

Legal Analysis of the Concept of Legal Reform on the Regulation of Justice Collaborators in Efforts to Combat Criminal Acts of Corruption in Indonesia

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Abstract. *In Indonesia, the regulations regarding Justice Collaborator regulated in the Circular of the Supreme Court (SEMA) No. 4 of 2011, which regulates the treatment of criminal reportees (whistleblower) and cooperating witnesses (Justice Collaborator). However, this SEMA does not have binding legal force like a law. In practice, the application of articles by prosecutors, lawyers, and judges in corruption cases is often inconsistent. For example, when a case meets the elements of Article 2 of the PTPK Law, the article imposed is often Article 3, which has a lighter threat of sanctions, so it tends to be used to lighten the perpetrators. This study uses the method Sociological Jurisprudence with a descriptive-analytical approach, relying on primary and secondary data collected through interviews and literature studies. The analysis was conducted qualitatively using legal protection theory and punishment theory. The results of the study indicate weaknesses in the legal substance related to Justice Collaborators in the criminal justice system in Indonesia. For example, the award regulated in Article 10A paragraph (3) does not provide clear legal certainty, and legal protection for Justice Collaborators is considered still weak. Government efforts to overcome these weaknesses include revising Law No. 13 of 2006 and preparing a draft revision of the Criminal Procedure Code, including reformulating the definition of crown witnesses and Justice Collaborators to be clearer and more integrated. This step is expected to strengthen the protection and implementation of the role of Justice Collaborators in the criminal justice system.*

Keywords: *Collaborator; Corruption; Justice; Reform.*

1. Introduction

Indonesia is a country of law based on the 1945 Constitution of the Republic of Indonesia, which makes law a guideline for people's lives. The law regulates behavior, and establishes prohibitions, rules, and sanctions. One of the crimes of concern is corruption, which is classified as an extraordinary crime.¹Corruption not only damages the country's finances and economic potential, but also weakens the social, cultural, moral, political pillars, as well as the legal and security order of the nation.²Criminal law enforces sanctions in the form of suffering or unpleasant consequences for violations of the law.

Corruption can paralyze national development and occurs in various levels of society with various modes of operation.⁵Indonesia has had anti-corruption regulations since 1971 through Law Number 3 of 1971, but the growing legal needs gave rise to Law Number 31 of 1999 which was later revised by Law Number 20 of 2001. Article 2 paragraph (1) of the Law prohibits acts of unlawful enrichment of oneself or a corporation that harms state finances, while Article 3 regulates abuse of authority. Although this regulation is expected to be effective, the eradication of corruption has been hampered until now. Corruption has become a chronic disease that has spread throughout all government sectors and state-owned companies. This phenomenon often starts in the public sector, where the power of public officials or state-owned companies is used to pressure or blackmail parties who need services, both from the government and State-Owned Enterprises (BUMN).

In addition to law enforcement officers, cooperation with other parties, including witnesses and perpetrators who cooperate (*Justice Collaborator*), is needed to uncover cases, especially from the criminal system network itself.⁷Corruption in the private sector is often on par with the public sector, especially in businesses related to taxation, banking, and public services. The application of the PTPK Law articles in corruption cases is often wrong, especially involving BUMN employees, which triggers different legal views. As a country of law, Indonesia must enforce the law optimally without exception, upholding human rights, and ensuring legal equality for the success of the rule of law.

A common problem in legal practice is the application of inappropriate articles, such as in corruption cases, where lighter articles are used to reduce the perpetrator's sentence even though other elements of the article are met. Criminal law enforces punishment for drug abuse as a crime with unpleasant consequences. Legal uncertainty regarding Justice Collaborators causes differences of opinion and lack of adequate protection. This hampers the effectiveness of the instrument.

This study aims to analyze the concept of legal reform related to the regulation *Justice Collaborator* in efforts to combat criminal acts of

corruption in Indonesia, including: to review legal regulations regarding *Justice Collaborator* in combating criminal acts in Indonesia, analyzing its weaknesses, and proposing legal reforms related to efforts to combat criminal acts of corruption in the future.

2. Research Methods

This research uses a sociological legal approach or is called field research, namely examining the applicable legal provisions and what actually happens in society. The specifications of this research are descriptive analytical in nature to describe the problems related to legal regulations regarding *Justice Collaborator* in criminal law in Indonesia and the urgency of reforming the law.

