

The Application of Justice Collaborator in Murder Cases in Indonesia



Eka Maina Listuti¹, Beniharmoni Harefa², Slamet Tri Wahyudi³

^{1,2,3} Master of Law, Universitas Pembangunan Nasional Veteran Jakarta

ABSTRACT: This research identifies, analyzes, and reformulates the juridical basis for the application of Justice Collaborators in murder based on Law No. 31/2014, as well as explaining the requirements and legal protection for Justice Collaborators in murder cases, reviewing the requirements and their application in legal practice in Indonesia.

This research uses a normative juridical approach, namely by examining/analyzing secondary data in the form of legal materials, especially primary legal materials and secondary legal materials, by understanding law as a set of positive rules or norms in the legislative system that regulates human life.

The results of the study that Justice Collaborator (JC) is an individual who is involved in a criminal act but not as the main perpetrator, and who is willing to cooperate with law enforcement to uncover larger and organized crimes. JCs have an important role in providing significant and reliable information to help law enforcement uncover major crimes. In Indonesia, JC status is regulated in various legal regulations agreed upon by the Ministry of Law and Human Rights, Attorney General's Office, Police, KPK, and LPSK. The protection of JCs is crucial, covering personal, family, and property security, as well as other rights such as a new identity and legal protection. Existing regulations allow JCs to be granted leniency or other benefits in recognition of their cooperation.

KEYWORDS: Justice Collaborator, criminal offense of murder, premeditated murder.

INTRODUCTION

Indonesia is a State of Law (Rechtsstaat/The Rule of Law) based on the constitution of the Republic of Indonesia. Article 1 paragraph (3) of the 1945 Constitution confirms that as a State of Law, all forms of law in Indonesia must be able to provide protection for the human rights of every person/citizen, provide a sense of justice, welfare and ensure public order, provide legal certainty to every citizen and provide and guarantee equal treatment for every person/citizen before the law (equality before the law).¹

In the 21st century, Indonesia faces increasingly complex legal challenges related to the crime of murder. In dealing with murder cases, it can be said that it is quite difficult for anyone to participate in it, especially law enforcers. The difficulty lies in proving the crime committed, especially when including those who have power in the bureaucratic system so that it sometimes poses a risk to those in it, so a competent or professional attitude and protection is needed for law enforcers and parties who take part in the disclosure of murder cases to facilitate disclosure.²

This is in line with Article 183 of the Criminal Procedure Code which explains that "The judge may not impose a sentence on a person unless with at least two valid pieces of evidence he is convinced that a criminal offense has actually occurred and that the defendant is the one guilty of committing it". One of the valid evidence in the trial is the witness. As stated in Article 184 of the Criminal Procedure Code, valid evidence is witness testimony, expert testimony, letters, instructions, and testimony of the defendant.³ However, although witness testimony is a valid piece of evidence needed in the criminal justice process, especially in organized crimes, often a person with knowledge of a crime is unwilling to become a witness due to fear.

The crime of murder has several forms or classifications (naming), including the crime of murder and the crime of premeditated murder. The crime of murder is regulated in Article 338 of the Criminal Code, namely: "Whoever with deliberate

¹ Utomo, N. P., "Pertimbangan Hakim Dalam Menjatuhkan Pidana Penjara Seumur Hidup Terhadap Pelaku Tindak Pidana Pembunuhan Berencana (Studi Kasus Di Pengadilan Negeri Sleman)", Jurnal Ilmiah Ilmu Hukum, 2013, hlm. 1.

² Lestari, N. N. R. D., Dewi, A. A. S. L., & Widyantara, I. M. M., "Justice collaborator dalam Pengungkapan Kasus Tindak Pidana Pembunuhan", Jurnal Analogi Hukum, Vol. 5 No. 1 (2023), hlm. 9.

³ Pasal 184 tentang Kitab Undang-Undang Hukum Acara Pidana.

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intent takes the life of another person, shall, being guilty of murder, be punished by a maximum imprisonment of fifteen years”.⁴ Meanwhile, the crime of premeditated murder is regulated in Article 340 of the Criminal Code, namely: “Any person who with deliberate intent and with premeditation takes the life of another person, shall, being guilty of premeditated murder, be punished by death or life imprisonment or a maximum imprisonment of twenty years”.⁵

The difference between the two crimes lies in the element of “with premeditation”. The crime of murder is realized/occurred by the existence of the will or intention to kill and its implementation together. In other words, between the emergence of the will to kill and its implementation becomes one unit. Whereas the crime of premeditated murder is realized/occurred starting with a plan before the execution of the murder, such as the perpetrator thinking about the act to be carried out calmly, there is a time gap between the emergence of the will and the execution of the will.⁶ Anwar stated that between the crime of premeditated murder and the crime of murder, the difference lies in what happens to the perpetrator before the murder. In the crime of premeditated murder, the perpetrator needs time to think calmly. Meanwhile, in the crime of ordinary murder, the will to kill and the execution of the murder are one unit.⁷

According to Article 1 point 26 of the Criminal Procedure Code, a witness is a person who can provide information for the purpose of investigation, prosecution and trial of a criminal case that he hears himself, sees himself and experiences himself.⁸ Witnesses and victims are often not protected for their safety and intimidation or terror occurs, as a result they are reluctant to testify in court. Whereas witnesses are one of the evidence in the examination of criminal cases where their testimony can prove the occurrence or absence of a criminal act.⁹

