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Justice collaborator status in murder based on Law Number 31 of 2014

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ABSTRACT

Provisions regarding Justice Collaborator are regulated in Law Number 31 of 2014 concerning the Protection of Witnesses and Victims. In practice, it is not uncommon for the role of Justice Collaborator to be applied inappropriately. For example, in the case of Bharada Richard Eliezer Pudihang Lumiu. This study aims to examine and analyze the determination of justice collaborator according to Law Number 31 of 2014 and examine and analyze the ideal construction of determining the status of justice collaborator for perpetrators of premeditated murder crimes. This study uses normative juridical research with secondary data in the form of primary, secondary, and tertiary legal materials. The results showed that the determination of the status of justice collaborator in the Brigadier Joshua murder case by the defendant Ricard Eliezer the application for Justice Collaborator status should have been rejected by the panel of judges, where the crime of premeditated murder was not included in the category of cases that qualified as Justice Collaborator based on the provisions of Law Number 31 of 2014, but for the sake of disclosure of the case, and in order to fulfill the responsibility of judges in carrying out their main duties and functions, to enforce the law optimally in order to fulfill a sense of justice, expediency and legal certainty. The Justice Collaborator system for premeditated murder perpetrators requires clearer, more detailed legal rules, as per the rule of law, legality, and certainty theories, compared to arrangements in America, Italy, and Hong Kong.

Keywords:

planned murder
justice collaborator
witness

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INTRODUCTION

In Criminal Law in Indonesia, the terms Formil Criminal Law and Material Criminal Law are known. Material Criminal Law is a set of rules that regulate the forms of violations and / or crimes accompanied by sanctions, while the Formil Criminal Law is a set of regulations that regulate the form of implementation of Material Criminal Law or better known as the Criminal Procedure Law. The Formil Criminal Law is regulated in Law Number 8 of 1981 concerning the Code of Criminal Procedure, while the Material Criminal Law is regulated in the Criminal Code (for general criminal law provisions), and other laws that regulate the Material Criminal Law which is regulated outside the Criminal Code.

Participation offenses are regulated in the Criminal Law, which is regulated in articles 55, 56, and 57 of the Criminal Code. In its development, the offense of inclusion has an important role in the development of a criminal case committed by more than one person, especially for special crimes regulated outside the Criminal Code, which is classified as an extraordinary crime. This is because the disclosure factor of criminal acts classified as extraordinary crimes is generally carried out by more than one perpetrator, and each perpetrator has their own role and sometimes determines the development of investigations and investigations of related crimes.

The conditions mentioned above, cause the government as the framer and implementer of laws and regulations to develop a system called Justice Collaborator (cooperating actors), to be able to assist in the development of disclosure of a criminal act classified as an extraordinary crime, such as in cases of corruption, money laundering, narcotics, terrorism, and trafficking in persons, which generally involve various parties where sometimes The crime involves the official or government employee himself.

The Justice Collaborator system in its development is regulated through the Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2011 concerning Treatment for Whistleblowers and Justice Collaborator Witnesses. In the Case of Certain Crimes, which states, "...The person concerned is one of the perpetrators of certain crimes referred to in this Supreme Court Circular, admits the crime committed, is not the main perpetrator in the crime and testifies as a witness in the judicial process. The public prosecutor in his prosecution stated that the person concerned had provided very significant information and evidence so that the investigator and/or public prosecutor could effectively uncover the crime, reveal other perpetrators who had a greater role and or return the assets/proceeds of a crime. For his assistance, the cooperating witnesses as referred to above, the judge can determine the crime to be imposed can consider the following criminal sentencing matters:

a. Imposing special conditional probation and/or
b. Imposing a prison sentence in the form of the lightest prison sentence among other defendants found guilty in the case in question."

In its development, the provisions regarding Justice Collaborator are regulated in Law Number 31 of 2014 concerning the Protection of Witnesses and Victims. The provisions regarding Justice Collaborator are regulated in Article 1 Number 2 which states, "Perpetrator Witness is a suspect, defendant, or convicted person who cooperates with law enforcement to uncover a criminal act in the same case."

In practice, it is not uncommon for the role of Justice Collaborator to be applied to cases that are not referred to in the Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2011 concerning Treatment for Whistleblowers and Justice Collaborators, not applied in cases referred to in SEMA, for example in the murder drama for the murder of Brigadier Yosua Hutabarat, where one of the culprits is Bharada Richard Eliezer Pudihang Lumiu, in the case of Judgment No. 798/Pid. B/2022/PN. Jkt.Sel., received the status of Justice Collaborator, in the case, where it is known that the murder case is known to involve more than one perpetrator, namely Irjen Ferdy Sambo, Bripka RR, and domestic assistant Kuwat Maruf, as well as Sambo's wife Putri Candrawathi, and including Bharada Richard Eliezer Pudihang Lumiu. According to Lusia Safitri, the concept or condition is not the main perpetrator in determining status Justice collaborator sparked debate. This is because Richard Eliezer in the Brigadier J murder case was the main executor, although only the person who was told to do it, but his position was both perpetrators, but it turned out to be accepted by the panel of judges and given a very light sentence compared to other perpetrators. In addition, the authority to appoint a Justice collaborator is still a polemic.

