problem in this study includes two main things: first, what is the role of Justice collaborator in the criminal justice system in narcotics cases with the threat of the death penalty; and second, what are the obstacles faced in implementing the role of Justice collaborator in the criminal justice system related to narcotics cases with the threat of the death penalty.

METHOD

This study uses a doctrinal or normative legal research method that is prescriptive and applied. Through this approach, the results of legal research are expected to contain certain values. This normative legal research utilizes library materials as the main data source, which is often referred to as secondary data. Secondary data in this study has special characteristics, namely that the data is already available and ready to be used (Muhdlor, 2012). The structure and content of the data have been designed by previous researchers, so that the data can be accessed without being bound by time or place constraints.

This research uses a statute approach, which focuses on the analysis of legal regulations relating to the issue being discussed. (Noviyanti et al., 2024), this study also uses a conceptual approach. The legislative approach is applied to examine the Constitution, laws, and other implementing regulations that are relevant to the legal issues being studied. Meanwhile, the conceptual approach is based on concepts and views that have developed in legal science related to the legal issues discussed.

Legal research sources can be divided into primary legal materials and secondary legal materials. Primary legal materials have an authoritative and legally binding nature, including relevant laws. (Rabbani & Romansyah, 2014). In normative legal research, Data collection techniques are carried out through library research and field research, with the main focus on secondary data collected from various library sources. (Suwarjono et al., 2023).

The data analysis method used in this study is qualitative data analysis, which focuses on problems and their solution efforts. This approach is carried out by breaking down the research object into certain elements to then draw general conclusions that cover a wide scope. The goal is to find consistency and legal certainty, with a descriptive analytical approach in a narrative manner, without using statistical methods.

RESULTS AND DISCUSSION

Results

Based on the results of this study, the role of Justice collaborators in the narcotics criminal justice system with the threat of the death penalty is very significant, especially in helping to reveal a wider narcotics network. Justice collaborators are able to provide important information regarding the organizational structure, modus operandi, and location of the storage of evidence that has been difficult for law enforcement to uncover. This provides benefits for law enforcement in accelerating the process of eradicating narcotics

crimes, especially those involving large-scale organized crime. With the presence of Justice collaborators, law enforcement officers are able to break the chain of drug trafficking which has an impact on preventing further drug trafficking.

However, the main obstacle in implementing Justice collaborators is still related to inadequate protection for those who are willing to cooperate. There are many cases where Justice collaborators face serious threats from active drug networks, both to themselves and their families. In addition, the selection process to become a Justice collaborator is often too strict, limiting the number of perpetrators who are willing to provide important information. This issue of protection is one of the focuses in the evaluation of the Justice collaborator system, with the need for increased security guarantees from the state for perpetrators who are willing to cooperate.

In terms of law enforcement, Justice collaborators in Indonesia still face challenges in the consistency of policy implementation, both at the judicial and executive levels. There is potential for manipulation where some perpetrators can take advantage of their position as Justice collaborators just to get a reduced sentence without providing accurate and valuable information. Therefore, a stricter and more transparent oversight mechanism is needed to ensure that the role of Justice collaborators in drug cases with the threat of the death penalty is carried out in accordance with applicable laws and meets high standards of justice.

Discussion

The Role of Justice Collaborators in the Criminal Justice System for Drug Cases with the Threat of the Death Penalty

One way to create stability in the life of society and the state is through law. Indonesia is a country of law, which means that law is the highest rule of law to realize truth and justice in this country. Laws are made to provide justice, benefits, and legal certainty for society. According to E. Utrecht in Kansil (1989), law is a collection of regulations (commands and prohibitions) that regulate the order of a society and therefore must be obeyed by the society. The existence of law cannot be separated from formal and material sources of law. Criminal law functions as an instrument to support the implementation and application of public law, as regulated in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP), which has its own evidentiary system as explained through research.

Justice collaborator often considered the same as a crown witness because they both have vital positions in the criminal justice system, making it easier for law enforcement to resolve criminal cases. However, apart from that there are significant differences. Justice collaborators are perpetrators of criminal acts who are willing to cooperate with law enforcement to dismantle dangerous organized crime networks, such as corruption, terrorism, narcotics, money laundering, human trafficking, or other organized crimes. Based on SEMA Number 4 of 2011, justice collaborators with other names as witnesses are perpetrators who are willing to cooperate.

Crown witnesses, on the other hand, are suspects who are asked by the public prosecutor to provide testimony regarding other suspects, with their case files separated. The use of crown witnesses is usually done when the public prosecutor faces limited evidence in proving a crime. Crown witnesses are generally used in crimes involving several perpetrators, where the perpetrators work together physically or psychologically in carrying out the crime.