In line with the development of legal protection of witnesses, with reference to the development of international law, the legal concept of witnesses has developed. In general, Indonesia recognizes several legal concepts regarding witnesses, namely Victim Witnesses, Fact Witnesses, Expert Witnesses, Child Witnesses, Reporter Witnesses, Witnesses a charge, Witnesses a de charge, Crown Witnesses, and Witnesses testimonium de auditu. Currently, with reference to the increasingly difficult modification of criminal offenses, even in the international world, a concept known as Justice Collaborator and Whistleblower has emerged.¹⁰

The regulation of legal protection of Witnesses (Justice Collaborators) and Whistleblowers, as stated by Padmo Wahyono, raises a logical consequence, not only the awareness of the temporality of a law, or the atmosphere of mysticism in the drafting process, but also must contain arrangements regarding the authority of state institutions charged with the obligation to apply the legislation.¹¹

The roots of the emergence of efforts to protect witnesses as Justice Collaborators, stem from the United Nations Convention Against Transnational Organized Crime, according to Article 24 of the United Nations Convention Against Transnational Organized Crime (UN General Assembly Resolution 55/25, annex I) which states that member states should make reasonable efforts to provide effective protection from reprisals or intimidation for witnesses who testify in cases involving transnational organized crime. Such measures include physical protection, relocation and confidentiality or restrictions on disclosure of the identity and location of witnesses, and the introduction of evidentiary rules to permit the giving of testimony in a manner that ensures witness safety. Member States should consider entering into agreements or arrangements with other States for witness relocation.¹²

Then it is emphasized in Article 26 of the United Nations Convention against Transnational Organized Crime that member states are required to make reasonable efforts to encourage those who participate or have participated in organized crime groups to cooperate with law enforcement officials for the purposes of investigation and evidence. Based on paragraph 4 of the article, the person concerned should be given protection in accordance with the provisions of Article 24 of the Convention.

Based on these international conventions, several countries also accommodate these provisions. For example, Albania, where in the Protection Act of Justice collaborator and Witness of the Republic of Albania (Republic of Albania The Assembly Law No. 9205, Dated 15/03/2004 On The Justice Callaborators and Witness Protection), Article 2 letter b emphasizes:

“A collaborator of justice is considered a person that serves a criminal sentence or a defendant in a criminal proceeding, toward whom special measures of protection have been applied due to callaboration, notifications and declarations made

⁴ Moeljatno, *Asas-Asas Hukum Pidana*, Rineka Cipta, Jakarta, 2009, hlm. 122.

⁵ *Ibid.*, hlm. 123.

⁶ Yanri, F. B., *Pembunuhan berencana*, Jurnal Hukum dan Keadilan, Vol. 4 No. 1 (2017), hlm. 38.

⁷ Anwar, M., *Hukum pidana bagian khusus (KUHP Buku II)*, Bandung: Alumni, 1986, hlm. 93-94.

⁸ “Pemeriksaan Saksi Di Tingkat Penyidikan Dan Di Pengadilan - Klinik Hukumonline,” accessed July 10, 2023, Pukul 12:59 WIB, <https://www.hukumonline.com/klinik/a/pemeriksaan-saksi-di-tingkat-penyidikan-dan-di-pengadilan-lt4ca459db4ecc2/>.

⁹ Eko Hadi Purnomo, “*Analisis Yuridis Tentang Tanggungjawab Pidana Terhadap Saksi Yang Memberikan Keterangan Palsu Dalam Perkara Pidana*”, Doctoral dissertation, Universitas Islam Kalimantan MAB, 2022, hlm. 5.

¹⁰ Y. C. Tofik, *KPK dan Kewenangan Penetapan Status Justice Collaborator*, Cet. 1, PT. Sangir Multi Usaha, Jakarta, 2022, hlm. 4.

¹¹ Padmo Wahyono, *Indonesia Negara Berdasarkan Atas Hukum*, PT. Ghalia Indonesia, Jakarta, 1986, hlm. 17-18.

¹² *Ibid.*, Y. C. Tofik, hlm. 5.

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during the criminal proceeding on the offences provided in letter “e” of this article, and for these reasons is in a real, concrete or serious danger.” According to Arini Asriyani, basically Justice collaborator in the law of the Republic of Albania is defined as a person who is serving a criminal sentence or a suspect / defendant in the criminal justice process, which requires special handling of protection because the person has cooperated, gave testimony, and statements made during the trial process where the criminal concerned is experiencing a real, real, and serious danger situation.¹³

Whereas in Australia, as stipulated in the Witness Protection Act 1994 (WPA 1994) which provides a definition of ‘Witness’ to all concepts of Witnesses who are only distinguished from the functional side. Where in Section 3 on Interpretation letter (e) WPA 1994 confirms “a person who, because of his or her relationship to, or association with, a person referred to in paragraph (a), (b), (c) or (d) may require protection or other assistance under the NWPP.” This means that the Australian Government does not distinguish between the concept of witness and the concept of Justice Collaborator, but still uses the concept of witness, only then, the WPA 1994 emphasizes the functional relationship between the witness and the violation of the law that occurred.

