



Judge's Considerations in the Matter of Changing the Status of Whistleblower to Justice Collaborator

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Abstract

Introduction: This study discusses the judge's considerations in the case of Daud Ndakularak who initially had the status of a whistleblower and then switched to become a justice collaborator in a corruption case. The focus of the research lies in the analysis of juridical and non-juridical considerations of judges, as well as the application of the provisions of the Supreme Court Circular Letter Number 4 of 2011 regarding the requirements for the change in status.

Purposes of the Research: This study aims to analyze the judge's review of the change in the status of Whistleblower to Justice Collaborator on the decision of Daud Ndakularak.

Methods of the Research: The research method used is normative juridical with a case study approach, through the analysis of court decisions and related laws and regulations.

Findings of the Research: The panel of judges considers both juridical and non-juridical aspects before deciding the case. Juridical considerations include the analysis of the indictment, demands, evidence, and elements of the article charged, while non-juridical considerations include circumstances that are aggravating and mitigating to the defendant. The judge also referred to the provisions of the Supreme Court Circular Letter Number 4 of 2011 in assessing the feasibility of changing the status of whistleblower to justice collaborator. The final verdict revealed that the defendant was legally proven innocent in terms of committing a criminal act of corruption as contained in the primary indictment, therefore the defendant was given freedom from the indictment. This reveals that the judge's assessment of this case or issue is in accordance with the applicable legal provisions.

Keywords: Whistleblower; Justice Collaborator; Judge's Consideration; Corruption Crimes.

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INTRODUCTION

Corruption is one of the crucial problems that hinders development and damages governance in many countries, including Indonesia. Corruption is written in Law Number 20 of 2001 Amendment to Law Number 31 of 1999 which relates to the Eradication of Corruption Crimes. In the fight against corruption, the public and individuals who have important information about this issue are crucial. The concept of justice collaborators and whistleblowers is very important. A justice collaborator is someone who agrees to collaborate with the authorities to uncover more in-depth and serious cases, while a whistleblower is someone who reveals information they know, even if they are not directly involved in the case. Both are crucial in helping the legal system handle complex and well-organized corruption cases.

However, despite the practical application of legal protection for Justice Collaborators and Whistleblowers, their role is crucial. Ideally, those who agree to cooperate with law enforcement should have strong protection from any form of intimidation, harassment, or

retaliation that may arise as a result of their actions.¹ Based on Law Number 13 of 2016, it does not specifically refer to the whistleblower; However, one of the definitions of a whistleblower in the context of this Law is any individual who shares information with the authorities related to a criminal act. In addition, as stipulated in Article 10 paragraph 2 of Law Number 13 of 2006i, the protection of witnesses or individuals who collaborate with law enforcement is also reflected in the complainant, namely witnesses who also function as suspects in similar cases.

This type of witness is also often known as legal collaborator, collaborator or crown. If proven guilty, the perpetrator's witness cannot escape criminal charges, but his testimony can be used as a consideration or assessment by the judge when determining the criminal sentence.² Regarding the complainant who is referred to as a suspect, this has been explained in Article 10 of Law Number 13 of 2006 concerning the Protection of Victims and Witnesses, which reveals that the complainant cannot be subject to legal sanctions, even in the form of fines or information about actions and consequences.

There are several examples that illustrate the vague concept of whistleblower protection, which means a whistleblower can be considered a new suspect.³ Currently, the ICJR has identified several whistleblowers of corruption cases who have been found guilty. One of them is Daud Ndakularak, a former employee of Waingapu, East Nusa Tenggara. According to the Witness and Victim Protection Agency Number: R-182/I.4/LPSK/03/2010, Daud Ndakularak has been protected in his role as a whistleblower of corruption cases at the Witness and Victim Protection Institute of the Republic of Indonesia since 2010, this is a good example in the East Sumba Regency Regional Expenditure Budget for the 2005-2006 Fiscal Year related to the crime of managing cash funds detrimental to state finances amounting to IDR.6,250,000,000,- (Six Billion, Two Hundred and Fifty Million Rupiah) which is the investigation stage, has been taken by the East Sumba Resort police and has been made a final decision by the Kupang Corruption Court.⁴

METHODS OF THE RESEARCH

This research is descriptive and case research, descriptive research is research that provides an overview of phenomena that are systematically researched using accurate data sets,⁵ in descriptive research, when data has been successfully collected from all respondents, the next thing that is done is to analyze the data.⁶ The purpose of descriptive research aims to form a systematic, inaccurate, description, relationship between the phenomena being studied and the factual about the facts. Based on the phenomenon to be studied, the relevant approach is used, namely comparative approximation to analyze the judge's consideration in terms of changing the status of *the Whistleblower* to a *Justice Collaborator* in the Daud Ndakularak case decision.

