



Criminal Sanctions Against Justice collaborators in the Crime of Premeditated Murder

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Abstract. Criminal sanctions as a means of criminal politics must be based on reasons or bases that can be accounted for philosophically, juridically, and sociologically. The crime of premeditated murder is a crime of murder that is preceded by a murder plan. In the Indonesian legal system, there is a term called justice collaborator or perpetrator witness who cooperates in disclosing a difficult and organized crime, which can help law enforcement officials. The problem formulations in this study are (1) How is the position of Justice Collaborator in the crime of premeditated murder? and (2) How is the judge's consideration in imposing criminal sanctions on Justice Collaborator in the crime of premeditated murder? In this study, researchers applied the normative legal research method, a type of research conducted by studying norms or laws and regulations related to the issues discussed by using an approach to court decisions, laws, and one example of a case in Decision Number 798/PID. B/2022/PN. JKT.SEL.

Keywords: Criminal Sanctions, Justice Collaborator, Aggravated Murder.

1 Introduction

Along with the rapid development of the times, crime is also growing. Organized crime is an extraordinary crime often referred to as extraordinary crime. One of the regulations created to provide opportunities for perpetrators of organized crime to alleviate their punishment is by assisting law enforcement in disclosing cases by becoming a witness, and the perpetrator must cooperate with law enforcement. If the perpetrator cooperates in revealing the case, his actions will be considered by the panel of judges to be given protection and leniency. In this case, witnesses who cooperate are referred to as justice collaborators.

In criminal justice, justice collaborators are very important in assisting law enforcers in finding the bright spots of criminal acts included in extraordinary crimes that require extraordinary handling. The presence of justice collaborators can attract attention from the public aimed at very serious crimes that need special handling and must be solved immediately so as not to cause uproar in the community. In Indonesia, there is a Supreme Court Circular Letter Number 4 Year 2011 on the Treatment of Whistleblowers and Witnesses of Cooperating Offenders (justice collaborators) in

Certain Criminal Cases. This Circular Letter issued by the Supreme Court is a guideline for the panel of judges to determine a person as a justice collaborator.

In this regard, one of the types of murder with the longest sentence is premeditated murder, which can be classified into certain crimes not mentioned in the Supreme Court Circular Letter. Premeditated murder is a crime that is referred to as "murder with premeditation" (Moord). Voorbedachte Rade (premeditation) is the condition that between the onset of the perpetrator's intention and the planned murder, there is still a period for the perpetrator to calmly think about his actions and the consequences. Some things need to be observed the judicial system in Indonesia is still unable to guarantee an honest and fair judicial process where there are still unfair punishments or errors in handling cases, such as punishment for justice collaborators who need to get more attention so that the sentencing of witnesses who cooperate can be following existing regulations and can be given leniency because they have helped law enforcers in disclosing a particular case that is organized. Based on the conditions and problems described, it is necessary to clarify the position and criminal sanctions against justice collaborators in premeditated murder.

2 Methodology

In conducting this research, the researcher applied normative legal research methods. This method is chosen because normative research is conducted by studying norms or laws and regulations related to the issues discussed by using an approach to court decisions, laws, and one example of a case.

3 Result and Discussion

3.1 The Position of Justice Collaborator in the Crime of Premeditated Murder

Murder is no longer a new thing in the life of society. The crime of premeditated murder can be categorized as the most severe criminal offense, which can be seen from the form of punishment obtained, namely a maximum of death penalty or life imprisonment or imprisonment for twenty years. When viewed from the inner attitude of guilt (schuld) owned by the perpetrator, the criminal threat to premeditated murder should be aggravated because the perpetrator of premeditated murder can be said to be a "cold-blooded killer" whose circumstances are different from the inner state of emotional killers in general [1]. The current Criminal Code in Indonesia encompasses a specific type of homicide that involves premeditation, as outlined in Article 340 of the Criminal Code. This article stipulates that individuals who intentionally and with prior planning cause the death of another person will be deemed guilty of premeditated murder. The prescribed penalties for this offense include capital punishment, life imprisonment, or a maximum incarceration period of twenty years."

