

CHAPTER I

INTRODUCTION

A. Background

The Republic of Indonesia is a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia, which truly upholds human rights and guarantees that citizens are equal before the law and government, which is without exception while guaranteeing compliance and obedience to it is in the hands of all citizens. Criminal acts are a form of deviant behavior that is always inherent in society, and no society is free from crime.¹ One of the crimes that are still very much attached to Indonesia is the crime of murder, even though it has been regulated in many laws that murder is an activity that violates the law and is strictly prohibited.

The Penal Code has regulated sanctions or threats of punishment to people who commit the crime of murder. The Penal Code Articles 338-348 in Chapter XIX on Crimes Against Life holds the threat of punishment. Article 338 of the Penal Code explains that taking another person's life is punishable by imprisonment for fifteen years. In contrast, Article 340 of the Penal Code clarifies that taking lives through preparation or planning in advance can be punished with imprisonment for twenty years or for life. The criminal threat that has been stated in the formulation of the law does not guarantee that a criminal act does not occur in society. Various things behind it also determine the occurrence of a criminal act. Murder arises due to the blurring of civilized values in social life.²

Lately, there have been many cases of murder, intentional and unintentional, as well as planned and unplanned. As recently happened in the premeditated murder case

¹ Yanri, F.B, "Pembunuhan Berencana", *Jurnal ilmiah hukum dan keadilan*, Vol. 4, No. 1 (2017), p. 36.

² Basri, M., Fuad, F., Suartini, "Analisis Kriminologi atas Perbuatan Pembunuhan di Kabupaten Bulukumba", *Jurnal Magister Ilmu Hukum*, Vol. 7, No. 1 (2022), pp.72-73.

of Brigadier Joshua by Ferdy Sambo, which involved many people, the issue has become complicated to solve. Therefore the court decided to use a justice collaborator in this case. The term justice collaborator is quite common in criminal cases that are pretty complicated to solve, such as cases of corruption, murder, or human trafficking.

Justice Collaborator is a designation for criminals who cooperate in providing information and assistance to law enforcement in solving a particular crime. In Indonesia, arrangements regarding the act of being a justice collaborator were first regulated in a joint regulation by Law Enforcement Officials and Supreme Court Circular No. 4 of 2011 on the treatment of reporters (Whistleblowers) and witness collaborators (Justice Collaborators) in certain crimes. The arrangements for justice collaborators in Supreme Court Circular No. 4 of 2011 must be fair and accountable for witnesses in Court.³

The basic concept of implementing justice collaborators is the cooperation of criminals who are not the main actors with law enforcement to find the main perpetrators so they can dismantle organized crime. For this reason, one of the requirements for becoming a justice collaborator is not to become the main perpetrator because if the main perpetrator becomes a justice collaborator to trap the perpetrators under them, then the main perpetrator can escape the law and become a deterrent to be able to repeat his actions. If we examine it comprehensively, the arrangements and stipulations of justice collaborators that apply in Indonesia are inappropriate in the USA. This country brought out the concept of justice collaborators.

Apart from being regulated in Supreme Court Circular No. 4 of 2011, Law Number 13 of 2006 on the Protection of Witnesses and Victims governs the protection

³ Hafid, Z.P, "Justice Collaborator Ditinjau dari Undang-Undang Nomor 31 Tahun 2014 Perlindungan Saksi dan Korban", *Jurnal Al-Qadai Peradilan dan Hukum Keluarga Islam*, Vol. 6, No. 1 (2019), p. 41.

of Justice Collaborators. Even though it does not define a reporter as well as his position as a Justice Collaborator, however, this lack of understanding does not eliminate the rights that must be given to them and must be fulfilled by the Witness and Victims Protection Institution.⁴ Because considering the existence of a Justice Collaborator in solving a case, especially an extraordinary crime, it is often difficult to prove it. Thus, the Justice Collaborator becomes very important because of the perpetrators, the modus operandi of the crimes committed, and other evidence that can dismantle and reveal organized or extraordinary crimes.⁵

Justice collaborators have a significant role in assisting law enforcement officials by dismantling all secrets from the beginning of the crime. Thus, it is appropriate for a justice collaborator to receive legal protection from the State for solving a crime. Moreover, the crime is an organized crime., the witness has consciously taken a risk in finding the truth. Because it is not easy to get a witness to be willing to give their testimony, and if they become witnesses, they are haunted by various kinds of fear, including losing their life, family, or job.

The strategic role is owned by witnesses who work together (justice collaborators) who can provide essential information in disclosing a crime and experience threats that seriously endanger the life of the witness. Therefore, it is necessary to fulfill the rights and guarantees of legal protection for witness perpetrators who cooperate. The issue regarding the qualifications of a justice collaborator in the context of formulation and practice still raises a dilemma. And if viewed from the Indonesian criminal justice system, at what stage can a person be called a justice collaborator, whether from the level of investigation, prosecution, justice, or

⁴ Astri, I.L., Sunaryo, S., Jatmiko, B.D.W, “Perlindungan Hukum terhadap Justice Collaborator dalam Tindak Pidana Narkotika”, *Indonesia Law Reform Journal*, Vol. 1, No. 1 (2021), p. 34.