In addition, irregularities in the application of Collaborator status, also in the criminal justice system, and real examples of this can be found in the case of Central Jakarta District Court Decision Number 161/Pid.Sus/TPK/2015/PN.Jkt.Pst. and Jakarta High Court Decision Number 13/PID/TPK/2016/PT. DKI. In the case of Central Jakarta District Court Decision Number 161/Pid.Sus/TPK/2015/PN.Jkt.Pst. Defendant I Gatot Pujo Nugroho in this case and Defendant II Evy Susanti in this case, are defendants in the bribery case against defendant Patrice Rio Capella as a member of the Nasdem Party of the Bengkulu Constituency in the membership of the People's Representative Council of the Republic of Indonesia for the term of office 2014 – 2019 (defendant in the Verdict Jakarta High Court Number 13/PID/TPK/2016/PT. DKI). Defendant I Gatot Pujo Nugroho in this case and Defendant II Evy Susanti in this case were charged with giving bribes to Patrice Rio Capella, and were sentenced by the Judge by imposing a sentence against Defendant I Gatot Pujo Nugroho in this case therefore with imprisonment for 3 (three) years and against Defendant II Evy Susanti in this case therefore with imprisonment for 2 (two) years 6 (six) months, and a fine of IDR 150,000,000 (one hundred and fifty million rupiah) each, provided that if not paid, it is replaced by imprisonment for 3 (three) months each. Jakarta High Court Decision Number 13/PID/TPK/2016/PT. DKI Declares the defendant Patrice Rio Capella mentioned above, legally and conclusively proven guilty of committing a criminal act of corruption as charged in the Second Alternative Indictment (article 11 of Law Number 31 of 1999 concerning the Eradication of Corruption Criminal Acts which has been amended by Law Number. 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Tipikor). Sentence the Defendant to imprisonment for: 1 (one) year 6 (six) months and a fine of Rp50,000,000.00 (Fifty Million Rupiah), provided that if the fine is not paid it is replaced by imprisonment for 1 (one) month. Both examples of cases are examples of the application of justice collaborator in accordance with SEMA Number 4 of 2011 and Article 10 and Article 10A of Law Number 31 of 2014, because both cases are corruption cases classified as the types of cases regulated in the provisions mentioned above, where the defendant in the case is a defendant who can receive the status of Justice Collaborator, while in the case of Decision No. 798/Pid. B/2022/PN. Jkt.Sel., the status of Justice Collaborator should not be accepted by defendant Eliezer, because the case is a premeditated murder case that is not included in the category of cases regulated in SEMA Number 4 of 2011 and Article 10 and Article 10A of Law Number 31 of 2014, so in that case, defendant Eliezer should not be able to receive the status of justice collaborator.

This study aims to examine and analyze the determination of justice collaborator according to Law Number 31 of 2014 and examine and analyze the ideal construction of determining the status of justice collaborator for perpetrators of premeditated murder crimes.

METHOD

In this study, researchers used the Normative Juridical Law Type Research method, namely legal research that emphasizes secondary data in research and examines principles, positive laws derived from literature data. The research approaches used in this study include:

1) The statutory approach is an approach that is carried out by reviewing all laws and regulations related to the legal issues discussed.
2) Conceptual Approach is an approach in legal research that provides an analytical point of view on problem solving in legal research seen from the aspects of legal concepts behind it, or even can be seen from the values contained in the norming of a regulation in relation to the concepts used.
3) Analytical Approach is an analysis of legal materials to determine the meaning contained by terms used in laws and regulations conceptually, as well as knowing their application in legal practices and decisions.
4) Case approach, where the Case approach is an approach in normative legal research in which researchers try to build legal arguments in the perspective of concrete cases that occur in the field

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In this study, researchers used secondary data in the study. Secondary data is literature data that contains legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials. The secondary data in this study consists of:

1) Primary Legal Materials: Constitution of 1945 Criminal Code, Law Number 1 of 2023 concerning Criminal Code, Law Number 48 of 2009 concerning Principles of Exercise of Judicial Power, Law Number 31 of 2014 concerning Protection of Witnesses and Victims, and SEMA Number 4 of 2011 concerning Treatment of Whistleblowers and Justice Collaborators
2) Secondary Legal Material: Consists of doctrines outlined through books that discuss the theory of legal certainty, buying and selling, Land Deed Making Officers, Sale and Purchase Deeds, and Transfer of Land Rights.
3) Tertiary Law Materials: Consists of research journals that explain the problem of applying justice collaborators to premeditated murder cases.

The collection of legal materials is carried out by identifying and inventorying positive legal rules, examining library materials (books, scientific journals, research reports), and other sources of legal materials relevant to the legal issues studied. Legal materials that have been collected, then classified, selected and ensured not to contradict each other, to facilitate analysis and construction. Meanwhile, the data analysis method used in this study is qualitative juridical, which is in the form of an in-depth interpretation of legal materials as is common in normative legal research.

RESULTS AND DISCUSSION

Analysis of the Determination of Justice Collaborator According to Law Number 31 of 2014

In the current developments in Indonesia, Justice Collaborators are receiving serious attention, due to their key role in "unveiling" certain criminal acts that are difficult for law enforcement to uncover. Justice collaborator is defined as a witness to the perpetrator of a criminal act who is willing to assist or cooperate with law enforcement. Thus, the position of the justice collaborator is a witness as well as a suspect who must give testimony in the trial.

In accordance with the theory of the state of law stated earlier, the concept of the state of law that is actually adopted by the Indonesian state is to look at the Preamble and Articles in the 1945 NRI Constitution as the entire source of Indonesian legal politics. The basis for affirmation of both as a source of national legal politics is first, the Preamble and Articles in the 1945 NRI Constitution contain the objectives, basis, legal ideals, and basic norms of the Indonesian state which must be the goals and foothold of Indonesian legal politics. Second, the Preamble and Articles in the 1945 NRI Constitution contain distinctive values derived from the views and culture of the Indonesian nation inherited by the ancestors of the Indonesian nation.

Van Wijk and Konijnenbelt, Indroharto said the principle of legality could not be absolutely implemented. "It is impossible to do that for every act of government it is required that there is an absolute basis of legality. Because it does nothing." Moreover, in practice, many government officials carry out actions only based on instructions from superiors, circulars or instructions.

