

Legal Certainty of Non-Prime Offender Provisions in Justice Collaborator Criteria

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Abstract

The judge's determination that the defendant was not the main perpetrator in the verdict of premeditated murder case number 798/Pid.B/2022/Pn.Jkt.Sel, involves the role of a justice collaborator, which requires the perpetrator to not be the main offender. Normatively, the absence of a clear definition leads to legal uncertainty. Therefore, establishing the criteria for not being the main perpetrator can be achieved through theoretical interpretation of the participation offenses related to Defendant Eliezer. Analysis of existing types of participation offenses indicates that those involved in the act (*medeplegen*) are not considered the main perpetrators, whereas individuals who encourage, instigate, and intend for the action to occur are deemed the main perpetrators. Consequently, based on his role, position, and authority in committing the crime, Defendant Eliezer is categorized as not the main perpetrator. The criteria for this determination focus on the individual with the greatest role and responsibility. The purpose of this research is to explore the legal certainty surrounding the determination of the main perpetrator as a criterion for becoming a justice collaborator, which lacks normative clarification. This research employs a normative juridical method with a conceptual approach, along with legislative and case study analysis. The findings indicate that the legal certainty in determining the non-main perpetrator, as a criterion for a collaborating witness in revealing premeditated murder cases involving Defendant Eliezer, lacks dogmatic legal certainty. The Criminal Code does not explicitly define the classification of non-main perpetrators within the doctrine of participation, but Articles 55-56 of the Criminal Code address the punishment for individuals involved in crimes committed collectively.

1. Introduction

In the development of criminal law in Indonesia, both formal and material, justice collaborators are known. In Indonesia, justice collaborators are regulated in several laws and regulations, one of which is through Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Witness and Victim Protection (hereinafter referred to as Law No. 31/2014), in Article 1 number 2 of Law 31/2014 provides restrictions on the definition of justice collaborators "cooperating perpetrator witnesses", namely perpetrator witnesses are suspects, defendants, or convicts who cooperate with law enforcement to reveal a criminal act in the same case. Justice collaborators have two roles at once, namely as a suspect and as a witness.

A justice collaborator is not appointed by law enforcement officials, but must apply for determination of status as a justice collaborator. There are several conditions that must be met by a justice collaborator, these conditions are regulated in Article 28 paragraph (2) of Law No. 31/2014, namely:

1. the criminal offense disclosed is a criminal offense in a particular case in accordance with the decision of the witness and victim protection agency as referred to in Article 5 paragraph (2)

2. the importance of the information provided by the perpetrator witness in revealing a criminal offense that he/she discloses
3. not being the main perpetrator in the criminal offense he/she discloses
4. willingness to return assets obtained from the criminal offense committed and stated in a written statement, and
5. the existence of a real threat or fear of threat, physical or psychological pressure on the Witness or his family if the criminal offense is disclosed according to the actual circumstances.

From the conditions stipulated in Article 28 paragraph (2) of Law No. 31/2014, there is one important condition, namely that a justice collaborator is not the main perpetrator in the criminal offense he reveals. The requirements for justice collaborators are also regulated in Number 9 letter a-c Supreme Court Circular Letter on Special Treatment for Whistleblowers (*whistleblowers*) and Witnesses of Collaborating Offenders (*justice collaborators*) in certain criminal offenses (hereinafter referred as to SEMA No.4/2011). Strictly speaking, Number 9 letter a of SEMA No.4/2011 regulates the guidelines to determine a person as a justice collaborator, namely that the person is one of the perpetrators of certain crimes, admits the crime committed, is not the main perpetrator in the crime and provides testimony as a witness in the judicial process. SEMA No.4/2011 does not only regulate the requirement of not being the main perpetrator to become a justice collaborator, there are several other guidelines, namely the public prosecutor in his/her indictment must state that the information and evidence provided by a justice collaborator are substantial to effectively uncover criminal acts, uncover other perpetrators who have a greater role and/or to return criminal assets. SEMA No.4/2011 also regulates the rights of a justice collaborator, namely in determining the punishment to be imposed, the judge can consider imposing special conditional probation and/or imposing a punishment in the form of the lightest imprisonment among other defendants found guilty in the same case.

In 2011 there was a regulation that also regulated the requirements to obtain protection as a justice collaborator, namely the Joint Regulation of the Ministry of Law and Human Rights, the Attorney General's Office, the Indonesian National Police, the Corruption Eradication Commission, and the Witness and Victim Protection Agency in 2011 concerning Protection for Whistleblowers, Whistleblower Witnesses, and Witnesses of Collaborating Offenders (hereinafter referred as to the Joint Regulation). Article 4 of the Joint Regulation generally regulates the requirements as a justice collaborator like the previous regulation, namely the criminal act to be revealed is a serious and/or organized criminal act, the justice collaborator provides significant, relevant and reliable information to reveal a serious and/or organized criminal act and is not the main perpetrator in the criminal act to be revealed. However, Article 4 of the Joint Regulation adds two other conditions, namely the willingness to return a number of assets obtained from the criminal offense in question, which is stated in a written statement and the existence of real threats or concerns about threats, pressure, both physically and psychologically against the justice collaborator or his family if the criminal offense is disclosed according to the actual circumstances.

The regulation regarding the requirement of not being the main perpetrator as a justice collaborator as stipulated in Article 28a paragraph (2) letter c of Law No.31/2014 and Number

9 letter a of SEMA No.4/2011 can cause problems in determining the requirements to determine the criteria of not being the main perpetrator in a criminal offense¹. The Institute for Criminal Justice Reform (hereinafter referred to as ICJR) considers that the use of the phrase “main perpetrator” in the requirements as a justice collaborator is not appropriate, and ICJR considers that there are differences in the perspective of law enforcement officials on the perpetrators who cooperate and the requirements of not being the main perpetrator regulated in Law No. 31/2014, SEMA No.4/2011 and the Joint Regulation².

