



JUSTICE COLLABORATOR IN THE CRIMINAL ACT OF PREDICTIVE MURDER (Study Of The Decision Of The South Jakarta District Court) Number: 798/Pid.B/2022/PN.Jkt.Sel)

Ramlan Damanik¹, Mahmud Mulyadi², Rosmalinda³

^{1,2,3} Universitas Sumatera Utara

Correspondence: Email ramlandamanik.rd@gmail.com

Abstract

Justice Collaborator (Cooperating Witness) is a suspect, defendant, or convict who cooperates with law enforcement to uncover a crime in the same case. Justice Collaborator has a big role in uncovering certain crimes. Justice Collaborator also played a role in uncovering the premeditated murder case against Victim NYH who was an aide to FS who served as Head of Propam Division of the National Police Headquarters. The initial chronology presented in the police report after the incident was not premeditated murder, but rather a shooting incident between the Victim and another aide, namely RE. However, thanks to RE's courage in volunteering as a Justice Collaborator, the premeditated murder crime that occurred has been uncovered. This study discusses the problem of how the practices of determining justice collaborators in Indonesia, how the determination of justice collaborators on behalf of RE in the crime of premeditated murder, and how the legal considerations of the Panel of Judges in imposing criminal sanctions on justice collaborators on behalf of RE. The research method in this thesis uses a research method with a normative research type with a descriptive analytical research nature and a qualitative data analysis method, by examining the Decision of the South Jakarta District Court Number: 798/Pid.B/2022/PN. Jkt.Sel and laws and regulations and other legal materials related to the determination of justice collaborators in premeditated murder. The practice of determining Justice Collaborators in Indonesia is carried out based on the provisions of laws and regulations, including Law Number 31 of 2014 and SEMA Number 4 of 2011 with the requirements for determining justice collaborators, namely justice collaborator is one of the perpetrators of a particular crime or a particular criminal case that he committed, not the main perpetrator in the crime and provided information as a witness in the trial process. Then against the Justice collaborator on behalf of RE who is the executor in the crime of premeditated murder, was determined as a justice collaborator with the consideration that the crime of premeditated murder he committed met the qualifications of a "certain case" with the indicator being another crime that resulted in the position of the witness and victim being faced with a very life-threatening situation and the fulfillment of the requirement that the justice collaborator in this decision is not the main perpetrator. For his role as a justice collaborator, RE was given a light sentence with a prison sentence of 1 (one) year and 6 (six) months with one of the considerations The victim's family has forgiven the defendant.

Keywords: *Justice Collaborator, Premeditated Murder, Light Sentence*

A. INTRODUCTION

One method to eradicate organized crime in international practice is by protecting and providing special treatment to perpetrators who are not the main perpetrators to cooperate with law enforcement officers (justice collaborators), in order to dismantle the organized crime. The term justice collaborator in the provisions of the law in the world was first introduced in the United States in the 1970s. The facility is none other than to deal with the mafia, which has long implemented omerta (a vow of silence and is also the oldest law in the Sicilian Mafioso). Justice collaborators in exposing terrorism crimes are practiced in Italy (1979), Portugal (1980), Northern Ireland, Spain (1981), France (1986) and Germany (1989) while for drug

crimes it is applied in Greece (1970), France, Luxembourg and Germany. The terminology of justice collaborator is used differently in these countries such as “supergrasses” (Ireland), “pentiti” or “pentitio” (Italy) which means “they have repented” or called “collaborator della giustizaa”. A justice collaborator whose role in exposing organized crime is entitled to protection. Based on the typology of crime, organized crime is the most complex and difficult to reveal. Organized crime is also possible for other types of crimes such as white collar crime, corporate crime and transnational crime as well as international crime. The perpetrators of organized crime are certainly people who have expertise in their fields who are able to organize their respective roles, motives and tasks and functions, both before the crime is committed until the removal of traces after the crime is committed. When viewed from the type of perpetrator, organized crime can also be classified as white collar crime.

Justice Collaborator has played a role in uncovering various crimes in Indonesia which are classified as organized crime, white collar crime, corporate crime and transnational crime as well as international crime, such as Decision Number: 48/Pid.Sus-Tpk/2020/PN.Jkt.Pst, Defendant Tommy Sumardi was determined as a justice collaborator in the bribery case of removing Djoko Tjandra's red notice. Based on the facts in the trial, the defendant was proven to have committed a criminal act of bribery with Djoko Tjandra where the defendant played a role in receiving money from Djoko Tjandra to be given to Napoleon Bonaparte as Kadivhubinter Mabes Polri and to Prasetyo Utomo as Karo Korwas PPNS Polri with the aim that the Secretary of NCB at Divhubinter remove Djoko Tjandra's name from the Immigration ECS system which previously in 2015 by the Secretary of NCB at Divhubinter Djoko Tjandra's name had been registered as a DPO in the Immigration ECS system. Then the justice collaborator also played a role in the corruption case involving Nazaruddin, while the justice collaborator was Mindo Rosalina Manulang.

Justice collaboratoris currently receiving serious attention, because it has a key role in “unveiling” the dark veil of certain crimes that are difficult for law enforcement to uncover. Justice collaborators can also be interpreted as witnesses to the perpetrators of a crime who are willing to help or cooperate with law enforcement. The role of justice collaborators was also felt in uncovering the crime of premeditated murder against the victim, a Police Brigadier named NYH, as per the South Jakarta District Court Decision which has determined a defendant of premeditated murder named RE as a Justice Collaborator. RE is the executor of the premeditated murder of the victim NYH. On July 8, 2022, Brigadier NYH died at the house of a Polri official in the Duren Tiga Housing Complex, South Jakarta on Friday at around 17:00 WIB. The official in question was later discovered to be Inspector General FS who at that time served as the Head of the Propam Polri Division (Head of the Professional and Security Division of the Republic of Indonesia Police).

