

**Legal Review of Justice Collaborator in The Concept of Criminal Law****Dadin Eka Saputra, S.H., M.Hum**

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**Abstract**

*The existence of a justice collaborator is very important to uncover organized crime cases. However, in terms of its regulation regarding certain aspects of a person, it does not reflect legal certainty. In this regard, the purpose of this study is to analyze the determination of a person's legal status as a justice collaborator and the role of the LPSK in protecting justice collaborators. This research uses normative legal research, namely research on secondary data in the form of primary, secondary, and tertiary legal materials. These legal materials are collected using literature studies, then processed and analyzed in a qualitative descriptive manner. The results showed that the determination of the legal status of the justice collaborator at the time of investigation and definitively carried out by the judge at the court hearing. Then the role of the LPSK in protecting justice collaborators from the fulfilment of the requirements until the process of handling criminal cases has permanent legal force.*

**Keywords** Legal Aspect, Justice Collaborator, Criminal Law**INTRODUCTION**

In every criminal case trial, the position and role of witnesses are very important because often witness statements can influence and determine the judge's decision. A witness is considered to have the ability to determine where the judge's decision is going. This has the effect that every witness statement always receives enormous attention both from the perpetrators involved in the trial and the legal observer community.<sup>1</sup>

According to Article 184 paragraph (1) of Law Number 8 of 1981 concerning the Code of Criminal Procedure (KUHP) witness statements are one of the valid evidence in criminal cases. Article 1 number 26 of the Code of Criminal Procedure states that a witness is a person who can provide information for the investigation, investigation, prosecution, and trial about a criminal case that he hears for himself, sees for himself, and experiences for himself. Based on the normative understanding that any person can be a witness and give testimony regardless of the status of the person, including suspects or defendants provided that they meet the specified requirements.

The position of the witness is very important to prove the guilt of the accused in court. Without witnesses, a crime will be difficult to uncover, especially certain crimes whose handling process has been engineered by law enforcement officials such as the premeditated murder case against Brigadier Joshua.

Witness testimony as evidence in criminal cases is one of the judge's considerations to determine whether or not the defendant's actions and guilt are proven. Therefore, to reveal the criminal acts that occurred, it is necessary to have witnesses present as well as cooperating perpetrators or non-victim witnesses or *Justice Collaborators*. *Justice Collaborator* is one of the perpetrators of certain crimes, admits the crime committed, is not

<sup>1</sup> Muhadar, et.al. 2009. *Perlindungan Saksi dan Korban Dalam Sistem Peradilan Pidana*. Surabaya : CV. Putra Media Nusantara, p. 1



the main perpetrator in the crime, and provides testimony as a witness in the judicial process.<sup>2</sup>

The regulation of *Justice Collaborators* in the criminal justice system in Indonesia is new when compared to the legal practice that occurs, and this is because the Criminal Procedure Code and other regulations explicitly do not regulate such witnesses. To provide a legal basis for the position of *Justice Collaborator* in the criminal justice system in Indonesia, several legal regulations were issued including the Supreme Court Circular (SEMA) Number 4 of 2011 concerning Treatment for Whistleblowers and *Justice Collaborators* in Certain Criminal Cases. According to SEMA, *Justice Collaborator* is a criminal who confesses to his crime but is not the main perpetrator who is willing to testify as a witness at trial.

The term Justice Collaborator in the criminal justice system in Indonesia has now become popular in the eyes of the public in connection with the appearance of Bharada Richard Eliezer who is one of the defendants of the premeditated murder of Brigadier Nopriansyah Josua Hutabarat applied for *Justice Collaborator* status to the Witness and Victim Protection Agency (LPSK). Bharada Richard Eliezer's application for *Justice Collaborator* status was then granted by the South Jakarta District Court Judges who examined, tried, and decided the case. With the granting of the *status of Justice Collaborator*, it became one of the bases for mitigating legal considerations, so that Bharada Richard Eliezer was lightly sentenced to imprisonment for one year and six months, while the Public Prosecutor, demanded imprisonment for 12 years.