This is because Law No. 31/2014, SEMA No.4/2011, and the Joint Regulation do not regulate explicitly and clearly the requirement of not being the main perpetrator as the criteria of justice collaborator. The provision of not the main perpetrator is only mentioned limitatively in the norm without providing an explanation, so that the issue becomes a dilemma for law enforcement officials in determining the qualifications of not the main perpetrator in the criteria. This is also the case in the provisions of the Criminal Code which also does not provide definitions or criteria regarding the main perpetrator or not the main perpetrator in the offense of participation. Determining the status of a perpetrator as not the main perpetrator can occur if a criminal act is committed by more than one perpetrator³. Criminal acts committed jointly can find the types of perpetrators known in the doctrine of participation (*deelneming*). Dogmatically, the Indonesia Criminal Code does not mention the classification of non-main perpetrators in the doctrine of participation, but Article 55-56 of the Criminal Code regulates the punishment for perpetrators of crimes committed jointly. This is implicitly regulated in Article 55 paragraph (1) of the Indonesia Criminal Code which reads “Punishable as perpetrators of criminal acts:

- (1) those who commit, order to commit, and participate in the act;
- (2) those who by giving or promising something, by abusing power or dignity, by force, threat or deception, or by providing opportunity, means or information, intentionally encourage others to commit the act”.

Then, Article 56 of the Indonesia Criminal Code regulates the punishment for someone who assists in committing a crime which reads “Punishable as an accomplice to a crime:

- (1) those who intentionally provide assistance at the time the crime is committed;
- (2) those who deliberately provide opportunities, means or information to commit a crime.

In theory, in the doctrine of participation (*deelneming*), every person involved in a crime committed jointly is a perpetrator (*dader*)⁴. Mentioned as perpetrators in the participation is divided according to their respective roles carried out to realize the common will. These roles in criminal law are referred to respectively as the one who commits (*plegen*), orders to commit

¹ Amelia Elisabeth, Putri Kusuma, and Ade Adhari, “Indonesia Journal of Criminal Law Kepastian Hukum Ketentuan Pelaku Utama Dalam Kriteria Justice Collaborator Di Indonesia,” *Indonesia Journal of Criminal Law* 3, no. 2 (2021): 262–71.

² Institute For Criminal Justice Reform, “Problem Penetapan Bagi Pelaku Yang Bekerjasama Masih Terjadi Di Pengadilan, Hakim Dan Jaksa Masih Belum Sepakat Soal Status Pelaku Yang Bekerjasama,” Institute For Criminal Justice Reform, 2016.

³ Mar’ie Mahfudz Harahap dan Reski Anwar, “Permasalahan Yuridis Penentuan Pelaku Utama Daam Pemberian Justice Collaborator Sebuah Tindak Pidana Tertentu,” *Jurnal Progresif: Jurnal Hukum* 16, no. 1 (2022): 1–9.

⁴ P.A.F Lamintang dan Franciscus Tteojunior Lamintang, *Dasar-Dasar Hukum Pidana Di Indonesia* (Sinar Grafika, 2018).

(*doenplegen*), participates in committing (*medeplegen*), encourages (*uitlokking*), and assists (*medeplichtige*).

The article does not explicitly determine which one is the main perpetrator and which one is not the main perpetrator. Neither norms nor theories do not provide qualifications of the provisions regarding the main perpetrator or not the main perpetrator, while this is an important point in determining whether a defendant to become a justice collaborator to reveal a crime committed jointly. This will result in the consideration of judges who have various perceptions and different opinions (*disparity*) due to the lack of clear rules regarding the provisions of not being the main perpetrator for a justice collaborator. Where there are previous decisions that cause differences in views between Corruption Eradication Commission Indonesia (CEC) investigators or prosecutors and judges⁵.

Justice collaborators are not only known in the scope of general crimes but also in special crimes. Law No.31/2014 and SEMA No.4/2011, regulate that only for certain criminal offenses a suspect can submit himself as a justice collaborator. Point 1 of SEMA No.4/2011 stipulates that a justice collaborator only exists for certain serious crimes such as corruption, terrorism, narcotics, money laundering, human trafficking, organized crimes, which pose serious problems and threats to the stability and security of society. Although the crime committed by the suspect is within the scope of general criminal offenses regulated in the Indonesia Criminal Code, if the crime committed is an organized criminal offense and poses a problem as well as a serious threat to the stability and security of society, one of the suspects can be designated as a justice collaborator.⁶

In the scope of general criminal offenses, there is another case that also has the same view, namely in the case of premeditated murder committed jointly involving 5 defendants. The five defendants were examined and charged with separate files in the case including; Ferdy Sambo, Putri Candrawati, Richard Eliezer Pudihang Lumiu, Ricky Rizal, and Kuat Ma'aruf. The case resulted in the death of one person who was the victim of premeditated murder, Brigadier Joshua Hutabarat.

As the case progressed, one of the defendants applied to become a justice collaborator to reveal a case that was difficult to uncover, namely the defendant Richard Eliezer Pudihang Lumiu (Defendant Eliezer). The crime committed by the Defendant Eliezer is part of the types of crimes specified in Law No. 31/2014. In the case of the Defendant Eliezer, premeditated murder falls under the category of other crimes where the life of the witness or victim is threatened or endangered. After consideration and examination, the panel of judges finally decided to determine the Defendant Eliezer to be a justice collaborator in the South Jakarta District Court Decision Number 798/Pid.B/2022/PN.Jkt.Sel. The verdict was based on the actions of the Defendant Eliezer which were committed jointly with other defendants and were punishable under Article 340 of the Indonesia Criminal Code jo. Article 55 of the Indonesia Criminal Code.

⁵ Fransisco F Alwer, "Penggunaan Justice Collaborator Dalam Kasus Putusan Nomor 798/Pid.B/2022.Jkt.Sel," *Jurnal Cahaya Mandalika* 5, no. 2 (2023).