The disclosure of the premeditated murder case against NYH cannot be separated from the role of RE who volunteered as a cooperating witness (justice collaborator) so as to reveal the actual facts of the incident. At the trial at the South Jakarta District Court in case Number: 798/Pid.B/2022/PN.Jkt.Sel, RE as the Defendant filed a request to be appointed as a Justice Collaborator by attaching a recommendation from the Witness and Victim Protection Agency (LPSK) dated January 11, 2023 regarding the Recommendation for Granting Rights and Handling Cases as a cooperating witness (justice collaborator).

Based on the trial facts as stated in the copy of the South Jakarta District Court decision Number: 798/Pid.B/2022/PN.Jkt.Sel, Defendant RE acted as the perpetrator of the shooting of Victim NYH. This is stated in Defendant RE's statement which states that Defendant RE shot 3 or 4 times at Victim NYH (deceased), although the Defendant could not confirm how many shots Defendant RE fired at the Victim.

Ramlan Damanik, Mahmud Mulyadi, Rosmalinda

B. FORMULATION OF THE PROBLEM

1. How are the Practices of Determining Justice Collaborators in Indonesia?
2. How is Justice Collaborator Determined in Premeditated Murder Crimes?
3. What are the Legal Considerations of the Panel of Judges in Imposing Criminal Sanctions on Justice Collaborator on Behalf of RE?

C. DISCUSSION

1. Practices of Determining Justice Collaborators in Indonesia

The concept of a state of law must make law the main pillar in the dynamics of national life. Therefore, everyone who lives in a country must submit to and obey the applicable legal provisions. Thus, if someone commits an act that can violate the law, they will be subject to sanctions. Along with the development of the times, crime is also growing. Problems about crime are increasingly complicated or complex. Law enforcers must be more careful with cases like today which continue to develop. Especially about cases that lead to the realm of criminal law.

Indonesian criminal law has regulated legal norms for witnesses who are also perpetrators of criminal acts who cooperate with law enforcement in uncovering the crimes committed or are often referred to as Justice Collaborators. There are several laws and regulations that explicitly and implicitly regulate the existence of Justice Collaborators. These laws and regulations include the following:

- a. Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims.

The provisions relating to Justice Collaborators are:

Article 1 Number 2 reads: "A witness is a suspect, defendant or convict who cooperates with law enforcement to uncover a criminal act in the same case."

Article 10 reads:

- 1) Witnesses, Victims, Witnesses, Perpetrators, and/or Reporters cannot be prosecuted, either criminally or civilly, for testimony and/or reports that they will, are, or have given unless the testimony or report was not given in good faith.
- 2) In the event of a lawsuit against a Witness, Victim, Perpetrator Witness, and/or Reporter for testimony and/or reports that will be, are being, or have been given, the lawsuit must be postponed until the case that he/she reported or gave testimony about has been decided by the court and has obtained permanent legal force.

Article 10 A reads:

- 1) Witnesses can be given special treatment during the examination process and awards for the testimony given.
- 2) Special handling as referred to in paragraph (1) includes:
 - a. Separation of places of detention or places of serving sentences between Witness Perpetrators and suspects, defendants and/or prisoners whose crimes have been revealed;
 - b. Separation of the files between the files of the Witness/Perpetrator and the files of the suspect and defendant in the investigation process, and prosecution of the criminal acts disclosed; and/or;
 - c. Giving testimony in court without being directly confronted with the accused whose crime is being revealed.
- 3) The award for testimony as referred to in paragraph (1) shall be in the form of:
 - a. Diminution of the sentence; or

Ramlan Damanik, Mahmud Mulyadi, Rosmalinda

- b. Conditional release, additional remission, and other rights of prisoners in accordance with the provisions of laws and regulations for Witnesses/Perpetrators who have the status of prisoners.
- 4) To obtain an award in the form of reduced sentence as referred to in paragraph (3) letter a, LPSK provides a written recommendation to the public prosecutor to be included in his/her demands to the judge.
- 5) To obtain awards in the form of conditional release, additional remission and other prisoner rights as referred to in paragraph (3) letter b, LPSK provides written recommendations to the minister who handles government affairs in the legal sector.

Regulations on justice collaborators in Indonesia can practically be said to have not existed before the enactment of Law Number 13 of 2006 on Protection of Witnesses and Victims, in the law itself the articles that regulate and describe witnesses and perpetrators cooperating are considered very minimal. The law also does not provide clear guidance on what are the prerequisites for determining someone to be a justice collaborator.

Although justice collaborators have been regulated in Law Number 13 of 2006, over time and in its implementation, this Law has been found to have shortcomings in regulating witness protection. Specifically, the regulation on the role of justice collaborators in its implementation still has many weaknesses caused by different interpretations of the article by the community and also by law enforcement itself. These weaknesses can be seen from: a. the scope of "cooperating actors" is still limited, b. the role of cooperating actors must be in court, c. unclear requirements, d. limited reward provision, e. no certainty in the provision of rewards, f. uncertain protection provision, g. no standard regarding calculating contributions as cooperating actors.

a. **The Role of Justice Collaborator in Indonesia**

The criminal justice system comes from the words, "system" and "criminal justice". The system can be interpreted as a series of interrelated elements to achieve certain goals. The ultimate goal of the Criminal Justice System (CJS) is none other than to achieve justice for the community. When examined etymologically, the system means a collection of (between) parts or components (subsystems) that are interconnected in a regular manner and constitute a whole. While criminal justice is a mechanism for examining criminal cases that aims to convict or acquit someone of charges of committing a crime.

Criminal justice system This was first introduced by Frank Remington with the concept of criminal justice administration engineering through a system approach and this idea was contained in the 1958 pilot project report. This idea was then attached to the criminal justice administration mechanism called the criminal justice system which was then disseminated by The President's Crime Commission under the leadership of Alfred Blumstein. The Commission's Task Force and Technology then systematically compiled a criminal justice system where a managerial approach was applied based on a system approach to the criminal justice administration mechanism. Since then, in the context of crime prevention in the United States, a system approach has been introduced and developed as an approach to law and order. Through this system approach, the police, prosecutors, courts and correctional institutions are no longer independent institutions but each is an important element and is closely related to one another.