The legal concept of Justice Collaborator in Indonesia has been accommodated in Law No. 13 of 2006 concerning Witness and Victim Protection, Law No. 5 of 2009 concerning the ratification of the United Nations Convention Against Transnational Organized Crime and Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Witness and Victim Protection. Article 1 point 2 of Law No. 13 of 2006 in conjunction with Law No. 31 of 2014 states “Witnesses are suspects, defendants, or convicts who cooperate with law enforcement to reveal a criminal act in the same case.” Referring to Padmo Wahyono's view above, Article 12 of Law No. 13 of 2006 in conjunction with Law No. 31 of 2014 confirms “LPSK is responsible for handling the provision of protection and assistance to Witnesses and Victims based on the duties and authorities as stipulated in this Law”. This means that the legislation has introduced a state institution that is responsible for implementing the mandate of Law No. 13/2006 in conjunction with Law No. 31/2014, namely the Witness and Victim Protection Agency (LPSK).¹⁴

Basically the concept of the application of the perpetrator who cooperates (Justice Collaborator) is the cooperation of criminals who are not the main perpetrators with law enforcement to arrest the main perpetrators, so as to dismantle organized crime. For this reason, one of the requirements to become a Justice Collaborator is that the perpetrator is not the main perpetrator, because if the main perpetrator is used as a Justice Collaborator to catch the perpetrators under him, the main perpetrator can escape the law and become a deterrent to be able to repeat his actions.

The role of a Justice Collaborator is someone as a suspect but not the main perpetrator and can expose the person involved above him (actor). In this case, even though he is involved, he will receive special treatment if he is willing to help make the case clear, the actions taken by the Justice Collaborator that can help law enforcement. A Justice Collaborator who sheds light on the case is a person who has courage and a strong mentality. This is because the person basically already knows the bad things that happen to him because of the report, such as being threatened, intimidated, persecuted, dishonorably dismissed or even killed. In upholding law and justice, the courts are still influenced by other forces and powers, and the law enforcement function of the courts is not yet fully independent, so that the main task of the courts to realize justice and peace in society is still far from expectations.¹⁵ Thus the presence of LPSK has a very important and strategic role so that the courage and strong mentality continues until the Justice Collaborator provides information or testimony in the investigation or even at trial.¹⁶

So that LPSK is required to fulfill a number of human rights owned by a Justice Collaborator, including the right to obtain protection for the personal security of his family and property, as well as freedom from threats related to the report of the testimony he will convey and the right to provide information without pressure, get a new identity, get a new place of residence, get reimbursement of transportation costs according to needs, and get legal counsel. Because Justice Collaborators are often victimized, it could be because of their position, or maybe they are afraid of their superiors who should be responsible for this, or they have been threatened for certain reasons, so as not to drag the people involved above them.¹⁷

At first the understanding of the concept of Justice Collaborator was not known in Indonesian criminal procedure law, the regulation of Justice Collaborator was new. The term Justice Collaborator is known from the results of renewal efforts in the practice of criminal law enforcement, of course the birth of this concept is inseparable from the development of modus operandi by criminals. Its existence began to receive attention and then regulated in positive law. However, before the term Justice Collaborator, the concept of evidentiary criminal law in Indonesia recognized the term crown witness, which is one of the perpetrators of a criminal offense who is then asked to be a key witness to reveal other perpetrators in exchange for a reduction in criminal penalties. However, the

¹³ Arini Asriyani, “Legal Protection of a Witness Cooperating Person (Justice Collaborator) In Exposing the Criminal Acts of Corruption, *IOSR Journal of Humanities And Social Science*”, Vol. 23, issue 2, Ver. 11 (2018), hlm. 16.

¹⁴ Arman Jauhari, Slamet Tri Wahyudi, “Perspektif keadilan dalam optimalisasi peran Lembaga Perlindungan Saksi dan Korban berupa pemberian kompensasi korban terorisme.” *National Conference on Law Studies (NCOLS)*, Vol. 5. No. 1 (2023).

¹⁵ Rumadan, I., *Peran Lembaga Peradilan Sebagai Institusi Penegak Hukum Dalam Menegakkan Keadilan Bagi Terwujudnya Perdamaian*. Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional, 2017.

¹⁶ Supriadi Widodo Eddyono, “Prospek perlindungan Justice Collaborator di Indonesia, perbandingannya dengan di Amerika dan Eropa”, *Jurnal Perlindungan*, Vol. 1 No. 1 (2011).

¹⁷ Mahrus Ali, *Dasar-dasar hukum pidana Indonesia*, Cetakan ke 2, Sinar Grafika, Jakarta, 2012.

