



JUSTICE COLLABORATOR IN VIEW OF ISLAMIC CRIMINAL LAW

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Abstract

The term "justice collaborator" emerged after the Ferdy Sambo case was exposed to the public. The reason is that the murder case involving POLRI members was accompanied by "drama" which attracted the attention of many people from the investigation process to the trial process, various mass media covered how the judicial process in this case was going. For some circles the term "justice collaborator" may sound foreign, but experts and academics in the criminal field may already be very "familiar" with this term. The question that arises then is how Islamic Criminal Law views and responds to this term. The purpose of this research is to find out "justice collaborators" in the view of Islamic Criminal Law and what the legal consequences are. The results of the study stated that in the view of Islamic Criminal Law "justice collaborators" or witness witnesses are witnesses (martyrs) who fall into the wicked category for the sin they have committed, but scholars of Islamic law agree that the testimony of a person who is wicked if he repents and promises not to repeats his actions then his testimony can be accepted. The legal consequences obtained by a "justice collaborator" are forgiveness or leniency from law enforcers for their cooperation in uncovering criminal cases that are difficult to dismantle.

Keywords: Justice Collaborator, Islamic Criminal Law



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INTRODUCTION

Justice Collaborator is a term that still remains in the minds of several people and groups of people in Indonesia, because this term emerged after a criminal incident occurred in July 2022. Who doesn't know of a case where the trial process dragged on for almost half a year, there was even a lot of "drama" in the middle of the trial process, where the suspects involved in the criminal incident exchanged arguments and evidence, denying each other about the incident? In fact, the loss of evidence and so on, it's no wonder that this case has become a "trending topic" everywhere, mass media news, television, podcasts, even gossip news don't want to lose out on discussing similar cases.

This criminal incident became the focus of many parties because it involved the POLRI institution whose "image" is that of law enforcers, guardians of public security. More than that, the murder incident of Brigadier Joshua Hutabarat was initially chronologically related to the incident of sexual harassment against the wife of police general Ferdy Sambo, namely Putri Candrawathi, which then resulted in a shootout between the first aide, namely Richard Eliezer and Brigadier Joshua (the victim). Fact after fact was finally revealed, then several suspects appeared, then one of the suspects volunteered as a witness to the perpetrator or what is popularly called a "justice collaborator".

A justice collaborator is one of the suspects in a criminal act where he is not the main perpetrator and he collaborates with law enforcement to uncover and uncover the facts of a criminal act and the people involved in it. From the case stated previously, Richard Eliezer was the one who then volunteered as a "justice collaborator or perpetrator who wants to cooperate with law enforcement to reveal the true facts and reveal the main perpetrator of the criminal incident that took the life of the victim Brigadier Joshua."

Basically the term "justice collaborator" is a term originating from English which was originally used in the United States. The Indonesian state itself actually does not use this term because it is difficult to find it in the criminal code (KUHP), even though in practice it can be found in the judicial system in Indonesia.

Through the Supreme Court Circular (SEMA) Number 4 of 2014, it is explained that the term justice collaborator is a perpetrator of a criminal act who has admitted to the crime he has committed, is not the main perpetrator of the criminal act, is willing to return the assets obtained from the criminal act and is able or willing to assist law enforcement by providing and explaining significant testimony to reveal the facts of the criminal act in the hope of finding the main perpetrator of the criminal incident.

The aim of this "justice collaborator" is to make it easier for law enforcers and their staff to uncover larger criminal incidents, because the application of a "justice collaborator" or perpetrator witness is usually specific to well-organized criminal acts, and these criminal acts are often parties one party covers up the other party's mistakes, making it difficult for law enforcers to thoroughly investigate the criminal incident.

Islamic Criminal Law is all the legal provisions and norms regarding criminal acts or disgraceful/criminal acts committed by themukallaf (someone who is subject to an obligation/burden) all of the provisions of which are an absorption of syar'i postulates sourced from the Qur'an and al-Hadith. Sayyid Sabiq explained this in Islamic law or Islamic regulations which prohibit all disgraceful acts that must be avoided by all humans. In the context of the Ferdy Sambo case, the murder of Brigadier Joshua is a disgraceful act that must be avoided because it endangers a person's life, where protecting the soul is a maqasid or sharia goal that must be maintained.

Islamic Criminal Law is also very familiar with the term "jarimah" which means an act for which the form and limits of punishment have been stated in the Al-Qur'an and Sunnah or have not been stated, that is why the division is called Jarimah Hudud and Jarimah Ta'zir. The Ferdy Sambo case is a criminal incident whose form and limits of punishment are stated in the Al-Qur'an and Sunnah or known as jarimah hudud.