The light criminal sanction imposed on Bharada Richard Eliezer is following the provisions of Article 10 paragraph (2) of Law Number 3 of 2006 concerning the Protection of Witnesses and Victims which determines that a witness who is also a suspect in the same case cannot be exempted from criminal charges if he is proven legally and conclusively guilty, but his testimony can be taken into consideration by the judge in mitigating the crime to be imposed.

According to the Indonesian criminal justice system, the process of examining criminal cases includes investigation, prosecution, and trial. Based on this system, at what stage does a person have the status of a perpetrator witness who cooperates with law enforcement officials (*Justice Collaborator*), whether during investigation, prosecution, or trial. This problem seems to be less clear about the arrangement. Likewise, since when did the role of the LPSK in providing legal protection to *Justice Collaborators*. Whether the role of LPS in protecting *Justice Collaborators* has begun since investigation, prosecution, or trial or is cumulative.

This problem is urgent enough to be studied and discussed in a normative juridical manner to realize legal certainty as one of the basic values of law. Based on this thinking, the author is interested in discussing such problems in this legal journal.

## PROBLEM STATEMENT

Based on this background, the problem can be formulated as follows: (1) When does a person have legal status as a *Justice Collaborator*? (2) When does LPSK play a role in protecting *Justice Collaborators*?

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<sup>2</sup> Lilik Mulyadi. 2015. *Perlindungan Hukum Terhadap Whistle Blower Dan Justice Collaborator Dalam Upaya Penanggulangan Organize Crime*. Bandung : PT. Alumni, p. 5

## METHODS

### Types of Research

This research uses a type of normative legal research, which is legal research conducted by examining secondary data. Based on this understanding, what is meant by normative legal research in this legal paper is research on secondary data in the form of legal materials relevant to the subject matter.

### Research Approach

This research uses a *statutory approach* (*statute approach*) and a concept approach (*concept approach*). A statute approach is an approach used to review and analyze laws and other regulations related to the legal issues handled. The concept approach<sup>3</sup> is an approach that departs from the views and doctrines that develop in legal science. By studying these views and doctrines, ideas will be found that give birth to legal understandings, legal concepts, and legal principles that are relevant to the legal issue at hand.<sup>4</sup>

### Types and Sources of Legal Materials

The types and sources of legal materials used in this research consist of:

1. Primary legal materials, namely binding legal materials in the form of laws and regulations;
2. Law Number 8 of 1981 concerning the Code of Criminal Procedure;
3. Law Number 31 of 2014 concerning amendments to Law Number 3 of 2006 concerning the Protection of Witnesses and Victims;
4. Supreme Court Circular (SEMA) Number 4 of 2011 concerning Treatment for *Whistle Blowers* and *Justice Collaborators* in Certain Criminal Cases.
5. Secondary Legal Materials, namely legal materials in the form of library materials such as law journals, literature, research results, legal articles, and legal writings from legal scholars relevant to the subject matter.
6. Tertiary Legal Materials are legal materials that can provide explanations for primary legal materials and secondary legal materials, such as legal dictionaries and encyclopedias.

### Collection and Processing of Legal Materials

The legal materials used in this research were collected through *library research*, which is research by examining and reviewing laws and regulations and literature relevant to the subject matter. Then the legal materials that have been collected are processed through stages, namely *coding*, *editing*, *reconstructing*, and *systematizing*.

### Legal Material Analysis

Legal materials that have been processed are then analyzed qualitatively, namely a data analysis that does not use numbers but provides a worded description of the results of the study, and a discussion is carried out. Furthermore, a conclusion is drawn as an answer to the problem under study

<sup>3</sup> Peter Mahmud Marzuki. 2009. *Penelitian Hukum*. Jakarta : Kencana, p. 35.

<sup>4</sup> *Ibid*



## RESULTS AND DISCUSSION

### Determination of Legal Status of Justice Collaborator

Evidence is a matter that plays a role in the process of examining criminal cases in court hearings because, through proof, the fate of the accused is determined. A criminal case is validated by applying valid evidence as defined in applicable legal regulations.