¹ Asti Dwiyantri et. al, "Urgensi dan Motivasi Perlindungan Hukum bagi Justice Collaborator dan Whistleblower dalam Tindak Pidana Korupsi", *Jurnal Perundang Undangan dan Hukum Pidana Islam* 9, no. 2 (2024), p. 133

² Bambang Arjuno et. al, "Bentuk Perlindungan Hukum Terhadap Pelapor Tindak Pidana Korupsi (Whistleblower) dan Saksi Pelaku Yang Bekerjasama (Justice Collaborator) Di Indonesia", *Jurnal Selat Volume* 4, no. 2 (2017), p. 147-148

³ Suci Rizka Fadhillah, "Urgensi Perlindungan Whistleblower terhadap Fenomena Pelapor Menjadi Tersangka dalam Tindak Pidana Korupsi", *Rechtsnormen Komunikasi Dan Informasi Hukum* 3, no. 1 (2024), p. 4

⁴ <https://icjr.or.id/daud-ndakularak-whistleblowerpelapor-korupsi-di-ntt-yang-diancam-pidana/>

⁵ Syafrida Hafni Sahir, *Metodologi Penelitian*, (Jogjakarta: Penerbit KBM Indonesia, 2021), p. 6

⁶ Fenti Hikmawati, *Metodologi Penelitian*, (Jakarta: Rajagrafindo Persada, 2020), p. 88

RESULTS AND DISCUSSION

A. The Judge's Consideration in the Matter of Changing the Status of a Whistleblower to a Justice Collaborator in the Daud Ndakularak Decision

Judges must consider many factors when making decisions because, if there are some people who do not fully support the decision that is being considered by the judge, it is bound to be a source of dissatisfaction among the public or even spark debate. The highest judge in Indonesia uses non-juridical and juridical considerations in terms of decisions. Regarding the juridical assessment of judges carried out by the Panel of Judges, it is based on crucial factors in the trial and has also been regulated by law, which is something that should be reviewed again in the decision, including witness statements, evidence, public prosecutor's indictment, articles in the appropriate law and prosecutor's statements.⁷ The Supreme Court explained the Circular Letter of the Supreme Court of the Republic of Indonesia No. 4 of 2011 regarding the duties and obligations of the complainant for alleged criminal acts and key witnesses in the criminal case concerned.

The law is very helpful for the guideline of judges when determining the perpetrators of criminal acts to become a *Justice Collaborator*, namely that person includes one of the perpetrators of the criminal act,⁸ In the Daud Ndakularak Case, it was concluded that the basis for the judge's consideration when giving a criminal sentence to the defendant in a corruption case, Article 3 and Article 18 of Law Number 31 of 1999 should have been amended by Law number 20 of 2001 concerning the Eradication of Corruption Crimes and also Article 55 paragraph 1 of the Criminal Code and Article 65 paragraph 1 of the Criminal Code and, Law Number 8 of the Basic Year of Non-Juridical and Juridical Assessment in 1981 can be described as follows:

a. Basis of Juridical Considerations

The basis of juridical considerations refers to the judge's assessment that applies in the legal system. Therefore, in order to understand the crime of corruption under Article 3 of Law Number 20 of 2001 and Law Number 31 of 1999, the judge must carefully and carefully consider what was revealed in the trial, which is adjusted to the available evidence, and whether the defendant's actions covered the elements of Article 3, namely: a) Taking advantage of oneself and others, or certain institutions; b) Taking advantage of opportunities or facilities available due to conflicts of interest or position; c) Causing losses to the economy or finances of the country.

In the Daud Ndakularak Case there are several conditions for the fulfillment of the judge's juridical basis of consideration, namely: 1) Indictment: According to the Daud Ndakularak Case Decision, there is an Indictment on page 9 in the verdict, that: Thus, the Defendant is proposed to the trial process by the Public Prosecutor in accordance with the following indictment: Primair Based on the law, Daud Ndakularak, also known as Daud, is the head of the Finance Section of the East Sumba Regency Regional Secretariat (he currently serves as the East Sumba Regency Regional Finance and Assets Agency) and is legally authorized to advise himself, others, or any organization that may affect the national currency or the economy. 2) Charges: According to the Daud Ndakularak Case Verdict

⁷ Danu Surya Putra, "Analisis Dasar Pertimbangan Hakim Dalam Menjatuhkan Putusan Bebas Tindak Pidana Korupsi Dana Tunjangan Penghasilan Aparat Pemerintah Desa Kabupaten Tapanuli Selatan" 7, no. 2 (2018), p. 127.