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applicability of crown witnesses is limited to certain criminal offenses, namely the crime of participation with case splitting or case splitting.¹⁸

Before discussing about Justice Collaborator, it is better to understand the origin and meaning of the term. Etymologically, Justice Collaborator comes from the word Justice which means justice.¹⁹ While Collaborate means to cooperate, produce, and create.²⁰ In terminology, a Justice Collaborator is defined as one of the perpetrators of a certain crime who recognizes the crime he committed, is not the main perpetrator in the crime and provides information as a witness in the judicial process.²¹ Furthermore, here are some definitions of Justice Collaborator in various views:

1. The United National Office on Drugs and Crime, holds the view that a justice collaborator is a person involved in an offense or crime committed by or in connection with a criminal organization who has substantial knowledge of the organization's structure, methods of operation, and activities as well as the organization's relationships with other groups. Most of them cooperate in the hope that they can receive immunity or at least leniency from imprisonment and physical protection for themselves and their families.²²
2. Council of Europa Committee of Ministers, that a collaborator of justice is a person who acts as a perpetrator of a criminal act or is believed to be part of a criminal act committed jointly or organized crime in all its forms or is part of a person who cooperates with law enforcement officials to provide testimony regarding a criminal act committed jointly or organized or regarding various forms of criminal acts related to organized crime and other serious crimes.²³
3. Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection, that the regulation implicitly regulates Justice Collaborators, namely in Articles 10 and 10A which reads:

Article 10

- 1) "Witnesses, Victims, Witness Actors, and/or Reporters cannot be prosecuted legally, either criminal or civil for testimony and/or reports that will, are, or have been given, unless the testimony or report is given not in good faith."
- 2) "In the event that there are lawsuits against Witnesses, Victims, Witness Actors, and/or Whistleblowers for testimony and/or reports that will be, are being, or have been given, the lawsuits must be postponed until the case he/she reports or gives testimony has been decided by the court and obtained permanent legal force."

Pasal 10A

- 1) "Witnesses may be given special handling in the examination process and rewards for their testimony."
- 2) "Special handling as referred to in paragraph (1) in the form of:
 - a) separation of places of detention or places of imprisonment between Witnesses and suspects, defendants, and / or prisoners whose criminal acts are revealed;
 - b) separation of dossiers between the file of the Witness of the Perpetrator and the files of suspects and defendants in the process of investigation, and prosecution of the criminal offense disclosed; and/or
 - c) testify before the court without directly confronting the defendant against whom the crime has been revealed."
- 3) "Award for testimony as referred to in paragraph (1) in the form of:
 - a) leniency in the imposition of sentence; or
 - b) parole, additional remission, and other prisoners' rights in accordance with the provisions of laws and regulations for Witnesses who are prisoners."
- 4) "To obtain an award in the form of leniency in the imposition of punishment as referred to in paragraph (3) letter a, LPSK provides a written recommendation to the public prosecutor to be included in his/her indictment to the judge."
- 5) "To obtain awards in the form of parole, additional remission, and other prisoners' rights as referred to in paragraph (3) letter b, LPSK provides recommendations in writing to the Minister who organizes government affairs in the field of law."

¹⁸ Firman Wijaya, *Wistle Blowes dan Justice Collaborator dalam Perspektif Hukum*, Penaku, Jakarta, 2012, hlm. 11.

¹⁹ Desi Anwar, *Kamus Lengkap 1 Milliard Inggris-Indonesia*, Indonesia-Inggris, Amelia, Surabaya, 2013, hlm. 196.

²⁰ *Ibid.*, hlm. 71.

²¹ SEMA RI Nomor 4 Tahun 2011 tentang Perlakuan Bagi Pelapor Tindak Pidana (*Whistleblower*) dan Saksi yang Bekerjasama (*justice collaborator*) di dalam Perkara Tindak Pidana Tertentu.

²² *United National Office on Drugs and Crime*, hlm. 19

²³ Abdul Haris Semendawai "Penanganan dan Perlindungan Justice Collaborator dalam Sistem Hukum Pidana di Indonesia", <http://www.elsan.or.id/download/1308812895-penangan-dan-perlindungan-justice-collaborator-pdf/>, diakses pada tanggal 16 Februari 2024.

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4. Supreme Court Circular Letter Number 4 Year 2011 on the Treatment of Whistleblowers and Justice Collaborator Witnesses in Certain Criminal Cases, that the guidelines for determining a person as a Justice Collaborator Witness are contained in Number 9 letter a and b of the SEMA as follows: "The person concerned is one of the perpetrators of certain criminal offenses as referred to in this SEMA, admits the crime committed, is not the main perpetrator in the crime, provides information as a witness in the judicial process and the Public Prosecutor in his prosecution states that the person concerned has provided very significant information and evidence so that the investigator and / or public prosecutor can effectively reveal the criminal offense in question, reveal other perpetrators who have a greater role and / or return assets / proceeds of a criminal offense."²⁴
5. Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of Police of the Republic of Indonesia, the Corruption Eradication Commission of the Republic of Indonesia, the Chairman of the Witness and Victim Protection Agency of the Republic of Indonesia Number: M.HH-11.HM.03.02.th.2011, Number: PER-045/A/JA/12/2011, Number: 1 Year 2011, Number: KEPB-02/01-55/12/2011, Number: 4 Year 2011 on Protection for Whistleblowers, Whistleblower Witnesses and Cooperating Witnesses in Article 1 point 3, that a cooperating Witness is a witness who is also a perpetrator of a criminal act who is willing to assist law enforcement officials to uncover a criminal act or the occurrence of a criminal act to return assets or proceeds of a criminal act to the state by providing information to law enforcement officials and providing testimony in the judicial process.

