

The Weak Role of Prosecutors in Designating Justice Collaborators in Indonesia

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Abstract: Crime is a phenomenon that has infiltrated into communal life. One type of crime resulting from this development is criminal activities carried out in collusion or groups, meticulously planned, and referred to as organized crime. This type of crime can be categorized as an extraordinary or extraordinary crime because it is considered more extreme than ordinary crimes. In organized crime, perpetrators form a group that employs various detailed and synchronized methods to obtain money, power, or other objectives. Examples of organized crime include corrupt groups, robbery conspiracies, and even groups of murderers. This should prompt law enforcement agencies to undertake new efforts to address and combat this type of crime, and one of the means employed can be through the Criminal Justice System network.

Keywords: Integrated Criminal Justice System, Criminal Justice System, Justice Collaborator

INTRODUCTION

Crime is an endless problem in society, as it has become a phenomenon deeply embedded in communal life. The methods employed to address crime, however, are bound to face recurrence, given that individuals harbor diverse interests. According to the perspective of



criminology expert Willem Bonger, crime is defined as an anti-social and immoral act, unforeseen by the community, and overtly opposed by the state through retribution in the form of suffering (punishment).¹ Crime cannot be eradicated from human life because inherently, crime is a part of human existence. As society evolves, crime also undergoes evolution and develops into specific types.

One type of crime resulting from this development is crimes committed in collusion or groups and meticulously planned, referred to as organized crime. This type of crime can be categorized as extraordinary or extraordinary crime because it is deemed more extreme than ordinary crimes. In organized crime, perpetrators form a conspiracy employing detailed and synchronized methods to attain money, power, or other objectives. Examples of organized crime include corrupt groups, robberies, and even assassination squads. This should prompt law enforcement agencies to implement various new measures to address and combat this type of crime, with one means being through the Criminal Justice System network.

The Criminal Justice System (CJS) or Integrated Criminal Justice System, according to Muladi, is a network of justice based on substantive criminal law, procedural criminal law, and also the law of criminal execution. Muladi adds that the institutional aspect of the CJS must be viewed in a social context, as an excessive focus on the interest of legal certainty alone can lead to a catastrophe, namely, injustice². In practice, the Integrated Criminal Justice System (ICJS) is supported by several subsystems such as the Police, Public Prosecution, Courts, and Correctional Institutions. The collaboration among subsystems within the ICJS essentially aims to address crime, and through this process, many crimes have been mitigated.

In the judicial process, especially regarding organized crime, a term that has recently gained prominence is "Justice Collaborator."

¹ Bonger.W.A, *Pengantar Tentang Kriminologi* (Jakarta: Ghalia Indonesia, 1982).

² Romli Atmasasmita, *Sistem Peradilan Pidana; Perspektif Eksistensialisme Dan Abilisionisme* (Bandung: Bina Cipta, 1996).



Simply put, a Justice Collaborator or witness-perpetrator is a suspect (who is not the main perpetrator) who assists investigators by exposing the criminal activities of their conspirators, with the hope of mitigating the punishment that would be imposed on them. In this case, even though they have committed a criminal act, they have aided in the process of seeking the truth and uncovering facts, making them eligible for leniency in their sentence. Recently, the term Justice Collaborator has been increasingly discussed, particularly in connection with the escalating cases of shootings carried out by the Ferdi Sambo group, resulting in the loss of the life of Brigadier Yosua Hutabarat. In this case, Bharada Eliezer, one of the suspects in the death of Brigadier Yosua Hutabarat, has agreed to reveal the truth of this case and volunteered to become a Justice Collaborator.

The concept of Justice Collaborator bears similarities to Plea Bargaining, where the defendant is obligated to admit their guilt or acknowledge that they have committed a criminal act. However, there is a distinction between Justice Collaborator and Plea Bargaining, as plea bargaining occurs when the defendant acknowledges their wrongdoing, and the defendant may be the main perpetrator of a criminal act. In the Plea Bargaining concept, the defendant only admits their guilt and is not tasked with assisting investigators in uncovering a crime. Based on this admission, the prosecutor may reduce their demands on the defendant, and in some cases, even drop charges against the defendant for other criminal acts.

The regulation regarding Justice Collaborators has been established through the Circular Letter of the Supreme Court (SEMA) No. 4 of 2011 concerning the Treatment for Whistle blowers and Justice Collaborators. In this circular letter, the guidelines that determine someone's eligibility to become a witness-perpetrator or Justice Collaborator are outlined in section 9, letter a. The guidelines for determining someone as a cooperating witness (Justice Collaborator) are as follows: [Provide details of the guidelines as stated in SEMA No. 4 of 2011]:



- a. The individual in question is one of the perpetrators of a specific criminal act as referred to in this Circular Letter, admitting to the crime they committed. They are not the main perpetrator of the crime and provide testimony as a witness in the legal process;

Upon closer examination of Article 9 letter a in Circular Letter No. 4 of 2011, there are four main conditions for someone to be considered a justice collaborator. Firstly, to become a justice collaborator, an individual must be a perpetrator of a criminal act. Secondly, the perpetrator must admit to having committed a crime or a criminal act. Thirdly, the perpetrator must not be the main actor in the criminal act; there must be another perpetrator above them. Lastly, a justice collaborator is obliged to provide significant information for the revelation of the truth regarding the uncovered criminal case.

