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**Legal Construction of Judge Rule Number: 798 / Pid.B / 2022 / Pn.Jkt.Sel Justice Collaborator  
against Police Status Position Bharada Eliezer**

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### ABSTRACT

**Purpose:** The purpose of this study is to determine the position of Bharada Eliezer against Decision Variety; 798/Pid.B/2022/PN.Jkt.Sel related to Justice Collaborator police status position and the Police Code of Ethics Decision related to Bharada Eliezer's Police Status.

**Methodology:** This research makes use of a normative juridical research method, a conceptual technique, and a statutory technique.

**Results:** Basically a person who commits a criminal offence of taking the life of another person is a violation of human rights and deprivation of the right to life especially when the person who commits the murder is a law enforcer and remains a member of the police, but in this case with the consideration of the judge and the consideration of the official in charge of the KKEP hearing because the perpetrator is submitted as a justice collaborator feared by irresponsible parties abused.

**Applications of this study:** Provide input to all members of the National Police so as not to commit acts that violate the laws and regulations and the code of ethics of the police profession and tarnish the good name of the police organization or agency.

**Novelty/Originality of this study:** There is a need to update the requirements and guidelines for justice collaborators because some criminal offenses that harm the state and extraordinary crimes really need justice collaborators to shed light on a criminal offense that was initially blurred in the facts.

**Keywords:** Justice Collaborator, Police, Judge's decision

### INTRODUCTION

In Indonesia, crime is a very worrying phenomenon because it is increasing day by day. The development of technology is now increasingly diverse crimes are not only crimes committed conventionally but now already using modern technology. Efforts to tackle this crime have been made by the government, society, and law enforcement to prevent crime. Crime continues to develop not only in terms of forms and types but also motives and causal factors. Law enforcers are still lacking in handling cases within their organization's realm unless the case is viral or indeed an extraordinary crime.

The rules enforcer is required to carry out tasks in sync with the mandate of the law which results in the award of a verdict with the substance in the form of justice for the parties, but on the other hand law enforcers are found who actually commit crimes and this results in a picture of law enforcement forums and enforcement of Indonesian rules deteriorating in the midst of the changing times. (Raharjo, 2006) Law enforcers who are often highlighted at this time are the police because the police mean the front guard in law enforcement.

The police are said to be the frontline, but it can happen that in the early days, the resolution of a criminal case can end (Raharjo, 2008), because the police have discretionary authority. (Raharjo & Angkasa, 2011) The phenomenon that occurs is that some members of the police act otherwise and are not in sync with the ethics of the police profession, or some members of the police violate the code of ethics of the police profession. (Ramdan, 2022) Crimes or criminal offences of police officers who are not

in sync with the code of police ethics will result in rules.

Polri has regulations that contain the function, role, purpose, position, membership structure and professional development contained in Law No. 2 of 2002 concerning Polri (hereinafter referred to as the Polri Law). Regulations governing the behaviour or actions, speech regarding things that are required, prohibited, appropriate or not done by members of the Police in carrying out their duties and authorities are regulated in the Chief of Police Regulation No. 14 of 2011 concerning the Police Professional Code of Ethics (hereinafter referred to as Perkapolri Code of Ethics).

Sometimes police officers who violate the code of ethics of the police profession are protected or conspire so that their friends are not subjected to the code of ethics. Some behaviours like this because they hold positions within the police institution lead to abuse of authority and position (abuse of power) by these police officers. Lord Acton stated about power "Power tends to corrupt, but absolute power corrupts absolutely" (Gunawan, 1990) (The state of corruption is very real but there is great power protecting it). Because of this incident, there is a sense of distrust as well as a sense of discomfort in society. (Ampuno, 2020)

One example of a crime that has led to a loss of public trust in the police is the case of Brigadier Josua Hutabarat, Div Propam Polri Fredi Sambo, Bharada Eliezer, and others. The case began with a report from Fredi Sambo's wife Putri Chandrawati who stated that she had been harassed by Brigadier Josua, and as a result of this Fredi Sambo was angry and shot Brigadier Josua. The shooting was not only carried out by Fredi Sambo but also by Bharada Elizer because of the insistence and orders from Fredi Sambo as his leader. In the process of time, Brigadier Josua's family felt that there were irregularities in Josua's death and with the help of Advocate Kamarudin Simanjuntak published the case. Finally, due to pressure from the community, the case was investigated by the police who were not related to the case and government officials, finally Bharada Eliezer was proposed as a Justice Collaborator and revealed the truth of the murder of Brigadier Josua.