The main difference between a justice collaborator and a crown witness lies in the category of crime being disclosed and the manner in which the testimony is given. A crown witness can be used in any type of crime without limitation. In contrast, a justice collaborator is a suspect or defendant who voluntarily cooperates with law enforcement to solve a case, while still allowing other perpetrators to be tried and sentenced according to their role.

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The basis of the analysis of the problem regarding "The Role of Justice Collaborators in the Criminal Justice System for Drug Cases with the Death Penalty" uses Grand Theory and Justice Theory as the main analytical tools. According to the author, this approach is very appropriate. The argument underlying this view is that from a legal and legal policy perspective, the actions taken by a Justice Collaborator deserve to be considered and appreciated.

Constraints on the role of Justice collaborators in the criminal justice system for narcotics cases with the threat of the death penalty

1. Justice collaborator In Some Perceptions as Crown Witness

The understanding of Justice collaborator often gives rise to various perceptions, especially in relation to crown witnesses. Some parties argue that the presence of crown witnesses is permitted to provide a sense of justice, while others argue otherwise because it is considered contrary to human rights. This perception is also reflected in various Supreme Court jurisprudence. In relation to the position of crown witnesses in the process of proving criminal acts in Indonesia, this issue becomes ambiguous regarding the regulation of crown witnesses in court. In the context of proving criminal acts, the regulation of crown witnesses is regulated in Article 168 letter c of the Criminal Procedure Code which is an application of Article 142 of the Criminal Procedure Code. The testimony of crown witnesses is treated the same as other witnesses, where crown witnesses are defendants who provide information about the crimes they committed with other defendants.

In this case, the accused who becomes a crown witness can be pardoned and charged with a lesser offense. Although crown witnesses are allowed in criminal evidence according to the Criminal Procedure Code, some jurisprudence prohibits their use. The position of crown witnesses is allowed if the evidence presented in court is insufficient, but this often makes clarity in achieving justice unclear.

2. Theory analysis Equality Before the Law;

The issue of justice is defined as a condition in which all people are treated equally in terms of status, rights, and obligations. The principle of equality demands that every individual be considered equal before the law. Justice is considered achieved when everyone gets equal rights and is treated equally without discrimination. The principle of "equality before the law" requires that similar cases be decided in the same way. Justice is the embodiment of the principle of equality.

According to Article 27 paragraph (1) of the 1945 Constitution, all citizens have equal standing before the law and government, and are required to uphold the law and government without exception. The Constitution also affirms the principle of equality before the law as part of human rights as regulated in Article 28D paragraph (1) of the 1945 Constitution, which states that everyone has the right to recognition, guarantee, protection, and certainty of fair law and equal treatment before the law. In the context of the Pancasila Legal State, this principle of equality means that all citizens, both the people and the government, must be treated equally. However, the realization of this justice has not been fully achieved in practice.

CONCLUSION

The conclusion of this study shows that the role of Justice collaborators in the criminal justice system for drug cases with the threat of the death penalty is very important, especially in exposing drug crime networks and strengthening evidence already held by law enforcement. However, there are various obstacles faced in its implementation, including the problem of inadequate protection, the credibility of the information that must be tested, the potential for manipulation, and ethical issues that arise related to the use of Justice collaborators in cases with the threat of the death penalty. In addition, obstacles in terms of legal substance, community culture, and the structure of the justice system also affect the effectiveness of this program. As a solution, it is necessary to strengthen regulations, increase legal protection, and simplify the requirements for perpetrators to become Justice

collaborators. SEMA Number 4 of 2011 also provides important guidelines in dealing with perpetrators who are willing to cooperate with law enforcement, especially in drug crime cases. However, challenges in protection, motivation, and transparency still require more attention to ensure that this mechanism runs well and in accordance with the principles of justice.

Based on the analysis of the research results, it is recommended that the regulations related to the mechanism for determining the status of justice collaborators, especially for death row inmates, be made clearer and more detailed. Legal certainty, justice, efficiency of law enforcement, and a common perception among the parties involved are very important. This includes a clear definition, objective criteria, comprehensive legal protection, and strict sanctions for justice collaborators who violate the provisions. Especially for death row inmates, special considerations and stronger security guarantees are needed. Challenges such as potential conflicts of interest, manipulation, and ethical issues also need to be considered to maintain justice and effectiveness. In addition, more detailed implementing regulations and a revision of the Witness and Victim Protection Law need to be carried out so that the justice collaborator system is more efficient. Changes in the flexibility of sentences in the Criminal Code Bill and the death penalty can also be an incentive for perpetrators to collaborate. These proposals are expected to uncover wider criminal networks, prevent crimes, and provide opportunities for perpetrators to correct mistakes. However, it is also necessary to pay attention to challenges related to ethics, manipulation, and witness protection. Recommendations include in-depth studies, involvement of various parties, and strict monitoring mechanisms so that this system is not misused.

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