Initially, the concept of a justice collaborator aimed to uncover the main actors of a serious criminal case. In Indonesia, regulations regarding justice collaborators are stipulated in the Circular Letter of the Supreme Court (SEMA) No. 4 of 2011. The requirements to become a justice collaborator according to SEMA No. 4 of 2011 are that the perpetrator must be involved in a specific criminal act (as defined in this Circular Letter) and admit to the crime they committed. The perpetrator must not be the main actor in the intended criminal act and must be willing to provide testimony as a witness in the legal process. The information and evidence provided must be highly significant, and the collaborator must be capable of revealing other perpetrators with more significant roles.³

One example of a case related to a justice collaborator is found in the premeditated murder case committed by Ferdy Sambo against Brigadier Nofriansyah Yosua Hutabarat. In this case, Richard Eliezer, also known as Bharada E, disclosed his testimony regarding the murder plot.

³ Mahkamah Agung, "Surat Edaran Mahkamah Agung (SEMA)" (n.d.).



According to the testimony of Bharada Eliezer, on Friday, July 8, 2022, after returning from Magelang, he was at Ferdy Sambo's private residence in Saguling, Jakarta. At that time, Eliezer received an order to go to the 3rd floor from Ferdy Sambo through Ricky Rizal (one of the defendants). Richard then went up to the 3rd floor and sat on the sofa. At that moment, only Ferdy Sambo was present, without any other assistants. After a while, Putri Candrawathi came to join them on the sofa. Ferdy Sambo then asked Eliezer if he knew about the incident in Magelang. Eliezer was confused about the incident in question and claimed not to know. Then Ferdy Sambo stated that Brigadir J had harassed his wife while at their residence in Magelang. Richard admitted to being surprised and scared because he was one of the assistants present in Magelang along with Putri Candrawathi. Ferdy Sambo expressed anger regarding the events in Magelang. Eliezer then imitated Ferdy Sambo's words, "This is disrespectful, disrespectful. He no longer respects me. He insulted my dignity,". Richard then conveyed that Sambo had uttered, "This child must be killed," while expressing his emotions. Ferdy Sambo then informed Richard about the planned scenario for the premeditated murder of Brigadir J. When planning the scenario to execute Brigadir Yosua, he gave Eliezer the order, "Later, you shoot Yosua, okay? Because if you shoot Yosua, I will defend you. If I shoot, no one will defend us." The narrative concocted at Ferdy Sambo's official residence began with the incident of harassment perpetrated by Yosua against Putri Candrawathi. Subsequently, Putri screamed and was heard by Richard. Eliezer then hurriedly approached Putri, and Yosua was caught. Yosua fired shots towards Richard, leading to a shootout between the two. The shooting ended with Yosua's death. That was the scenario concocted by Ferdy Sambo in front of his wife and Eliezer. When Eliezer heard the plan, he was silent and confused, but Sambo continued to reassure him that this scenario would keep Eliezer in a safe position. Firstly, because Eliezer was in a position to defend Putri Candrawathi.



Secondly, because Eliezer was in a position to defend himself since, according to the scenario, Yosua shot Eliezer first. Shortly after, Ferdy Sambo entered his official residence. Upon arrival, Ferdy was already wearing black rubber gloves. Sambo then inquired about the readiness of his weapon, but Eliezer had not loaded the bullets into the firearm he brought. Eliezer quickly loaded the Glock as instructed. A few moments later, Yosua entered with Ricky and Kuat Ma'ruf. Ferdy Sambo then grabbed Yosua by the neck and asked him to kneel in front of him. However, Yosua did not obey Sambo's command. Then, Ferdy Sambo looked at Eliezer and ordered him to shoot Yosua. Eliezer fired three or four shots from a distance of 2 meters, hitting Yosua's body. While taking the first shot, Eliezer admitted to feeling weak and even closed his eyes. Yosua fell and groaned in pain after the bullets penetrated his body.⁴