⁸ Rahman Amin, "Dasar Pertimbangan Hakim Dalam Menetapkan Terdakwa Tindak Pidana Narkotika Sebagai Justice Collaborator (Studi Putusan Mahkamah Agung RI Nomor: 920K/Pid.Sus/2013)" 1, no. 2 (2017), p. 169-170.

There is a Criminal Verdict on the Defendant Daud, which is sentenced to imprisonment for approximately 6 years minus the defendant's arrest period and also a large fine of IDR.200,000,000.00 (two hundred million rupiah) subsidy for 6 (six) months of imprisonment". 3) Examination: According to the Daud Ndakularak Case Decision There is a stage of examination against Daud Ndakularak on page 71 of the verdict, It reads: "Considering, that from the description connected with the facts revealed from the results of the search in this case, it has been obtained that the Defendant Daud Ndakularak Alias Daud has the duty and responsibility to coordinate the activities of preparing the Revised Regional Expenditure Budget and the calculation of the Regional Expenditure Budget"

b. Non-Juridical Considerations

Non-Juridical Aspect The application of the severity of the punishment given from the behavior of the perpetrator and the consequences of the perpetrator's actions. Mainly in the context of determining the type of prison sentence. However, in the context of the relevant Law, this has been stipulated normatively regarding the minimum requirements for criminalization, as stipulated in Law Number 20 of 2001 concerning the Eradication of Corruption Crimes. In addition, the Judge must also carefully observe what is stated in Article 8 paragraph 2 of Law Number 48 of 2009 concerning Judicial Power which states that: "To do so effectively, the Judge must also pay attention to the good and evil nature of the defendant."⁹

c. Aggravating circumstances

Not supporting the government's decision in the field of national development based on corruption, nepotism, and kleptomania.

d. Some things that alleviate

- a) The alleged perpetrator was cooperative during the trial
- b) The alleged perpetrator has never or has never been punished
- c) The suspected perpetrator has been in good faith by reporting the criminal acts of corruption that have been committed by the witness Kalendi Manangahau Alias Kalendi and the witness Deny Untono Alias Deny to the East Sumba Resort Police
- d) The suspected perpetrator received a protection guarantee from the Witness and Victim Protection Agency of the Republic of Indonesia.

In accordance with the Judge's Juridical and Non-Juridical Considerations and the provisions of the Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2011, the Author argues that the judge has considered the change in the status of Daud Ndakularak from Whistleblower to Justice Collaborator. Based on the chronology of the Daud Ndakularak Case, the author then analyzes the Daud Ndakularak decision to find out what is the subject of study by the judge in terms of changing the status of *Whistleblower* to *Justice Collaborator*, in accordance with what has been stipulated by the law regarding Justice Collaborator, especially for the provisions of the Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2011 Provided that the following conditions:

1. Admitting the Crime He Committed and Not the Main Perpetrator

⁹ Eky Putri Larasati *et. al*, Dasar Pertimbangan Hakim Terhadap Pemidanaan Tindak Pidana Korupsi Yang Diputus Minimum Khusus (Studi Kasus Di Pengadilan Negeri Kepanjen), Fakultas Hukum Universitas Brawijaya, p. 6-7

With regard to the legal requirement as a witness, the perpetrator who collaborates is the perpetrator who admits what he did, when viewed from the case in which the defendant daud Ndakularak was involved, with the confession submitted by the defendant committing a criminal act of corruption during the trial, and according to the judge's consideration during the trial and the discovery of evidence and facts at the trial that show that the defendant daud ndakularak participated in signing the check that was in the trial. disbursement from the local government account without following legal financial procedures, even though it is not the main perpetrator, the judge considers it to be one of the behaviors against the law to commit corruption crimes committed in large numbers and does not provide support for government programs in an effort to eradicate corruption crimes, thus that the condition of "admitting the criminal act committed and not the main perpetrator" has been fulfilled in the case of Daud Ndakularak.

2. Giving Testimony as a Witness in the Trial

Submitting information as an witness in the trial is one of the requirements to be appointed as a Justice Collaborator which has been regulated in Article 10 paragraph 2 of Law Number 13 of 2006 concerning the Protection of Witnesses and Victims that "his testimony can be used as a consideration by the judge in mitigating the crime to be imposed" as well as in the Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2011 which explained that the perpetrator shared witness statements at the judicial stage. Based on this provision, a criminal act can be classified as a witness of the perpetrator who collaborates if the perpetrator provides information as a witness to the investigation process and is written in the minutes of which as a witness until the trial in court to the perpetrator he discloses.¹⁰ If viewed from the case involving the defendant Daud Ndakularak, the defendant has provided information since the beginning of the investigation and had received protection from LPSK as a *whistleblower* witness of the defendant who complained about the case to the East Sumba Resort Police as a witness in the investigation and provided clarity and information as a witness for the Public Prosecutor at the Corruption Court. Thus, the requirement to testify as a witness at the trial has been completed in the case of Daud Ndakularak.