Bharada Eliezer's confession revealed the veil of Brigadier Josua's murder and how police officers helped to cover up the case by removing CCTV evidence, forensic evidence, firearms, and so on. The process of investigating and prosecuting the case eventually led to the trial of all those involved in the case and the verdict and sanctions imposed by the judge. In the verdict of Bharada Eliezer the judge imposed a prison sentence of 1 (one) year and 6 (six) months in accordance with Decision Number; 798/Pid.B/2022/PN.Jkt.Sel.

Bharada Eliezer's role as a Justice Collaborator as a witness who cooperates with law enforcement to solve a crime that is considered difficult to solve. The crime of premeditated murder organized by a group of people is used to reveal the role of each perpetrator in this premeditated murder case. Justice Collaborators themselves are protected in Law Number 31 of 2014 concerning Witness and Victim Protection amending Law Number 13 of 2006 concerning Witnesses and Victims (hereinafter referred to as the Witness and Victim Protection Law), and the requirements for Justice Collaborators are contained in SEMA Number 4 of 2011 concerning the treatment of whistleblowers and witnesses who cooperate (Justice Collaborators) in certain criminal cases (hereinafter referred to as SEMA Justice Collaborators), is one of the perpetrators of a criminal offence, is not the main perpetrator in the criminal offence, provides information as a witness in the judicial process, provides significant evidence and reveals perpetrators who have a greater role.

Based on the description that has been presented, the problem can be formulated on how the Role of Justice Collaborator in Decision Number; 798/Pid.B/2022/PN.Jkt.Sel Regarding the Police Status of Bharada Eliezer. How is the Legal Construction of the Police Code of Ethics Commission Session (KKEP) for the Police Status of Bharada Eliezer.

## RESEARCH METHODS

The writing method for this paper uses normative juridical research (Legal research). Legal research

is to find the truth of coherence, namely whether the rule of law is in accordance with legal norms and whether the norms in the form of orders or prohibitions are in accordance with legal principles, as well as the actions (Act) of a person in accordance with legal norms (not in accordance with legal rules) or legal principles. (Peter Mahmud Marzuki, 2015) The problem approach in this study uses a Statute Approach and Conceptual Approach. Primary legal materials are legal materials that are authoritative, meaning they have authority. Primary legal materials consist of legislation, official records or minutes in making laws and judges' decisions. (Peter Mahmud Marzuki, 2015).

## RESULTS AND DISCUSSION

### **The Role of Justice Colobolator in Decision Number; 798/Pid.B/2022/PN.Jkt.Sel Regarding the Police Status of Bharada Eliezer**

Bharada Eliezer is a police officer in the murder case of Bripka Josua, basically if a police officer is suspected or commits a criminal offence in accordance with Article 29 paragraph (1) of the Police Act, then he is then subject to the authority of the General Court like a civilian if he commits a criminal offence. This shows that members of the police are civilians and are not subjects of military law like the Indonesian National Army.

Despite being civilians, Polri members are subject to the Perkapolri Code of Ethics and the rules of Government Regulation No. 2 of 2003 Governing Disciplinary Regulations for Members of the Indonesian National Police (hereafter referred to as PP Disiplin). Participants in Chapter 2 of Regulation Number 3 Year 2003 on the Implementation of Institutional General Technical Courts. The execution of the Institutional Technical General Justice for Indonesian National Police Members, also known as the Technical Justicial Regulation for Members of the Indonesian National Police, is typically done in accordance with procedural law. Members of the Indonesian National Police are typically prosecuted in criminal cases in accordance with the procedures in accordance with the procedural law applicable in the general judicial environment.