This study uses primary data obtained from respondents in the field and secondary data from literature, including primary, secondary, and tertiary legal materials related to the functionalization of law in overcoming corruption in Indonesia. Primary legal materials are binding legal norms, such as: the 1945 Constitution, the Criminal Code, the Criminal Procedure Code, and several laws related to the eradication of corruption and witness protection, such as Law No. 28/1999, No. 31/1999 in conjunction with No. 20/2001, No. 7/2006, and No.31/2014, as well as the Circular Letter of the Supreme Court No. 04/2011. Secondary legal materials are the opinions of experts from literature, law books, magazines, newspapers, the internet, and scientific works such as theses, dissertations, and dissertations. Tertiary legal materials are instructions that provide solutions to primary and secondary legal materials, such as the Big Indonesian Dictionary and the Legal Dictionary.

Data collection was carried out through two methods, namely literature study and field study. Literature study collects materials from books, magazines, the internet, and regulations that are relevant to the problem. Field study involves direct observation.

3. Results and Discussion

3.1. Legal Regulations Regarding Justice Collaborators in Efforts to Combat Criminal Acts in Indonesia Today

Corruption is a deviant social phenomenon that is detrimental to the state. Indonesian criminal law views corruption as a serious crime and imposes severe sanctions.⁹Corruption is a complex act that requires the capabilities of auditors and law enforcement officers, so legal changes are important to anticipate it.¹⁰Fockema Andreae stated that corruption comes from the Latin word "corruption" *corruption* which means rottenness. In Indonesian, corruption is defined as bad, dishonest, and bribery. Current public perception tends to associate corruption with acts of manipulation and cheating.

Corruption, as Lord Acton asserted, "*The power tends to corrupt, absolute power corrupts absolutely*" is a consequence of abuse of power. The 1945 Constitution was designed to limit government power and prevent corruption.

Indonesia's legal system, consisting of basic law, customary law, and other laws, plays an important role in controlling the actions of the rulers and ensuring clean government. Prevention and eradication of corruption require active participation from the community. The community has the right to seek, obtain, and provide information about suspected corruption. They also have the right to receive services from law enforcement, provide advice, and obtain legal protection. The implementation of these rights must be in accordance with applicable laws and other religious and social norms. As citizens, we are obliged to help eradicate corruption in order to create a safe and peaceful Indonesia.

The existence of criminal acts of corruption in Indonesian positive law has actually been around for a long time, namely since the enactment of the Criminal Code (*Wetboek van Strafrecht*) on January 1, 1918, the Criminal Code as a codification and unification applies to all groups in Indonesia in accordance with the principle of concordance and was enacted in *Staatsblad* 1915 Number 752 dated October 15, 1915. Number 79 of 1957 to Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (*State Gazette of the Republic of Indonesia* 2001 Number 134, Supplement to the *State Gazette of the Republic of Indonesia* Number 4150), which was ratified and came into effect on 21 November 2001.¹⁴ Corruption in Indonesia develops in three stages: elitist, endemic, and systemic. At the elitist stage, corruption only occurs among officials. At the endemic stage, corruption spreads to the community. At the systemic stage, corruption spreads throughout the system, infecting every individual. If corruption has reached the systemic stage, its impact is not only detrimental to the state and economy, but also to the life of the nation and state.

Abdullah Hehamahua identified eight causes of corruption in Indonesia:

1. The state administration system is wrong
2. Low civil servant compensation
3. Greedy officials
3. Law enforcement is not working
4. Light punishment for corruptors
5. Ineffective supervision
6. There is no exemplary leadership
7. Community culture that is conducive to KKN

Corruption in the Islamic legal treasury is difficult to define like the modern term, because there is no exact equivalent in *fiqh*. Corruption refers to fraudulent practices that are prohibited in Islamic law. Law No. 1 of 1999 paragraphs 2 and 3 still contain elements of unlawfulness, providing

opportunities for corruption if the law is manipulative and corrupt. The definition of corruption should be more general, not limited to unlawfulness and harming the state. Corruption is an act that is contrary to societal norms, religion, morals, and law to enrich oneself or others, which damages the agreed order, resulting in the loss of other people, corporations, or the state. Article 2 of Law Number 31 of 1999 states that corruption is an act that enriches oneself or others which harms state finances, which involves "taking" the rights or property of others. In Fiqh jinayah, "taking" can be called stealing, which "benefits oneself". Circular of the Supreme Court (SEMA) RI No. 4 of 2011 regulates that collaborating witnesses (*justice collaborator*) is a perpetrator of a certain crime who admits to the crime he committed, is not the main perpetrator, and provides information as a witness in the trial process.