⁶ Renaldi Markus Larumpa, "Saksi Pelaku Yang Bekerjasama Pada Pengungkapan Kasus Tindak Pidana Pembunuhan Berencana Dalam Sistem Peradilan Pidana (Studi Putusan Nomor: 798/Pid.B/2022/PN.Jkt.Sel" (Universitas Khairun Ternate, 2024).

The determination of the Defendant Eliezer as a justice collaborator was based on the judge's consideration of the requirements to become a justice collaborator in Law No. 31/2014. In his consideration, the judge stated that the Defendant Eliezer was not the main perpetrator in the crime of premeditated murder by qualifying him as a *medepleger*. In fact, in terms of his role in the act, the Defendant Eliezer was the executor of the shooting of the victim, which is a major role in realizing the will. This is a problem where the provisions of not being the main perpetrator are not specifically determined so that the judge qualifies such a case at the judge's discretion based on his own belief during the trial.

The lack of specific criteria for not being the main perpetrator in the requirement to become a justice collaborator will cause legal uncertainty which will have an impact on the granting of rights and special treatment for assistance provided to law enforcement officials because a person who becomes a justice collaborator has rights that have been guaranteed in Law No.31/2014 and the Joint Regulation, one of which is the right to be sentenced to the lowest penalty from other perpetrators. Therefore, setting specific criteria regarding not being the main perpetrator as a condition of justice collaborator in Indonesian legislation is important to create legal certainty and avoid conflict of opinion of law enforcement officials on the determination of justice collaborators. This is because legal certainty is one of the efforts to realize justice.

In this research, the author compares the research with 3 (three) previous studies. First, research conducted by Amelia Elizabeth Putri Kusuma with the title "Legal Certainty of the Main Perpetrator Provisions in the Criteria for Justice Collaborators in Indonesia" the research analyzes and understands the application of the main perpetrator provisions in the criteria for justice collaborators in Indonesia⁷. The result of this research is that legal certainty regarding the provisions of the main perpetrator in the criteria of justice collaborators cannot be fulfilled by Indonesian positive law so that it has the potential to injure the law enforcement process. Second, research by Refniayu Dwiasty with the title "Legal Certainty Against the Protection of Justice Collaborators in Corruption Crimes Cases" this study analyzes the legal arrangements for the Protection of Justice Collaborators in Corruption Crimes cases⁸. Third, research by Isti Latifah Astri¹ with the title "Legal Protection of Justice Collaborators in Narcotics Crimes", this research discusses the rights and obligations of Justice Collaborators in narcotics crimes and the formulation of legal protection policies for Justice Collaborators in narcotics crimes in the future⁹. Based on the problem of not regulating the specific requirements and criteria of not the main perpetrator in the justice collaborator, the author realizes to conduct further research as an effort to find clarity of norms governing the provisions of not the main perpetrator to become a justice collaborator in the disclosure of the crime of premeditated murder. Based on the background description above, the author

⁷ Amelia Elisabeth Putri Kusuma, "Penerapan Ketentuan Pelaku Utama Dalam Kriteria Collaborator Pada Putusan Pengadilan Negeri Pusat Nomor 93/Pid.Sus-Tpk/2019/PN. Jkt. Pst.," *Jurnal Hukum Adigama* 4, no. 2 (2021): 3390-3410.

⁸ Refniayu Dwiasty, Mulyati Pawennei, and Baharuddin Badaru, "Kepastian Hukum Terhadap Perlindungan Justice Collaborator Dalam Perkara Tindak Pidana Korupsi," *Journal of Lex Philosophy (JLP)* 5, no. 1 (2024).

⁹ Isti Latifah Astri et al., "Perlindungan Hukum Terhadap Justice Collaborator Dalam Tindak Pidana Narkotika," *Indonesia Law Reform Journal* 1, no. 1 (2021): 32-49.

formulates the problem, namely how the legal certainty of the provisions of not the main perpetrator in the criteria of justice collaborators in the crime of premeditated murder?

2. Methods

In this research the author uses a normative juridical research method with a conceptual approach by examining views and doctrines in legal science, a statutory approach by examining all laws and regulations related to legal issues, and a case approach is carried out by examining cases related to the issue at hand and has become a court decision that has permanent force¹⁰.

3.1. Results and Discussion

One of the efforts that can be taken by law enforcement officials in handling certain criminal cases that are organized with more than one perpetrator and the case can cause problems as well as serious security threats and community stability is to determine the status of justice collaborator. According to Hidayatullah, the involvement of justice collaborator witnesses in the disclosure of organized crime is a necessity to achieve successful law enforcement. A justice collaborator is a defendant, suspect, or convict who admits his actions and then cooperates with the law to reveal the truth and the main perpetrators of the crime. According to Marjono Reksodiputro, a *justice collaborator* is a perpetrator who actively helps law enforcement uncover the full extent of the crime he committed. The Legal Mafia Task Force provides a definition that a justice collaborator is a criminal offender who is not the main perpetrator who cooperates to assist law enforcement in the form of providing information, strong evidence, and witness testimony under oath, which can reveal a criminal act¹¹.

Justice collaboratoris *regulated* in laws and regulations in Indonesia including Law No. 31/2014, SEMA No.4/2011, and Joint Regulation. / Article 1 paragraph (2) of law No. 31/2014 defines a justice collaborator as a suspect, defendant, or convict who cooperates with law enforcers to reveal a criminal offense in the same case. Article 9 letter 'a' SEMA No. 4/2011, provides guidelines regarding justice collaboratoris a perpetrator of a certain criminal offense, confessing his crime, not the main perpetrator in the crime he reveals. Article 1 paragraph (3) of the Joint Regulation stipulates that justice collaborator is a witness who is also a perpetrator of a criminal offense who is willing to assist law enforcement officials in uncovering a criminal offense or the occurrence of a criminal offense to return assets or proceeds of a criminal offense to the state by providing information to law enforcement officials and providing testimony in the judicial process¹².