3. Effectively Exposing Criminal Acts or Exposing Other Perpetrators Who Have a Greater Role

The following requirements that must be completed by the perpetrator of a criminal act in order to be approved to become a Justice Collaborator are to reveal the crime effectively or to inform other perpetrators who have a position that may have more influence on criminal activities as written in the Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2011. This means that the perpetrator of a criminal act must notify clear information regarding the criminal act that has been committed or regarding the participation of other perpetrators which makes it easier for the authorized law enforcement to uncover the crime even if there is a much more influential role that participates in committing the crime. When viewed from the case that dragged the defendant Daud Ndakularak, the defendant based on the facts that were revealed at the trial from witness information that could be used as the judge's assessment in the final verdict found that other perpetrators who played a greater role, namely Kalendi Manangahau the position of general

¹⁰ Rahman Amin, "Dasar Pertimbangan Hakim Dalam Menetapkan Terdakwa Tindak Pidana Narkotika Sebagai Justice Collaborator (Studi Putusan Mahkamah Agung RI Nomor: 920K/Pid.Sus/2013)" 1, no. 2 (2017), p. 172-173

treasurer/Regional Treasurer of East Sumba Regency, thus for the condition of "Effectively uncovering criminal acts or revealing other perpetrators who have a greater role" fulfilled in the case of Daud Ndakularak.

4. The Public Prosecutor in his prosecution listed the role that had been given by the perpetrator

One of the several requirements to determine the perpetrator of a criminal act as a *Justice Collaborator* when revealing a criminal act is that the Public Prosecutor in his prosecution displays the position that has been submitted by the perpetrator's witness as written in the Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2011. From the stipulation, it means that the role that has been handed over by the perpetrator of the crime to other perpetrators and the greater role must be explained by the public prosecutor in the letter of demand in front of the trial. In the case involving Daud Ndakularak, in the Daud Ndakularak verdict it was stated that the public prosecutor demanded that the panel of judges of the corruption court at the Kupang District Court who conducted the examination and also participated in the trial in this case determined: 1). Stating that the defendant Daud Ndakularak has been legally proven guilty of committing a corruption crime committed jointly and continuously as in the primary indictment of the public prosecutor. 2). Giving a criminal sentence for the defendant for a crime of 6 years, as well as a fine of IDR.200,000,000, with the rule that if it is not paid, it will be replaced with a prison sentence of 6 (six) months, thus for the condition that "the Public Prosecutor in his demand includes the role that has been given by the perpetrator" has been fulfilled in the case of Daud Ndakularak. Based on the Judge's Juridical and Non-Juridical Considerations and the provisions of the Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2011, the Author argues that the judge has considered the change in Daud Ndakularak's status from Whistleblower to Justice Collaborator.

B. The suitability of the judge's consideration in terms of changing the status of a whistleblower to a justice collaborator in the Daud Ndakularak decision is in accordance with the applicable provisions

The judge's decision is the climax of the criminal trial case in the trial court. "Deciding and resolving disputes that occur among members of society, between the community and institutions, both government and non-government institutions," is a statement about the Court that plays a role as a judicial institution in the constitutional structure of the Republic of Indonesia. Observation of a dispute in a court hearing, decision or verdict will be announced. The judge is the crown and crown judge of the case.¹¹ In deciding the case, the Judge has the authority to issue a criminal verdict if two main conditions are met, namely at least two valid pieces of evidence and the judge's belief that the defendant is guilty.

The following valid evidence according to Article 184 of the Criminal Procedure Code are:¹² a) Witness Statement: According to the decision of Daud Ndakularak, to illustrate the general charges filed by the prosecutor, the witnesses presented are as follows: Kalendi Manangahau Alias Kalendi, Deny Untono Alias Deny, Rambu Ana, Umbu Tay Hukapaty, Maerah, Yohanes Pama, Umbu Bira, Daud K. Letidjawa, from several witnesses appointed by the public prosecutor, the Judge "considers that the testimony of the witnesses mentioned above, after being related to other evidence, is in accordance with each other and proves the

¹¹ Sandro Unas, "Kajian Yuridis Terhadap Bentuk Putusan Hakim Dalam Tindak Pidana Korupsi" 7, no. 4 (2019), p. 59-60