According to Anselm von Feurbach, the principle of Legality prohibits a provision in criminal law from being retroactive. This is to guarantee individual freedom from detournament de pouvoir by the authorities, legal certainty, and the existence of psychological coercion for perpetrators not to commit prohibited acts.

According to Jan Michiel Otto, legal certainty is explained more juridically, where Jan Michiel Otto defines legal certainty as a possibility in certain situations, with the following limitations:

1) There are rules that are clear, clear, consistent, and easy to obtain or access, and are published and recognized by the state.
2) Government agencies apply these laws consistently and also submit and obey the rules of law.
3) Citizens adjust their behavior to the rule of law in principle.
4) Independent and impartial judicial judges are able to apply the rule of law consistently when resolving legal disputes.
5) The results of the trial are concretely implemented.

Moving on from this theory connected with the problem to be discussed in this paper, which is related to the determination of the status of justice collaborator in Law Number 31 of 2014, it is known that there is a point of view on the importance of the role of Justice Collaborator begins with awareness of the importance of protecting witnesses, especially witnesses related to criminal acts classified as criminal acts severe, such as, trafficking in persons, narcotics, corruption, terrorism, and criminal acts that include actions from organizations or cooperation in the field of crime.

This was expressed by Antonio Maria Costa, who stated "Witness intimidation has become such a common feature of criminal investigations and prosecution that protection measures for witnesses are considered an essential element of a country's arsenal against organized crime. The growing tendency of inquisitorial legal systems to adopt elements once exclusive to adversarial systems – such as the greater value given to oral testimony and lesser weight to pretrial statements – has increased the importance of witnesses in criminal proceedings involving serious crimes and, accordingly, the obligation to preserve their evidence". (Intimidation of witnesses has become such a common feature of criminal investigations and prosecutions that protective measures for witnesses are considered an essential element as a state arms against organized crime. The growing tendency of inquisitorial legal systems to adopt elements once exclusive to traceability systems, such as greater value given to oral testimony and lower weight over reports at judicial level examinations, has increased the importance of witnesses in criminal proceedings involving serious crimes and, accordingly, the obligation to protect evidence presented by witnesses).

Antonio Maria Costa further stated, The United Nations Convention against Transnational Organized Crime provides that States parties should take appropriate measures to protect witnesses in criminal proceedings related to crimes covered by the Convention and its Protocols. Those crimes include (The United Nations Convention against Transnational Organized Crime provides that States shall take appropriate measures to protect witnesses in criminal proceedings relating to crimes covered by the Convention and its Protocol. Crimes include):

1) Participation in an organized criminal group;
2) Money-laundering;
3) Corruption in the public sector;
4) Obstruction of justice;
5) Trafficking in persons;
6) Illicit manufacturing of and trafficking in firearms, their parts and components and ammunition;
7) Smuggling of migrants;
8) Other serious crimes as defined in the Convention, encompassing the elements of transnationality and involvement of an organized criminal group.

Antonio Maria Costa also explained, In a number of countries, the court may decide to apply specific measures during the hearing of testimony to ensure that witnesses testify free of intimidation and fear for their lives. These measures can also be applied in sensitive cases (trafficking in persons, sex crimes, child witnesses and family crimes, among others) to prevent the revictimization of victim-witnesses by limiting their exposure to the public and the media during the trial. They include (In a number of states, courts may decide to implement certain measures during testimony hearings to ensure that witnesses testify free from intimidation and fear for their lives. These measures can also be applied in sensitive cases (human trafficking, sex crimes, child witness and family crimes, among others) to prevent the revictimization of witnesses by limiting their exposure to the public and media during trials, including:

1) Use of a witness pretrial statement instead of in-court testimony;
2) Presence of an accompanying person for psychological support;
3) Testimony via closed-circuit television or videoconferencing;
4) Voice and face distortion;
5) Removal of the defendant or the public from the courtroom;

6) Anonymous testimony.

Antonio Maria Costa further stated, There are usually no statutory restrictions as to the types of crime or witness for which such measures can be allowed. Their application may be requested by the prosecutor and decided by the court after it has heard the opinion of the defence. The court's decision is usually open to appeal. The elements typically taken into account by courts when ordering the application of procedural measures are The elements usually taken into account by the court when ordering the application of procedural measures, among them are:

1) Nature of the crime (organized crime, sexual crime, family crime etc.);
2) Type of victim (child, victim of sexual assault, co-defendant etc.);
3) Relationship with the defendant (relative, defendant's subordinate in a criminal organization etc.);
4) Degree of fear and stress of the witness;
5) Importance of the testimony.

Furthermore, Antonio Maria Costa stated, Procedural measures can be grouped into three general categories depending on their purpose:

1) Measures to reduce fear through avoidance of face-to-face confrontation with the defendant, including the following measures:
   a) Use of pretrial statements (either written or recorded audio or audio-visual statements) as an alternative to in-court testimony;
   b) Removal of the defendant from the courtroom;
   c) Testimony via closed-circuit television or audio-visual links, such as videoconferencing;
2) Measures to make it difficult or impossible for the defendant or organized criminal group to trace the identity of the witness, including the following measures:
   a) Shielded testimony through the use of a screen, curtain or two-way mirror;
   b) Anonymous testimony;
3) Measures to limit the witness's exposure to the public and psychological stress:
   a) Change of the trial venue or hearing date;
   b) Removal of the public from the courtroom (in camera session);
   c) Presence of an accompanying person as support for the witness.