These regulations regulate the terms or criteria of *justice collaborator*, one of the important requirements is not the main perpetrator as stated in Article 28 paragraph (2) of Law No.31/2014. Not only contained in Law No.31/2014 but the phrase "not the main perpetrator" is also stated in other laws and regulations, namely in Number 9 letter 'a' SEMA No. 4/2011 which reads: "...The person concerned is one of the perpetrators of certain criminal offenses as referred to in this SEMA, admits the crime he/she committed, is not the main perpetrator in

¹⁰ Irwansyah, *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel* (Yogyakarta: Mirra Buana Media, 2021).

¹¹ Hidayatullah, *Perlindungan Hukum Justice Collabortor Dalam Sistem Peradilan Pidana* (Qiara Media, 2021).

¹² Hidayatullah, *Filosofi Justice Collaborator* (Qiara Media, 2021).

the crime and provides testimony as a witness in the judicial process", Article 4 Letter 'c' of the Joint Regulation reads: "...is not the main perpetrator in the criminal offense that he will reveal".

Although the phrase "not the main perpetrator" is implicitly stated in the legislation, there is no single regulation that regulates and explains specifically the criteria for "not the main perpetrator". As Hidayatullah argued, the non-specific regulation of the criteria and requirements of "not the main perpetrator" gave birth to several court decisions that have juridical problems with the determination of the main perpetrator and not the main perpetrator. This has resulted in differences in views between law enforcers in the process of determining justice collaborators by judges which often appear in court decisions¹³.

The difference in views between law enforcers in the process of determining justice collaborators by judges also occurred in a case of premeditated murder committed jointly registered as a verdict of premeditated murder case Number 798/Pid.B/2022/PN.Jak.Sel which resulted in the death of one Polri member, Brigadier Yosua Hutabarat (hereinafter referred to as Brigadier Yosua). This crime was committed jointly involving five defendants who were examined separately, namely Bharada Richard Eliezer Pudihsang Lumiu, Inspector General of Police Ferdy Sambo, Putri Candrawati, Rizky Rizal, and Kuat Ma'aruf¹⁴. The intent of premeditated murder planned by Ferdy Sambo and his wife Putri Candrawati is in accordance with the facts of the trial that began on July 7, 2022, when the Victim Brigadier Yosua was caught in the eye by witness Kuat Ma'ruf who was suspected of committing an offense against witness Putri Candrawati at the house of defendant Eliezer Perum Cempaka Residence Block C III, Cempaka Street, Banyu Rojo Village, Mertoyudan Subdistrict, Magelang Regency. After the incident, the victim Brigadier Yosua apologized to the witness Putri Candrawati for his actions. Then the incident was known by the witness Ferdy Sambo through the telephone connection from the witness Ferdy Sambo and asked to meet at home Jln. Saguling III No. 29 South Jakarta to tell all these events. At that time the Victim Brigadier Yosua had been secured by witness Ricky Rizal all types of firearms were on him considering there was high tension between Kuat Ma'ruf which could have resulted in the unexpected. After the witness Putri Candrawati was dropped off at the Saguling House in South Jakarta by the witness Kuat Ma'ruf and Ricky Rizal using two cars and arrived there then also Ferdy Sambo arrived at the Saguling House. Then on the 3rd floor of Saguling House, the witness Putri Candrawati told what happened to her because of the actions of the Victim Brigadier Yosua that she had been harassed by the Victim Brigadier Yosua.

After learning about the actions of the Victim Brigadier Yosua, the witness Ferdy Sambo was furious and called the witness Ricky Rizal via HT to meet him on the 3rd floor of the house and tell him about the harassment committed by the Victim Brigadier Yosua against the witness Putri Candrawati. At that time the witness Ferdy Sambo ordered the witness Rizal to shoot the Victim, but Ricky Rizal did not want to because he was not mentally strong. Then at that time, the witness Ferdy Sambo ordered Defendant Eliezer to meet him on the 3rd floor. After the Defendant Eliezer and the witness Ferdy Sambo sat together, then the witness Ferdy

¹³ Samsuri, "Rekonstruksi Regulasi Justice Collaborator Dalam Sistem Peradilan Pidana Di Indonesia Yang Berbasis Nilai Keadilan" (Universitas Islam Sultan Agung, 2023).

¹⁴ Putusan Hakim Pengadilan Negeri Jakarta Selatan Nomor 798/Pid.B/2022/Pn.Jkt.Sel, (n.d.).

Sambo told the witness his frustration and anger towards the Victim Brigadier Yosua for his actions. Then he said that the Defendant Eliezer shot the Victim Brigadier Yosua with the promise that he would keep the case safe. Then the Defendant Eliezer was willing to shoot, then the witness Ferdy Sambo arranged scenarios to shoot with the intention of taking the life of the Victim Brigadier Yosua which was originally going to be done at the Duren Tiga House. After that the witness Ferdy Sambo ordered the Defendant Eliezer to prepare a weapon and bullets to be used later.

Then the witness Putri Candrawati, the witness Kuat Ma'ruf, the Defendant Eliezer and the Victim Brigadier Yosua departed from the Saguling House to the Duren Tiga Service House No. 46. Before leaving the defendant Eliezer had prayed in the toilet with the hope that the witness Ferdy Sambo would change his mind. After arriving at the Duren Tiga Service House at approximately 17.07 WIB, then entered the house at that time the Defendant also prayed in the room of the 2nd floor adjutant. Not long the witness Ferdy Sambo and his entourage arrived at the Duren Tiga Service House and then asked where the witness Ricky Rizal and the Victim Brigadier Yosua were in a loud voice. When Witness Ferdy Sambo, Witness Ricky Rizal, Witness Kuat Ma'ruf, Defendant Eliezer and Victim Brigadier Yosua were on the 1st floor in front of the stairs, Witness Ferdy Sambo grabbed Victim Brigadier Yosua by the neck and told him to kneel in front of Witness Ferdy Sambo and Defendant Eliezer, confused about what was going to happen. Then at that very moment, Witness Ferdy Sambo ordered the Defendant Eliezer to shoot the Victim, then Defendant Eliezer swiftly shot the Victim using a Glock-17 firearm serial number MPY851 into the body of the victim and the victim fell on the floor with a lot of blood. Then at the same time the witness Ferdy Sambo shot at the victim using a Glock-17 firearm and shot several times in the direction of the stairs and television using a HS type firearm and sticking to the victim's finger to make it appear that the incident was a shootout between the Defendant Eliezer and the Victim Brigadier Yosua.