Richard Eliezer's decision as a "justice collaborator" or witness to the perpetrator is a big question in this research. What is Islamic Criminal Law's view of the concept of "justice collaborator" or perpetrator witness? and what are the legal consequences for "justice collaborators" or perpetrator witnesses in Islamic Criminal Law? The discussion is as follows.

METHOD

This research is a type of legal research, in which it examines the presence of perpetrator witnesses or "justice collaborators" in the view of Islamic Criminal Law as well as the consequences of Islamic Criminal Law on the acceptance of testimony from "justice collaborators". In this case, the author first looks for regulations related to the issue raised, as well as looking at the views of jurisprudence experts (fuqaha) and the legal basis of the Al-Qur'an or hadith. This means that the research used to raise this issue is a type of normative legal research because the study focuses on applicable norms and regulations. Data was obtained from primary and secondary legal materials, primary data in the form of statutory regulations relating to "justice collaborators" namely Law Number 31 of 2014 concerning the protection of witnesses and victims, as well as

Sema Number 4 of 2011 concerning the treatment of Crime Reporters and Perpetrator Witnesses. who cooperate in criminal acts. Meanwhile, secondary data consists of materials that are closely related to primary legal materials such as journals, articles, books and opinions of legal experts. The data analysis technique uses a normative juridical approach where this research aims to review the role of "justice collaborator" and the relief obtained from this role in the view of Islamic Criminal Law.

RESULTS AND DISCUSSION

Justice Collaborator in Views of Islamic Criminal Law

Testimony or testimony is an expression of words that come from someone who conveys clear and true news or information about the occurrence of an event with the aim of revealing the facts that actually happened. Article 1 (26) of the Criminal Procedure Code states that a witness is a person who can provide information for the purposes of investigation, prosecution and justice regarding a criminal case that has been seen, witnessed, heard and personally experienced.

In the judicial process, of course, a judge who examines a criminal case will want at least three pieces of evidence that apply in the criminal law book (KUHP). Testimony is evidence that is often presented before the court by judges. Because with testimony a judge can bring order to the picture of the criminal incident that occurred, through the sight, hearing and awareness of a witness in witnessing the criminal incident. Therefore, testimony is very important evidence, to avoid untruths and fraud in resolving a criminal case.

Islamic Criminal Law, through its teachings, places great emphasis on the aspect of justice in conveying testimony. In the main source of Islamic law, namely the Al-Qur'an, there is a verse that explains the conditions for conveying testimony, namely in Surah al-Maidah: 8:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ ۚ وَلَا يَجْرِمَنَّكُمْ شَنَا^طنٌ ۙ أَوْ قَوْمٌ عَلَىٰ ءَلَا تَعْدِلُوا ءَعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ ۖ وَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ ۝٨

"O you who believe, let you be those who always uphold (the truth) for Allah, be witnesses fairly. and never let your hatred of a people encourage you to act unjustly. Be fair, because justice is closer to piety. and fear Allah, surely Allah is All-Knowing of what you do."

This verse explains the things that a witness must pay attention to when presenting his testimony. It is stated that if someone wants to be a witness and convey his testimony in any event, including a criminal incident, he must pay

attention to the truth aspect of his testimony, and must pay attention to the justice aspect of his testimony. parties involved in the criminal incident, do not take sides with one party or another, even though a witness must have a certain relationship with one of the parties, a witness should not position himself as being on one side, a witness can only side with truth and justice , not to parties who influenced his testimony.

In Islamic criminal law, there are several conditions that must be fulfilled by a person who submits his testimony so that his testimony can be accepted, both before court and outside court, applies to all testimony in every case.