In criminal procedure law there are underlying principles, but in this case, two types of principles that are rarely discussed will be discussed first, namely first, the principle of accusator (Accusatoir), namely the principle that emphasizes that every

suspect/defendant has the right not to be made the object of the trial, but that the suspect/defendant can provide information according to his conscience and alibi as he pleases, even so the task of law enforcement officers is to dig up the real truth of a legal event. The principle of accusator is the opposite of the principle of inquisitor (Inquisitoir), the meaning of this principle of inquisitor is that the suspect/defendant becomes the object of the trial and the confession or statement of the suspect/defendant is the strongest evidence. Second, namely the principle of opportunity, which means as a legal principle that gives the public prosecutor the authority to prosecute or not to prosecute with or without conditions a person or corporation that has committed a crime for the public interest. In the pre-independence era, this opportunity principle was not yet enforced in writing, but was only implemented in accordance with the habits of the Public Prosecutor (JPU) in carrying out demands on suspects/defendants in a criminal case.

b. Conditions for Appointing a Justice Collaborator

The determination of a suspect, defendant or convict who has committed a crime as a justice collaborator must fulfill several requirements as stipulated in several provisions of laws and regulations. The provisions of Article 28 Paragraph (2) of Law Number 31 of 2014 state that LPSK Protection for Witnesses of the Perpetrators is given with the following conditions:

- 1) the criminal acts to be revealed are criminal acts in certain cases in accordance with the LPSK decision as referred to in Article 5 paragraph (2);
- 2) the importance of the information provided by the Witness in revealing a crime;
- 3) not as the main perpetrator in the crime he disclosed;
- 4) willingness to return assets obtained from criminal acts committed and stated in a written statement; and
- 5) There is a real threat or concern that there will be a threat, physical or psychological pressure on the Witness, the Perpetrator or his/her Family if the crime is revealed according to the actual circumstances.

The provisions of number 9 of the Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2011 contain provisions regarding the requirements for determining a justice collaborator which state that the guidelines for determining a person as a Cooperating Witness (Justice Collaborator) are as follows:

- 1) The person concerned is one of the perpetrators of a particular crime that he/she committed, not the main perpetrator in the crime and provides information as a witness in the trial process;
- 2) The Public Prosecutor in his indictment stated that the person concerned had provided very significant information and evidence so that investigators and/or public prosecutors could effectively uncover the criminal act in question and reveal other perpetrators.

c. The Existence of Justice Collaborators in Criminal Cases in Indonesia

The role of justice collaborators in uncovering criminal cases greatly assists law enforcement officers in eradicating criminal acts. The Supreme Court Decision Number: 920 K/Pid.Sus/2013 on behalf of Defendant Thomas Claudius Ali Junaidi shows that the judicial institution is serious in providing recognition and appreciation for justice collaborators. In the court decision at the District Court level, the Panel of Judges has considered the importance of the defendant's role as a justice collaborator. This can be seen from the legal considerations of the Maumere District Court Number: 100/Pid.Sus/2012/PN.MMR, dated December 17, 2012 on page 50 stating that the

Panel of Judges found the fact that the Defendant who played a major role as a liaison or intermediary to obtain narcotics in the form of crystal methamphetamine, the Defendant had a major role in helping the Police in uncovering the circulation of narcotics in Maumere, so that with the Defendant's assistance the Police were able to arrest people who were the targets of the operation in Maumere. This is an appreciation for the Defendant. On the other hand, the Defendant as a victim helped other people to find narcotics in the form of crystal methamphetamine because it was based on a sincere intention to help, but the Defendant also acted as an intermediary for narcotics in the form of crystal methamphetamine and the Defendant reasonably suspected that this act had violated the law.

2. Determination of Justice Collaborator in Premeditated Murder Crimes

a. Chronology of the Premeditated Murder of NYH

The Decision of the South Jakarta District Court Number 798/Pid.B/2022/PN. Jkt.Sel regarding the criminal case of premeditated murder against the Defendant RE has contained the chronology and methods of the premeditated murder of the Victim NYH based on the trial facts according to the statements of Witnesses, Experts, the Defendant and other evidence. The chronology and methods of the premeditated murder are as follows:

- On Thursday, July 7, 2022 at around 18.00 WIB at the house of witness FS in Perum Cempaka Residence Block C III Jalan Cempaka, Banyu Rojo Village, Mertoyudan District, Magelang Regency, witness KM in front of the terrace saw victim NYH from the glass window sneaking up and down the stairs, because of that witness KM banged on the glass door while shouting, "Woyy.!!!" upon the shout victim NYH ran to the kitchen and then to the front through the guest door, witness KM then chased to the kitchen and shouted to witness S, "S look at mom,..look at mom"; later witness KM heard witness S say, "mom...mom...mom...!!!"; so he didn't chase victim NYH and went back to see the condition of witness PC, who was sitting in front of the bathroom door leaning on the dirty clothes basket;
- That when witness S and witness KM were about to lift witness PC, victim NYH came who was on the stairs and said, "uncle, I'll explain ... uncle, I'll explain", then witness KM asked, "what are you doing, ma'am", where victim NYH before explaining, witness KM shouted, "if you dare to go up I'll kill you" then went down the stairs chasing victim NYH through the kitchen door, and when passing through the kitchen, witness KM saw a kitchen knife, took it and continued chasing victim NYH until the kitchen door to the garage then returned to the second floor to help witness PC with witness S; At around 19.30 WIB on Thursday, July 7, 2022, because they were contacted by witness PC, defendant RE and witness RR who were at the Alun-alun Mosque in Magelang City went to witness PC's house at Perum Cempaka Residence Block C III Jalan Cempaka, Banyu Rojo Village, Mertoyudan District, Magelang Regency. Upon arriving at the house, the defendant and witness RR entered the room of witness PC who was lying down with a blanket on the mattress, at that time witness RR asked "what's wrong, ma'am ...?" and witness PC answered "Where is NYH?", then witness PC asked witness RR to call victim NYH to meet him;
- After witness RR looked for the victim in several places including asking witness S but did not meet him, and because witness RR remembered there was a commotion between witness KM and victim NYH based on what