Premeditated murder is a criminal act that is very serious in nature because the mode and motive of the crime is organized and planned carefully and willed by the perpetrator. Premeditated murder is also a criminal offense committed against life which is regulated in the Criminal Code¹⁵. From the qualification of the type of criminal offense, it shows that premeditated murder is included in this case in the category of other criminal offenses described in the explanation of Article 5 Paragraph (2) Law No. 31/2014 because this case poses serious problems and threats to public stability and security because it reduces public confidence in the police institution. The criminal offense committed by the five suspects is in accordance with the requirements of justice collaborator which requires that if the criminal offense is investigated it will endanger the justice collaborator and his family as stipulated in Article 28 Paragraph (2) Letter 'e' of Law No. 31/2014 so that the type of criminal offense is included in the category of criminal offenses that can involve justice collaborators.

The case was carried out systematically and organized by high-ranking police officers with the role of each defendant well to realize the common will agreed upon by each perpetrator to take the life of the victim Brigadier Yosua. The role of the Defendant Eliezer,

¹⁵ Renaldi Markus Larumpa, "Saksi Pelaku Yang Bekerjasama Pada Pengungkapan Kasus Tindak Pidana Pembunuhan Berencana Dalam Sistem Peradilan Pidana (Studi Putusan Nomor: 798/Pid.B/2022/PN.Jkt.Sel)" (Universitas Khairun Ternate, 2024).

who at that time was the shooter of the victim, determines his status as the main perpetrator or not the main perpetrator. This is proven by the judge in his juridical consideration which proves all elements of the offense in Article 340 *juncto* Article 55 of the Indonesia Criminal Code.

After fulfilling the elements of premeditated murder based on Article 340 of the Indonesia Criminal Code, namely subjective elements, objective elements, aggravating elements because it is premeditated, material offense, and *dolus premeditatus*. Then the elements in Article 55 of the Indonesia Criminal Code are those who commit, order to commit, and participate in the act, those who provide assistance and facilitate the crime. In the judge's consideration, the judge concluded that the Defendant Eliezer was legally and convincingly proven to be involved in the case¹⁶. According to the judge, the involvement of the Defendant Eliezer in the crime of premeditated murder committed jointly was as a person who participated in committing (*medeplegen*).

This decision differs from the view of the Attorney General's Office (AGO) that Defendant Eliezer is not a *justice collaborator* with his assessment. The different statement was conveyed by the Head of the Public Prosecutor's Office Ketut Sumedana, namely that the Defendant Eliezer was considered as the executor or main perpetrator of the premeditated murder of the victim Brigadier Yosua, so the Defendant Eliezer was the main perpetrator. Based on this view, the public prosecutor's recommendation in the case was 12 years imprisonment for the Defendant Eliezer. However, the panel was of a different opinion with its own assessment that in his disclosure Defendant Eliezer acted as a *justice collaborator* with the legal apparatus to find the truth, which was determined by the judge in the *a quo* decision. As the judge stated:

"Based on what has been considered and the truth of the fact that the cause of death of the victim Joshua has been surrounded by various parties which resulted in the darkness of the case so that truth and justice almost appear upside down, then the honesty, courage and determination of the Defendant Eliezer with various risks have conveyed the true events, so it is appropriate for the Defendant Eliezer to be designated as a *justice collaborator* and is entitled to an award as determined by Law No. 31/2014 Article 5 and 10A, namely special treatment and awards in the form of criminal leniency and parole 31/2014 Articles 5 and 10A, namely special treatment and rewards in the form of criminal leniency and parole."

Based on these considerations, the judge concluded that the designation of Defendant Eliezer as a justice collaborator was due to the fact that he was not the main perpetrator in the crime, as stipulated in Law No. 31/2014 Article 28 Paragraph (2) letter c. From his actions, Defendant Eliezer's involvement was executing orders from witness Ferdy Sambo to shoot Victim Brigadier Yosua. Despite being conscious at the time, Defendant Eliezer was not proven to have *mens rea*. The order came from witness Ferdy Sambo, who intended to kill the Victim using his authority to involve his subordinates in the planned scenario, including Defendant Eliezer as the shooter. The responsibility based on authority and power held by Defendant Eliezer is lower than that of witness Ferdy Sambo, making Ferdy Sambo the most culpable party in terms of *mens rea*. Defendant Eliezer's cooperation in all these matters demonstrates

¹⁶ Ketut Sumedana, "Terkuak Alasan Jaksa Sebut Bharada Eliezer Bukan Justice Collaborator," Detik News, 2023, <https://www.detik.com/sumut/hukum-dan-kriminal/d-6525294/terkuak-alasan-jaksa-sebut-bharada-eliezer-bukan-justice-collaborator%3E>.

his role as an accomplice. This qualification is further supported by the evidence and facts presented during the trial, leading the panel to conclude that: "Defendant Eliezer was assigned to shoot the victim, but the shooting was also carried out by Ferdy Sambo, who was the mastermind behind the plan and gave the orders, making Ferdy Sambo the main perpetrator."