Bharada Eliezer was tried in the South Jakarta District Court Decision Number; 798/Pid.B/2022/PN.Jkt.Sel The public prosecutor's indictment against Bharada Eliezer was charged with the following charges declaring Bharada Eliezer legally and convincingly proven to have jointly committed the crime of taking the life of another person as regulated and punishable in the Primair Indictment in violation of Article 340 jo Article 55 paragraph (1) to 1 of the Criminal Code and imposing a prison sentence of 12 (twelve) years.

Article 340 of the Criminal Code reads "Whoever deliberately and with premeditation takes the life of another person, shall, being guilty of murder with premeditation, be punished by death or life imprisonment or a maximum imprisonment of twenty years."

The element of premeditation has three conditions: (1) a calm determination of the will; (2) the availability of sufficient time from the arising of the will to the execution of the will; and (3) the execution of the will (act) in a calm atmosphere. These three elements of planning must be fulfilled. If one of the conditions is not fulfilled, then the element of planning cannot be fulfilled, because the three elements are cumulative. (Halif., 2021)

The meaning of murder and premeditated murder is murder committed by the process of how the murder is carried out, the tools or means used, the place or location of the murder, the time of its execution, or the way the perpetrator of premeditated murder removes traces. (Bernadetha Aurelia Oktavira, 2022) The Criminal Code considers premeditated murder to be a crime that deeply offends the principles of just and civilised humanity. Premeditated murder requires a cunning mind or a very evil intention, adequate tools and means, as well as the right time and also a strong motive to move someone to commit murder.

When viewed from Article 340 of the Criminal Code, the elements of the article have fulfilled all the elements, and it is evident that the defendant is guilty of committing premeditated murder. In this case,

anyone who commits an act prohibited by a rule of law, which prohibition is accompanied by a threat (sanction) in the form of certain punishment, for those who violate the prohibition. The elements of a criminal offence are divided as follows: 1) The act must be a human act 2) The act must be prohibited and threatened with punishment by law 3) The act is contrary to law (against the law) 4) Must be committed by someone who can be held accountable 5) The act must be blamed on the perpetrator. (Effendi, 2011)

Bharada Eliezer's role as a Justice Colabolator submitted by legal counsel in Decision Number; 798/Pid.B/2022/PN.Jkt.Sel Bharada Eliezer submitted an application as a perpetrator witness who cooperated with the Justice Colabolator and attached a recommendation from LPSK regarding recommendations for granting rights and special handling as a perpetrator witness who cooperated with the Justice Colabolator. Determining the perpetrator witness who cooperates with the Justice Colabolator is regulated in number 9 letter a SEMA Justice Collaborators which reads: "The person concerned is one of the perpetrators of certain criminal offences as referred to in this SEMA, admits the crime committed and is not the main perpetrator in the crime and provides information as a witness in the judicial process". Certain serious criminal offences referred to in this SEMA, such as corruption, terrorism, narcotics, money laundering, human trafficking, and other organised criminal offences, have caused serious problems and threats to the stability and security of society, thus undermining institutions and values of democracy, ethics and justice and endangering sustainable development and the rule of law.

Justice Collaborator is given if the executor is willing to cooperate with law enforcement to reveal the case. The basic concept of the application of the Justice Collaborator is the cooperation of criminals who are not the main perpetrators with law enforcers to catch the main perpetrators, so that it can be the main perpetrators with law enforcement to catch the main perpetrators, so as to dismantle organised crime. (Komarudin, 2022)

The emergence of Justice Collaborator in Indonesia is a solution to law enforcement in Indonesia. Law enforcement in Indonesia is difficult to solve. Thus the Supreme Court as a legal pillar to mobilise and strengthen the Indonesian legal system, with the innovation of the Supreme Court in issuance of SEMA Justice Collaborators as a legal umbrella for Justice Collaborators and whistleblowers when assisting in solving criminal cases in Indonesia. (Nyoman et al., 2023) Like Bharada Eliezer with various risks has conveyed the real incident so that it is worthy of being designated as a perpetrator witness who cooperates with Justice Collaborator in accordance with Article 10 A of the Witness and Victim Protection Law.