Ramlan Damanik, Mahmud Mulyadi, Rosmalinda

- witness KM said who said he had chased victim NYH using a knife, then witness RR first looked for and secured the HS firearm belonging to victim NYH and took the Steyr Aug long-barreled weapon, which was in victim NYH's bedroom, then secured both weapons by storing them in the TPS room (child of witness FS with the defendant) on the second floor;
- Then Witness RR went down to the first floor again and met Victim NYH who was in front of the house, asked Victim NYH "what's wrong Yos?..." and Victim NYH answered "I don't know bro, why is KM angry with me..." then witness RR invited Victim NYH to come into the house because witness PC called him. For that Victim NYH met witness PC by sitting on the floor while witness PC sat on the mattress while leaning back;
 - When witness RR left witness PC's room and stood outside the room while looking at witness PC and victim NYH through the glass door of the room, the Defendant tried to calm victim NYH and forgive his cruel actions towards witness PC and asked victim NYH to resign;
 - After the victim NYH left the room, Witness KM came and said to witness PC, "Mother must report to father, so that there will be no thorns in this house in my household";
 - On Friday early morning, July 8, 2022, witness PC called witness FS. and said that the victim NYH had entered witness PC's private room and committed an indecent act against witness PC and asked witness FS, her husband, not to contact anyone, saying "don't contact the aide, don't contact the others", considering that the house in Magelang is small and afraid that someone else will hear the story and worried that something unwanted will happen considering that victim NYH has a weapon and a bigger body than the other aide", in connection with that, witness FS agreed to witness PC's request, then witness PC asked to return to Jakarta and would tell the story of the incident he experienced in Magelang after arriving in Jakarta;
 - Then on Friday, July 8, 2022 at around 10.00 WIB, witness PC told witness RR to prepare the car and other necessities because witness PC was going home to Jakarta and asked witness RR and witness KM to come with him to Jakarta;
 - Regarding the HS type firearm belonging to the victim NYH and the Steyr Aug type firearm, which had previously been secured by witness RR, they were taken and taken for the HS type firearm with serial number H233001 stored on the dashboard of the Lexus LM car with police number B 1 MAH, while the Steyr Aug type firearm was handed over by witness RR to the defendant RE to be placed and stored in the foot section of the front left seat of the Lexus LM car with police number B 1 MAH;
 - Next, witness PC left for Jakarta using 2 (two) cars, witness PC in the middle seat in the Lexus LM car with Police Number B 1 MAH which was driven by witness KM with the Defendant sitting beside him and witness S sitting beside the defendant RE. while the Lexus car with Police Number L 1973 ZX was driven by witness RR with Victim NYH sitting beside him. Then upon arriving at the Saguling house, defendant RE, witness S, victim NYH, and witness RR took a PCR test carried out by witness NA;
 - On Friday afternoon, July 8, 2022, witness FS returned from his office at the National Police Headquarters to his house at Saguling 3 No. 29 as shown in the CCTV footage that was broadcast and explained by Digital Forensics expert Hery Priyanto in Frame 15220, time 14.46.54 in the CCTV, witness FS

- entered the Saguling house elevator from the 1st floor, stopped for a while on the 2nd floor and finally went to the 3rd floor;
- Then the group of witness PC also arrived from Magelang at the Saguling House where it can be seen in Frames 26950 to 27237 after witness PC PCR then entered the house at 15.00.15 via the elevator to the 3rd floor, inviting witness KM, later witness KM went down the stairs next to the elevator at 15.03.03 CCTV time;
 - Because there were still items, namely witness PC's bag, witness KM went back up to the third floor with the Defendant who was carrying a Steyr long-barreled weapon. Witness KM carried the bag to the front of the room, because witness PC said, "At, just put the bag there", while defendant RE said, permission for the weapon? to which witness PC answered, just put it in the room, so the Defendant went inside. carrying a Steyr Aug long-barreled weapon, placed it in the weapons storage area located in witness PC's bedroom, after that defendant RE and witness KM went out and went down to the 1st floor;
 - Next, witness PC told witness FS, her husband, in the living room on the 3rd floor of the house on Jalan Saguling in detail about the harassment carried out by victim NYH accompanied by sobs including slamming witness PC's head 3 (three) times, which caused witness PC to fall and sit leaning on the dirty clothes basket so that witness FS as her husband heard witness PC's story and was very shaken, emotional, angry, furious and clenched his fists and cried, unable to understand why victim NYH, who was in fact his own aide, could do such things to his family;

That then witness FS immediately called witness RR via HT to meet witness FS on the 3rd floor, and when witness RR came, witness FS asked "What happened in Magelang?". The answer was, "I don't know", then witness FS in tears said, "that mother has been harassed by NYH" and said he would call the victim NYH and "you back me up, keep me safe if he fights back, do you dare shoot him", the witness RR answered, "I don't dare sir, because I'm not mentally strong sir". In connection with that, witness FS ordered witness RR to call the defendant RE;