Antonio Maria Costa also explained that those measures may be used alone or in combination to produce a greater effect (for example, videoconferencing with shielding or anonymity with face distortion). In the application of procedural measures, due consideration should be given to balancing the witness's legitimate expectation of physical safety against the defendant's basic right to a fair trial. In jury trials, any restriction of a defendant's right to confront his or her accuser potentially introduces a bias in the trial. Any implying of the defendant's dangerousness may unfairly prejudice the jury, thereby undermining the presumption of innocence and giving disproportionate value to the protected witness's testimony. Trial courts must instruct jurors that the use of protective measures should not bias their decision on guilt or innocence. In addition, trial court judges should give general instructions as to the weighing of witness testimony to prevent the jury from overvaluing evidence given by a protected witness. Despite such cautionary instructions, when procedural measures are applied to reduce the witness's fear of a face-to-face confrontation with the defendant, they impose an additional burden on the accused to prove his or her innocence, or at least the absence of threat.

In its development, the provisions regarding cooperating perpetrators are contained in Article 26 of the United Nations Convention Against Transnational Organized Crimes. Indonesia itself has ratified the UN Convention Against Corruption into Law Number 7 of 2006 and ratified the UN Convention Against Transnational Crime into Law Number 5 of 2009. Article 26 of the United Nations Convention Against Transnational Organized Crime states that whistle blowers or whistleblower witnesses cannot be prosecuted in criminal or civil law for reports, testimony that will, are being or have been given. Meanwhile, a justice collaborator or witness and suspect in the same case cannot be exempted from criminal charges if proven legally and conclusively guilty. However, his testimony can be taken into consideration by the judge in mitigating his crime.

Justice Collaborator is defined by Antonio Maria Costa as A person who has taken part in an offence connected with a criminal organization possesses important knowledge about the organization's structure, method of operation, activities and links with other local or foreign groups. An increasing number of countries have introduced legislation or policies to facilitate cooperation by such people in the investigation of cases involving organized crime. These individuals are known by a variety of names, including cooperating witnesses, crown witnesses, witness collaborators, justice collaborators, state witnesses, "supergrasses" and pentiti (Italian for "those who have repented"). There is no moral element involved in their motivation to cooperate. Many of them cooperate with the expectation of receiving immunity or at least a reduced prison sentence and physical protection for themselves and their families. They are among the main participants in witness protection programmes. An increasing number of countries have introduced laws or policies to facilitate cooperation with such people in the investigation of cases involving organized crime. These people

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In Italy, a legislative amendment was introduced in 2001 whereby justice collaborators would be eligible for witness protection upon meeting specific criteria, such as a deadline (180 days) to give full testimony that cannot be subsequently altered. Advantages (not immunity, but parole, leave or home imprisonment) may also be granted on the condition that the witness has served a significant part of the sentence, cooperates fully, does not pose any danger to the public and has demonstrated good behaviour and signs of reform. the Italian Criminal Code provided for partial or total immunity from punishment if the offender made reparations for criminal damage or cooperated with authorities in cases of political conspiracy or gang related activities. Justice collaborators who receive prison sentences must serve at least a quarter of their sentence or, if they have a life sentence, 10 years in prison before they are admitted into the protection programme. Benefits (not immunity, but parole, leave or jail house) may also be granted provided that the witness has served an important part of the sentence, cooperates fully, does not pose a danger to society and has shown good behavior and signs of reform. The Italian Penal Code provides for partial or total immunity from punishment if the offender is made criminal damage reparations or cooperates with authorities in cases of political conspiracy or gang-related activities. Justice collaborators who receive a prison sentence must serve at least a quarter of their sentence or, if they have a life sentence, 10 years in prison before they are admitted to a protection program).

In Hongkong, Antonio Maria Costa revealed, “In the Hong Kong Special Administrative Region of China and the Netherlands, to ensure the safety of high-risk witnesses who are serving prisoners or are being remanded to prison, special security units have been created in the prison system. Incarceration is usually in isolation from other prisoners, especially from those who will testify as witnesses in the same case.”

Kemudian Antonio Maria Costa mengemukakan, The combination of lenience in (or even immunity from) prosecution with witness protection is considered a powerful tool in the successful prosecution of organized crime cases. However, the practice can raise ethical issues as it may be perceived as rewarding criminals with impunity for their crimes. To address those concerns, a growing number of legal systems provide that the “benefit” to collaborators is not complete immunity for their involvement in criminal activities but rather a sentence reduction that may be granted only at the end of their full cooperation in the trial process. Legislation and policy in a number of countries clearly separate admission to a witness protection programme from any benefits that participants may be granted by the prosecution or court with respect to past criminal behaviour, and they provide that justice collaborators must serve some prison time for their crimes. Within the penitentiary system, special measures are required to protect the life of justice collaborators. A special branch of the prison administration usually administers them in coordination with the protection unit. They include Separation from the general prison population, Use of a different name for the prisoner-witness, Special transportation arrangements for in-court testimony, and Isolation in separate detention units at the prison or even in special prisons.

Antonio Maria Costa also stated that, “Following their release from prison, justice collaborators may be resettled to a new, secret location under a different identity if the threat to their life persists and other conditions are also fulfilled. Family members of justice collaborators, however, may be admitted to the programme while the witness is still in custody. Sometimes prisoner-witnesses commit new crimes after their release from prison and admission to the programme and are subsequently terminated from witness protection. To ensure that their return to prison would not endanger their lives because of their previous cooperation, the prison administration may place them in an inmate monitoring programme and house them separately from other prisoners who are known to pose a danger to them.

In Indonesia, the rights of Justice Collaborators who have the status of suspects, and/or defendants, and/or convicts are regulated in the Supreme Court Circular Number 4 of 2011, which is explained about the Justice Collaborator cateogy is, "...The person concerned is one of the perpetrators of certain criminal acts as referred to in this Supreme Court Circular, admits the crime committed, is not the main perpetrator in the crime and provides information as a witness in the judicial process. The public prosecutor in his prosecution stated that the person concerned had very significant information and evidence so that the investigator and/or public prosecutor could uncover the crime effectively, uncover other perpetrators who had a greater role and or return the assets/proceeds of a particular crime. For his assistance, the cooperating witnesses as referred to above, the judge can determine the crime to be imposed can consider the following criminal sentencing matters:

1) Imposing special conditional probation and/or
2) Imposing a prison sentence in the form of the lightest prison sentence among other defendants found guilty in the case in question."