Corruption cases in Indonesia are increasingly rampant and have become a serious problem that threatens social and economic stability. Law Number 31 of 1999 and Number 30 of 2002 state that corruption is an extraordinary crime.

Therefore, exposing corruption requires a special approach, one of which is by use *Justice Collaborator*.¹⁸Corruption is a special crime whose settlement is carried out in a Special Court within the general court environment. The settlement of this crime is guided by Law Number 8 of 1981 concerning Criminal Procedure Law which is a reference in the criminal justice process so that it works well and respects human rights.

Justice collaborators are suspects who are willing to help law enforcement in uncovering crimes. They are often involved in criminal organizations and have important information. Legal protection for Justice Collaborators is essential to ensure security and encourage openness of information. Although Law Number 31 of 2014 concerning Protection of Witnesses and Victims (UU PSK), Law Number 7 of 2006 concerning Ratification of the United Nations Convention Against Corruption, 2003 (UNCAC), and SEMA Number 04 of 2011 concerning Treatment for Criminal Reporters (Whistleblowers) and Cooperating Witnesses (*Justice Collaboration*) has regulated protection for Justice Collaborators, but the protection is not yet fully comprehensive. The lack of understanding of law enforcement officers regarding the implementation of effective protection often hampers the law enforcement process.

Settings about *Justice Collaborator* (JC) in criminal justice in Indonesia is relatively new compared to legal practices in the Criminal Code. Legislation does not explicitly regulate JC, but Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims provides a legal basis. This law aims to create conducive conditions for the community to participate in disclosing criminal acts, providing legal

protection, and security for JC. This protection covers the trial to post-trial stages, because serious threats from the injured party can endanger JC and his family. As a country of law, according to Article 1 paragraph 3 of the 1945 Constitution, Indonesia is obliged to protect the human rights of every citizen. Fair law enforcement for JC plays a role in assisting law enforcement officers, uncovering criminal acts, and returning assets from the proceeds of crime. The forms of legal protection applicable in Indonesia have 4 forms, namely:

1. Physical and psychological protection includes personal security from threats as well as guarantees of protection for the family. *Justice Collaborator* from threats, violence, or interference from any party.²⁰ Article 5 paragraph 1 of the PSK Law provides *Justice Collaborator* (JC) the right to physical, psychological, personal, family and property security protection, as well as freedom from threats related to one's testimony.

2. Article 15 letter (a) of the KPK Law regulates the KPK's obligation to protect witnesses or reporters of corruption crimes, including security, evacuation, or identity changes, but does not apply to reporters involved in criminal acts.

According to Abdul Haris Samendawai, LPSK provides protection to JCs at the request of related parties after the Attorney General or the KPK has designated them as JCs. LPSK examines the requirements and provides physical and non-physical protection, but applications cannot be submitted if they have not been designated as JCs. LPSK's role in protecting Justice Collaborators includes protection services and support for procedural rights, such as free statements, translators, case information, transportation, and legal advice.

3. Legal protection for Justice Collaborators (JC) is regulated in Articles 10 and 10A of the PSK Law, which states that JC cannot be prosecuted criminally or civilly if they provide information in good faith to uncover a criminal act.²²

The prosecutor must postpone the charges until the case is completed to ensure that the JC remains focused on providing testimony and prevent disruption to the examination process. The Criminal Procedure Code also regulates the protection of crown witnesses, namely defendants who become witnesses in revealing the crimes they have committed, by including the protection of human rights for suspects or defendants in the legal process.

4. To provide a sense of security protection to Justice Collaborators (JC) who provide information in the judicial process, special handling is required as regulated in *Joint Regulation of the Minister of Law and Human Rights, Attorney General, Chief of the Republic of Indonesia Police Number:*

m.hh-11.hm.03.02.th.2011, Number: per-045/a/ja/12/2011, Number: 1 of 2011, Number kepb-02/0155/12/2011, Number: 4 of 2011 Concerning Protection for Reporters, Reporting Witnesses and Cooperating Perpetrator Witnesses.