1. Puberty (adult)
2. Aqil (reasonable)
3. Dhabit (strong memory)
4. Can speak
5. Can see
6. Fair
7. Islam

Of the several conditions listed above, the priority condition is condition number six, namely fairness or fairness of a witness. This requirement requires that a witness, including a "justice collaborator", must provide truthful testimony, not harm either party, not be biased towards one party or not be influenced by one party. A witness or "justice collaborator" must be inclined towards truth and justice to make it easier for law enforcers or judges to analyze incident by incident that occurred in a criminal case. Islamic law scholars or commonly known as fuqaha have also agreed and agreed that in any case a witness must be a fair witness who is far from being categorized as wicked. This is based on the Al-Qur'an verse Surah at-Thalaq: 2;

فَإِذَا بَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ فَارِقُوهُنَّ بِمَعْرُوفٍ وَأَشْهِدُوا ذَوِي عَدْلٍ مِّنكُمْ وَأَقِيمُوا الشَّهَادَةَ لِلَّهِ ذَلِكُمْ يُوعِظُ بِهِ مَن كَانَ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَمَن يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا ۚ

“When they are nearing the end of their iddah, then reconcile them well or let them go well and testify with two fair witnesses among you and let your testimony be established for the sake of Allah. Thus, are taught those who believe in Allah and the Hereafter. Whoever fears Allah will surely find a way out for him”.

The sentence marked in bold and underlined is the sentence that is the point of the discussion, namely that a witness, including a "justice collaborator" must have fair criteria. The nature of justice is the antonym of wickedness, namely someone who is dishonest, ignores good deeds, commits acts that are forbidden and displays immorality in himself, which is a character of testimony that must be rejected and whose integrity must be doubted. In this case, of course, the person who has the right to determine and assess the justice of a witness or "justice collaborator" is a judge. The judge must also pay attention to the applicable laws and regulations regarding the criteria for those entitled to be a witness in a criminal case.

From the explanation of the criteria for a witness who must be fair, it seems to be in conflict with the Ferdy Sambo case where the perpetrator witness or "justice collaborator" in this case is Richard Eliezer, has committed an act that takes someone's life, which means he falls into the category of someone who is ungodly because he has ignored a virtuous or good act, committing an act that is forbidden, namely killing, and this means that the testimony submitted should be rejected.

But we also need to look at the provisions contained in the SEMA regulations that a person who wants to become a witness to the perpetrator or "justice collaborator" must first admit their mistakes and crimes. Even though he has committed wrong and evil deeds, he is invited to make efforts to repent and promise not to repeat his actions again.

In the book *bidayatul mujtahid wa nihayatul muqtashid* written by Ibnu Rushd:

ولم يختلف أن الفاسق تقبل شهادته إذا عرف بتوبته.

"Fiqh scholars have no differences of opinion regarding the testimony of someone who is categorized as wicked, if he wants to repent then his testimony can be accepted."

From the description above, it can be understood that a criminal witness or justice collaborator is a witness who collaborates with law enforcement to reveal a criminal incident honestly according to the facts that occurred without covering anything up. Therefore, a person who submits himself as a witness to the perpetrator or "justice collaborator" must first make an effort to repent, namely admitting his past mistakes and promising before the law not to repeat actions that could harm other people, all of this is so that the witness of the

perpetrator or justice collaborator" comes out of the status of someone who is unjust or wicked.

Providing leniency in view of Islamic criminal law

It has been explained in the previous discussion about the view of Islamic criminal law regarding the existence of "Justice Collaborators" or perpetrator witnesses who partner or cooperate with law enforcement to uncover and uncover a criminal case or incident. It can be said that the presence of a "justice collaborator" or perpetrator witness is progress, very relevant and very much needed, especially for the criminal justice system in Indonesia to resolve problems and difficulties in terms of evidence.

If you use the maqasid sharia approach, in this theory there are several levels such as dharuriyat, hajjiyat and tahsiniyyat. So, the need for the presence of a "justice collaborator" is an aspect of dharuriyat, which means one of the levels of need whose importance must be prioritized, because it involves very broad benefits for human life. This means that if this level of need is not met or is not pursued, then to a large extent, human welfare will be threatened by its existence in this world and the hereafter.

Next, it is important to explain the consequences for "justice collaborators" or perpetrator witnesses in Islamic criminal law. Basically, the consequences of a person who has committed a disgraceful act or sin have been determined in the Shari'a, whether in the form of hudud or punishment whose levels have been determined in the Shari'a, or ta'zir or punishment whose terms have not been precisely determined in the Shari'a. The author is of the opinion that whatever the type of punishment, it is an effort to educate the perpetrator in particular and educate society in general so that they do not repeat and do something similar to what the criminal has done. The aim is to safeguard the common good, maintaining widespread harmony and order.

The sanctions for criminal perpetrators who then apply to become "justice collaborators" or perpetrator witnesses are in the provisions of article 10a (1) concerning the Witness and Victim Protection Law, which states that "perpetrator witnesses can be given special treatment in the examination process and appreciation for their testimony. given." Furthermore, it is also explained in sub number 3 (still in article 10a), that what is meant by award here is "relief in criminal punishment". From this explanation, it means that positive law gives appreciation to "justice collaborators or perpetrator witnesses in the form of leniency in criminal sentences because they have worked together to help law enforcers in uncovering criminal cases.