Certain crimes referred to in Supreme Court Circular Number 4 of 2011 are corruption, terrorism, narcotics crimes, money laundering, trafficking in persons, and other organized crimes. Thus, the crime has caused serious problems and threats to the stability and security of society.

In granting special treatment in the form of criminal leniency, judges are still obliged to consider the sense of justice of the community. The requirements for being a witness of perpetrators who cooperate (Justice Collaborators) in Extra Ordinary Crime crimes are the size of the role in revealing criminal acts, the type of crime revealed, the size of the involvement, the sense of community justice, life safety, and other crimes committed by cooperating perpetrator witnesses (Justice Collaborators).

Broadly speaking, the rights and forms of protection that can be given to justice collaborators are physical and psychological protection, legal protection, special handling and rewards. For special handling, there are several rights that can be obtained by the whistle blower or justice collaborator. That is, the separation of the place of detention from the suspect or other defendants of the crime revealed, the filing of the case is carried out separately with other suspects or defendants in the reported case. Then, it can obtain a delay in prosecution against him, obtain a delay in legal proceedings such as investigation and prosecution that may arise because of the information, reports and or testimony he provides. As well as being able to testify before the court without showing his face or showing his identity.

In Indonesia, Justice Collaborator was first initiated in the Supreme Court Circular Number 4 of 2011 because of the large number of criminal cases handled by law enforcement officials but there are no laws and regulations that provide a legal basis that provides regulations for Justice Collaborator in criminal justice. To provide a legal basis, Supreme Court Circular Number 4 of 2011 was issued with the aim of providing guidelines to judges in the Supreme Court when handling a Justice Collaborator in criminal justice. This circular also provides limits on certain serious crimes, namely corruption, terrorism, narcotics, money laundering, trafficking, and other organized crimes that have caused serious problems and threats to the stability and security of society so as to undermine democratic institutions and values, ethics and justice and jeopardize sustainable development and the rule of law.

In its development, the term justice collaborator was then adopted in Law Number 13 of 2006 concerning the Protection of Witnesses and Victims which has been updated by Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. This witness and victim protection law explicitly provides a strict regulation of the definition of Justice Collaborator where this law only regulates the definition of witnesses and whistleblowers of criminal acts. Arrangements relating to Justice Collaborator are regulated in Article 10 and Article 10A (regulated in Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims).

As for the provisions in Article 10 of Law Number 31 of 2014 concerning the Protection of Witnesses and Victims, there is a mention of the term perpetrator witness, where the perpetrator witness referred to here is Justice Collaborator, where the provisions of Article 10 state that:

1) Witnesses, Victims, Perpetrator Witnesses, and/or Whistleblowers cannot be prosecuted in law, either criminal or civil for testimony and/or reports that they will, are, or have given, unless such testimony or report is given not in good faith.
2) In the event that there is a lawsuit against a Witness, Victim, Perpetrator Witness, and/or Reporter for testimony and/or reports that will be, are, or have been given, the lawsuit must be postponed until the case he reports or testifies to has been decided by the court and has obtained permanent legal force.

Then the provisions of Article 10A of Law Number 31 of 2014 concerning the Protection of Witnesses and Victims state:

1) Perpetrator witnesses can be given special handling in the examination process and appreciation of the testimony given.
2) Special handling as referred to in paragraph (1) in the form of:
    a) Separation of the place of detention or place of criminal detention between the Perpetrator Witness and the suspect, defendant, and/or prisoner whose crime was revealed;
    b) Separation of files between the file of the Perpetrator Witness and the file of the suspect and defendant in the process of investigation, and prosecution of the criminal acts they disclose; and/or
    c) Testify before the court without directly confronting the defendant whose crime is revealed.
3) Appreciation for testimony as referred to in paragraph (1) in the form of:
    a) Leniency for criminal convictions; or
    b) Parole, additional remission, and other prisoners' rights in accordance with the provisions of laws and regulations for Perpetrator Witnesses who are prisoners.
4) To obtain an award in the form of leniency for criminal convictions as referred to in paragraph (3) letter a, the LPSK provides a written recommendation to the public prosecutor to be included in its demands to the judge.

5) To obtain awards in the form of parole, additional remission, and other prisoners' rights as referred to in paragraph (3) point b, the LPSK provides written recommendations to the minister who organizes government affairs in the field of law.

Regarding the form of protection for Justice Collaborators, it is regulated in Article 5, Article 8, Article 10, and Article 10A of Law Number 31 of 2014 concerning the Protection of Witnesses and Victims. Where the form of protection for Justice Collaborator includes protection in the form of, confidentiality of identity, separation of examination, detention, and in giving testimony in court. The form of appreciation for Justice Collaborator includes leniency, up to parole and remission while serving sentence, as stipulated in Article 10 A Paragraph 3 of Law Number 31 of 2014 concerning Protection of Witnesses and Victims.

The requirements to become a Justice Collaborator in the Supreme Court Circular Number 4 of 2011 include that the person concerned is one of the perpetrators of certain criminal acts as referred to in the Supreme Court Circular Number 4 of 2011, Admitting the crime committed, Not the main perpetrator in the crime and providing testimony as a witness in the judicial process, The public prosecutor in his prosecution states that the person concerned has very significant information and evidence so that the investigator and/or public prosecutor can uncover the crime effectively, and reveal other perpetrators who have a greater role and or return assets/proceeds of a crime.