On the other hand, there is a matter that feels obstructive in the development of the case of the death of Brigadier Yosua Hutabarat. The good intention of Bharada Eliezer, who was willing to become a justice collaborator to reveal the truth of this case, seems to be overlooked by the Public Prosecutor. The Attorney General's Office (Kejaksaan Agung or Kejaksaan) stated that Bharada Eliezer is not a justice collaborator because he is the executor or the main perpetrator in the case of the death of Brigadier Yosua Hutabarat.⁵ This feels like an injustice to the community because without the testimony of Bharada Eliezer, this case would not have been uncovered. As a result, Bharada Eliezer faces a higher prison sentence demand than the other three defendants. The other three defendants, namely Putri Candrawathi, Kuat Ma'ruf, and Ricky Rizal Wibowo, each face an 8-year prison sentence demand, while

⁴ Alfiandana, "Skenario Pembunuhan Brigadir J Menurut Bharada E, Dari Gerak Hingga Percakapan," 2023, <https://voi.id/berita/232193/skenario-pembunuhan-brigadir-j-menurut-bharada-e-dari-gerak-hingga-percakapan>.

⁵ "Terkuak Alasan Jaksa Sebut Bharada Eliezer Bukan Justice Collaborator," 2023, <https://www.detik.com/sumut/hukum-dan-kriminal/d-6525294/terkuak-alasan-jaksa-sebut-bharada-eliezer-bukan-justice-collabo>.



Bharada Eliezer faces a 12-year prison sentence demand. The Public Prosecutor seems to completely disregard Bharada Eliezer's justice collaborator status in its demands.

The Attorney General's Office (Kejagung) believes that Eliezer is the executor, and the act he committed as an executor makes him the main perpetrator, thus disqualifying him from being considered a justice collaborator. Additionally, Kejaksaan also argues that premeditated murder cases are not categorized as organized crimes, as specified in Article 1 of Circular Letter No. 4 of 2011. Article 1 of Circular Letter No. 4 of 2011 states:

- b. Certain criminal acts that are serious in nature, such as corruption, terrorism, drug-related crimes, money laundering, human trafficking, and other organized crimes, have posed serious problems and threats to the stability and security of society. These acts undermine institutions and the values of democracy, ethics, and justice, while also endangering sustainable development and the rule of law.

Upon careful examination of Circular Letter No. 4 of 2011, especially in Article 1, there is ambiguity regarding whether premeditated murder falls under the phrase "other organized crimes" mentioned in the Circular Letter. The crimes mentioned in Circular Letter No. 4 of 2011 specifically refer to white-collar crimes such as corruption, money laundering, and human trafficking. This can lead to different interpretations among law enforcement agencies.

The prosecutor's demands in the case of Brigadier Yosua's death have become a significant debate in the homeland, with as many as 122 academics expressing their disagreement with these demands.⁶ Those academics consist of professors and lecturers from

⁶ Irfan Kamil, "Ratusan Guru Besar-Dosen Maju Jadi Sahabat Pengadilan Untuk Richard Eliezer, Berharap Hakim Vonis Ringan," 2023, <https://nasional.kompas.com/read/2023/02/08/12001801/ratusan-guru-besar-dosen-maju-jadi-sahabat-pengadilan-untuk-richard-eliezer>.



leading universities in the homeland and are part of the Indonesian Academic Alliance. These academics declare themselves as *amicus curiae* or friends of the court and have submitted a letter of request to the Jakarta District Court. They advocate for justice for Bharada Eliezer because they believe that Eliezer is a legitimate justice collaborator. This rejection is based on the reasoning that Eliezer willingly took on risks to reveal the truth about the case of human rights violations that tarnished the reputation of the Indonesian National Police. Another reason is that the Witness and Victim Protection Agency (LPSK) has recommended Eliezer as a justice collaborator. This recommendation is based on Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Witness and Victim Protection, and Eliezer is considered to have fulfilled the requirements as a witness-perpetrator or justice collaborator.

In the end, Richard Eliezer was declared guilty by Chief Judge Wahyu Iman Santoso in the sentencing session at the South Jakarta District Court, as he was directly involved in the murder case of Brigadier Yosua Hutabarat. The verdict handed down by the panel of judges was 1 year and 6 months, significantly lighter than the 12-year demand made by the public prosecutor. Several factors contributed to the leniency of Eliezer's sentence, including his acknowledgment as a witness-perpetrator or justice collaborator. Eliezer was also deemed to have expressed remorse for his actions and promised not to repeat them. Additionally, the victim's family forgave Eliezer after he apologized directly to Yosua's parents, Samuel Hutabarat (Yosua's father), and Rosti Simanjuntak (Yosua's mother). However, on the other hand, a factor that aggravated the sentence was Eliezer's indifference to his close relationship with Yosua as fellow assistants to Ferdy Sambo, where he continued to follow Sambo's orders to shoot Yosua.⁷

⁷ "Mengapa Eliezer Dihukum Ringan? Ini Hal-Hal Meringankan Di Vonis," 2023, <https://news.detik.com/berita/d-6572478/mengapa-eliezer-dihukum-ringan-ini-hal-hal-meringankan-divonis#:~:text=Hakim Ketua Wahyu Iman Santoso,15%2F2%2F2023>).