According to Decision Number:798/Pid.B/2022/PN.Jkt.Sel, which governs Bharada Eliezer's case, Bharada Eliezer is not Brigadier Josua's primary killer despite cooperating with law enforcement. "(1) Punishable as perpetrators of criminal offenses: 1. those who commit, those who order to commit, and those who participate in the act," states Article 55, Paragraph 1, Number 1 of the Criminal Code. In this instance, Bharada Eliezer took part in a crime.

In this scenario, the judge's belief and the requirements established by the law are inextricably linked in the decision-making process. If the judge's conviction cannot be established by at least two reliable sources of evidence, it is deemed missing, and if it cannot, two reliable sources of evidence are deemed null.(Soetarna, 2011)

Consideration of the judge in Decision Number; 798/Pid.B/2022/PN.Jkt. Sel with the truth of the facts causing the death of the victim Brigadier Josua 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 Bharada Eliezer with various risks have conveyed the real events so that Bharada Eliezer deserves to be a witness to the perpetrator who collaborates with the Justice Collaborator and weighs the things that relieve Bharada Eliezer as a witness to the perpetrator who collaborates with the Justice Collaborator, behaving politely in court, has never been convicted, is still young, is expected to be able to improve his actions in the future, regrets his actions and promises not to repeat them again, and Brigadier Josua's family has forgiven Bharada Eliezer's actions.

The considerations of the judge in accordance with this conscience imposed a sentence of 1 (one)

year 6 (six) months imprisonment and continued to be served with this in accordance with the statement of Reza Indragiri Amriel, a Forensic Psychology Expert and researcher of the ASA Indonesia Institute, stating that if the judge sentenced a maximum sentence of 2 years imprisonment then Bharada Eliezer's career in the Police might still be saved. This is because according to Police General Listiyo Sigit Prabowo, if a police officer involved in a criminal case gets a sentence of more than two years in prison, he will be dishonourably discharged (PTDH). (Saptohutomo, 2023) Therefore, Bharada Eliezer's status as a police officer in accordance with Decision Number; 798/Pid.B/2022/PN.Jkt which imposes a prison sentence of less than 2 years can still allow him to become a police officer. This needs to be decided again by the Police Code of Ethics Commission (KKEP).

### **Legal Construction of the Police Code of Ethics Commission (KKEP) Hearing on the Status of Police Officer Bharada Eliezer**

The police as one of the law enforcement officers who have the task of maintaining security and public order, enforcing the law, protecting, protecting and serving the Indonesian people are given the task of preventing, eradicating and overcoming criminal acts. The existence of the police as the initial implementation of the justice system is obliged to carry out its duties and authorities as a law enforcement officer. However, there are some police officers who abuse their authority as law enforcement officers by participating in murder cases. Of course this can lead to a loss of public trust in the credibility of the police to provide legal certainty or provide legal protection to the public for the rampant acts of murder that occur. (Utomo, 2005)

If a police officer violates the code of ethics of his/her profession, it is the same as violating the law. This is because the violation violates their profession, as well as their duties and authority as protectors, servants and protectors of the community. Meanwhile, the code of ethics itself is mandated by the law and has been formulated in the KAPOLRI Regulation so that when violating the mandate of the law means the same as violating the law. From the description above, it can be concluded that if a Polri member violates the code of ethics of his profession, it is the same as the Polri member violating the law, where the violation of the law is in the form of his duties and authority as a member of the Police in terms of serving and protecting the community. (Christian, 2023)

In the case of the murder of Brigadier Josua, one of the participants in the premeditated murder, Bharada Eliezer, has been tried and received a verdict from the South Jakarta Court with a prison sentence of 1 year and 6 months. After obtaining the verdict of the South Jakarta court, Bharada Eliezer will be heard by the Police Code of Ethics Commission (hereinafter referred to as KKEP). The KKEP session was held on Wednesday 22 February 2023, the session was chaired by Kombes Sakeus Ginting as the Chairperson of the Commission and Members Kombes Hengky Widjaja and Kombes Imam Thobrini.