Regarding the history of Justice Collaborators, in the United States protection of a witness can be done for witnesses under the protection and supervision of the Bureau of Prison and the US Marshal Service. The Bureau of prison has the authority to supervise and regulate and approve and determine applications for witness protection. While the US Marshal Service acts to assess witnesses who will be included in the protection program and provide protection in urgent circumstances.²⁵

However, there are also witnesses who make a request in advance to be included in the witness protection program and then investigate the relationship with the crime being investigated by the United States prosecutor, but everything must still go through the application route, even though it can be given through a request on their own initiative or an offer or rather a request from the United States prosecutor.

The issue of witness protection in Germany is regulated in two laws, namely in the German Criminal Code, which in 1998 was amended specifically for witness protection issues through the Witness Protection in Criminal Proceedings and Protection of Victims Act. This law emphasizes rights in the examination process. However, it does not specifically address the rights of witnesses, such as the rights of threatened witnesses, who are often key witnesses to serious crimes.²⁶

In addition, the provision of witness protection is subject to the authority of each German state, with each state having different policies. It can be inconvenient if a witness can be protected under one state's regulations, but when he or she has to travel to another state, it is likely that he or she will not be protected. It was therefore necessary to issue a regulation harmonizing the respective witness protection legislation of each German State. In 2001, the German government passed the Harmonization of Witness Protection in Danger Act (*Zeugenschutzharmonisierungsgesetz/ZshG*).

The practice of protecting Justice Collaborators in the Netherlands uses the mechanism of Witness Agreements, namely an agreement between the original text of the 1998 *Zeugenschutzgesetz* Witness Protection Act. The Public Prosecutor and the witness to provide testimony in exchange for rewards such as leniency.²⁷ However, the instrument of witness agreements to combat crime is not widely used in the Dutch administration of criminal justice. The provision of witness agreements is contained in the Dutch Criminal Procedure Code Title III, Section 4B4D (Articles 226g-226l CCP). The importance of the information, evidence or testimony provided by the cooperating witness is one of the main factors in granting Justice Collaborator status.

In the Netherlands, the principle of making the perpetrator witness as a Justice Collaborator is known as the Principle of Subsidiarity, where the granting of Justice Collaborator status can only be done as a substitute if other means of uncovering crime have failed or it is certain that it will not produce results in uncovering criminal acts. 10 The type of crime to be revealed needs to be limited to incentives for Justice Collaborators, which can only be given if the person concerned provides information, information, evidence and testimony on serious and organized criminal acts and his involvement is not as the main perpetrator of the reported crime.

However, in the Netherlands, witnesses who make an agreement with the Public Prosecutor cannot provide anonymous testimony. It is important to ensure adequate physical protection. This protection is provided by the Witness Protection Agency.

²⁴ Angka 9 huruf a dan b Surat Edaran Mahkamah Agung RI Nomor 4 Tahun 2011 tentang Perlakuan Bagi Pelapor Tindak Pidana (*Whistleblower*) dan Saksi yang Bekerjasama (*Justice Collaborator*) di dalam Perkara Tindak Pidana Tertentu

²⁵ http://themoonstr.blogspot.com/2013/01/whistleblower-dan-justice-collaborator_24.html diakses pada tanggal 16 Februari 2024

²⁶ Naskah asli Undang-undang Perlindungan Saksi *Zeugenschutzgesetz* tahun 1998 di <http://www.datenschutz-erlin.de/recht/de/ggebung/zeugen.html>

²⁷ Surya Jaya, *Perlindungan Justice Collaborator dalam sistem pengadilan*, Elsam, Jakarta, 2010.

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When the Public Prosecutor is negotiating with the witness he may introduce the witness to the witness protection service to assess the need for physical protection measures of the witness in the event of an agreement between the witness and the witness protection service on the terms and conditions of physical protection of the witness (and sometimes some of his family members as well). The type of protection can vary from a new identity to a new home in another city or country or even a new appearance if necessary even with plastic surgery.

The practice of applying Justice Collaborators to reveal an organized crime in Indonesia has occurred, including in the Djoko Tjandra red notice bribery case, the Asian Agri Group tax evasion case, the e-KTP procurement corruption case and the bribery case for the election of the Senior Deputy Governor of Bank Indonesia.²⁸ If further examined regarding the determination of Justice Collaborator in the cases mentioned above, it boils down to Corruption Crime, this is as stipulated in the Corruption Crime Law which clearly regulates the determination of Justice Collaborator, but in practice the determination of Justice Collaborator is also given to Richard Eliezer Pudihang Lumiu alias Bharada E who is the perpetrator of premeditated murder, which in the Criminal Code and Criminal Procedure Code as the legal umbrella for the crime of murder does not regulate the determination of Justice Collaborator in the crime of murder so that it is necessary to expand the norms or rules regarding the determination of Justice Collaborator in the case of murder in Indonesia in the Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection which is based on Law of the Republic of Indonesia Number 5 of 2009 concerning Ratification of the United Nations Convention Against Transnational Organized Crime.²⁹

Based on the above background, the problem formulation in this study is How are the requirements for a murder perpetrator to become a Justice Collaborator?

RESEARCH METHODS

In writing this research, the author uses normative legal research.³⁰ The writing approach using normative legal research is used as a form of how to conduct this writing which refers to the prevailing laws and regulations or norms. The approach refers to legal norms contained in laws and regulations and court decisions.³¹ This type of writing is based on the theme studied, which is related to the application of Justice Collaborators in murder cases in Indonesia. This research uses a normative juridical approach, namely by examining / analyzing secondary data in the form of legal materials, especially primary legal materials and secondary legal materials, by understanding the law as a set of positive rules or norms in the legislative system that regulates human life.