In the opinion of Loebby Luqman, that the occurrence of participation in doing, namely with the existence of participation in the form:

1. There must be cooperation from each participant; and
2. The cooperation in the criminal act must be physical.

Thus, in this participation, there must be physical cooperation between each perpetrator. The cooperation of the Defendant Eliezer is then proven that: "The Defendant Eliezer is a person who participates in committing *medeplegen*, whereas in participating in committing *medeplegen* not all those who participate in committing must fulfill the formulation of the offense, so the Defendant Eliezer is not the main perpetrator in the crime." Because the role of the witness Ferdy Sambo is the most mentally willing (*mens rea*) in addition to other parties who participate. However, the role of the Defendant Eliezer in the participation is also responsible for the acts he committed by participating with the main perpetrator. Therefore, the perpetrator (*pleger*) is the person who fulfills all the elements of the offense (also in the form of attempt or preparation), including when committed through other persons or subordinates of the (main) perpetrator or them¹⁷.

The classification that is not implicitly regulated in Indonesian legislation regarding the meaning of the phrase "not the main perpetrator" in the offense of participation for the criteria to become a *justice collaborator* becomes unclear norms. This lack of clarity has led to various interpretations, which has led to legal uncertainty. Seeing this, it is associated with the issue of certainty theoretically and normatively shows that it needs a clear explanation of meaning, where based on the theory of legal certainty put forward by Van Apeldoorn that there are two aspects contained in legal certainty, namely:

"First, legal certainty means that it can be determined what law applies to concrete problems to get a law that can be predicted (*predictability*), the second legal certainty means legal protection in this case the parties to the dispute can be avoided from the arbitrariness of judgment."

Then according to Austin, legal certainty shows that definite law can be achieved if the law has a strong explanation and effect. From this theoretical view, it shows that the criteria of not being the main perpetrator is not legally certain and the meaning is not well explained in the legal system because the elements of certainty identify the meaning of the provisions of not being the main perpetrator is not contained in positive law (law). So that the meaning of the phrase "not the main perpetrator" is left to the freedom of the judge. It is found in the decision a quo through the judge's consideration where the interpretation of the criteria is qualified through the role played in realizing the will¹⁸.

¹⁷ Agusman Heri, "Analisis Yuridis Terhadap Tindak Pidana Penyertaan Pembunuhan (Studi Putusan MA Nomor 2462/Pid.B/2017/PN Medan 2018)," *Jurnal Abdi Ilmu* 131 2, no. 11 (2019).

¹⁸ Siswantari Pratiwi, "Delik Penyertaan Dalam Kitab Undang-Undang Hukum Pidana (KUHP)," *Binamulia Hukum* 1, no. 11 (2022).

The theoretical interpretation of the qualification of determining not the main perpetrator is of course in a criminal offense based on the theory of criminal participation, there must be more than one perpetrator. The categories of participation are as follows:

1. The perpetrator; or commonly called *pleger* (*perpetrator*) is a person who materially and *persoonlijk* actually commits an act that perfectly fulfills the elements of the offense formulation. The perpetrator is not a person who participates in committing a crime, but rather a person who commits a criminal offense completely in addition to the other defendants who participate in the criminal offense that is committed jointly.
2. The person who orders the act to be committed, otherwise known as *doenplegen*, is the person who commits the criminal act but not personally, but by means of another person, as an instrument in his hands, if the other person acts without intent, negligence or responsibility due to circumstances of knowledge, misdirection or subjection to force.
3. The co-perpetrator, or *medelegen*, is a person who participates in the commission of a crime committed by the main perpetrator. According to Van Hamel, the perpetrator must also have all the characteristics that according to the formulation of the law are criminal acts. Eddi said that the person who participates in committing must fulfill two important things, namely there must be two intentions that are absolute, and the existence of a mental attitude among the perpetrators to cause the desired offense together.
4. The one who moves/advocates to do; is almost the same as the one who orders, but the difference is that the advocate must be materially able to be responsible in criminal law, while the one who orders to do is not. The person who mobilizes or encourages is the one who gives or promises something, abuses power, by force, by threat or misdirection, and provides opportunities for facilities or information.
5. The person who assists in the commission of a crime is a person who provides assistance both before and during the commission of the crime by providing an opportunity, means, or information to commit the crime.

As the opinion of Jan Michiel Otto who defines that legal certainty in certain situations can be achieved through¹⁹:

1. The availability of clear, consistent and easily obtainable rules, issued by and recognized due to state power;
2. Ruling agencies (government) apply these legal rules consistently and also submit and obey them;
3. Citizens principally conform their behavior to those rules;
4. Independent and unthinking judges (the judiciary) apply the legal rules consistently when they resolve legal issues;
5. Judicial decisions are concretely enforceable.

Based on Jan Michiel Otto's opinion, it can be understood that legal certainty refers to a clear, fixed and consistent application of the law where its implementation cannot be influenced by subjective circumstances. Therefore, the unclear and specific regulation of the phrase "not the main perpetrator" on the criteria for justice collaborators in Indonesian

¹⁹ Rhmadi Indra Tektona, "Quo Vadis : Kepastian Hukum Aturan Monopoli Dan Persaingan Usaha Sehat Pada Undang-Undang Nomor Tahun 2020 Tentang Cipta Kerja," *Jurnal Persaingan Usaha* 2, no. 1 (2022): 43-54.

legislation has not given birth to legal certainty because there are no clear rules regarding the requirements for justice collaborators as “not the main perpetrator” because there are no laws and regulations that regulate the reasons why someone can be said to be the main perpetrator or not the main perpetrator in a criminal act. Legal certainty cannot be assessed subjectively, as well as in determining the criteria of not the main perpetrator in a justice collaborator.

As in the example of the murder case of Brigadier Yosua, where the determination of Bharada E as a justice collaborator was determined by the panel of judges. In criminal law, there are several theories of evidence. In the theory of pure objective proof in the positive teaching of law, the judge is strictly bound by the evidence and the basis of proof that has been determined by the law by stating that an act charged has been proven must be based on things that have been concluded from the many pieces of evidence and based on the law. In this purely objective theory of proof, the judge's belief that comes from his deepest conscience must not even play a role in making decisions at trial. This is as D. Simons argues that the system of proof based on the law is positively aimed at eliminating all subjective considerations of the judge. If it is associated with the theory of legal certainty according to Jan Michiel Otto, then the subjective consideration of the judge even though based on his conscience in stating that a perpetrator is not the main perpetrator it can be determined as a justice collaborator should not be done because legal certainty must be born because of the law not because of the subjective judgment of the judge. Therefore, it is necessary to regulate more clearly and specifically in the legislation regarding the criteria of “not the main perpetrator” in the requirements of justice collaborators in Indonesia²⁰.