The existence of the primary goal of a justice collaborator is the main thing at stake in this case. If Bharada Eliezer, as a justice collaborator, is not appreciated and rewarded, it can be predicted that in the future, it will be difficult to find individuals willing to become justice collaborators due to the jeopardization of the rights of justice collaborators. Although, in the end, in this case, Bharada Eliezer's honesty is appreciated and rewarded by the judge with a lenient sentence, there is still a legal conflict here. This is because the public prosecutor has a difference of opinion from the panel of judges in determining Bharada Eliezer's status as a witness-perpetrator or justice collaborator. This difference indicates an ambiguity or obscurity of norms in the applicable regulations, especially in Circular Letter No. 4 of 2011. This is evident in the differing opinions of the prosecutor and the judge, where the public prosecutor considers Eliezer not to be a justice collaborator, while the judge sees Eliezer as a justice collaborator.

The rights for a justice collaborator are regulated by Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Witness and Victim Protection. Meanwhile, guidelines for determining someone's status as a justice collaborator are outlined in Circular Letter No. 4 of 2011. However, these legislative regulations still do not establish the principles and mechanisms for implementing justice collaboration in Indonesia. Therefore, problems arise, one of which is judges not considering the importance of providing recognition or protection for a justice collaborator. Legislative regulations should have a uniform formal structure to facilitate user understanding. However, the grouping of regulations and policy rules is often not solely determined by formal aspects, making a substantive approach a more objective choice in distinguishing legal norms as regulations or policy rules. As in the case of the murder of Brigadier Yosua, where the regulations in the Circular Letter are considered weak, giving the impression that they are not adhered to by the public prosecutor.



The Dutch colonization in Indonesia, based on the principle of concordance, has contributed to the adoption of the Dutch legal system by Indonesia. This has resulted in many legal regulations in Indonesia originating from the Dutch colonial period and still being applicable in current legal practices. In comparison with the law in the Netherlands regarding justice collaborators, the Netherlands has had regulations on justice collaborators since 2006. The Netherlands has regulated the provision of justice collaborator through the term "Witness Agreements," which is governed by the Dutch Criminal Code of Procedure. Additionally, in the Netherlands, there is the "Directive Pledges to Witnesses in Criminal Cases," which provides more detailed regulations by the prosecution in the implementation of agreements with witnesses to prevent rule violations by prosecutors and perpetrators in the practice of witness agreements.

THEORETICAL BASIS

The Theory of Criminal Justice System (Criminal Justice System)

Used in relation to the efforts of the judiciary in combating crime through cooperation and coordination among institutions assigned by the law for that purpose. The justice system can be examined from various aspects. Firstly, everything related to the administration of justice is covered here. In this context, the justice system includes institutions, resources, procedures, infrastructure, and others. Secondly, the justice system is defined as the process of adjudication (examining and deciding cases).⁸

The Criminal Justice System is a network of justice that utilizes criminal law as its primary tool, encompassing substantive criminal law, procedural criminal law, and the execution of criminal law. Within the Criminal Justice System, there is a systemic movement of its supporting components, namely the police, prosecution, and judiciary, working together to transform inputs into outputs. The ultimate goals of this

⁸ Bagir Manan, *Restoratif Justice (Suatu Perkenalan) Dalam Refleksi Dinamika Hukum Rangkaian Pemikiran Dalam Dekade Terakhir* (Jakarta: Perum Percetakan Negara RI, 2008).



system are intermediate-term targets such as crime prevention and long-term objectives related to the well-being of society.⁹

The Theory of Legal Protection

C.S.T Kansil explains that legal protection is various legal efforts that law enforcement officials must provide to instill a sense of security, both mentally and physically, from disturbances and various threats from any party.

Legal Protection for Justice Collaborators Reviewed from Law Number 31 of 2014. The issue of protection for cooperating perpetrator witnesses (justice collaborators) in Indonesia remains a controversial matter because, on one hand, there is a high enthusiasm to protect witnesses and victims, while on the other hand, the legal provisions governing the protection for cooperating perpetrator witnesses (justice collaborators) are still inadequate.

Comprehensive Legal Protection for Justice Collaborators It should apply at all stages of the legal process (starting from the reporting stage, investigation, examination, prosecution, and trial) as well as after the completion of the legal process. This is because, in certain conditions in a specific criminal act, threats and terror for each justice collaborator may persist even after the completion of the criminal legal process.

The Law Number 31 of 2014 concerning Witness and Victim Protection provides protection and assistance to witnesses and victims. The protection referred to is a form of action that provides a shelter and protection for someone in need so that they feel secure from threats in their surroundings.¹⁰

⁹ Rahman Amin, *Hukum Justice Collaborator Dalam Sistem Peradilan Pidana Di Indonesia Studi Perkara Tindak Pidana Narkotika* (Deepublish, 2020).