Meanwhile, in the provisions of Islamic law, although they are not specifically stated, there is a connection regarding relief, namely in Surah al-Baqarah 178 which means:

“O you who believe, qishaash is prescribed for you regarding those who are killed; freeman with freeman, slave with slave, and woman with woman. So whoever receives forgiveness from his brother, let (the one who forgives) follow it in a good way, and let (the one who is forgiven) pay (diat) to the one who forgives in a good way (also).”

This verse provides an explanation about someone who is involved in a criminal act of murder, then the sanctions are similar to what he did, but if he gets forgiveness from his family, then the criminal may not be sanctioned according to what he did, but will be given other sanctions in the form of fines and so on. This means that in the provisions of Islamic law which are based on the Koran, there is a concept of leniency in punishment and that is fine as long as the family of the victim provides this leniency.

Ahmad Hanafi explained that the concept of forgiveness is one of the factors in reducing sentences, whether forgiveness is given by the victim's family or given by the government. However, the mitigating effect only applies to criminal acts or jarimah qishas, diyat and ta'zir, and does not apply to types of jarimah hudud. The fuqaha themselves in essence relatively agree with the concept of leniency given to perpetrators, they say that the authorities or government may grant forgiveness to perpetrators if there is a more general benefit in it.

This means that witnesses who act as "justice collaborators" based on the opinion of jurists can be given forgiveness or leniency from the government, in this case law enforcement through its tools such as prosecutors and judges. Because there is a more general benefit, namely "disclosure of criminal cases or incidents" which would be difficult for a judge to resolve. And this will not be revealed unless the witness "justice collaborator" is present.

In An-Nisa's letter: 85, An-Nisa also explains that: "Whoever gives good intercession, he will surely receive a share (reward) from it, and whoever gives bad intercession, he will surely bear a share (sin) from it, Allah is Almighty over all things."

The meaning is that intercession in Surah An-Nisa verse 85 is a word equivalent to providing relief to someone in need. This means that providing intercession or relief in the form of assistance, either materially, morally or in other forms, is a commendable act recommended by religion in the hope that the person who is given intercession will return to do good deeds and leave tyranny behind.

CONCLUSION

In the view of Islamic Criminal Law, the term "justice collaborator" or perpetrator's witness is equated with the concept of "martyr" or a witness in general, even though in fact a "justice collaborator" is an perpetrator who has committed a disgraceful and sinful act, but when this perpetrator wants to cooperate with law enforcers to thoroughly investigate and reveal the facts of the criminal incident, and he repents, promises not to repeat the actions he committed, then his testimony or role as a "justice collaborator" can be accepted.

As for the legal consequences for "justice collaborators", based on the opinion of fuqaha, this is the granting of forgiveness or intercession given by law enforcers for their services in uncovering criminal incidents that are difficult to uncover.

REFERENCES

- Departemen Agama RI, (2010), *al-Hidayah al-Qur'an Tafsir Perkata Tajwid Kode Angka*, Jakarta: Kalim
- Hanafi, Ahmad, (2005), *Asas-Asas Hukum Pidana Islam*, Jakarta: PT. Bulan Bintang.
- Kitab Undang-Undang Hukum Pidana
- Murtadlo, M. Ali, (2013), *Pengaturan Saksi Pelaku yang Bekerjasama (justice collaborator)*, Malang: Universitas Brawijaya.
- Muslich, Ahmad Wardi, (2005), *Hukum Pidana Islam*, Jakarta: Sinar Grafika
- Pasal 1 angka 26 Kitab Undang-Undang Hukum Acara Pidana
- Rusyd, Ahmad Ibnu, *Bidayatul Mujtahid wa Nihayatul Muqtasid*, Juz VI, Beirut Lebanon: Daar al-Ilmiyah.
- Sema Nomor 4 Tahun 2011 Tentang Perlakuan Bagi Pelapor Tindak Pidana (whistleblower) dan Saksi Pelaku yang Bekerjasama (Justice Collaborator) di dalam tindak pidana tertentu.
- Shidiq, Sapiudin, (2011), *Ushul Fiqh*, Jakarta: Kencana.
- Undang-Undang Nomor 31 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 13 Tahun 2006 tentang Perlindungan Saksi dan Korban.