According to Chazawi, a certain time in premeditated murder is relative, not depending on the short or long time but on the concrete circumstances at the time of

the incident [2]. Article 340 of the Criminal Code contains an element of planning, which is an important part of identifying whether the murder was premeditated. Therefore, a murder plan that has fulfilled this element can be said to be premeditated murder as evidenced by the decision of the inner attitude of the perpetrator who calmly commits the act. The perpetrator has sufficient time to think back before the murder. Based on several definitions of the element of premeditation, Chazawi summarizes it into three conditions for the fulfillment of the element of premeditation. These conditions include:

1. Deciding on the will calmly.
2. There is sufficient time available from the emergence of the will to the execution of the will.
3. Execution of the will (action) in a calm atmosphere.

Recently, Indonesia was shocked by a premeditated murder committed by certain individuals whose investigation process could run smoothly after the testimony of one of the perpetrators who served as a witness to the perpetrator who cooperated (justice collaborator). The term justice collaborator originated from the birth of a law that provides facilities for cooperation between witnesses who cooperate (justice collaborators) with law enforcement, which was first introduced in the United States in the 1970s.

In the jurisdiction of Indonesia, a legal instrument known as the Supreme Court Circular Letter (SEMA) No. 4/2011 has been enacted to govern the procedures and protocols pertaining to the handling of whistleblowers and justice collaborators in specific criminal proceedings. In this particular scenario, the SEMA (Standardized Evaluation Methodology for Adjudication) serves as a framework utilized by the panel of judges to ascertain the culpability of an individual, so enabling them to be classified as a justice collaborator in a justifiable manner. The SEMA, or the Special Law on Justice Collaboration, delineates the types of criminal actions that qualify for classification as a justice collaborator. These offenses encompass both grave crimes and organized criminal activities, wherein an offender may voluntarily present themselves as a justice collaborator.

According to Sections 9(a) and 9(b) of SEMA Number 4 Year 2011, it is stipulated that in order to be recognized as a justice collaborator, the offender must satisfy certain prerequisites. One essential criterion is that the collaborating perpetrator witness must be implicated as one of the offenders involved in a specific criminal act. The individual responsible for the crime must confess to their actions. In the event that the individual in question is not the primary offender, they may submit their testimony as a witness during the examination of other perpetrators in a trial. The second criterion necessitates that the public prosecutor explicitly asserts in the indictment that the individual in question has furnished substantial information and evidence, thereby enabling the collaborating perpetrator witness to aid investigators and public prosecutors in the detection of the crime. Additionally, the individual in question should be capable of disclosing other perpetrators who hold more prominent roles [3].

According to Point 9 letter (c) of SEMA Number 4 Year 2011, the panel of judges has the authority to take into account the role of the justice collaborator and the community's sense of justice. This allows them to consider the testimony of the col-

laborating perpetrator when determining a special conditional probationary sentence. Additionally, the judges may impose a lighter imprisonment sentence compared to other defendants who have been proven guilty in the relevant case. The issue of the role of justice collaborators in the disclosure of criminal offenses has also been a matter of concern within the framework of witness protection as outlined in Law Number 31 of 2014, which pertains to amendments made to Law Number 13 of 2006 on Witness and Victim Protection. Article 10 of the regulation recognizes the important role of a justice collaborator in uncovering organized crime and trying to uncover people involved in it, even being a suspect in the same criminal case, to provide information as a witness or reporter [4].

Moreover, the collaboration and coordination among law enforcement authorities are aimed at achieving cooperation and synergy, as outlined in the Joint Regulation of the Minister of Law and Human Rights, the Attorney General, the Chief of Police, the Corruption Eradication Commission, and the Chairman of the Witness and Victim Protection Agency of the Republic of Indonesia. This regulation, numbered M.HH-11.HM.03.02.th.2011, PER-045/A/JA/12/2011, 1 of 2011, KEPB-02/01-55/12/2011, and 4 of 2011, focuses on the protection of whistleblowers, whistleblower witnesses, and witnesses of cooperating actors.

This joint regulation of Ministers and other state institutions provides a legal basis for the requirements for a defendant or suspect to become a justice collaborator, namely:

- a. The crime revealed by the justice collaborator is organized and serious;
- b. The information provided by the justice collaborator must be true, significant, clear, and reliable in revealing organized and serious criminal cases;
- c. A person who wants to become a justice collaborator must not be the main perpetrator in the organized and serious criminal offense he/she is facing;
- d. The person who wants to become a justice collaborator must write that he is willing to return the assets he/she has obtained from organized and serious criminal acts.