¹⁰ Z. P Hafid, "Justice Collaborator Ditinjau Dari Undang-Undang Nomor 31 Tahun 2014 Perlindungan Saksi Dan Korban," *Al-Qadau: Peradilan Dan Hukum Keluarga Islam* 6, no. 1 (2019): 39-58.



RESEARCH METHODS

The type of research used in this study is normative legal research, which involves analyzing literature based on legal materials used, both primary and secondary. The law can be conceptualized as what is written in legislation (law in books) or as norms and principles that serve as standards for human behavior, considered appropriate.¹¹ In normative studies, the law in question is not only in the form of legislation but is related to theoretical frameworks, philosophy, comparative analysis with other countries, structure, and the composition of explanations for each article in the legislation.¹²

Thus, normative legal research is no longer synonymous solely with legislation. It goes beyond that, encompassing various aspects related to the normative system as its object of study, such as ideal legal values, legal theories, legal principles, legal doctrines, court decisions, and legal policies.

The problem approach used in this research is the Legislative approach and the Conceptual approach. The legislative approach, for example, is conducted by studying the consistency/conformity between the Constitution and Laws or between one law and another. In this case, the author examines the conformity between the 1945 Constitution of the Republic of Indonesia, the Criminal Code (KUHP), Law Number 8 of 1981 concerning Criminal Procedure Law, Law Number 13 of 2006 concerning Witness and Victim Protection, and Circular Letter of the Supreme Court (SEMA) Number 4 of 2011.

Secondary legal materials are legal sources obtained through literature review, which involves reading books, legal journals, and articles related to the Importance of Collaborating Perpetrator Witnesses (Justice Collaborator) in Corruption Crimes. To obtain primary legal

¹¹ Amiruddin & Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2012).

¹² Irwansyah, *Penelitian Hukum Pilihan Metode Dan Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana, 2021).



materials, the secondary method of collecting legal materials is used, then grouped and documented, recorded, quoted, summarized, and reviewed as needed with a qualitative approach.

Analyzing this research uses a systematic technique presented descriptively and analytically. It begins by systematically describing legal materials and then analyzing them through an analysis technique using interpretative techniques and employing layered legal logic with deductive-inductive reasoning.¹³

RESULTS AND DISCUSSION

The Role of Prosecutors in Designating Justice Collaborators

The Attorney General's Office is a state institution that executes state power, particularly in the field of prosecution. As a body authorized in law enforcement and justice, the Attorney General's Office is led by the Attorney General, who is selected by and accountable to the President. The Supreme Attorney's Office, High Prosecutor's Office, and District Prosecutor's Office are state powers specifically in the prosecution field, and all together constitute a unified entity that cannot be separated.

In carrying out its duties and authority, the Attorney General's Office is led by the Attorney General, who oversees 6 (six) Deputy Attorneys General, 1 (one) Head of the Indonesian Attorney Training Institute, and 32 Heads of High Prosecutor's Offices in each province. Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia also suggests that the Attorney General's Office is in a central position with a strategic role in strengthening the nation's resilience. This is because the Attorney General's Office is at the core and serves as a filter between the investigation process and the trial process, as well as the executor of court decisions and determinations. Thus, the Attorney General's Office is the controller of the legal process (*Dominus Litis*), as only the institution of the Attorney General's Office can

¹³ I. M. M Pusparini, N. L. M. D., Dewi, A. S. L., & Widyantara, "Urgensi Saksi Pelaku Yang Bekerjasama (Justice Collaborator) Dalam Tindak Pidana Korupsi," *Interpretasi Hukum* 1, no. 1 (2020): 179-85.



determine whether a case can be brought to court based on valid evidence according to the Criminal Procedure Law.

It should be added that the Attorney General's Office is also the sole executor of criminal verdicts (executive ambtenaar). In addition to its role in criminal cases, the Attorney General's Office also has other roles in Civil Law and State Administration Law, namely representing the Government in Civil and State Administration cases as State Attorneys. Prosecutors, as the implementers of these powers, are authorized as Public Prosecutors and carry out court decisions, as well as other authorities based on the law. Therefore, the researcher will explain the role of prosecutors in four different countries in the context of their role in determining justice collaborator.