From this description, of course, it can be understood that the determination of the status of justice collaborator in Law Number 31 of 2014 which updates Law Number 23 of 2006 concerning the Protection of Witnesses and Victims basically regulates the provisions of Justice Collaborator by referring to the provisions regulated in SEMA number 4 of 2011, and when connected with the example of the case discussed, namely related to the murder of Brigadier Joshua by defendant Eliezer, Ferdi Sambo and other defendants, of course, the status of Justice Collaborator proposed by defendant Eliezer should have been rejected by the panel of judges, because the crime in the case is not included in the crime that can get the determination of Justice Collaborator status as stipulated in Law Number 31 of 2014 which renews Law Number 23 of 2006.

Analysis of the Ideal Construction of the Determination of the Status of Justice Collaborator for Perpetrators of Premeditated Murder Crimes

Hans Kelsen says in his theory known as the Theory of the Level of Law (Stufentheorie) that lower norms apply and are based on higher norms, so that they continue to arrive at norms that cannot be further traced which are called basic norms (Grundnorm). Basic norms are the highest norms of a system of norms that are set in advance by society and depend on all norms under them, so that basic norms are said to be pre-supposed. The theory of the Law Level (Stufentheorie) was further developed by Hans Nawiasky, a pupil of Hans Kelsen, in relation to the state. According to Hans Nawiasky in the theory of legal levels that he developed (die theorie vom stufenordung der rechtsnormen) the legal norms of a country are tiered and stratified, where the lower norms apply and are based on higher norms, and higher norms are based on the highest norms called basic norms (Grundnorm in Hans Kelsen's theory). In addition to tiered and stratified legal norms according to Hans Nawiasky are also grouped, where the grouping is as follows:

1) Group I: State Basic Norms (Staatsfundamentalnor)
2) Group II : Basic Rules of the State (Staatsgrundgesetz)
3) Group III : Formal Law (Formell Gesetz)
4) Group IV : Implementing Rules/Autonomous Rules (Verordnung &; Autonome Satzung)

In Criminal Law in Indonesia, the terms Formil Criminal Law and Material Criminal Law are known. Material Criminal Law is a set of rules that regulate the forms of violations and/or crimes accompanied by sanctions, while Material Criminal Law is a set of regulations that regulate the form of implementation of Material Criminal Law or better known as the Criminal Procedure Law. The Formil Criminal Law is regulated in Law Number 8 of 1981 concerning the Code of Criminal Procedure, while the Material Criminal Law is regulated in the Criminal Code (for general criminal law provisions), and other laws that regulate the Material Criminal Law which is regulated outside the Criminal Code.

Participation offenses regulated in the Criminal Law are regulated in articles 55, 56, and 57 of the Criminal Code. In its development, the offense of inclusion has an important role in the development of a criminal case committed by more than one person, especially for special crimes regulated outside the Criminal Code, which is classified as an extraordinary crime. This is because the disclosure factor of criminal acts classified as extraordinary crimes is generally carried out by more than one perpetrator, and each perpetrator has their own role and sometimes determines the development of investigations and investigations of related crimes.

The conditions mentioned above, cause the government as the framer and implementer of laws and regulations to develop a system called Justice Collaborator (cooperating actors), to be able to assist in the development of disclosure of a criminal act classified as an extraordinary crime, such as in cases of corruption,

money laundering, narcotics, terrorism, and trafficking in persons which generally involve various parties where Sometimes such criminal acts involve officials or government employees themselves.

The Justice Collaborator system in its development is regulated through the Supreme Court Circular Number 4 of 2011 concerning the Treatment of Whistleblowers and Justice Collaborators in Certain Criminal Cases, which states, "...The person concerned is one of the perpetrators of certain criminal acts referred to in this Supreme Court Circular, admits the crime committed, is not the main perpetrator in the crime and testifies as a witness in the judicial process. The public prosecutor in his prosecution stated that the person concerned had very significant information and evidence so that the investigator and/or public prosecutor could uncover the crime effectively, reveal other perpetrators who had a greater role and or return the assets/proceeds of a crime. For his assistance, the cooperating witnesses as referred to above, the judge can determine the crime to be imposed can consider the following criminal sentencing matters: Imposing a special conditional probation and/or imposing a prison sentence in the form of the lightest prison sentence among other defendants found guilty in the case in question."

In its development, the provisions regarding Justice Collaborator are regulated in Law Number 31 of 2014 concerning the Protection of Witnesses and Victims. The provisions regarding Justice Collaborator are regulated in Article 1 Number 2 which states, "Perpetrator Witness is a suspect, defendant, or convicted person who cooperates with law enforcement to uncover a criminal act in the same case."

In practice, it is not uncommon for the role of Justice Collaborator to be applied deviantly in accordance with the provisions in SEMA number 4 of 2011 and Law number 31 of 2014. This can be seen and found in the case of Central Jakarta District Court Decision Number 161/Pid.Sus/TPK/2015/PN.Jkt.Pst. and Jakarta High Court Decision Number 13/PID/TPK/2016/PT. DKI. In the case of Central Jakarta District Court Decision Number 161/Pid.Sus/TPK/2015/PN.Jkt.Pst. Defendant I Gatot Pujo Nugroho in this case and Defendant II Evy Susanti in this case, are defendants in the bribery case against defendant Patrice Rio Capella as the Nasdem Party of the Bengkulu Constituency in the membership of the People's Representative Council of the Republic of Indonesia for the term of office 2014 – 2019 (defendant in the Verdict Jakarta High Court Number 13/PID/TPK/2016/PT. DKI). Defendant I Gatot Pujo Nugroho in this case and Defendant II Evy Susanti in this case were charged with giving bribes to Patrice Rio Capella, and were sentenced by the Judge by sentencing Defendant I Gatot Pujo Nugroho in this case to imprisonment for 3 (three) years and against Defendant II Evy Susanti in this case therefore to imprisonment for 2 (two) years 6 (six) months, and a fine of IDR 150,000 (one hundred and fifty million rupiah) each, provided that if not paid, it is replaced by imprisonment for 3 (three) months each. Jakarta High Court Decision Number 13/PID/TPK/2016/PT. DKI Declares the defendant Patrice Rio Capella mentioned above, legally and conclusively proven guilty of committing a criminal act of corruption as charged in the Second Alternative Indictment (article 11 of Law Number 31 of 1999 concerning the Eradication of Corruption Criminal Acts which has been amended by Law Number. 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Tipikor). Sentence the Defendant to imprisonment for: 1 (one) year 6 (six) months and a fine of Rp50,000,000.00 (Fifty Million Rupiah), provided that if the fine is not paid it is replaced by imprisonment for 1 (one) month.