One of the important pieces of evidence in uncovering serious and organized crimes is justice collaborators. Many methods and juridical and non-juridical legal efforts in criminal law in Indonesia have not uncovered serious and organized crimes. In field practice, law enforcement officers find many obstacles in uncovering serious and organized crimes, especially obstacles that are very often encountered to presenting key witnesses who are very knowledgeable in the running of serious and organized crimes where this person knows about the roots, origins, and evidence in serious and organized crimes.

Many protections that law enforcement officials can give justice collaborators include awards such as additional remission, leniency of sentence to parole or other awards that apply according to the relevant laws if the justice collaborator is a prisoner serving his sentence. Providing awards to justice collaborators is a legal policy in the hands of executive organizers in Indonesia, which is not fully binding on the judiciary. The reduction of sentence for justice collaborators must start from submitting a lighter charge from the public prosecutor in the trial.

The role of witnesses who cooperate is very significant and inevitably must be recognized as having advantages in providing testimony that investigators may not obtain. The difficulty of handling organized criminal cases, especially premeditated murder, seems very difficult to handle without the cooperation of one of the perpetrators of the crime. The position of justice collaborator as a perpetrator witness who cooperates with law enforcement officials and guidelines for its use are regulated in the Supreme Court Circular Letter Number 4 of 2011 [5]. The rights that a justice collaborator can receive have been regulated in the applicable regulations in Indonesia, but the application is still far from expectations. The role of justice collaborators should receive special attention because the services provided in providing information in the investigation process until the trial greatly assist law enforcement officials in uncovering difficult and organized crimes. The key roles of a justice collaborator include revealing criminal acts that have occurred or will occur so that state assets remain safe, providing important information to law enforcers, and providing testimony in the judicial process [6].

3.2 Consideration of Judges in Imposing Criminal Sanctions Against Justice Collaborators in the Crime of Aggravated Murder

The careful and thorough examination of a judge's deliberation is crucial in determining the efficacy of a judge's decision, which encompasses principles of justice (*ex aequo et bono*), legal certainty, and the provision of advantages for the involved parties. Therefore, it is imperative to approach the judge's deliberation with utmost care, precision, and diligence. Furthermore, it is imperative that the judge's deliberation encompasses the subsequent issues:

- a. The topic and issues that are acknowledged or contentions that are undisputed.
- b. A comprehensive legal examination is conducted on the ruling, encompassing all established facts and matters presented during the trial.

The consideration of the panel of judges in imposing criminal sanctions is the existence of juridical and non-juridical considerations.

1. Juridical Consideration

Juridical considerations encompass the deliberations of the panel of judges, which are rooted in the factual evidence presented during the trial and guided by legal principles that necessitate inclusion in the final conclusion. The aforementioned elements are derived from several sources, including the prosecutor's indictment, testimonies provided by witnesses, statements made by the defendant, and the presence of evidentiary material.

2. Non-juridical considerations

In conjunction with legal considerations, the panel of judges, in rendering a verdict, also took into account non-legal considerations encompassing sociological, psychological, criminological, and philosophical aspects. These factors included the defendant's personal background, the ramifications of the defendant's actions, the defendant's mental state, and the defendant's religious beliefs.

In addition to juridical and non-juridical considerations, the judges also had aggravating and mitigating considerations for the defendant, which are regulated in

Article 197 paragraph (1) letter (f) of the Criminal Procedure Code. The Criminal Code regulates matters used for aggravating punishment, such as committing a crime under the circumstances of Articles 52 and 52 (a) of the Criminal Code, recidivism, and combination (same loop). Then, the mitigating circumstances, according to the Criminal Code, are attempted criminal offense, assisting (medeplichgheid), and immaturity (minderjarigheid).

In addition, the panel of judges also considered the defendant's attitude during the trial. In addition, the considerations and decisions of the panel of judges in deciding the crime of premeditated murder are closely related to human rights [7]. The crime of premeditated murder is a criminal offense whose punishment is aggravated compared to the crime of ordinary murder. The premeditated murder is aggravated as a form of increasing the seriousness of the offense by reflecting a higher moral level of responsibility [8].