Protection includes placing JC in a separate detention room, LPSK coordination with related institutions, and judges' considerations for leniency. Judges are also required to consider a sense of justice in granting special treatment.

Article 5 paragraph (2) of PP Number 71 of 2000 regulates the rights and protection of witnesses and informants. If there is sufficient evidence of JC's involvement in a crime, he will still be given protection during the trial process, even without legal status protection. Coordination of related agencies, including LPSK and the Ministry of Law and Human Rights, is needed to ensure the implementation of special treatment for JC.

5. The awarding of awards to Justice Collaborators (JC) is important to support the disclosure of corruption crimes and involve the community. Awards in the form of reduced sentences can be given through written recommendations from LPSK to the public prosecutor, such as demands for probation, additional remission, or other prisoner rights according to regulations. Awards are also stated in the contract between the public prosecutor and JC. Technically, the process. Strategy to Reveal Criminal Acts of Corruption. Strategy to Reveal Criminal Acts of Corruption.

This follows the Joint Regulation: JC submits an application to the Attorney General or the head of the KPK, LPSK provides a recommendation, and the decision to grant or reject an award is made by the Attorney General or the head of the KPK based on the identity, reasons, and form of the award submitted.²³ Special award for *Justice Collaborator* in the form of remission and pardon involving consideration by the Attorney General or the Chairman of the Corruption Eradication Committee to the Minister of Law and Human Rights and the President. The Corruption Court of Judges determines the award, supported by SEMA No. 11 of 2004 concerning the treatment of *Whistleblower And Justice Collaborator*.

3.2. Weaknesses of Justice Collaborator Regulations in Efforts to Combat Corruption in Indonesia

Law Number 13 of 2006 concerning Protection of Witnesses and Victims provides protection for the rights of witnesses and victims, but its implementation faces obstacles, especially related to reduced sentences and awards. Despite public support, Justice Collaborator (JC) is considered new in Indonesian justice. Several articles in this law have ambiguities that contradict legal theory and norms, disrupting the application of criminal law. One of the legal problems is the ambiguity regarding the "main perpetrator," which is not regulated in the law, although Articles 55 and 56 of the Criminal Code clearly regulate inclusion in the discussion regarding inclusion (*deelneming*).

Articles 55 and 56 of the Criminal Code regulate the types of perpetrators of criminal acts, distinguishing between involvement (*deelneming*) into two types:

1. Creator (*father*) is regulated in Article 55 of the Criminal Code. The creators consist of:

1) The perpetrator (*pleger*) according to Pompe, a person who has an obligation to end a prohibited condition and carry out an act that fulfills the formulation of a crime, as stated in Article 55 of the Criminal Code, either as a sole perpetrator or an perpetrator who completes the formulation of the crime himself.

2) The one who orders to do (*the first one*) is a person who commits a crime through the intermediary of another person, who acts as an instrument. The doer criteria include the use of humans as tools, actions carried out, and tools that are unable to take responsibility themselves.

3) Those who participated (*medepleger*), according to Memori van Toelichting, is a person who intentionally participates in an act with conscious cooperation (*work-related work*) and joint work (*gezamenlijke uitvoering/physieke samenwerking*).

4) Advocate (*uitlokker*) Advocate is encouraging/moving subjects which to carry out an offense by utilizing the methods stipulated by the Law. Advocates are almost the same with "the one who orders to do it", but the material maker (*auctor physicus*) in "the proponent" must be able/capable of being responsible under criminal law while in "the one who orders to do it" this is not the case.

2. Assistant (*Medically tested*) is regulated in Article 56 of the Criminal Code Assistant (*Medically tested*) is of a nature *accessories*, meaning that there is *amedaplichtige* there should be someone who does the main action (there must be a doer who is assisted).

However, Articles 55 and 56 of the Criminal Code divide the roles of perpetrators of criminal acts, but do not explicitly determine who is the main perpetrator. The Criminal Code, the PSK Law, and the SEMA do not provide a legal definition of the main perpetrator, making it difficult for law enforcement judges to determine who is worthy of being called the main perpetrator objectively.