Evidence in criminal cases is determined in Article 184 paragraph (1) of Law Number 8 of 1981 concerning the Code of Criminal Procedure (KUHAP): witness statements, expert statements, letters, instructions, and statements of the accused. Based on this provision, the presence of witnesses occupies an important position in determining the material truth of a criminal case.

Witness testimony is obtained from the testimony of a witness who, according to Article 1 number 26 of the Criminal Procedure Code the witness is a person who can provide information for the investigation, investigation, prosecution, and trial about a criminal case that he hears himself, sees for himself, and experiences for himself. Based on this understanding, it can be concluded that anyone can be a witness and give testimony regardless of the person's status, including suspects or defendants.

In the trial of criminal cases, the law of evidence is fundamental in proving the guilt of the accused. With witnesses, an illegal act will be easier to uncover, as incredibly organized crime and fabrications by specific individuals. Witness testimony is a basis for the judge's consideration to determine whether or not the defendant's actions and guilt are proven. Therefore, in cases of criminal acts that are very difficult to prove, alternative witnesses are needed, namely by applying witnesses as well as perpetrators for cooperation in disclosing criminal cases called cooperating perpetrator witnesses or non-victim witnesses or *Justice Collaborators*.<sup>5</sup>

According to the National Law Development Agency of the Ministry of Law and Human Rights, a *justice collaborator* is a criminal willing to cooperate with law enforcement to uncover crimes or cases considered complicated and extensive.<sup>6</sup> The news about the justice collaborator has now become public attention in connection with the appearance of Bharada Richard Eliezer as a *justice collaborator* to uncover the criminal case of premeditated murder against Brigadier Joshua. This case involved former Propam Division Head Ferdy Sambo and his wife. Initially, the case disclosure faced difficulties due to fabrications carried out by Ferdy Sambo and his men, including Richard Eliezer.

To defend against him, Bharada Richard Eliezer appeared as a *justice collaborator* willing to give accurate information about the case, even though he was also the perpetrator and not the main perpetrator.

The existence of *justice collaborators* is specifically not regulated by law but by the Supreme Court Circular (SEMA) Number 4 of 2011 concerning the Treatment of Whistle Blowers and *Justice Collaborators* in Certain Criminal Cases. The purpose of the *justice collaborator* arrangement, according to SEMA, is an effort to foster public participation to uncover significant crimes, so it must provide legal protection and special treatment for everyone who knows, reports and/or finds something that can help law enforcement, officials. Then to equalize the vision and mission of the *justice collaborator*, a

<sup>5</sup> Ginia Tia Sagita. *Urgensi Justice Collaborator Dalam Pengungkapan Kasus Tindak Pidana Korupsi, Tinjauan Yuridis Putusan Nomor 59/Pid.b/TPK/2012/PN.Jkt*. Pusat Skripsi Universitas Jendral Sudirman (2014), p. 6-7

<sup>6</sup> Syarat Mengajukan Permohonan Sebagai Justice Collaborator. <https://nasional.tempo>. Diakses pada tanggal 22 Februari 2023



Joint Regulation was made signed by the Minister of Law and Human Rights, the Attorney General, the Chief of the National Police, the KPK and the Head of the Witness and Victim Protection Institute (LPSK). This Joint Regulation regulates the Protection of Whistleblowers, Whistleblower Witnesses, and Cooperating Perpetrator Witnesses.

According to SEMA Number 4 of 2011, that *justice collaborator* is applied to criminal acts of terrorism, corruption, money laundering, human trafficking, narcotics, and other organized crimes. Then number 9 of the SEMA, it is stated the requirements and guidelines for judges to determine someone as a *justice collaborator* as follows:

1. The person concerned is a perpetrator of certain crimes, 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 cases in the judicial process.
2. The Public Prosecutor in his prosecution stated that the person concerned had provided essential information and evidence so that the investigator and/or public prosecutor could effectively uncover the crime in question, uncover other perpetrators who had a more significant role and/or return assets/proceeds of a crime.
3. For his assistance, the perpetrator witnesses who cooperate as referred to above, the judge, in determining the crime to be imposed, may consider the following criminal matters:
4. Imposing special conditional probation and/or
5. Imposing a sentence in the form of the lightest prison sentence among other defendants found guilty in the case in question.