Events in Decision Number: 798/PID. B/2022/PN. JKT.SEL. Occurred on Friday, July 8, 2022, at the Office House Number 46 of the defendant FS, located in the Polri Complex, Duren Tiga, South Jakarta. The background to the murder was allegedly because the victim had harassed the defendant PC, Brigadier J, when he was in Magelang on Thursday, July 7, 2022. In this incident, the defendant RE appeared, who acted as a justice collaborator in the case. As stated in the Decision Number, the judges considered the defendant RE to be legally and convincingly proven guilty of committing the crime of participating in premeditated murder.

In Decision Number: 798/PID. B/2022/PN. JKT.SEL., the panel of judges deliberated on the defendant RE's eligibility for justice collaborator status. The judges interpreted the term "certain criminal acts" in accordance with SEMA No. 4 of 2011, which refers to specific and grave offenses such as corruption, terrorism, narcotics, money laundering, trafficking in persons, and other forms of organized criminal activities. These acts are deemed to have caused significant problems and posed threats to societal stability and security. Moreover, they undermine democratic institutions, values, ethics, and justice, while also jeopardizing sustainable development and the rule of law. Based on the aforementioned elements, it may be deduced that the defendant RE is eligible to be recognized as a justice collaborator due to his involvement in an organized criminal act.

In this case, the defendant RE had a role as the person who shot the victim Yosua, while the witness and defendant FE was the intellectual actor or originator of the idea, designer and also the one who shot the victim Yosua and involved other witnesses or defendants including the defendant RE who was a perpetrator but not the main perpetrator. As in the decision, the panel of judges also considered that the honesty and courage of the defendant RE was also the key to justice for the community and deserved an award. The defendant RE dares to be honest with various risks that have conveyed the actual incident so that he deserves to be designated as a witness who cooperates (justice collaborator) and is entitled to an award as specified in Article 10 A of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection. The aggravating circumstances were that the defendant RE did not appreciate the close relationship with the victim, which resulted in the victim's death.

In the author's analysis, applying penalties for justice collaborators in Indonesia still has no legal certainty. Many differences in interpretation exist in the field, so the provision of punishment to defendants who have played a role as witnesses of collaborating actors needs to get very serious attention. The absence of legal certainty in applying penalties for justice collaborators makes its application not follow the purpose of forming legal regulations. Every legislation must aim to provide legal certainty, especially for legal norms that have been written. Laws that have been made without value or certainty will lose meaning because laws that no longer have certainty value can no longer be used as a guide to behavior for a person because certainty is one of the objectives of the law.

3.3 Conclusion and Recommendation

1. The regulation pertaining to the role of justice collaborators as witnesses for culprits who cooperate with law enforcement, as well as the criteria for their utilization, is outlined in Supreme Court Circular Letter Number 04 of 2011. The rights that a justice collaborator can receive have been regulated in the applicable regulations in Indonesia, but the application is still far from expectations. The role of justice collaborators should receive special attention because the services provided in providing information in the investigation process until the trial greatly assist law enforcement officials in uncovering difficult and organized crimes. The key roles of a justice collaborator include revealing criminal acts that have occurred or will occur so that state assets remain safe, providing important information to law enforcers, and providing testimony in the judicial process. In Decision Number: 798/PID. B/2022/PN. JKT.SEL., the panel of judges had considered the status as a justice collaborator for the defendant RE as follows: " The term "certain criminal acts" as stated in SEMA No. 4 of 2011 refers to specific serious criminal offenses, including corruption, terrorism, narcotics, money laundering, trafficking in persons, and other forms of organized criminal activities. These acts have resulted in significant issues and pose threats to the stability and security of society. Furthermore, they undermine democratic institutions and values, ethical principles, and the administration of justice, thereby jeopardizing sustainable development and the adherence to the rule of law." From these considerations, it can be concluded that the defendant RE is entitled to hold the status of a justice collaborator based on the criminal act involving him being an organized crime. As in the decision, the judges also considered that the honesty and courage of the defendant RE was also the key to justice for the community and deserved reward. The aggravating circumstances included that the defendant RE did not appreciate the close relationship with the victim, which resulted in the victim's death.
2. As part of a state of law with various regulations, it should always prioritize honesty and courage in revealing a case because this can be the key to upholding justice in the community. As a law enforcer, it is supposed to provide good protection for every justice collaborator to obtain all the rights he deserves.

Law enforcement officials can prioritize a justice collaborator in revealing cases and give a light sentence following his actions if he is proven guilty.

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