In the Netherlands, the practice of justice collaborator involves the mechanism of Witness Agreements, which is an agreement between the public prosecutor and a witness to provide testimony in exchange for certain benefits. In Dutch criminal law, a clear distinction is made between physical protection for witnesses and instruments for making agreements with witnesses to testify in exchange for specific benefits. Until the 19th century, there was no debate about witness agreements in the Netherlands. During this period, attention was focused on combating organized crimes, including drug trafficking. In this effort, Dutch police and prosecutors felt the need to use witness agreements to request witnesses who might be willing to testify against their fellow defendants. Although there was no clear legal basis for this practice at the time, prosecutors had the authority to do so based on the principle of discretionary power. The Supreme Court of the Netherlands has indirectly allowed prosecutors to make agreements with witnesses and provide compensation for their testimony. On the other hand, the Supreme Court has also requested lawmakers to establish a more specific legal basis for the use of witness agreements. This practice continued until



2006 when witness agreements were officially incorporated into Dutch legislation.¹⁴

When a witness intends to enter into an agreement with the public prosecutor, they cannot testify anonymously. The public prosecutor and the Witness Protection Service evaluate the need for measures to provide physical protection for the witness (Article 225 L PKC). The type of protection provided can vary greatly, ranging from a new identity to a new home in a different location, or even plastic surgery if necessary. Agreements with the witness protection service related to protection are distinct from agreements related to the witness's obligation to testify, which have been agreed upon with the public prosecutor. The witness agreement procedures are detailed in the "Wetboek van Strafvordering" or the Dutch Code of Criminal Procedure. The judge will assess the conformity of the agreement between the public prosecutor and the witness with the applicable legal guidelines. If it is not in accordance, the judge can declare the agreement invalid (Article 226 H No. 3 PKC). Witness agreements in the Netherlands only apply to cases of serious crimes, where the alleged criminal act carries a threat of at least eight years of imprisonment or is considered a serious organized crime with a minimum threat of four years of imprisonment (Article 226 G No. 1 PKC).

Prosecutors in Germany also play a role in the practice of justice collaboration, although their role is not as prominent as that of the police. The police are the ones who initiate the recruitment of collaborators, acting as the driving force behind collaborator recruitment. The main reason for expediting collaborator recruitment activities is due to German legal regulations setting a deadline for the collaborator recruitment procedure. Before the trial begins, collaborators must have already disclosed information about the crimes of their group, and these statements are verified along with other supporting evidence. The prosecutor's role in court is that of a verifier, or the party responsible for

¹⁴ Joko Cahyono, "Pengaturan Witness Agreement Bagi Justice Collaborator Yang Berkeadilan Dan Kemanfaatan Dalam Undang-Undang Perlindungan Saksi Dan Korban" (Universitas Brawijaya, 2023).



assessing the reliability of these statements and determining whether the statements are false or suitable as a basis for prosecution.

Prosecutors and the police can make agreements with justice collaborators for protection and reduced sentences. However, a weakness in the collaborator procedure in German law is the uncertainty in these agreements. The agreement made between authorities and collaborators is referred to as a "gentlemen's agreement" (largely honored). Prosecutors cannot make binding promises regarding sentence reductions. This entirely depends on the court's application of the provisions, although the court tends to respect the agreement in most cases. This creates uncertainty for collaborators; they must disclose information but do not have certainty about the rewards they will receive.

In Italy, public prosecutors are responsible for investigations. They have the authority to direct and supervise the investigative police (*polizia giudiziaria*). In each Public Prosecutor's Office (*Procura della Repubblica*), there is an investigative police unit composed of members from various police forces. The members of the investigative police functionally report to the public prosecutor, meaning they must follow the prosecutor's instructions and promptly report any crimes to them so that the public prosecutor can take over the investigation immediately.¹⁵ However, organizationally, they remain under the hierarchy of their superiors in the police and executive agencies.¹⁶

In investigations related to organized crime and terrorism (crimes that may be eligible for justice collaboration), public prosecutors are fully responsible for the investigation. If, at the end of the investigation.¹⁷ In investigations related to organized crime and terrorism (crimes that may be eligible for justice collaboration), public prosecutors are fully

¹⁵ M. Gialuz, "The Italian Code of Criminal Procedure: A Reading Guide," CEDAM, 2014, 26.

¹⁶ Montana, "Paradigms of Judicial Supervision and Co-Ordination between Police and Prosecutors: The Italian Case in a Comparative Perspective," *European Journal of Crime, Criminal Law and Criminal Justice* 17, no. 4 (2009): 13–14.

¹⁷ M. Caianiello, *The Italian Public Prosecutor: An Inquisitorial Figure in Adversarial Proceedings* (Oxford: Oxford University Press, 2012).



responsible for the investigation. If, at the end of the investigation, the public prosecutor decides to formally prosecute someone, they will summon the person before a judge for a preliminary hearing (Giudice dell'udienza preliminare - GUP) to determine whether the person is eligible for trial or not. The hearing is conducted before a different judge (Giudice del dibattimento). During the trial, the public prosecutor acts as the party presenting evidence against the defendant in support of their charges. In this system, the information gathered during the investigation cannot fundamentally be the basis for the judge's decision.¹⁸

In America, prosecutors play a role in the practice of justice collaboration, where they can enter into agreements with collaborators. In the form of Plea Bargaining, Brian Garner defines it as a process in which the defendant and the prosecuting attorney in a criminal case reach a mutually satisfactory agreement subject to court approval. Typically, this process involves the defendant admitting guilt to lesser charges or only some of the charges in a more extensive indictment. In return, the defendant receives a lighter sentence than what they would face if charged with the actual offenses.¹⁹ In essence, Plea Bargaining is a negotiation between the prosecuting attorney and the defendant to reach an agreement on a reduced sentence.