- While sitting with witnesses AR, P, F, DIM, D and witness KM in front of the house on Jalan Saguling III No. 29 South Jakarta, witness RR called the defendant RE by saying, "Cad is called by father to the 3rd (third) floor, just take the elevator CAD" then answered, "what for bro", to which witness RR answered, "I don't know";
- When the defendant RE had gone up to the 3rd floor, he met with witness FS and then told the defendant RE to come inside and sit on the sofa. After the defendant sat down, witness PC came and sat next to witness FS;
- The same question was asked by witness FS to the Defendant about the incident in Magelang, to which the witness answered, "I don't know sir", after that witness FS explained to the Defendant about the incident in Magelang where the victim NYH had harassed witness PC, then witness FS cried and said that the harassment carried out by victim NYH against witness PC had insulted his dignity and honor, for that witness FS said, "this child should indeed be put to death";
- Then, while leaning forward, FS said to the Defendant, "You will shoot later because if you shoot, I will guard you, because if I shoot, no one can guard us", which was answered, "Yes, commander", then witness FS told the

scenario of the murder of NYH, "NYH harassed my mother, then my mother suddenly screamed, then defendant RE came, NYH then shot defendant RE and defendant RE returned fire at NYH which resulted in NYH's death. The scenario was conveyed by witness FS repeatedly and witness FS promised to guard the Defendant and also said that the killing would be carried out at the Duren Tiga house and said "if anyone asks, answer with the reason that he will carry out self-isolation (isoman)";

- That witness FS then asked about defendant RE's weapon, to which he replied, "ready sir, it's beside me", then witness FS gave a box containing bullets and ordered defendant RE to add to his Glock 17 magazine weapon, then witness FS asked where the firearm belonging to victim NYH was, to which he replied, "it's in the Lexus LM car" and on witness FS's orders, the Defendant went down from the 3rd floor to take victim NYH's HS firearm from the dashboard of the Lexus B 1 MAH car and returned to the 3rd floor to hand it over to witness FS;
- Then the defendant RE came down from the 3rd floor feeling anxious and restless, so the defendant prayed in the toilet in the hope that witness FS would change his mind;
- With the reason of isolation, witness PC then went down from the 3rd floor to the 1st floor of the Saguling house, inviting and ordering witness RR as the driver, while defendant RE when he heard witness PC had gone down from the 3rd floor then headed to car B 1 MAH, joined and sat in the back seat with witness KM. So that finally all those who left Magelang, namely witness RR, witness KM, witness PC and defendant RE and victim NYH except witness S, one Lexus car B 1 MAH to the official residence of Duren Tiga No. 46;
- Arriving at the official residence of Duren Tiga No. 46 at around 17.07 CCTV time, the victim NYH got off first and immediately opened the gate of the house, after that witness PC got off followed by witness KM entering the house through the garage towards the kitchen door which had previously been opened by witness KM, then witness PC went straight to the main bedroom on the first floor accompanied by witness KM, then witness KM immediately closed the front door of the house and went up to the second floor to close the balcony door on the second floor;
- When witness KM was on the 2nd floor, defendant RE also went up to the second floor and entered the adjutant's room to pray again in the hope that witness FS would change his mind so as not to take the life of victim NYH, while witness RR did not enter the official residence Duren Tiga No. 46, but remained standing in the garage of the house so that he could see the presence of victim NYH who was standing in the garden of the official residence yard;
- At around 17.08 WIB, witness FS left with witness AR and witness PIW as the driver driving a black Lexus LX 570 official car with Police Number B 1434 RFP escorted by Witness Farhan Sabillah as a motorbike guard and when passing Jl Duren Tiga, witness AR and witness PIW heard the voice of witness FS holding a cellphone saying, "hello...hello", and asked witness AR and witness PIW, "what's wrong with you, ma'am... stop...stop...", which finally Witness AR got out first and the car continued to move forward through the side gate of the Duren Tiga No.46 official residence, after that witness FS told Witness PIW to stop the car, after stopping witness FS rushed to get out but the firearm he was carrying fell, seeing the incident, witness AR took the initiative to get it, but was prevented by saying "let me get it", the

- firearm was then taken by witness FS and put in the right trouser pocket which according to witness AR the weapon that fell was the HS type;
- Next, witness FS entered the house and met witness KM on the first floor, in a high tone, saying "Wat!, where are RR and NYH... call!", at the same time, defendant RE who heard FS's voice immediately went down to the first floor to meet witness FS and stood on the right side of witness FS, then witness FS said to defendant RE "cock your gun!", after that defendant RE cocked his gun and tucked it into his right waist; On the orders of witness FS, witness KM went out through the kitchen door to the garage and approached witness RR who was standing near the garage near the trash bin by saying "Uncle... called by father and NYH", hearing these words
 - witness RR approached victim NYH who was in the side yard of the house and told victim NYH that he was being called by witness FS, then on the advice of witness RR, victim NYH walked into the house through the garage and kitchen door towards the living room near the dining table followed by witness RR and witness KM;
 - Arriving in the middle room near the dining table, witness FS immediately held the back of the victim NYH's neck and pushed him forward so that the position of the victim NYH was right in front of the stairs facing witness FS. The defendant RE was on the right side of FS, witness KM was behind FS while witness RR was behind the defendant RE, then witness FS immediately said to the victim NYH with the words "squat down!!", then the victim NYH while raising both his hands facing forward parallel to his chest had time to step back a little and said "what's going on?";
 - Next, witness FS. shouted loudly to defendant RE by saying "Hey...! You shoot...! You shoot quickly!! Hurry up, you shoot!!!". Hearing witness FS's screams, defendant RE immediately pointed his Glock-17 firearm with serial number MPY851 at the body of victim NYH and fired his firearm in a face-to-face position so that victim NYH fell sprawled bleeding profusely and still groaning;
 - Then witness KM saw witness FS move forward while the defendant saw FS move forward shooting with a Glock 17 weapon towards victim NYH, and then with a HS weapon shooting several times towards the top of the stairs and towards the top of the television, then attaching the HS weapon to the finger of victim NYH's right hand and placing the HS weapon next to the left hand of victim NYH;
 - As a result of the shooting of defendants RE and FS, the victim died as per Visum Et Repertum No. R/082/Sk.H/VII 2022/IKF dated July 14, 2022 which was made and signed by dr. FARAH P KAROUW. Sp.FM and dr. ASRI M PRALEBDA, Sp.FM, a specialist in Forensic and Medicolegal at the Bhayangkara Hospital Level I Puskokkes Polri who among other things have concluded: "The cause of death of this person (victim NYH) was the effects of firearm violence in the chest area that had penetrated the lungs, firearm violence to the back of the head is also fatal in itself and can cause death";
 - Then in the garage of Duren Tiga No. 46 after the incident, witness FS gathered witnesses AR, witness KM, witness RR, D alias Kodir and the Defendant, then witness FS said, "What if it happened to your children, wives or family". Then witness FS embraced defendant RE by saying, "I will defend him, even if my position is at stake"