Legal protection for cooperating witnesses in Indonesia is not yet clear, both in formulation and practice. The Indonesian criminal justice system has not yet established a definite position for someone as a cooperating witness, either at the investigation, prosecution, or trial levels. The regulation regarding cooperating witnesses is still lacking, so that criminal law reform is urgently needed. The Criminal Procedure Code has not yet regulated cooperating witnesses, even though they play an important role in uncovering organized crime. The term "*Justice Collaborator*" is not recognized in the Criminal Procedure Code, which makes it difficult to handle cases. Therefore, Indonesia needs to adopt a similar arrangement to the United States. Supreme Court

Circular Letter No. 4 of 2011 regulates the treatment of perpetrators of criminal acts (whistleblowers) and cooperating witnesses as an organic regulation to fill the legal vacuum. With the right arrangement, cooperating witnesses can help reveal criminal cases more clearly. The Supreme Court plays an important role in filling the legal vacuum in order to achieve a more just legal goal.

The Supreme Court Circular states that cooperating witnesses are perpetrators of certain crimes who admit their guilt and provide testimony as witnesses.

These crimes include corruption, terrorism, narcotics, money laundering, human trafficking, and other organized crimes.

The Supreme Court Circular provides guidance for judges in issuing decisions regarding certain criminal acts involving witnesses who cooperate with law enforcement, including guidelines for determining Justice Collaborators in point (9).

The weakness of the legal structure according to Lawrence Meir Friedman states that the structural system affects the implementation of the law. Law No. 8 of 1981 regulates the legal structure of the Police, Prosecutor's Office, Courts, to Prisons. The authority of law enforcement agencies is guaranteed by law without external influence, with the principle of "*fiat justitia et pereat mundus*." The law cannot be enforced without credible, competent and independent law enforcement officers. Weak mentality apparatus, such as religious understanding, economics, and non-transparent recruitment, hinder law enforcement. The law enforcement factor is very important, because its quality affects the effectiveness of the law, even though the regulations are good.

Weaknesses of Legal Substance (*Legal Substance*) The following are some of the weaknesses of the legal protection arrangements for *Justice Collaborator* in the laws and regulations in Indonesia:

- a. LPSK's recommendation to obtain an award for Justice Collaborator is seen in the attention of Indonesian law. Law Number 13 of 2006 which was amended by Law Number 31 of 2014 regulates the existence of whistleblowers and Justice Collaborators along with their legal protection.
- b. There are no criminal provisions for individuals who violate the rights of Justice Collaborators, even though JC is very important in revealing cases that are difficult to reveal due to the lack of witnesses.

Next, there is the Weaknesses of Legal Culture (*Legal Culture*). One of the things that criminal law wants to achieve is regarding crime prevention. Sudarto, stated that a rational effort from society in overcoming crime can be called criminal politics or criminal policy. Understanding the urgency and role *Justice Collaborator* (JC) in uncovering crimes often do not receive awards or recognition. Therefore, a scientific discussion is needed regarding the factors

that influence the role of JC in uncovering criminal acts, as well as its urgency in laws and regulations. Weak protection for JC can hinder the eradication of corruption, because the public is reluctant to report. JC has a strategic role in uncovering major cases. The author recommends a solution to optimize the role of JC by providing awards in the form of reduced sentences, remissions, and other rights in accordance with laws and regulations to encourage their participation.

3.3. Legal Updates on Justice Collaborator Regulations in Efforts to Combat Corruption in Indonesia in the Future

Existence *Justice Collaborator* technically regulated in the Joint Regulation of the Minister of Law and Human Rights of the Republic of Indonesia, Attorney General of the Republic of Indonesia, Chief of the National Police of the Republic of Indonesia, Corruption Eradication Commission of the Republic of Indonesia, Chairman of the Witness and Victim Protection Agency of the Republic of Indonesia, Number: M.HH-11.HM.03.02.th.2011, Number: PER-045/A/JA/12/2011, Number: 1 of 2011, Number: KEPB-02/01-55/12/2011, Number: 4 of 2011 Concerning Protection for Reporters, Reporting Witnesses and Cooperating Perpetrator Witnesses (hereinafter referred to as the Joint Regulation) and Circular Letter of the Supreme Court Number 4 of 2011 concerning Treatment for Reporters of Criminal Acts (Whistleblowers) and Perpetrator Witnesses who cooperate (*Justice Collaborator's*). Article 1 number 3 of the Joint Regulation states: A Cooperating Witness is a witness who is also a perpetrator of a crime who is willing to help law enforcement officers to uncover a crime or an impending crime to return assets or proceeds of a crime to the state by providing information to law enforcement officers and providing testimony in the trial process.