Regarding the negotiation process between the prosecuting attorney and the perpetrator of the crime to cooperate in providing testimony, the perpetrator must first submit a statement of guilt known as a "guilty plea" or "plea of guilty."²⁰ After that, the defendant must voluntarily and truthfully cooperate fully with the prosecuting attorney, including providing information and testimony in court. If the prosecuting attorney agrees to their cooperation, they can reduce the charges and recommend to the judge to reduce the defendant's sentence

¹⁸ Giulio Illuminati, "The Frustrated Turn to Adversarial Procedure in Italy (Italian Criminal Procedure Code of (1988," *Washington University Global Studies Law Review* 4, no. 3 (2005): 573.

¹⁹ Peter Murphy, *Evidence* (London: Blackstone Press, 1997).

²⁰ Lloyd L. Weinreb, *Criminal Process: Cases, Comment, Question, Seventh Edition* (New York: Foundation Press, 2004).



as a reward for their cooperation. The prosecuting attorney has discretionary authority to offer a lighter or reduced sentence to the offender if the offender is willing to cooperate by providing testimony about the crime. Typically, offenders decide to cooperate with the prosecutor because they believe it is in their best interest.²¹

If the offender is willing to cooperate, the prosecuting attorney will file a motion with the judge to consider this cooperation in sentencing, hoping the judge will grant a reduction in sentence as a reward for cooperation. The plea agreement document, along with the prosecutor's motion, is then submitted to the court before the defendant appears before the judge and pleads guilty. In reviewing the plea agreement, the judge must, in an open court session, directly inform and ensure the defendant's rights, explain the charges faced, clarify the contents of the plea agreement, and ensure that the defendant voluntarily admits guilt.²²

In the concept of a justice collaborator applied in various countries, a public prosecutor plays a central role in determining the status of a collaborating perpetrator. However, the situation is different in Indonesia, where the role of the prosecutor in this regard seems to be more limited. Unlike the role of the judge who has the authority to designate someone as a justice collaborator. This is in stark contrast to the concepts used in other countries such as the Netherlands and Germany, where prosecutors play a crucial role in determining the status of collaborating perpetrators. However, this is not the case in Indonesia, as seen in the Eliezer case mentioned above. In that case, the role of the prosecutor is limited to prosecuting the perpetrator without the authority to designate the perpetrator as a justice collaborator.

One of the principles in the prosecution stage is "dominus litis," indicating that in the criminal justice process, the judge is the party that has control over whether a case can be brought to trial in court or not.²³ The principle of Dominus Litis is acknowledged in Indonesia and is

²¹ Lloyd L. Weinreb.

²² Yvon Dandurand, "A View of Selected Witness Protection Program," 2010.

²³ RM. Surachman, *Mozaik Hukum I: 30 Bahasa Terpilih* (Jakarta: Sumber Ilmu Jaya, 1996).



reflected in Article 2 of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. This article asserts that the Attorney General's Office is a government agency that exercises state power in prosecution and other authorities based on the law, with independent implementation. This means that if Indonesia acknowledges the principle of *Dominus Litis*, prosecutors should also have a role in participating in the determination of a justice collaborator.

In the Netherlands, prosecutors have the authority to enter into a witness agreement with a witness collaborator. In Italy, a defendant who is willing to cooperate in a criminal case can become a justice collaborator and will then be selected according to the regulations set by the public prosecutor. In the United States, if an offender is willing to cooperate, the prosecutor will file a motion with the judge through a mechanism called Plea Bargaining to consider such cooperation. The comparison between these countries highlights the importance of the role played by prosecutors in determining the status of a witness collaborator who is willing to cooperate in the criminal justice system.

According to point 9 letter b of Supreme Court Regulation Number 4 of 2011, the Public Prosecutor actually plays a crucial role in assessing and recognizing the significant contribution of an individual in uncovering a specific criminal act. In their indictment, the prosecutor is the party that declares that the implicated witness collaborator has provided testimony and evidence of significant value in effectively revealing the criminal act. However, as seen in the previously discussed case of Eliezer, it appears that in the prosecution's indictment, the prosecutor never stated that the testimony and information provided by Eliezer had an impact or role in uncovering the facts in the case. This situation raises questions because, in the final verdict, the Panel of Judges granted Eliezer's request to become a justice collaborator. This indicates that the strength of the existing regulations seems to be weak, as it can easily be overlooked in the judicial process in Indonesia.