Based on its nature, this research is descriptive, namely research intended to provide data that is as accurate as possible about humans, conditions or other symptoms. The purpose is mainly to confirm hypotheses in order to help in strengthening old theories, or in the framework of compiling new theories. Therefore, this research is intended to provide clear data on the Juridical Review of the Application of Justice Collaborator in the Murder Crime Case. So that the approach used to this problem cannot be separated from a policy-oriented approach. The policy approach includes an understanding that is intertwined between a goal-oriented approach, a rational approach, an economic and pragmatic approach, and a value-oriented approach.

DISCUSSION

REQUIREMENTS FOR A MURDER OFFENDER TO BECOME A JUSTICE COLLABORATOR

The main reference for legislation in Indonesia that generally regulates witnesses, including their rights and protection, is still the Criminal Procedure Code (KUHAP) and other regulations under it. The Code of Criminal Procedure is the umbrella of all criminal procedure laws in Indonesia and is the first to regulate witnesses and their rights.

The definition of a witness can be found in Article 1.26 of the Criminal Procedure Code (KUHAP). According to the definition in the Criminal Procedure Code, a witness is someone who can provide information for the benefit of the investigation, prosecution and judicial process regarding a criminal case that he or she has heard, seen and experienced himself or herself.³²

Based on the definition mentioned by Article 1 number 26 of the Criminal Procedure Code above, several conclusions are drawn which the requirements of witnesses are including:

1. A person who sees or witnesses with his/her own eyes a criminal offense.
2. A person who hears the occurrence of a criminal offense.
3. A person who personally experiences and or is a direct victim of an event that constitutes a criminal offense.

²⁸ Beniharmoni Harefa, dan Nurul Bazroh, "Pembuktian Gratifikasi Seksual dalam Pemberantasan Tindak Pidana Korupsi," *Jurnal Hukum Pidana dan Kriminologi*, Vol. 3 No. 2 (2022), hlm. 44-52. DOI: <https://doi.org/10.51370/jhpk.v3i2.83>

²⁹ Wicipto Setiadi, Beniharmoni Harefa. "The principle of reversal burden of proof in act of money laundering in Indonesia." *International Journal of Innovation, Creativity and Change*, Vol. 9 No.7 (2019), hlm. 197-209.

³⁰ Sukismo, *Karakter Penulisan Hukum Normatif dan Sosiologis*, Penerbit Puskumbangsi Leppa UGM, Yogyakarta, 2008, hlm. 8.

³¹ Jhonny Ibrahim, *Teori dan Metodologi Penulisan Hukum Normatif*, Bayumedia Publishing, Malang, 2006, hlm. 46.

³² Pasal 1 angka 26 Undang-Undang Nomor 8 Tahun 1981 tentang Hukum Acara Pidana.

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Based on the above understanding, we get a clarity that the witness in giving his testimony in front of the trial can directly give his testimony at the time of trial based on the facts that occur in the field.³³

Indonesia as a State of Law has given birth to various laws and regulations. In general, laws and regulations are formulated with the aim of regulating and organizing people's lives in a country in order to obtain justice, certainty and benefits. Various types of laws and regulations in various fields of life have been passed, but this does not mean that a country is free from crimes and violations or what is commonly called criminal acts. It is said to be a criminal act if the act is regulated in the law or legal norms and categorized as a prohibited act and followed by legal sanctions for people who have violated these rules.³⁴

In order to overcome criminal acts, the government has formulated various policies and rules as outlined in the legislation. One of the policies that acts as a repressive effort against criminal acts, especially certain serious and / or organized criminal acts, is the existence of cooperating witnesses or Justice Collaborators known in Indonesia in order to help law enforcers overcome a criminal act which according to article 1 point 2 of Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning Witness and Victim Protection, namely:

“Witnesses are suspects, defendants, or convicts who cooperate with law enforcement to reveal a criminal offense in the same case.”³⁵

Initially, the concept of Justice Collaborator was used for Corruption Crimes in Article 37 paragraph (2) of the United Nations Convention Against Corruption (UNCAC), which reads:³⁶

“Each state party shall consider, providing for the possibility in certain cases of mitigating the punishment of an offender who provides substantial cooperation in the investigation or prosecution of a crime to which this convention applies.”

The United Nations Convention Against Corruption (UNCAC) of 2003, which has been ratified through Law Number 7 of 2006 on the Ratification of the United Nations Convention Against Corruption (UNCAC) on April 18, 2006, states that corruption is a serious problem that threatens the stability and security of society, harasses democratic institutions and values, ethical values and justice, and jeopardizes sustainable development and the rule of law.³⁷ Not only corruption crimes, the application of Justice Collaborators is also used in different cases, namely the Murder Crime case.

Criminal law provides opportunities for certain criminals to cooperate as witnesses in uncovering a criminal offense. As a form of appreciation for the perpetrator, he will be rewarded with, among others, a reduction in criminal sanctions, parole, additional remission and other rights for prisoners in accordance with statutory provisions. The presence of a Justice Collaborator in a case is expected to assist law enforcement in order to reveal the truth and facts in a criminal offense.