In this case, the panel of judges considered that the defendant's legal representative had submitted an application for the defendant to be appointed as a cooperating perpetrator witness (Justice Collaborator), which application was accompanied by a recommendation from the LPSK dated January 11, 2023 regarding Recommendations for Granting Rights and Special Handling as a cooperating perpetrator witness (Justice Collaborator). Then the Tribunal needs to first determine whether the Criminal Act committed by the Defendant is included in the Criminal Act for which the perpetrator can obtain the status of a cooperating perpetrator witness (Justice Collaborator).

Furthermore, the panel of judges considered in SEMA number 4 of 2011, the Supreme Court has provided guidelines for criminal acts in which the perpetrators can obtain the status of perpetrator witnesses who cooperate with the conditions set. Where in number 9 letter a of SEMA no. 4 of 2011, determining a person as a witness of the perpetrator who cooperates (Justice Collaborator) is as follows: "The person concerned is one of the perpetrators of certain criminal acts as referred to in this SEMA, admits the crime committed is not the main perpetrator in the crime and provides testimony as a witness in the judicial process.

Furthermore, the panel of judges considered that what is meant by certain crimes in SEMA No. 4 of 2011 is certain serious crimes, such as corruption, terrorism, narcotics crimes, money laundering, trafficking in persons, and other organized crimes, have caused serious problems and threats to the stability and security of society, thus undermining democratic institutions and values, ethics and justice and jeopardizing sustainable development and the rule of law.

Furthermore, the panel of judges considered, that the birth of SEMA No. 4 of 2011 was based on the provisions in Law No. 13 of 2006, which although it has regulated the Protection of Whistle Blowers and witnesses of Cooperating Perpetrators (Justice Collaborator) in article 10 of Law No. 13 of 2006, it is realized that further guidance is still needed in its application. After carefully examining SEMA No. 4 of 2011, the

protection provided to both Whistle Blowers and Justice Collaborators is on "certain crimes", while Whistle Blowers and Justice Collaborator witnesses are based on "criminal acts in certain cases", is not yet part of SEMA No. 4 of 2011. Then the panel of judges considered, that over time it has been passed and Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims, where the guidelines as specified in SEMA 4 of 2011 have been accommodated, further the Tribunal sees the development of justice in society requires Whistle Blowers and Perpetrator Witnesses to Cooperate (Justice Collaborator)is not solely based on "specific crimes" as in SEMA 4 of 2011, but also refers to "certain criminal acts in certain cases", as stipulated by Law No. 31 of 2014 concerning amendments to Law No. 13 of 2006.

Then the panel of judges considered that it had been turned out that the Defendant was a person who participated in doing/medeplegen, while in participating in doing/medeplegen not all who participated in doing had to fulfill the delic formula. Witness Ferdy Sambo, witness Strong Makruf, witness Ricky Rizal, witness Putri Candrawati and the Defendant have their respective roles with the same will / goal namely the loss of life of the victim Joshua, working like a system without the role of one witness cannot work, in this case the Defendant has a role as the person who shot the victim Joshua, while witness Ferdy Sambo the originator of the idea, intellectual actor, designer as well as who had shot Joshua's victim and had involved other witnesses including the Defendant, so that witness Ferdy Sambo was seen as the main perpetrator whereas although the Defendant was right as the person who shot Joshua including the perpetrator but not the main perpetrator.

Furthermore, the panel of judges considered, that as has been found in the case of the loss of life of Joshua's victim, it is such that it can be known that the amount of evidence that was not found, damaged, eliminated, replaced, added, even dragged the parties involved obscured, engineered, misled so that many were faced with the Code of Ethics Hearing and had been sanctioned by the Police Agency and some of them were even fired and faced before the court.

Furthermore, the panel of judges considered that the facts of the trial had shown that Defendant Richard Eliezer Pudihang Lumiu had made light of the case of the loss of life of the victim Joshua, with truthful, consistent, logical testimony and in accordance with other remaining evidence so as to greatly help the case aquo be revealed, even though to put the Defendant in a position and situation that was very dangerous to his life, considering that the Defendant practically walked alone. Furthermore, the panel of judges considered, that subsequently the Tribunal had received a Letter of Application for Amicus Curiae (Friends of the Court) against the case of Defendant Richard Eliezer from various parties including: Institute For Criminal Justice Reform, Trisakti University Faculty of Law Alumni Association, Farida Law Office, the last FHAJ Iluni Advocacy Team from the Indonesian Academy Alliance which basically stated that honesty and courage are the keys to justice for all, therefore, please that the honesty of Defendant Richard Eliezer be properly rewarded.