In the Joint Regulation of the Minister of Law and Human Rights, the Attorney General, the Chief of the National Police, the KPK and the Head of the LPSK stated that 5 (five) conditions must be met to obtain the status of *justice collaborator* (cumulative), namely:

1. The crime disclosed is a severe or organized crime.
2. Provide significant, relevant and reliable information to reveal a crime.
3. Not the main perpetrator in the criminal act he will uncover.
4. Willingness to return several assets obtained from the crime concerned is stated in the affidavit.
5. There is a real threat or concern for threat or pressure. Both physically and psychologically to cooperating perpetrator witnesses or their families if the crime is revealed according to the actual circumstances.

Referring to these provisions, Bharada Richard Eliezer has fulfilled the requirements as a *justice collaborator* and as a reward for his courage in revealing the criminal acts that occurred, the South Jakarta District Court Judges sentenced Bharada Richard Eliezer lightly to one year and six months in prison, while the Public Prosecutor demanded imprisonment for 12 years. This also follows Article ... Law Number 3 of 2006 concerning the Protection of Witnesses and Victims, which specifies that a witness, who is also a suspect in the same case, cannot be exempted from criminal charges if he is proven legally and conclusively guilty. Still, his testimony can reduce the crime to be imposed against him.

According to the criminal justice system in Indonesia, examining criminal cases includes investigation, prosecution and trial in court. Concerning the criminal justice system, when does a witness have legal status as a *justice collaborator*?

According to Law Number 31 of 2014 concerning Amendments to Law Number 3 of 2006, applications to become *justice collaborators* in certain crimes are submitted to the LPSK. The position of the LPSK is critical in determining someone to be a *justice collaborator*. Still, the LPSK does not work alone but involves the role and authority of other



legal institutions, such as the Police, the Prosecutor's Office, and the Court. During the investigation, the agency will coordinate with investigators regarding the detention and protection of a *justice collaborator*. Then when the case is transferred to the prosecutor's office to be heard in court, the LPSK also coordinates with the prosecutor's office to get an award in the form of leniency or sentence.

SEMA Number 4 of 2011, Joint Regulation of the KPK, the Indonesian Prosecutor's Office, the Indonesian Police, the LPSK, and the Minister of Law and Human Rights and Law Number 3 of 2006 jo Law Number 31 of 2014 do not regulate when a person has legal status as a *justice collaborator*. Referring to the premeditated murder case that placed former Chief of Propam Ferdy Sambo as a convict with the appearance of Bharada Richard Eliezer as a justice collaborator, where the determination of the legal status of the *justice collaborator* was definitively carried out by the judge who examined, tried, and decided the case. Thus, the determination of a person with legal status as a *justice collaborator* is definitively determined by the judge at the trial. In other words, a person has no legal status as a *justice collaborator* during investigation and prosecution.

Law Number 3 of 2006 and Law Number 4 of 2011 provide space for law enforcement officials to give the legal status of *justice collaborator* during the investigation process. However, some investigators and public prosecutors want the legal status of the justice collaborator to be provided after the prospective *justice collaborator* presents testimony as a witness at the trial. This opinion is based on concerns that future *justice collaborators* did not disclose accurate information when testifying at trial. The problem is well-founded but only partially accurate.

The issue when determining a person's legal status as a *justice collaborator* should be resolved from the time of investigation, provided that in the investigation process, the perpetrator has shown good faith in disclosing a criminal case correctly. If the legal status of the *justice collaborator* is determined too late, it is hoped that the common purpose of the case will be achieved. Because it can happen, the main perpetrator does not want the other perpetrator to reveal their crime. For this reason, the main perpetrator can use all means, both persuasion and violence, to obstruct incriminating witnesses as *justice collaborators*.