¹² Sri Dewi Rahayu *et. al*, "Pertimbangan Hakim Dalam Putusan Perkara Tindak Pidana Narkotika" 1, no. 1 (2020), p. 133

elements charged"; b) Expert Testimony: According to the Decision of Daud Ndakularak, the Experts that have been submitted by the public prosecutor are as follows: Expert Hardono, Expert Hardono provides an explanation regarding the audit method and the basis for calculation, including a comparison between the value of the contract and the realization of the work; c) Letters: According to the decision of Daud Ndakularak, there are several letters submitted by the following public prosecutors: Official documents related to the project that is the object of the case, Letter of Agreement/Employment Contract, Minutes of Examination and other relevant Administrative Documents; d) Instructions: According to the Daud Ndakularak Decision, the Judge stated that the evidence as assistance in the case was obtained from the testimony of witnesses, correspondence and also testimony from the defendant. The three are compatible and relevant to the facts of the trial, so that according to Article 188 paragraph (2) of the Criminal Procedure Code, it can be evidence of clues that strengthen the judge's belief in the defendant's involvement in the alleged corruption crime; e) Defendant's Testimony.

According to the Daud Ndakularak Decision, the defendant was Daud Ndakularak, he provided several statements that essentially "justified the prosecutor's indictment, admitted his actions, explained his role in assisting the procurement process, and mentioned other parties involved, and the defendant explained that he knew of the inconsistency in the execution of the work, but still signed the disbursement documents due to orders and pressure from his superiors". This information was submitted at the trial, which was supported by other valid evidence and used by the judge as one of the considerations to reveal the elements of the alleged criminal act.

Furthermore, according to the judge's belief, Judge Considering, that the defendant must also be willing to pay off the financing of the case in the amount of the amar verdict because the defendant has been proven guilty and has been sentenced. Analyzing paragraphs 3 and 18 of Law Number 31 of 1999 As previously mentioned, this is in accordance with Law Number 20 of 2001 concerning the Eradication of Corruption as well as Article 55 paragraph 1 to 1 of the Criminal Code and Article 65 paragraph 1 of the Criminal Code, Law Number 8 of 1981 concerning the Criminal Procedure Code and other applicable regulations. Stating that the defendant Daud Ndakularak alias Daud has been proven legitimate and convinced of committing the crime of "Corruption Committed Together" as stated in the subsidiary indictment and giving a criminal penalty to the defendant Daud Ndakularak or Daud with imprisonment of approximately 1 year as well as a fine of IDR.50,000,000.00 with a warning if the fine is not paid. Then it will be replaced by 1 month imprisonment.

The legal basis for determining the status of being a Justice Collaborator in Indonesia can now be seen in the laws and regulations, namely the Criminal Procedure Code which is generally regulated regarding protection efforts for witnesses in article 1 Number 36 of the Criminal Procedure Code or the Criminal Procedure Code. According to the definition of hakin regarding perpetrator witnesses, which is based on the Supreme Court Circular Letter Number 4 of 2011 and also the agreement between the Witness and Victim Protection Institution and Law Enforcement, the perpetrator witness is not the main perpetrator, according to the explanation. The evidence is not the main perpetrator, as can be observed from the facts at the trial said by the perpetrator's witnesses and from the clarifications made by other witnesses.¹³ Based on the discussion above, the author argues that from the matters

¹³ Nomero Armandheo Simamora *et. al*, "Tinjauan Yuridis Penetapan Status Seseorang Sebagai Justice Collaborator di Indonesia" 3, no. 1 (2023), p. 58-59.

considered by the judge on the change of the status of the Whistleblower to Justice Collaborator against Daud Ndakularak is in accordance with the applicable policy.

CONCLUSION

The panel of judges considers both juridical and non-juridical aspects before deciding the case. Juridical considerations include the analysis of the indictment, demands, evidence, and elements of the article charged, while non-juridical considerations consist of the circumstances and mitigating the defendant. In addition, the Judge mentioned the Supreme Court Circular Letter Number 4 of 2011, in assessing the feasibility of changing the status of whistleblower to justice collaborator. These conditions include confession of acts, not as the main perpetrator, the provision of information in the trial, the disclosure of other perpetrators who have a greater role, and the inclusion of the role of the defendant in the prosecutor's demands. All of these requirements are fulfilled in this case, in deciding the case, the Judge has the authority to issue a criminal verdict if two main conditions are met, namely a minimum of two valid evidence and also the judge's conviction. The author argues that from the matters considered by the judge on the change of *the status of the Whistleblower* to *Justice Collaborator* against Daud Ndakularak is in accordance with the applicable provisions.

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