On the one hand, the definition of murder is an activity carried out by someone and several people that results in someone and several people dying. The crime of murder, in the Criminal Code (KUHP) is included in the crime of life. Crimes against life (misdrijven tegen het leven) are attacks on the lives of others. In the provisions of Article 340 of the Criminal Code, premeditated murder has the following elements:

1) Whoever: According to S.R Sianturi in his book "Principles of Criminal Law and Its Application", the element of whom, in this case, contains the understanding of everyone as a subject who commits a criminal act. What is meant by whoever in this element has the meaning of a person/human who can be a subject of law, namely against anyone against whom that person has been charged with a criminal act and at the time of committing the act is considered capable of being responsible according to law.
2) Intentional: According to Andi Sofyan and Nur Azisa in their book "Criminal Law", the intentional element in this case can be interpreted as a will that is realized by actions which the consequences of these actions can be known. There are three gradations of intentional forms or levels of intentionality, namely, intentional as an intention/intention/purpose (*opzet als oogmerk*), meaning if the action done or the occurrence of consequences is indeed the purpose of the maker. Then deliberately aware of certainty (*opzet bij zekerheids of noodzakelijkheids bewustzijn*), meaning that if the action done or the occurrence of an effect is not intended to achieve the intended action or effect it must/must do the act or the occurrence of a certain effect. Furthermore, the form of deliberate awareness of the possibility/dolus eventualis (opzet bij mogelijkheidsbewustzij of voorwaardelijk opzet of dolus eventualis), means that if by doing the act or the occurrence of an intended effect, it is realized that there is a possibility of other consequences.
3) With a plan in advance: According to R. Soesilo in his book "The Criminal Code (KUHP) and its Complete Commentaries Article by Article", explaining the element of "planned in advance" means that between the arising intent to kill and its implementation there is still time for the maker to calmly think for example in what way it will be done. Meanwhile, according to S.R. Sianturi in his book "Criminal Acts in the Criminal Code and Its Description", the essence of Article 340 of the

Criminal Code is that a plan is first considered to exist if the offender in a sufficient time has thought and weighed and then determined the time, place, method or tool and so on that will be used for the murder. Then, it may also have occurred to the perpetrator that the result of the murder or other means is that others do not easily know that he is the murderer.

4) Taking the lives of others: According to Endah Tresyani in her article "Implementation of Proof of Premeditated Murder in Trial by the Public Prosecutor of the Surakarta State Attorney's Office", this element of taking the life of another person can be interpreted as the purpose or intention of the previous element, namely the intentional element. Thus, the element of eliminating the lives of others is the purpose of the actions committed by the perpetrator of the act where the actions committed by the perpetrator actually result in the loss of other people's lives.

While the justice collaborator is actually held to reward perpetrators who cooperate in revealing a criminal act in the form of leniency and legal protection, so that the formation of disclosure of a criminal act committed by law enforcement officials can be resolved optimally. Where SEMA of the Republic of Indonesia number 4 of 2011 and Law Number 31 of 2014 concerning the Protection of Witnesses and Victims requires a justice collaborator, the person concerned is one of the perpetrators of certain crimes classified as extraordinary crimes, such as in cases of corruption, money laundering, narcotics, terrorism, and trafficking in persons.

On the one hand, the justice collaborator itself is basically needed in disclosing cases where perpetrators with the status of justice collaborators, of course, can be used by law enforcement officials in facilitating the disclosure of cases, as happened in the case of the murder of brigadier Joshua which involved cooperation and abuse of authority and position in the internal body of the National Police which should be the front line of law enforcement in Indonesia.

However, there are restrictions on the application of justice collaborators in SEMA number 4 of 2011 and in Law Number 31 of 2014 which limits justice collaborators to only be applied to corruption, terrorism, narcotics, money laundering, trafficking, and other organized crimes that have caused serious problems and threats to the stability and security of the community so that undermines democratic institutions and values, ethics and justice and jeopardizes sustainable development and the rule of law.

On the one hand, justice collaborator is needed to reveal other perpetrators who have a greater role and/or return assets/proceeds of a crime, so that justice collaborator should not only be applied in criminal acts as referred to in SEMA number 4 of 2011 and in Law Number 31 of 2014, namely only in certain crimes regulated outside the Criminal Code, but also justice collaborator is needed in other cases as referred to in the Criminal Code, especially against criminal acts involving more than one perpetrator, and difficult to disclose.

So that basically the ideal construction of determining the status of Justice Collaborator for perpetrators of premeditated murder crimes, it is also necessary to have legal arrangements to be able to guarantee legal certainty for perpetrators who want to cooperate in revealing difficult cases in their disclosure, so according to researchers, Law Number 31 of 2014 needs to be amended and added, related to justice collaborator material so that it can be applied in other cases as referred to in the Criminal Code, especially against criminal acts involving more than one perpetrator, and difficult to disclose.

CONCLUSION

The status of justice collaborator in Indonesia was determined in relation to the murder case of Brigadier Joshua by defendant Ricard Eliezer Pudihang Lumiu. The application for Justice Collaborator status should have been rejected by the panel of judges, as premeditated murder is not included in the category of cases that qualify for Justice Collaborator status. However, due to the urgency of disclosing the case, the judge expanded the use of the justice collaborator system to meet the judge's duty of enforcing the law optimally.

The ideal construction of the Justice Collaborator system against perpetrators of premeditated murder crimes requires clearer, more detailed legal rules that do not cause multiple interpretations. This includes making award category arrangements tailored to the assistance provided by justice collaborators, adjusting the types of cases that can be applied, and ensuring written agreements between perpetrators and law enforcement.

In the future, Law Number 31 of 2014 should be amended and added to apply the justice collaborator system to other cases that are systematic and difficult to disclose. This will help law enforcement in Indonesia be more effective and optimal in the law enforcement process against organized crimes that pose serious threats to society's stability, security, democratic values, ethics, and justice, and jeopardize sustainable development and the rule of law.

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