⁵ Romdoni, M. & Abu Bakar, A.P, “The Role of the Justice Collaborator in A Premeditated Murder Crime”, *Legal Brief*, Vol. 12, No. 5 (2022), p. 3036.

collaboration at all system levels. Apart from that, at the level of its application, a justice collaborator still needs to improve legal protection.⁶

Therefore, based on this description, the author analyzed whether the role of a justice collaborator is appropriate and how the legal protection. The author also compares how legal protection is for justice collaborators in the USA because the term justice collaborator was first published in the USA. The authors wish to discuss more the role of the Justice Collaborator in the crime of premeditated murder and how the legal protection is according to the law, and how the legal protection compares to the USA.

B. Problem Formulations

1. What are the legal provisions for justice collaborators in Indonesia and USA?
2. What is the form of legal protection for justice collaborators in solving cases of premeditated murder?

C. Research Objectives

1. To understand the legal provisions for justice collaborators in disclosing cases of premeditated murder.
2. To analyse legal protection for justice collaborators in cases of premeditated murder.

D. Benefits of Research

There are some benefits of the research, namely:

1. Theoretical Benefits

This study contributes to knowledge in the field of Criminal Law regarding legal protection for justice collaborators in cases of premeditated murder.

⁶ Oktafia, D. & Ariyani, N, "Model Perlindungan Hukum terhadap Justice Collaborator Tindak Pidana Korupsi di Indonesia", *Jurnal Hukum Ius Quia Iustum Faculty of Law*, Vol.27, No. 2 (2020), p. 330.

2. Practical Benefits

This research is expected to benefit the author as a researcher. To certain parties, in this case, the government, to develop a better quality of law in Indonesia, especially on the issue of premeditated murder. This research is also expected to be useful for perpetrators who carry out the role of justice collaborator so that their rights to be witnesses before the law can be well protected.

E. Research Methods

1. Type of Research

The type of research is normative legal research that examines secondary data in the forms of legal material, such as statutory approach, case approach, conceptual approach and comparative approach.

2. Type of Data

The type of data used by the author is secondary data consisting of primary legal materials and secondary legal materials.

a. Primary Legal Material

Primary legal materials are legal materials originating from the applicable laws and regulations and existing regulatory provisions, including:

- a) Circular Letter of the Supreme Court of the Republic of Indonesia Number 4 of 2011 on Treatment for Criminal Acts Reporters and Perpetrators of Witness Cooperating in Certain Criminal Cases.
- b) Law Number 13 of 2006 on the Protection of Witnesses and Victims.
- c) The Penal Code articles 338 to 348.
- d) Law Number 39 of 1999 on Human Rights.
- e) Law Number 7 of 2006 on Ratification of the United Nations Convention Against Corruption.

- f) Law Number 5 of 2009 on Ratification of the United Nations Convention against Organized Transnational Crime.
- g) Law Number 31 of 2014 on Amendments to Law Number 13 of 2006 on the Protection of Witnesses and Victims.
- h) Government Regulation No. 99 of 2012 on the Second Amendment to Government Regulation No. 32 of 1999 on the Terms and Procedures for the Implementation of Rights of the Society.

b. Secondary Legal Material

Secondary legal materials are legal materials that provide an explanation of primary legal materials. The legal materials used by the author in this study include:

- a) Books
- b) Scientific journal
- c) Internet or legal websites
- d) Related papers
- e) Other related documents

3. Method of Collecting Data

The data that were collected through library and the relevant source include books, official documents, journals, articles, papers or scientific works related to this research, namely about legal protection, justice collaborators and criminal acts of premeditated murder.

4. Method of Data Analysis

In this research, the data analysis that was used by the author is a qualitative descriptive method, namely analyzing by describing the problem in detail based on data that is in accordance with the object of research. Meanwhile, qualitative

analysis is the grouping of data according to the explanation so that it can answer problems in the form of conclusions. The analysis was based on constitutions, laws, and other theories related to this problem.

F. Systematic of Undergraduate Thesis

This undergraduate thesis consists of five chapters as follows:

Chapter One is the introduction. This chapter describes the background of the research, the research problem, the objectives and benefits of the research, the research methods, and the systematics of the undergraduate thesis.

Chapter Two discusses premeditated murder. This chapter explains the meaning of criminal offense, murder and premeditated murder.

Chapter Three discusses justice collaborators. This chapter contains the definition of justice collaborator, the role of justice collaborator and regulation.

Chapter Four is about findings and analysis. This chapter describes The Legal Provisions for Justice Collaborators in Indonesia and the USA and the form of Legal Protection for Justice Collaborators in Solving Cases of Premeditated Murder.

Chapter Five is conclusions and recommendations. This chapter is the last part which contains conclusions and suggestions regarding the problems described above.