KKEP decided the fate of Bharada Eliezer in the police and whether he could still hold police status or be dishonourably discharged PTDH. After the judge's decision at the South Jakarta District Court Number; 798/Pid.B/2022/PN.Jkt.Sel with the consideration of the judge Eliezer's status as a justice collaborator in the murder case of Brigadier Joshua. The distance in rank between Eliezer and Ferdys Sambo was considered to make Richard unable to refuse Sambo's order to shoot Yosua. Aggravating circumstances Eliezer was considered to have misused his official firearms which resulted in the loss of a person's life.

The KKEP decided Bharadan Eliezer's fate by remaining a member of the Police, and getting a demotion for one year. This was conveyed by the National Police Chief General Listiyo Sigit Prabowo, who stated that Bharada Eliezer was not dismissed from the police agency after completing the penajara sentence, he would be returned to his profession, namely the police. (Persada, 2023) Bharada Eliezer also received administrative punishment for violating ethical sanctions, namely violation of declared misconduct.

Sanctions are in effect since they were decided, Head of the Public Information Bureau of the National Police Headquarters Ahmad Ramadhan explained that the demotion decision took effect since it was decided and Bharada Eliezer accepted the decision without appeal. The provisions of the KKEP

decision do not parale with criminal judgements. (Tempo, 2023) In accordance with Article 12 paragraph (1) of Government Regulation Number 2 of 2003 concerning Disciplinary Regulations for Members of the Indonesian National Police (hereinafter referred to as PP Discipline for members of the police) reads "the imposition of disciplinary penalties does not eliminate criminal charges". This means that Bharada Eliezer will still be prosecuted in the district court and does not remove criminal sanctions.

At the KKEP hearing, the articles violated by Bharada Eliezer were Article 13 paragraph (1) of Government Regulation Number 1 of 2003 concerning the Dismissal of Members of the Indonesian National Police (hereinafter PP on the dismissal of police officers), which essentially related to the dismissal of police officers must go through KKEP. Article 5 paragraph (1) letter o and/or Article 6 paragraph (2) letter b and/or Article 8 letters b and c and/or Article 10 paragraph (1) letter f and/or Article 10 paragraph (1) letter a number 5 of Perkapolri Number 7 of 2022 concerning Professional Code of Ethics and Code of Ethics Commission of the Indonesian National Police (hereinafter referred to as Perkapolri KEP and KKEP).

Article 11 letter a and Article 12 paragraph (1) letter a of the Government Regulation on the dismissal of Polri members Police members who commit criminal offenses are dismissed dishonorably if they are sentenced to a term of imprisonment based on a court decision that has permanent legal force and in the opinion of the competent authorities cannot be retained in the police department. This dismissal is carried out after going through a hearing of the Indonesian National Police Professional Code of Ethics Commission. So if you have received an inkrah decision from the district court and are sentenced to imprisonment but according to the authorised officials can still be defended, you will remain a member of the Police but if not, you will be dishonourably discharged by PTDH. Bharada Eliezer is still a member of the Police with the consideration of authorised officials within the Police and the following points of consideration of the KKEP hearing: The alleged violator has not been convicted of any disciplinary, code of ethics, or criminal offence.

1. The alleged violator admits guilt and regrets the act
2. The alleged violator has become a JC or witness to a cooperating perpetrator, where other perpetrators in the South Jakarta District Court trial tried to obscure the true facts in various ways, damage, eliminate evidence, and take advantage of the influence of power, but instead the honesty of the alleged violator with various risks has helped reveal the facts that actually happened
3. The alleged violator was polite and cooperated well during the trial so that the trial ran smoothly and openly.
4. The alleged offender is still young, still 24 years old, still has the opportunity to have a good future especially since he has regretted his actions and promised not to repeat his actions in the future
5. There was an apology from the alleged violator to the family of Brigadier Yosua where during the criminal trial at the Jaksel District Court the alleged violator had visited the family Brigadier Yosua, kneeled down and apologised for the actions he was forced to do so that Yosua's family forgave him.
6. All actions taken by the alleged violators were under duress, and because they did not dare to refuse orders from superiors
7. The alleged violator, who holds the rank of Bharada or enlisted police officer, did not dare to refuse the order to shoot Yosua from FS (Ferdy Sambo), because apart from being a superior, FS's rank with the alleged violator is very far away
8. With the help of suspected violators who are willing to cooperate and want to provide honest information, so that the case of the death of Brigadier Yosua can be revealed.