Because the legislation in Indonesia has not specifically regulated the criteria of “not the main perpetrator” as a condition of justice collaborator in the case of the premeditated murder of Brigadier Yosua, the panel of judges believes that the elements of the offense of participation in Article 55 of the Indonesia Criminal Code consisting of: as a perpetrator (*plegen*), ordering to do (*doenplegen*), participating in doing (*medeplegen*), encouraging (*uitlokking*), and assisting (*medeplichtige*) are dependent on the role given by the Defendant Eliezer. As in Article 55 of the Indonesia Criminal Code reads:

Paragraph 1: “Shall be punished as perpetrators of a criminal offense:

- (1) those who commit, order to commit, and participate in the act;
- (2) those who by giving or promising something, by abusing power or dignity, by force, threat or deception, or by providing opportunity, means or information, intentionally encourage others to commit an act.”

Paragraph 2: “With respect to the persuader, only the intentional act which is persuaded shall be taken into account, together with its consequences.”

From the qualifications of the types of participation in Article 55 of the Indonesia Criminal Code mentioned above, the qualification of the involvement of the Defendant Eliezer in the success of the plan determines what his status is. The fulfillment of the elements of the offense of participation mentioned above, in the decision *a quo*, the panel of judges considered that the role of the Defendant Eliezer was proven legally and convincingly as a person who participated (*medeplegen*) in the crime of premeditated murder.

²⁰ Djismas Samosir and Adreas Samosir, *Tindak Pidana Tertentu Di Dalam Kitab Undang-Undang Hukum Pidana*, Revisi, vol. 1 (Bandung: Nuasa Aulia, 2022).

Because this determination is very objective and casuistic which is determined by the role of each perpetrator. Although normatively it is not explained about the meaning or provide criteria for determining "not the main perpetrator", the meaning can be seen from the contribution or role of the Defendant Eliezer in realizing the will. According to Andi, this is very casuistic where the determination of the main perpetrator or not the main perpetrator in the participation can be seen from two aspects, namely the aspect of power relations and the aspect that benefits the most from the action, so that these two things can be concluded that the most guilty in the action is the main perpetrator²¹.

Whether a defendant is qualified as not the main perpetrator can be seen from his role, ability and power over the case. Of course, the determination of not the main perpetrator can be seen through the facts of the trial which are clearly revealed for a crime committed which the evidence is mutually compatible. The proof of the case, then the role of the defendant to be qualified as not the main perpetrator is as an intermediary in the criminal act. The act of intermediary in criminal acts in the offense of participation (*deelneming*) for crimes committed in an organized manner that the intermediary is categorized as an act of participation.

Evidently in the case of *a quo*, the person who has strong power and authority and the actor who plans and participates in shooting is Ferdy Sambo, so it can be concluded as the main perpetrator. As for the Defendant Eliezer, his position and power relations were very low from Ferdy Sambo and then his role was ordered to shoot the victim²². So that the position and ability of a perpetrator in committing a crime together becomes a criterion for determining the main perpetrator and not the main perpetrator. This criterion focuses that the main perpetrator is the person who is most responsible for the crime. Because the issue of *deelneming* is basically to determine the criminal responsibility of each person for a criminal offense, thus it must be proven.

This analysis is in line with Hidayatullah's opinion, which provides criteria for the provision of the main perpetrator in a serious crime:

1. The person who advocates or persuades to perform a criminal offense. According to him, this type of perpetrator usually has the economic ability to invite collaboration in exchange for wealth or property.
2. People who have the power or influence or authority to determine policies or decisions in the process of criminal acts.

This provision was used by the judge in determining that the Defendant Eliezer was not the main perpetrator in the *a quo* case. So the judge decided that the Defendant Eliezer deserved to be determined as a cooperating witness as stated in the verdict. While Ferdy Sambo is the main perpetrator and the person most responsible for the premeditated murder. From the explanation above, several major points qualify the determination of not the main perpetrator in the criteria to become a justice collaborator, namely: first: not intentionally in

²¹ Pradikta Andi Alfat, "Menentukan Pelaku Utama Dalam Penyertaan Tindak Pidana, Proyeksi Calon Hakim," Forum keadilan babel.com, 2023, <https://forumkeadilanbabel.com/2023/02/20/menentukan-pelaku-utama-dalam-penyertaan-tindak-pidana/>.

²² & Edi Pranoto Nomero A. Simamora, "Tinjauan Yuridis Penetapan Status Seseorang Sebagai Justice Collaborator Di Indonesia," *Iblam Law Review* 3, no. 1 (2023).

mind (*mens rea*), second: has a smaller role than the main perpetrator (*co-perpetrator*), third: a person who has power or authority and a lower position than the main perpetrator.

Although the Indonesian legislation does not specifically regulate the criteria of "not the main perpetrator" as a condition of justice collaborator, it should be remembered that one of the requirements for determining a criminal offender to become a justice collaborator is because the criminal offense committed poses a serious problem and threat to the stability and security of society so as to undermine the institution and values of justice, therefore the considerations that must be made are to restore trust, community order and create justice for the community. Legal certainty is important and crucial in a state of law, but there is legal justice which is the main principle of the purpose of the rule of law. This is in line with the opinion of the Constitutional Court in Decision Number 33/PUU-XIV/2016 which states that justice must take precedence over legal certainty, especially in criminal cases. The decision of the panel of judges declaring Bharada Eliezer as a justice collaborator is in accordance with justice in society even though it creates legal uncertainty for the determination of the criteria "not the main perpetrator" as a condition of justice collaborator. However, in the future *ius constituendum*, a clear and specific regulation is needed regarding the criteria of "not the main perpetrator" in the justice collaborator requirement so that in the future the law will not only create justice but also certainty²³.