The role of the judge is still needed to correct whether or not a *justice collaborator* has been established since the investigation. This can be measured from the information a justice collaborator gives at a court hearing, whether it violates cooperation with law enforcement officials. If it breaks collaboration with law enforcement officials, the judge can revoke his legal status as a *justice collaborator*. Conversely, if it does not violate cooperation with law enforcement officials, the judge can strengthen his legal position as a *justice collaborator*.

### **The Role of LPSK in Protecting Justice Collaborators**

*Justice collaborator* is one of the perpetrators of certain crimes, admits what he committed, is not the main perpetrator, and gives testimony as a witness at the court hearing. According to the Joint Regulation of the Minister of Law and Human Rights, the Attorney General, the Chief of the National Police, the KPK, and the Head of the LPSK determined four rights and protections for *justice collaborators*, namely:

1. Physical and psychic protection;
2. Legal protection;
3. Special handling; and
4. Obtained awards.

For special handling, there are several rights obtained by the *justice collaborator*, namely the separation of the place of detention from the suspect or other defendants from

the crime revealed, and the case investigation is carried out separately with other suspects or defendants in the reported issue. He can then obtain a stay of prosecution against him and testify before the court without showing his face or identity.

*Justice collaborators* can be rewarded with leniency, including probation. Then obtain the granting of remission and other prisoners' rights following applicable laws and regulations of the cooperating perpetrator witness is a prisoner. All of these rights can be obtained with the consent of law enforcement.

Regarding the implementation of the rights of the *justice collaborator*, the existence of the LPSK has a vital role because, according to Article 1 point 1 of Law Number 13 of 20106, the LPSK is an institution tasked and authorized to provide protection and other rights to witnesses. Then, according to Article 4 of the Law, the LPSK aims to provide a sense of security to witnesses in giving testimony in every criminal justice process. Furthermore, according to Article 5 of the Law, the rights of a witness are to obtain protection for the security of his person, family and property and to be free from threats relating to testimony that he will, is, or has given.

The protection issue for *justice collaborators* is essential in providing a sense of security to themselves and their families from the threat of the main perpetrator, both physically and psychologically. In this case, the role of the LPSK is vital to provide such protection. The question is when the LPSK serves and is authorized to protect *justice collaborators*.

As stated, the application to become a *justice collaborator* is submitted to the LPSK by fulfilling the specified requirements. At the same time, the determination of a person's legal status as a *justice collaborator* is definitively determined by the judge at the court hearing. When referring to these provisions, the role of the LPSK in protecting *justice collaborators* is only carried out after being determined by the judge. However, referring to the Witness and Victim Protection Law, that the LPSK is tasked and authorized to protect witnesses, it can be interpreted that protection for *justice collaborators* is carried out from investigation to court hearings such as the case of Bharada Richard Eliezer.

About the issue of when the LPSK plays a role in protecting *justice collaborators*, the regulation is unclear both in the Law on the Protection of Witnesses and Victims and SEMA Number 4 of 2011 and the Joint Regulation of the Minister of Law and Human Rights, the Attorney General, the Chief of the National Police, the KPK, and the LPSK. For this reason, legal regulations relating to the role of the LPSK in protecting *justice collaborators* must be refined by clearly and unequivocally determining the realization of legal certainty.

## CONCLUSION

Based on the results of the discussion that has been stated, a conclusion can be drawn as follows:

1. Determination of a person's legal status as a *justice collaborator* in a criminal case when the requirements have been met. Following the criminal justice system in Indonesia, the *justice collaborator* is determined at the time of investigation and is definitively carried out by a judge in a court session.
2. The role of the LPSK to protect *justice collaborators* is from the time the requirements are met until the process of handling criminal cases has permanent legal force.

The suggestions that can be put forward on the subject matter in this journal are:

1. Given that determining one's legal status as a *justice collaborator* is still polemical, it needs to be steered clearly and firmly for legal certainty. In this case, the determination



of the legal status of the *justice collaborator* should be given since the investigation provided that it meets the specified requirements.

2. For legal certainty, it is also necessary to have clear and firm arrangements regarding the time limit for the LPSK to provide protection for *justice collaborators*.

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