Settings about *Justice Collaborator* in the Indonesian criminal justice system is a new thing, because the Criminal Procedure Code, the Corruption Eradication Law, and other regulations do not explicitly regulate this. Justice Collaborators are known in criminal law enforcement practices and are beginning to be regulated in Indonesian positive law. Current criminal law policies, both from international and national documents, provide regulations related to *Justice Collaborator* the following:

1. United Nations Convention Against Corruption/UNCAC (Law Number 7 of 2006 concerning the UN Convention Against Corruption). This instrument is the legal basis behind the birth of the idea of *Justice Collaborator* in criminal justice. The regulations relate to *Justice Collaborator* in criminal justice as regulated in Article 37 as follows: Paragraph (2): Each participating State is obliged to consider, providing the possibility in certain cases to reduce the sentence of an offender who provides substantial cooperation in the investigation or prosecution of a crime as stipulated in this Convention. Paragraph (3): Each State is obliged to consider the possibility in accordance

with the basic principles of its national law to provide immunity from prosecution for persons who provide substantial cooperation in the investigation or prosecution of a crime as stipulated in this Convention.

2. United Nations Convention Against Transnational Organized Crime/UNCATOC (Law Number 5 of 2009 concerning the UN Convention Against Transnational Organized Crime). Likewise with the UN Convention against Corruption, this Convention also provides ideas for regulations related to *Justice Collaborator* in criminal justice, namely regulated in Article 26 as

as follows: Article (2): Each State Party shall consider opening the possibility, in appropriate circumstances, of reducing the sentence of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

Article (3): Each State Party shall consider opening the possibility, in accordance with the fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention. Law Number 13 of 2006 concerning Protection of Witnesses and Victims This law on the protection of witnesses and victims does not explicitly provide clear regulations regarding the definition of *Justice Collaborator* where this law only regulates the definition of witnesses and reporters of criminal acts. Regulations relating to *Justice Collaborator* regulated in Article 10 as follows: Paragraph (2): A witness who is also a suspect in the same case cannot be released from criminal charges if it turns out that he is proven legally and convincingly guilty, but his testimony can be used as a consideration by the judge in reducing the sentence to be imposed.

3. Circular Letter of the Supreme Court Number 4 of 2011 concerning the Treatment of Criminal Reporters (Whistleblowers) and Cooperating Witnesses (*Justice Collaborator*) in Certain Criminal Cases The background to the birth of SEMA is because of the large number of criminal cases handled by law enforcement officers but the absence of statutory regulations that provide a legal basis for regulating *Justice Collaborator* in criminal justice. To provide legal basis, this SEMA was issued with the aim of providing guidelines to judges in the Supreme Court when handling a case. *Justice Collaborator* in criminal justice. This circular also provides limitations on certain serious crimes, namely corruption, terrorism, narcotics, money laundering, human trafficking, and other organized crimes that have caused serious problems and threats to the stability and security of society, thereby destroying institutions and values of democracy, ethics and justice and endangering sustainable development and the rule of law. This SEMA also aims to foster public participation in order to uncover organized crimes by creating a conducive climate by providing legal protection and special treatment to anyone who knows, reports, or finds something that can help law enforcement officers to

uncover and handle organized crimes effectively, considering that there are no laws and regulations that provide adequate regulations on the role of reporting witnesses and cooperating perpetrator witnesses (*Justice Collaborator*) in criminal justice. The regulations relate to *Justice Collaborator* regulated in Point 9 regarding guidelines for determining someone as a cooperating witness (*Justice Collaborator*) are as follows:

a) The person concerned is one of the perpetrators of a particular crime as referred to in this SEMA, admits to the crime he/she committed, is not the main perpetrator in the crime and provides information as a witness in the trial process.

b) The public prosecutor in his indictment stated that the person concerned has very significant information and evidence that investigators and/or public prosecutors can uncover the criminal acts in question effectively, uncover other perpetrators who have a greater role and/or return the assets/proceeds of a criminal act.

c) With regard to the assistance, the judge can determine the sentence to be imposed on witnesses who cooperate as referred to above, taking into consideration the matters of imposing a sentence such as imposing a special conditional probation sentence and/or imposing a prison sentence in the form of the lightest prison sentence among the other defendants who are proven guilty in the case in question.