Shortly after the incident, following questions from witness Benny Ali and heard by witness Susanto Haris, witness KM said, "I was upstairs, I wanted to close the door, when the explosion happened I was scared and I lay down", witness RR was in the car garage. said, "I was in the garage and when I heard the gunshots I hid behind the refrigerator in the kitchen", while showing the movements of how witness RR hid behind the refrigerator", while the defendant RE said, "I was on the second floor with Mr. KM, then I heard my mother screaming for help, then I went down the stairs and saw the victim NYH, who was in front of my mother's room and saw me and the shooting happened";

- That the same story was told by witness RR, defendant RE and witness KM to witness Agus Nurpatia on Friday evening, July 8 20022 at the Provost Bureau, National Police Headquarters, when they were gathered and asked to tell the chronology of the events surrounding the death of victim NYH at the Duren Tiga official residence some time before witness FS arrived at the Provost Bureau;
- To witnesses Benny Ali and Susanto Haris when they were at Saguling's house shortly after the victim NYH was shot on the evening of July 8, 2022, witness PC also testified that at that time witness PC had just returned from Magelang, went straight to Saguling's house, went straight into the room, sat down and relaxed, wearing shorts, at that time the late Brigadier Yoshua came in and harassed witness PC, witness PC screamed, NYH came out and heard the sound of gunfire, accompanied by sobs every sentence spoken which caused witness Benny Ali to be touched, concerned, unable to bear to see witness PC's condition so he did not continue asking for witness PC's statement;
- Likewise on July 9, 2022, when witness Arif Racman Arifin asked for information from witness PC on the orders of witness Hendra Kurniawan at the Saguling house, he met witness PC on the 2nd floor already crying while holding a tissue, so witness Arif Racman asked permission to postpone the request for information but witness FS replied, "it's okay, now", while witness PC was about to talk. Then, persuaded by witness FS, witness PC spoke, initially there was a voice but after a while his voice disappeared and he cried, then witness PC explained again, witness PC entered the house, opened the door and his voice disappeared again. Finally FS continued to explain that witness PC was harassed, witness Arif Rahman was silent because he did not dare to ask considering that witness PC and FS were both crying, until the story was finished, witness Arif Rachman could only write 6 lines;
- On July 10, 2022, in the office of witness FS on the 2nd floor of the Saguling house, to ensure that witness RR, witness KM and defendant RE continued to convey the story that had been conveyed to the investigator, witness FS and witness PC gave an iPhone 13 Pro Max brand cellphone to witness RR, witness KM and defendant RE, as well as money in the form of dollars amounting to Rp. 1,000,000,000,- (one billion rupiah) for defendant RE, Rp. 500,000,000,- (five hundred million rupiah) each for witness KM and witness RR, which then the money was not handed over and will be handed over if this case is finished;

That it turns out that the stories told by witnesses RR, KM, PC and defendant RE were merely scenarios, until on August 6, 2022, the Defendant told the real story of the incident on July 8, 2022 at the Duren Tiga official residence,

which was not a shooting but a shooting incident in order to take the life of victim NYH;

3. Legal Considerations of the Panel of Judges in Imposing Criminal Sanctions on Justice Collaborator on Behalf of RE

a. Elements of the Crime of Premeditated Murder

One type of crime with severe punishment in the Criminal Code is the crime of murder. In the Criminal Code, there are also two types of murder, namely the crime of principal murder and the crime of premeditated murder. The crime of premeditated murder is a form of increasing aggravation in the crime of murder which shows the level of seriousness of the violation and the level of moral burden that must be accounted for. In addition to showing a higher level of seriousness of the crime, the perpetrator of the crime of premeditated murder must be treated more guilty than the crime of ordinary murder because premeditated murder has been considered a cold-blooded killer which is different from a killer due to momentary emotional pressure. This emphasizes that premeditated murderers have a much higher level of danger compared to ordinary murderers.

Premeditated murder is formulated in Article 340 of the Criminal Code which reads: "Anyone who intentionally and with prior planning takes the life of another person, is threatened, because of premeditated murder (moord), with the death penalty or life imprisonment or for a certain period of time, a maximum of twenty years". From the text of the article, it is clear that there are several elements that must be met so that the act is perfect to be categorized as premeditated murder, namely starting with the subjective element, namely intentionally and with prior planning. Furthermore, the objective element of this article is taking a life with the object of another person's life and is carried out with prior planning (planned).

Determining whether this premeditated murder was carried out with prior planning, there are several conditions that must be met by the perpetrator, the first is deciding the will in a calm atmosphere. The meaning of deciding the will in a calm atmosphere is that the perpetrator plans to kill someone not suddenly or the perpetrator has enough time to think about all scenarios, how to kill, what tools to use to kill, and how the perpetrator can escape from his actions, after successfully killing his target.

In addition to thinking calmly about how the crime will be committed, the perpetrator must also consider the implications of his actions in a psyche that allows for thinking. If in doing something that is planned but the plan is not to kill, for example the plan is made to poison the target, but because the perpetrator does not know the victim's health condition and it turns out that the poison actually worsens the victim's condition, causing the victim to die, then the perpetrator cannot be charged with premeditated murder. Because since the perpetrator has mens rea to commit a crime, the intention that the perpetrator has is not the intention to kill but the intention to make the person faint, but because of things beyond the perpetrator's control, it turns out that the poison causes the victim to die so that in this case the element of intent to kill is not fulfilled because basically based on the perpetrator's intention it is not to kill.