Arrangements for witnesses who cooperate (Justice Collaborator) in certain serious and/or organized crimes in the criminal justice system in Indonesia so far are contained in the following legal regulations:

1. The United Nations Convention Against Corruption (UNCAC) which was ratified into Law Number 7 of 2006 concerning the United Nations Convention Against Corruption, the regulation of Justice Collaborators is regulated in Article 37 paragraph (2) and paragraph (3) of the 2003 convention against corruption (UNCAC). This article does not clearly regulate the Justice Collaborator, but the article regulates the protection of Justice Collaborators.
2. United Nations Convention Against Transnational Organized Crime (UNCATOC) which was ratified into Law Number 5 of 2009 concerning the United Nations Convention Against Transnational Organized Crime. Article 26 paragraph (2) and paragraph (3) of this convention describes Justice Collaborators who deserve legal protection.
3. Law No. 31/2014 on the amendment of Law No. 13/2006 on the Protection of Witnesses and Victims
4. Supreme Court Circular Letter (SEMA) No. 4/2011 on the Treatment of Whistleblowers and Justice Collaborators in certain criminal cases.
5. Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of Police of the Republic of Indonesia, the Corruption Eradication Commission of the Republic of Indonesia, and the Chairman of the Witness and Victim Protection Agency of the Republic of Indonesia Number: M.HH-11.HM.03.02.th.2011, Number: PER-045/A/JA/12/2011, Number: 1 of 2011, Number: KEPB-02/01-55/12/2011, Number: 4 of 2011 concerning Protection for Whistleblowers, Witnesses and Witnesses of Cooperating Actors.

The Institute for Criminal Justice Reform (ICJR) considers that the phrase “main perpetrator” in the existing regulations is still not well formulated, because it will cause various interpretations or different understandings. Then, ICJR recommends that all

³³ Prodjudikoro, R. W., *Hukum acara pidana di Indonesia*, Sumur, Bandung, 1997, <https://opac.perpusnas.go.id/DetailOpac.aspx?id=502758>.

³⁴ Moeljatno, *Asas-Asas Hukum Pidana*, PT. Rineka Cipta, Jakarta, 2008, hlm. 61.

³⁵ Lihat pasal 1 angka 2 Undang-Undang Nomor 31 Tahun 2014 tentang perubahan atas Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban.

³⁶ United Nations Convention Against Corruption (UNCAC) telah diratifikasi oleh Indonesia melalui Undang-Undang Nomor 7 Tahun 2006 tentang Konvensi Perserikatan Bangsa-Bangsa Anti Korupsi.

³⁷ Benihamoni Harefa, et al., *Pemberantasan korupsi di Indonesia pada masa pandemi Covid-19*, Deepublish, 2022, hlm. 9.

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law enforcement institutions sit together again and discuss in order to reach an understanding of the view of the “main perpetrator” as one of the requirements in determining the Justice Collaborator.³⁸

The issue of the main perpetrator creates a lack of legal certainty. In essence, legal certainty is a guarantee that the law must be carried out in a good way. In criminal law enforcement, legal certainty plays an important role in the life of society to realize order and justice. If a rule of law does not contain the value of certainty, it is feared that it will cause irregularities in people's lives, and will result in the emergence of arbitrary actions and vigilantism. If left in such conditions, life in it will be in an atmosphere of social disorganization or social chaos.³⁹ In other words, uncertainty regarding the main perpetrator in the Justice Collaborator criteria can harm the law enforcement process.

Justice Collaborators can only be submitted for certain serious criminal acts such as corruption, terrorism, narcotics, money laundering, trafficking in persons, and other organized criminal acts. In such crimes, it is usually almost impossible to realize the criminal act independently or in other words, always together and involving several parties. In corruption cases, for example, it is likely that there are parties who order, parties who participate, and parties who help. Therefore, in applying for a Justice Collaborator there is a condition that it is not the main perpetrator, which means that the criminal act involves several actors with different roles. Thus, in the decisions of the criminal acts referred to, it is not uncommon to find the defendants subject to the article of criminal participation, which is contained in Articles 55 and 56 of the Criminal Code. However, the Criminal Code does not explicitly explain which of the two articles can be categorized as the main perpetrator.

In foreign legal systems, namely the United Kingdom, Canada and France, criminal participation is also divided into main perpetrators and accomplices.⁴⁰ In the English legal system, a principal is someone who actually commits a criminal offense; those who jointly commit a criminal offense (joint principal); someone who acts through the intermediary of another person to commit a criminal offense. In the Canadian legal system, a principal is someone who commits a material act or who embodies the whole essence of the offense, or someone who meets the qualities intended by the law subjectively and objectively. Then, in the French legal system, the principal offender is the author of the criminal offense; the inducer; and the participant.

For example, when Richard Eliezer Pudihang Lumiu submitted himself to LPSK to become a Justice Collaborator in the murder of Nofriansyah Yosua Hutabarat, this case involved members of the Indonesian National Police. With the perpetrators of criminal acts who offer themselves to become Justice Collaborators, of course there are differences in testimony from before and after becoming a Justice Collaborator. So how the degree of testimony of a Justice Collaborator and the judge in seeing or weighing which testimony is the most reasonable from a Justice Collaborator will be used by the judge in making a decision.