4. Joint Regulation of Law Enforcement Officials and LPSK on Protection for Reporters, Reporting Witnesses and Cooperating Perpetrator Witnesses is intended to align views and perceptions and facilitate the implementation of the duties of law enforcement officials in uncovering serious and/or organized crimes and provide guidelines for law enforcers in coordinating and cooperating in the field of providing protection for Reporters, Reporting Witnesses and Cooperating Perpetrator Witnesses in criminal cases. Meanwhile, the purpose of this joint regulation is to realize cooperation and synergy between law enforcement officials in handling serious and organized crimes through efforts to obtain information from the public who are willing to become Reporters, Reporting Witnesses and/or Cooperating Perpetrator Witnesses in criminal cases, creating a sense of security from both physical and psychological pressure and providing awards for members of the public who know about the occurrence or imminent occurrence of a serious and/or organized crime to report or provide information to law enforcement officials; and assist law enforcement officials in uncovering serious and/or organized crimes and assisting in the effective return of assets resulting from criminal acts. The regulations relating to *Justice Collaborator* regulated in Article 1 as follows: Point (3): A Cooperating Witness is a witness who is also the perpetrator of a crime who is willing to help law enforcement officers to

uncover a crime or an impending crime to return assets or the proceeds of a crime to the state by providing information to law enforcement officers and providing testimony in the trial process.

The perpetrators who cooperate are motivated to reveal corruption cases for reduced sentences. Granting a JC request requires careful consideration from law enforcement, according to Article 4 of the Joint Regulation, as follows:

- a. The crimes to be uncovered are serious and/or organised crimes.
- b. Providing significant, relevant and reliable information to uncover a serious and/or organised crime.
- c. Not the main perpetrator in the crime that will be revealed
- d. Willingness to return a number of assets obtained from the criminal act in question, which is stated in a written statement.
- e. There is a real threat or concern that there will be a threat, pressure, either physical or psychological, against the cooperating witness or his/ her family if the crime is revealed according to the actual circumstances.

Circular Letter of the Supreme Court Number 4 of 2011 concerning the Treatment of Criminal Reporters (Whistleblowers) and Cooperating Witnesses (*Justice Collaborators*) in Certain Criminal Offenses, also determines the conditions for a perpetrator to cooperate, namely:

- a. The person concerned is one of the perpetrators of a certain crime as regulated in this SEMA, admits to the crime he/she committed, is not the main perpetrator in the crime and provides information as a witness in the trial process.
- b. The Public Prosecutor in his/her indictment states that the person concerned has provided very significant information and evidence so that investigators and/or public prosecutors can reveal other perpetrators who have a greater role and/or return the assets/property of a crime.

Justice Collaborator as a cooperating witness on the condition that the person concerned is one of the perpetrators of a particular crime, admits to the crime he committed, is not the main perpetrator in the crime and provides information as a witness in the court process.²⁹The adoption of Justice Collaborators in criminal justice aims to create a conducive climate by providing legal protection and special treatment for those who help law enforcement uncover crimes effectively.

Witness testimony as evidence can only be done if it fulfills the elements as regulated in Article 185 of the Criminal Procedure Code. In this provision it is stated:

1. Witness testimony as evidence is what the witness states in court
2. The testimony of one witness alone is not enough to prove that the

defendant is guilty of the act with which he is accused;

3. The provisions referred to in paragraph (2) do not apply if accompanied by other valid evidence;

6. The statements of several independent witnesses regarding an event or situation can be used as valid evidence if the witness statements are related to one another in such a way that they can confirm the existence of a particular event or situation;

7. Neither opinions nor inventions, which are obtained from the results of thought alone, constitute expert testimony;

8. In assessing the truth of a witness's testimony, the judge must seriously consider: a. the correspondence between the testimony of one witness and another; b. the correspondence between the testimony of the witness and other evidence; c. the reasons that may have been used by the witness to give a certain testimony; d. the lifestyle and morals of the witness and everything that in general can influence whether or not the testimony can be believed.

9. Statements from witnesses who are not sworn in, even if they are consistent with each other, do not constitute evidence, however, if the statement is consistent with the statement from a sworn in witness, it can be used as additional valid evidence.