The meaning of a plan in advance is the same as being planned in advance (Voorbedachtte Rade), namely between the emergence of the perpetrator's goal and the time of execution, there is still time for the perpetrator of the murder to think about how the murder is to be carried out, which of course a perpetrator

can think about it calmly. Interpreting the word "tempo" in this context should not be too narrow, but it does not have to be long either, the most important element is whether at that time the perpetrator of the murder is accompanied by a calm mood and is still able to think about the possibilities of what will happen, even though in fact there is still an opportunity to cancel his evil intention to take the life of another person, but he still commits murder. Regarding premeditated murder, it has been formulated that the matter of determining the element of premeditated murder is the condition and mood to commit murder, even though his choice to end the life is in a state of mind that is very close to his evil act. If there is a plan, it can be ascertained that it is a moord (murder).

b. Elements of the Crime of Premeditated Murder in Legal Considerations of the Decision in Criminal Case Number 789/Pid.B/2022/PN-Jkt.Sel.

The Panel of Judges at the South Jakarta District Court who examined, tried and decided the case of premeditated joint murder in criminal case number 789/Pid.B/2022/PN-Jkt.Sel in the decision considered the primary charges of the Public Prosecutor as regulated in the provisions of Article 340 in conjunction with Article 55 Paragraph (1) point 1 which have been proven based on the facts revealed in court with the following elements:

- 1) Whoever
- 2) Deliberately
- 3) With Pre-Planning
- 4) Taking Another Person's Life
- 5) Who does it, orders it to do it or participates in doing it

The Panel of Judges' considerations regarding the elements of Article 340 in conjunction with Article 55 Paragraph (1) point 1 with the role of the defendant RE in the crime of premeditated murder against the victim NYH are as follows:

a) Element of Whom

Discussing whoever in the formulation of a crime means discussing the legal subject who can be considered as a subject in the sense of "Naturelijke person" while animals and their bodies (msetpersonen) cannot be considered as subjects.

b) Elements of Intention

Memories of Reading(MvT) formulates the definition of "intentional" as a conscious will with the aim of committing a certain crime and the existence of intention requires wilens en wetens (willing and knowing) which means that a person is said to have committed an act intentionally must have willed and realized the action and/or consequences of his/her actions. Given the conscious will that exists in the inner field, therefore from a series of real actions of a person in the outer field, the inner attitude or will of a person will be reflected. The element of intention (dolus/opzet) is something that is desired (willens) and known (wetens). The level of intention consists of 3 (three) forms, namely Intention as intent (opzet als oogmerk), Intention as certainty (opzet bij zekerheids wustzijn), Intention as possibility (opzet bij mogelijkheden bewustzijn).

A few moments later, witness FS came and entered through the kitchen and met with witness KM and asked and ordered witness KM, "where are RR and NYH... call!!!", at the same time after hearing witness FS coming, defendant RE came down from the 2nd floor of the Duren Tiga house to meet witness FS in the living room and on FS's orders, the Defendant cocked his Glock 17 weapon, then after victim NYH entered, FS grabbed the back of his neck or nape and pushed his body forward and ordered, "crouch down!!!", then the victim who felt he did not know the problem said, "what's going on", while raising both his hands, but witness FS shouted, "Hey!!! you shoot!!! you shoot quickly!!! Quickly,

Ramlan Damanik, Mahmud Mulyadi, Rosmalinda

hey, you shoot!!!!". So the Defendant fired 3 to 4 times with his weapon, including hitting the left chest which of course is a vital area that supports life, then witness FS himself had also moved forward and fired his Glock 17 weapon towards the back of the victim NYH's head.

D. CLOSING

1. Conclusion

Defendants who act as justice collaborators are treated differently by judges in criminal justice practices, some receive special treatment in the form of light sentences and some are not considered for their role as Cooperating Witnesses (justice collaborators) so that the sentences imposed on the Defendants do not receive leniency. The Decision of the South Jakarta District Court Number: 798/Pid.B/2022/PN.Jkt.Sel determined the Defendant of the Criminal Act of premeditated murder on behalf of RE as a justice collaborator because the crime revealed was a crime in a certain case with the classification of other crimes that resulted in the position of witnesses and victims being faced with a very life-threatening situation and the fulfillment of the requirement that the justice collaborator is not the main perpetrator. The sentence imposed on Defendant RE who was the executor in the premeditated murder of Victim NYH with a prison sentence of 1 (one) year and 6 (six) months can be categorized as a light sentence. The light sentence was certainly influenced by the role of the Defendant as a justice collaborator as determined by the judge in the verdict. The basis for consideration in deciding on a lighter sentence for justice collaborator RE was because the family of victim NYH had forgiven the Defendant.

2. Suggestion

Whatever the Author's suggestions for improving positive law and the implementation of criminal law enforcement, especially regarding the determination of Justice Collaborators, are as follows:

- 1) There needs to be a positive law that regulates the requirements for determining a justice collaborator clearly and firmly so that in the practice of enforcing criminal law, a perpetrator who intends to reveal a crime obtains legal certainty and obtains the same rights or facilities as other cooperating witnesses (justice collaborators).
- 2) A defendant who acts as an executor in a premeditated murder crime should be considered in depth to be determined as a justice collaborator, because the crime of premeditated murder is not included in the category of certain crimes that are explicitly stated in accordance with the provisions of Law Number 31 of 2014 and SEMA Number 4 of 2011, even if the consideration is that it is a crime in a certain case with the benchmark that the perpetrator witness is faced with a position that endangers his life, then the panel of judges should not consider it subjectively but must be based on facts about the circumstances that are proven to endanger the perpetrator witness. Then related to an executor of premeditated murder who is not classified as the main perpetrator, there needs to be a clear and firm definition of the terminology of the main perpetrator in the provisions of laws and regulations.