4. Conclusions

From the results of the aforementioned research, the author should conclude that the legal certainty of determining not the main perpetrator as one of the criteria for becoming a cooperating perpetrator witness in the disclosure of the premeditated murder case by the Defendant Eliezer does not have dogmatic legal certainty. Determining the status of a perpetrator not as the main perpetrator can occur if a criminal act is committed by more than one perpetrator. Criminal acts committed jointly can find the types of perpetrators known in the doctrine of participation (*deelneming*). This legal uncertainty results in differences in views between law enforcers, which leads to unjust fulfillment of rights. So that the determination of not the main perpetrator in the provision needs to be interpreted theoretically to provide an explanation of meaning. This was then done by the judge on premeditated murder who qualified the Defendant Eliezer as not the main perpetrator. The theoretical interpretation of determining the criteria for not being the main perpetrator can be seen from the role of a perpetrator, the position, authority, and power possessed in committing the crime, or the person most responsible for the occurrence of the crime with deliberate and planned intent. The author's prescription on the issue of clarity of the meaning of the norm recommends overcoming legal uncertainty to the government to be able to revise or give meaning to each requirement in making a suspect or defendant a justice collaborator in a crime. Dogmatically, the Criminal Code does not mention the classification of non-main perpetrators in the doctrine of participation, but Article 55-56 of the Indonesia Criminal Code regulates the punishment for perpetrators of crimes committed jointly.

5. Reference

Dwiasty, Refniayu, Mulyati Pawennei, and Baharuddin Badaru. "Kepastian Hukum Terhadap

²³ Latifah Astri et al., "Perlindungan Hukum Terhadap Justice Collaborator Dalam Tindak Pidana Narkotika."

- Perlindungan Justice Collaborator Dalam Perkara Tindak Pidana Korupsi." *Journal of Lex Philosophy (JLP)* 5, no. 1 (2024).
- Heri, Agusman. "Analisis Yuridis Terhadap Tindak Pidana Penyertaan Pembunuhan (Studi Putusan MA Nomor 2462/Pid.B/2017/PN Medan 2018)." *Jurnal Abdi Ilmu* 131 2, no. 11 (2019).
- Hidayatullah. *Filosofi Justice Collaborator*. Qiara Media, 2021.
- — —. *Perlindungan Hukum Justice Collaborator Dalam Sistem Peradilan Pidana*. Qiara Media, 2021.
- Irwansyah. *Penelitian Hukum Pilihan Metode & Praktik Penulisan Artikel*. Yogyakarta: Mirra Buana Media, 2021.
- Ketut Sumedana. "Terkuak Alasan Jaksa Sebut Bharada Eliezer Bukan Justice Collaborator." *Detik News*, 2023. <https://www.detik.com/sumut/hukum-dan-kriminal/d-6525294/terkuak-alasan-jaksa-sebut-bharada-eliezer-bukan-justice-collaborator%3E>.
- Kusuma, Amelia Elisabeth Putri. "Penerapan Ketentuan Pelaku Utama Dalam Kriteria Collaborator Pada Putusan Pengadilan Negeri Pusat Nomor 93/Pid.Sus-Tpk/2019/PN. Jkt. Pst." *Jurnal Hukum Adigama* 4, no. 2 (2021): 3390-3410.
- Larumpa, Renaldi Markus. "Saksi Pelaku Yang Bekerjasama Pada Pengungkapan Kasus Tindak Pidana Pembunuhan Berencana Dalam Sistem Peradilan Pidana (Studi Putusan Nomor: 798/Pid.B/2022/PN.Jkt.Sel." Universitas Khairun Ternate, 2024.
- Latifah Astri, Isti, Sidik Sunaryo, Bayu Dwi, and Widdy Jatmiko. "Perlindungan Hukum Terhadap Justice Collaborator Dalam Tindak Pidana Narkotika." *Indonesia Law Reform Journal* 1, no. 1 (2021): 32-49.
- Nomero A. Simamora, & Edi Pranoto. "Tinjauan Yuridis Penetapan Status Seseorang Sebagai Justice Collaborator Di Indonesia." *Iblam Law Review* 3, no. 1 (2023).
- Pradikta Andi Alfat. "Menentukan Pelaku Utama Dalam Penyertaan Tindak Pidana, Proyeksi Calon Hakim." *Forum keadilan babel.com*, 2023. <https://forumkeadilanbabel.com/2023/02/20/menentukan-pelaku-utama-dalam-penyertaan-tindak-pidana/>.
- Pratiwi, Siswantari. "Delik Penyertaan Dalam Kitab Undang-Undang Hukum Pidana (KUHP)." *Binamulia Hukum* 1, no. 11 (2022).
- Putusan Hakim Pengadilan Negeri Jakarta Selatan Nomor 798/Pid.B/2022/Pn.Jkt.Sel, (n.d.).
- Samosir, Djismas, and Adreas Samosir. *Tindak Pidana Tertentu Di Dalam Kitab Undang-Undang Hukum Pidana*. Revisi. Vol. 1. Bandung: Nuasa Aulia, 2022.
- Samsuri. "Rekonstruksi Regulasi Justice Collaborator Dalam Sistem Peradilan Pidana Di Indonesia Yang Berbasis Nilai Keadialan." Universitas Islam Sultan Agung, 2023.
- Tektona, Rhmadi Indra. "Quo Vadis : Kepastian Hukum Aturan Monopoli Dan Persaingan Usaha Sehat Pada Undang-Undang Nomor Tahun 2020 Tentang Cipta Kerja." *Jurnal Persaingan Usaha* 2, no. 1 (2022): 43-54.