Every person who reveals corruption must have courage and always face risks, both those that threaten themselves and their families. Therefore, protection is needed both *Justice Collaborator*. Protection of witnesses is regulated in Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Protection of Witnesses and Victims. Article 5 paragraphs (1) and (2) determine the rights of witnesses and victims. *Justice Collaborator* has the position of a witness to the perpetrator. According to Article 1 number 2 of Law Number 31 of 2014, it is stated that "A witness to the perpetrator is a suspect, defendant, or convict who cooperates with law enforcement to uncover a criminal act in the same case." Article 5 paragraph (3) of Law Number 31 of 2014 determines protection for *Justice Collaborator*.

A Justice Collaborator can get a reduction in the sentence demanded by the public prosecutor, including demanding a suspended sentence and granting additional remission or other prisoner rights. The judge in determining the sentence to be imposed can consider the assistance that has been given by *a Justice Collaborator*.

Justice Collaborator has a very dominant and strategic role in helping law enforcement officers to uncover and reveal criminal acts. This is because a *Justice Collaborator* is a person who plays a role in the occurrence of an organized crime and is carried out collectively, such as a crime of corruption. However, the position of a person *Justice Collaborator* not the main perpetrator of a criminal act of corruption. Such a person can be used as a

source of information in relation to the existence of suspects and other evidence in a criminal act of corruption that has not been found by law enforcement. *Justice Collaborator* often used to expose dishonesty and deviations committed by himself and his colleagues in a criminal act. This effort is certainly not an easy job because he must honestly reveal what he has done with his colleagues in an organized crime in which case he will also be burdened with what he reveals in the testimony. When viewed based on the role *Justice Collaborator* strategic to accelerate the disclosure of organized crime, then there is a need for laws and regulations that regulate about *Justice Collaborator* is very necessary so that strong political will is needed from both the government and the DPR as well as from all interested parties to implement it. *Justice Collaborator* especially in cases of corruption.

The problem currently being faced in Indonesia is that the regulation *Justice Collaborator* has not been regulated in the Criminal Procedure Code. The provisions in the Criminal Procedure Code only regulate the rights of a perpetrator in the criminal justice process. Until now, the regulation on *Justice Collaborator* explicitly only exists in the Circular Letter of the Supreme Court Number 4 of 2011 concerning the treatment of criminal reporters (Whistleblowers) and witnesses who cooperate (*Justice Collaborators*) in certain criminal cases. This SEMA in its function is only as an official letter containing an explanation or instructions on the procedures for implementing a statutory regulation within the scope of its authority so that this SEMA is not sufficient to provide a legal basis for *Justice Collaborator*, because of a *Justice Collaborator* emerged from the investigation, inquiry and prosecution stages, to the examination stage in court, whereas this SEMA only regulates *Justice Collaborator* which has entered the trial stage, while at the stage before the trial, this SEMA is only a copy so that it is not too binding in its implementation, depending on other law enforcement officers whether they will follow the rules in the SEMA or not without any coercive power against other law enforcement officers who do not implement the provisions as regulated in the SEMA.

4. Conclusion

Legal policy towards *Justice Collaborator* in criminal acts of corruption to date, it is still limited to the provisions in the Circular of the Supreme Court Number 4 of 2011 concerning the treatment of those reporting criminal acts (*Whistleblower*) and cooperating witnesses (*Justice Collaborator*) in certain criminal cases. However, the SEMA does not have binding legal force like the Law. In addition, there are weaknesses in the legal substance related to the implementation *Justice Collaborator* in the criminal justice system in Indonesia, such as the uncertainty of the awards given to Justice Collaborators, as regulated in Article 10A paragraph (3), as well as the weak protection provided. The steps taken by the government are to revise Law

Number 13 of 2006 to add provisions regarding *Justice Collaborator*. In addition, the regulation on Justice Collaborators can be included in the draft revision of the Criminal Procedure Code (KUHAP), by reformulating the definition of crown witnesses and *Justice Collaborator* so that there are no multiple interpretations in its application by law enforcement officers. Regulations regarding *Justice Collaborator* should be included in the revision of the Criminal Code, because the Criminal Code is a formal criminal law instrument that determines the procedural examination of cases in the criminal justice system in Indonesia. Regulation of legal protection for *Justice Collaborator* need to be included in the revision of the Criminal Procedure Code so that it can be a guideline and basis for law enforcers in providing protection to them.

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