In addition to Supreme Court Regulation Number 4 of 2011, Prosecutors, especially the Attorney General, have the authority to grant



or refuse to grant rewards to Collaborating Perpetrator Witnesses as a reward for their cooperation. This is stipulated in Article 10 Paragraph 1 of the Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of the National Police of the Republic of Indonesia, the Corruption Eradication Commission of the Republic of Indonesia, and the Chairman of the Witness and Victim Protection Agency of the Republic of Indonesia. It states that "Protection in the form of rewards for Collaborating Perpetrator Witnesses as referred to in Article 6 paragraph (4) letter a shall be in the form of leniency in sentencing, including seeking probation."

The article regulates the protection and rewards for Collaborating Perpetrator Witnesses in the form of leniency in sentencing. The provisions above are carried out with the following procedures. First, the request is submitted by the perpetrator themselves to the Attorney General or the Leader of the Corruption Eradication Commission (KPK). Next, the Witness and Victim Protection Agency (LPSK) can submit a recommendation for Collaborating Perpetrator Witnesses to be considered by the Attorney General or the Leader of the KPK. The request includes the identity of the Collaborating Perpetrator Witness, the reasons, and the form of the expected reward. The Attorney General or the Leader of the KPK has the right to decide whether to grant or refuse the reward in accordance with applicable regulations.

Actually, the prosecutor's office plays a significant role in determining the status of a justice collaborator. Firstly, the perpetrator who wishes to become a justice collaborator must submit a request directly to the Attorney General or the Head of the Corruption Eradication Commission (KPK). Secondly, the Witness and Victim Protection Agency (LPSK) can provide recommendations for Collaborating Perpetrator Witnesses to the Attorney General or the Head of the KPK, which will be considered in determining their status. The request should include the identity of the collaborating perpetrator



witness, the reasons for wanting to become a justice collaborator, and the expected form of reward.

Subsequently, the Attorney General and the Head of the Corruption Eradication Commission (KPK) play a crucial role in determining whether the reward will be granted or not. They have the authority to decide whether the perpetrator is eligible for the reward, following the applicable regulations. In this context, prosecutors are involved in evaluating the contributions made by the perpetrator in uncovering criminal activities, including the extent to which such disclosures benefit law enforcement and the judicial process. Therefore, prosecutors play a central role in assessing, deciding, and granting rewards to Collaborating Perpetrator Witnesses or justice collaborators.

The basis for the issuance of the Joint Regulation by the Minister of Law and Human Rights of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of the Indonesian National Police, the Corruption Eradication Commission of the Republic of Indonesia, and the Chairman of the Witness and Victim Protection Agency of the Republic of Indonesia was to address several issues at that time. Firstly, there was an awareness of the importance of the role of reporters, reporting witnesses, and collaborating perpetrator witnesses in assisting law enforcement and uncovering criminal activities, including identifying the main perpetrators of a crime. Secondly, existing regulations at that time did not provide adequate protection for reporters, reporting witnesses, and collaborating perpetrator witnesses. Third, this protection is considered an essential part of the National Action Plan for the Prevention and Eradication of Corruption, involving all relevant agencies in the criminal case resolution process. Therefore, this Joint Regulation is designed to provide better protection and encourage active participation from those involved in disclosing criminal activities, especially in efforts to prevent and eradicate corruption.



CONCLUSION

The regulation regarding Justice Collaborators in criminal proceedings in Indonesia is relatively new when compared to legal practices under the Criminal Procedure Code (KUHAP). Legal protection for Justice Collaborators in Indonesia is not explicitly and specifically regulated, but the regulation of Justice Collaborators has been implicitly addressed in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims. The form of legal protection provided to Justice Collaborators includes physical and psychological protection, legal protection, special handling, and rewards.

The position of a Justice Collaborator in the efforts to combat corruption is as a participant who collaborates with law enforcement to provide crucial evidence and necessary information in exposing and eradicating corrupt practices. This role is governed by guidelines outlined in the Circular Letter of the Supreme Court Number 04 of 2011. However, in practice, discrepancies still exist among law enforcement authorities in determining someone as a Justice Collaborator. This results in difficulties in obtaining legal protection and rewards, ultimately leading potential collaborators to reconsider cooperating with law enforcement. The repositioning of Justice Collaborators in the efforts to eradicate corruption involves placing them as key witnesses in new legislation or incorporating them into existing laws related to the prevention of corruption. Justice Collaborators would be positioned as key witnesses who can be summoned for testimony outside of court proceedings. This arrangement allows investigators greater flexibility to obtain information and statements in order to expose other perpetrators involved in corruption cases.

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