REFERENCES

- Adnan, Wahyu, *Kejahatan Terhadap Tubuh dan Nyawa*, Bandung: Gunung Aksara, 2007.
- Arumanadi, Bambang, Sunarto, *Konsepsi Negara Hukum Menurut UUD 1945*, Semarang: IKIP Semarang Press, 1993.
- Arief, Barda Nawawi, *Bunga Rampai Kebijakan Hukum Pidana*, Bandung: Citra Aditia Bakti, 1996.
- Ashshofa, Burhan, *Metode Penelitian Hukum*, Jakarta: Rineka Cipta, 2010.
- Atmadja, I Dewa Gede, I Nyoman Putu Budiarta, *Teori-Teori Hukum*, Malang: Setara Pers, 2018.
- Purnama, I Ketut Adi, *Pembaruan Sistem Peradilan Pidana Indonesia, (KUHP Nasional Sebagai Karya Monumental)*, Bandung: Refika Aditama, 2023.
- Putro, Widodo Dwi, *Kritik Terhadap Paradigma Positivisme Hukum*, Yogyakarta: Genta Publishing, 2011.
- Sugiharto, R., *Sistem Peradilan Pidana Indonesia*, Semarang: UNISSULA Press, 2018.
- Rahardjo, Satjipto, *Sisi Lain dari Hukum di Indonesia*, Jakarta: Penerbit Buku Kompas, 2003.
- , *Biarkan Hukum Mengalir: Catatan Kritis Tentang Manusia & Hukum*, Jakarta: Buku Kompas, 2008.
- , *Hukum Progresif: Sebuah Sintesa Hukum Indonesia*, Yogyakarta: Genta Publishing, 2009.
- Rifa'i, Ahmad, *Penemuan Hukum oleh Hakim dalam Prespektif Hukum Progresif*, Jakarta: Sinar Grafika, 2010.
- Saleh, Roeslan, *Stesel Pidana Indonesia*, Jakarta: Bina Aksara, 1987.
- , *Pikiran-Pikiran Tentang Pertanggungjawaban Pidana*, Jakarta: Ghalia Indonesia, 1982.
- , *Mengadili Sebagai Pergulatan Kemanusiaan*, Jakarta: Aksara Baru, 1983.
- Sianturi, S. R., *Tindak Pidana di KUHP Berikut Uraianannya*, Jakarta: Alumni AHM. PT. HM, 1983.
- Syafridatati, Surya Prahara, Febrina Anissa, *Sistem Peradilan Pidana*, Padang: LPPM Universitas Bung Hatta, 2022.
- Wiradipradja, E. Saefullah, *Penuntun Praktis Metode Penelitian dan Penulisan Karya Ilmiah Hukum*, Bandung: Keni Media, 2015.
- Yanto, Oksidelfa, *Negara Hukum: Kepastian, Keadilan dan Kemanfaatan Hukum Dalam Sistem Peradilan Pidana Indonesia*, Bandung: Pustaka Reka Cipta, 2020.
- Peraturan Perundang-Undangan**
- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Republik Indonesia Nomor 1 Tahun 1946 Tentang Kitab Hukum Pidana.
- United Nation Convention Against Corruption* yang telah diratifikasi dalam Undang-Undang Nomor 7 Tahun 2006 Tentang Pengesahan *United Nation Convention Against Corruption* (Konvensi Perserikatan Bangsa-Bangsa Anti Korupsi).
- United Nations Convention Against Transnational Organized Crime* yang telah diratifikasi dalam Undang-Undang Nomor 5 Tahun 2009 Tentang Pengesahan *United Nations Convention Against Transnational Organized Crime* (Konvensi Perserikatan Bangsa-Bangsa Menentang Tindak Pidana Transnasional Yang Terorganisasi).
- Undang-Undang Republik Indonesia Nomor 31 Tahun 2014 Tentang Perubahan Undang-Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi dan Korban.
- Achmad, Farhan Fauzie, Taun Taun, "Peran *Justice Collaborator* dalam Pengungkapan Kasus Pidana di Indonesia", *Jurnal Pendidikan dan Konseling*, No.5, Vol.4, 2022.
- Agustini, Ni Ketut Sri Kharisma, "Analisis Unsur-Unsur Pasal 340 KUHP Tentang Pembunuhan Berencana Pada Kasus Pembunuhan Tragis Anggota Ormas Di Bali", *Kertha Negara*, No.2, Vol.5, 2017,

Ramlan Damanik, Mahmud Mulyadi, Rosmalinda

- Aji, Dena, Aditya Tampubolon, Halimah Citra, Rizky Bayu, Herli Antoni, “Analisis Terkait *Justice Collaborator* Sebagai Faktor Yang Meringankan Sanksi Pidana Richard Eliezer, *Khairani: Jurnal Pendidikan Anak Usia Dini*, No.2, Vol. 1 Juni 2023.
- Aprillia, Vira, Sudiman Sidabuke, Daniel Djoko Tarliman, Penjatuhan Sanksi Pidana Di Bawah Ketentuan Minimum Khusus Terhadap *Justice Collaborator* Dalam Perkara Tindak Pidana Korupsi, *Calyptra : Jurnal Ilmiah Mahasiswa Universitas Surabaya*, No.2, Vol.9, Mei 2021.
- Arifin, Ridwan, Arsitas Dewi Fatasya, “Kajian Hukum Atas Pembunuhan Berencana Yang Disertai Penganiayaan Dan Mutilasi (Studi Atas Kasus-Kasus Mutilasi Kontroversi Di Indonesia)”, *Jurnal Ilmu Hukum: Fakultas Hukum Universitas Riau*, No.1, Vol. 8, 2019,
- Assaad, Andi Istiqlal, “Hakikat Sanksi Dalam Perspektif Hukum Pidana Indonesia Dan Hukum Pidana Islam (Studi Tentang Pidana Mati)”, *Al-Ishtlah: Jurnal Ilmiah Hukum*, No. 2, Vol. 19 2017.
- Cristianto, Hwian, “Penafsiran Hukum Progresif dalam Perkara Pidana”, *Mimbar Hukum*, No.5 Vol.5, 2011.