The considerations in this KKEP hearing which kept Bharada Eliezer as a member of the police with a Court Decision of less than 2 years and became a witness to the perpetrator who cooperated with the Justice Collaborator and from the decision of the South Jakarta District Court judge this became a consideration for the commission as an official authorised to give consideration to the KKEP hearing to keep Bahrada Eleiezer as a member of the Republic of Indonesia police.

However, in this case the author still sees shortcomings in Bharada Eliezer's police status such as there

are no clear rules governing the further application of Justice Collaborator and determining whether or not a person deserves a Justice Collaborator needs to be strict to determine whether he deserves a Justice Collaborator. This can be used by irresponsible people to alleviate their punishment and submit as a Justice Collaborator. As for Bharada Eliezer as a perpetrator who participated in the murder was sentenced by the South Jakarta District Court judge to a lenient sentence with his consideration, but seen from the Human Rights Article 28 A of the 1945 Constitution "The right to life and defence of life": "everyone has the right to life and the right to defend his life and life", the judge needs to look at the human rights of Brigadier Josua.

Kompolnas is expected to change the face of the militaristic police to humanist so that it can improve the image of the police which is seen by the community as bad into a good police image. It is expected that the presence of kompolnas due to the weak police supervision both run by the inspectorate of general supervision (Itwasum) and leadership supervision. There are 5 (five) factors inhibiting the internal control function, as follows: (Dian Trisusilowaty, Anggita Doramia Lumbanraja and Suteki, 2019) The First Factor, Itwasda's authority in carrying out the supervisory function of the actions of Polri members is only limited to collecting information whether there is a violation or not, which will then be submitted to the authorised functional unit and does not reach the authority to prosecute and the authority to take action. The second factor is that the mechanism is not a one-stop shop. Receiving complaints is not only done by Itwasda, but also by other functional units. The third factor is the unbalanced ratio of subbagdumasan members compared to the overall tasks carried out. The fourth factor is the handling of peers. As experienced by other internal supervisors, supervising and prosecuting peers is more difficult than external prosecution. The fifth factor is that the public does not understand the complaint mechanism.

The supervision of kompolnas has not been effective, this is because kompolnas is only limited to accommodating and forwarding complaints to the police institution. And the results of these recommendations do not have forced efforts. Meanwhile, in the aspect of enforcing the code of ethics, Kompolnas is only involved in the process of case titles, Commission hearings as spectators who directly supervise and even then if there is an invitation submitted by the Police. (Yusuf, 2023)

## CONCLUSION AND SUGGESTION

The Role of Justice Colabolator in Decision Number; 798/Pid.B/2022/PN.Jkt.Sel Regarding the Police Status of Bharada Eliezer. The judge decided on imprisonment for 1 (one) year and 6 (six) months due to several considerations, one of which was Bharada Eliezer as a witness to the perpetrator who cooperated with the Justice Colabolator, submitted as a Justice Colabolator by the legal counsel and approved by the judge. The judge's consideration decided the criminal sanction so that Bharada Elizer could still be a member of the police because the imprisonment was under 2 years with the consideration of the KKEP hearing by the authorised officer giving consideration to the KKEP hearing whether he could remain a member of the police or be dishonourably discharged PTDH.

Legal Construction of the Police Code of Ethics Commission (KKEP) Session for Bharada Eliezer's Police Status. After undergoing a general judicial hearing at the South Jakarta District Court with a sentence of 1 (one) year 6 (six) months then continued with the KKEP hearing to determine Bharada Eliezer's police status. The KKEP hearing decided to keep Bharada Elizer as a member of the police, and demotion for 1 (one) year and apologise to the leadership of the Police, due to considerations such as being a Justice Colabolator, never being convicted, and so on. It does not erase the penajara criminal sanction decided by the South Jakarta District Court.

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