At the practical level, the problem of uncertainty of the main perpetrator criteria has implications for the punishment contained in the South Jakarta District Court Decision Number: 798/Pid.B/2022/PN.Jkt.Sel dated February 15, 2023 which is a crime of premeditated murder committed by the defendant Richard Eliezer Pudihang Lumiu. Richard Eliezer Pudihang Lumiu's application as a Justice Collaborator was granted by the Panel of Judges, and Richard Eliezer Pudihang Lumiu received a reduced criminal sentence. Based on the legal facts, the actions of the defendant Richard Eliezer Pudihang Lumiu fulfilled all the elements/formulation of the criminal offense, including fulfilling the elements of Article 55 paragraph (1) of the Criminal Code, and also in committing the case the defendant Richard Eliezer Pudihang Lumiu played an active role in realizing the criminal offense, so this should be a consideration for the Judge in granting the defendant's Justice Collaborator application.

There are several provisions regarding Justice Collaborators that are used as guidelines in the disclosure of murder cases, namely:

1. United Nations Convention Against Transnational Organized Crime (UNCATOC) which was ratified into Law Number 5 of 2009 concerning the United Nations Convention Against Transnational Organized Crime. Article 26 paragraph (2) and paragraph (3) of this convention describes Justice Collaborators who deserve legal protection.
2. Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning Witness and Victim Protection, but in the Law itself there are still shortcomings regarding its scope such as the conditions for being able to determine someone to become a Justice Collaborator who is still a problem, the provision of rewards is not clear and not commensurate with the risks obtained for Justice Collaborators.
3. Supreme Court Circular Letter (SEMA) Number 4 Year 2011 on the Treatment of Whistleblowers and Witnesses of Cooperating Offenders (Justice Collaborators) in Certain Criminal Cases.
4. Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of Police of the Republic of Indonesia, the Corruption Eradication Commission of

³⁸ *Institute For Criminal Justice Reform*, “Problem Penetapan Bagi Pelaku Yang Bekerjasama Masih Terjadi di Pengadilan, Hakim dan Jaksa Masih Belum Sepakat Soal Status Pelaku Yang Bekerjasama”, <https://icjr.or.id>, 13 Juni 2016.

³⁹ M. Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHP: Penyidikan dan Penuntutan*, Sinar Grafika, Jakarta, 2002, hlm. 76.

⁴⁰ Mia Amiati Iskandar, *Perluasan Penyertaan Dalam Tindak Pidana Korupsi Menurut UNCATOC 2000 dan UNCAC 2003*, GP Press Group, Jakarta, 2013, hlm. 222.

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the Republic of Indonesia, and the Chairman of the Witness and Victim Protection Agency of the Republic of Indonesia Number: M.HH-11.HM.03.02.th.2011, Number: PER-045/A/JA/12/2011, Number: 1 Year 2011, Number: KEPB-02/01-55/12/2011, Number: 4 Year 2011 on the Protection of Whistleblowers, Whistleblower Witnesses and Cooperating Witnesses.

The conditions or criteria for a perpetrator of murder to become a Justice Collaborator are contained in Number 9 letters a and b of Supreme Court Circular Letter (SEMA) Number 4 of 2011 concerning Treatment for Whistleblowers and Witnesses of Cooperating Actors (Justice Collaborators) in certain criminal cases, namely:

1. The person concerned is one of the perpetrators of certain criminal offenses as referred to in this SEMA
2. Confesses the crime he/she committed
3. Not the main perpetrator in the crime
4. Provide testimony as a witness in the judicial process
5. The public prosecutor in his/her indictment states that the person concerned has provided very significant information and evidence so that the investigator and/or public prosecutor can effectively uncover the criminal offense in question, uncover other perpetrators who have a greater role and/or return assets / proceeds of a criminal offense

However, in the statutory provisions on the protection of witnesses and victims, there are no further provisions regarding the requirements or criteria for a person to become a Justice Collaborator and what types of certain criminal offenses are included in the requirements. This raises problems in determining the terms or conditions to be said to meet these criteria.

The provisions regarding Justice Collaborators have not been specifically and firmly regulated in the legislation. This is one of the weaknesses in providing legal certainty regarding Justice Collaborators.

CONCLUSION

The conditions or criteria for a perpetrator of murder to become a Justice Collaborator are contained in Number 9 letters a and b of Supreme Court Circular Letter (SEMA) Number 4 of 2011 concerning Treatment for Whistleblowers and Witnesses of Cooperating Actors (Justice Collaborators) in certain criminal cases, namely:

1. The person concerned is one of the perpetrators of certain criminal offenses as referred to in this SEMA
2. Confesses the crime he/she committed
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5. The public prosecutor in his/her indictment states that the person concerned has provided very significant information and evidence so that the investigator and/or public prosecutor can effectively uncover the criminal offense in question, uncover other perpetrators who have a greater role and/or return assets / proceeds of a criminal offense

However, in the statutory provisions on the protection of witnesses and victims, there are no further provisions regarding the requirements or criteria for a person to become a Justice Collaborator and what types of certain criminal offenses are included in the requirements. This creates problems in determining the terms or conditions to be said to meet these criteria.

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