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Justice Collaborator's Position and Function on Witness Protection's Rights as a Suspect from the Perspective of Criminal Law in Indonesia

Article	Abstract
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INTRODUCTION

This research discusses controversy over the murder (shooting) of Nopryansah Yosua Hutabarat or Brigadier J by Bharada E under FS's order. The real incident was the shooting of J dead. The shooting was executed by RE under FS's order. FS was indirectly subject to Article 240 concerning Premeditated Murder, subsidiary to Article 338 in conjunction with Articles 55 and 56 of Criminal Code, carrying 20-year imprisonment or death penalty. The most dominant murder case in Indonesia is premeditated murder. The Mirna Salihin case was an example of premeditated murder that had caught public attention that almost all national televisions broadcast the case trials for hours. The

mastermind in this case was Jessica Kumala Wongso as Mirna's close friend. Jessica put poison into Mirna's Vietnamese iced coffee at a cafe in Jakarta. Not long after, Mirna convulsed and had foam coming out of her mouth. Jessica was sentenced to 20-year imprisonment for premeditated murder set forth in Article 340 of Criminal Code. The most dominant to influence someone to commit murder is the psychological factor. Human's display of behaviors is always driven by their psychological process. According to Albert Bandura (1973), human's criminal behavior is the fruit of a psychological learning process, of which mechanism is acquired from exposure to criminal behaviors committed by people around them and repeated reinforced exposures that increasingly encourage them to imitate the criminal behaviors they have seen. This shows that certain problems faced and experienced by an individual with environmental support such as the media that always expose criminal acts, unstable faith, unclear thoughts, and uncontrolled emotions lead people to desperation towards committing murder. Another factor related to a murderer's psychological problems is interpersonal problems between the perpetrator and the victim, such as a grudge, offense, harm or dispute which ultimately make it difficult for them to have amicable conversations.¹

Premeditated murder is set forth in Article 340 of Criminal Code "The person who with deliberate intent and with premeditation takes the life of another person, shall, being guilty of murder, be punished by capital punishment of life imprisonment or a maximum imprisonment of twenty years." This article also explains that a suspect in a premeditated murder can be sentenced by death penalty. Death penalty is also explained in Article 89 of Criminal Code Bill that alternative death penalty shall be rendered as a last resort for the people's welfare and carried out after the request for clemency is rejected by the President. Henceforth, Article 91 paragraphs (1)-(3) and Article 92 of Criminal Code Bill explain the conditions for death sentence execution in Indonesia.²

Human rights are the basic irrevocable rights or citizenship inherent in individuals from the time they are born, naturally and directly given by God Almighty that the state, the law, the government and everyone must respect, uphold and protect for the sake of human honor and dignity protection. Human rights include civil, political, social, and economic rights and the right to living in a healthy environment. Besides, Indonesia is obliged to protect and enforce the human rights. Human rights formulation can be found in legal regulations, which contain an understanding of human rights, including Law No. 39 Year 1999.³

As revealed by previous research by Adi Syahputra Sirait (2019) on the practice of criminal justice in Indonesia, a suspect or defendant often acts as a witness to testify for another suspect or defendant in the same case, commonly referred to as crown witness. Such practice is acceptable to the parties involved in Indonesia's criminal justice system, despite frequent objections from suspects or defendants asked to testify as witnesses. These objections include information submitted by the Suspect or Defendant in their status of Witness for the other Defendant, which can also

¹ Yogi Aranda, "Faktor-Faktor Kejahatan Pembunuhan Berencana Yang Dilakukan Oleh Anak Terhadap Anak," *Ius Poenale* 1 no. 2 (2020). <https://doi.org/10.25041/ip.v1i2.2065>

² Salvadoris Pieter and Erni Dwita Silambi, "Pembuktian Dalam Tindak Pidana Pembunuhan Berencana Ditinjau Dari Kitab Undang-Undang Hukum Pidana," *Jurnal Restorative Justice* 3, no. 1, (2019). <https://doi.org/10.35724/jrj.v3i1.1940>; refers to Sugeng Riyadi and Beny Timor Prasetyo, "Kebijakan Moderasi Pidana Mati Dalam RUU KUHP Perspektif Nilai-Nilai Pancasila," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi Konstitusi* 4, no. 2 (2021), <https://doi.org/https://doi.org/10.24090/volksgeist.v4i2.5329>.

³ Widhy Andrian Pratama, "Penegakan Hukuman Mati Terhadap Pembunuhan Berencana," *SIGN Jurnal Hukum* 1, no. 1 (2019): 29–41. <https://doi.org/10.37276/sjh.v1i1.34>

be used to ensnare himself. In addition, their information as a witness is made under oath, thus their statement shall be binding in the judicial process. Therefore, objections often arise and are considered violating human rights.⁴

In the research conducted by Ariyanti and Ariyani (2020), the protection for justice collaborators currently set forth in the new Indonesia's positive law covers physical and psychological protection, special handling, legal protection and decisions. Protection for justice collaborators is expressed in many regulations. There are no specific, clear, and certain regulations on the protection for justice collaborator. The status quo discourages perpetrators who are to testify as justice collaborators to uncover corruption cases, making them reluctant to give their testimonies since they assume respect and protection are uncertain. In fact, acting as a justice collaborator assumes a very big risk as it is to uncover a big case such as corruption cases. It is in such case the importance protection for a justice collaborator is aware of in one's role in disclosing a corruption case for justice collaborators to feel guaranteed with legal protection and certainty. Legal protection model for justice collaborators in dealing with corruption in Indonesia can be of persuasive protection model, which is comprehensive for protecting justice collaborators involving all law enforcement components authorized to handle corruption. Using this persuasive model, the institutional components will coordinate with each other, thus a justice collaborator who has given any information to one of the institutions will be protected by all of the institutional components.⁵

Research was conducted by Rusli, Aprinisa, Ningrat (2023) on the Witness and Victim Protection Agency (LPSK) as the executor of the protection and fulfillment of witness and victim's rights in Indonesia. In addition, LPSK in implementation of its duties also protects Justice Collaborators in dealing with certain criminal cases as stipulated in the Law on Witness and Victim Protection threatening their life. The services provided include physical protection, fulfillment of procedural rights, legal protection, medical assistance, psychological rehabilitation and rehabilitation, compensation and restitution.⁶

In the research by Lestari, Dewi, and Widyantara (2023), the legal arrangements for justice collaborator's testimony for judges' decision making in disclosing criminal murder cases are not specifically regulated in Code of Criminal Procedure or any other statutory regulations, but in some guiding provisions, namely statutory regulations -Invitations as referred to in Article 1 paragraph (2) of Law No. 31 Year 2014 Amendments to Law no. 13 of 2006; Item 9 letter a SEMA No. 4 Year 2011; and Article 1 paragraph (3) Joint Regulation of Minister of Law and Human Rights, Attorney General, KAPOLRI, KPK, and LPSK concerning Protection for Whistleblowers, Reporting Witnesses, and Collaborating Witnesses -, but the provisions state they cannot present complete but proportional jurisdiction, thus Justice Collaborator's existence is responded differently by law enforcers. With judges' consideration, in case of change in testimony, before and after acting as justice collaborator, the criminal sanction to be imposed on this Justice Collaborator shall be

⁴ Adi Syahputra Sirait, "Kedudukan Dan Efektivitas Justice Collaborator Di Dalam Hukum Acara Pidana," *Jurnal el-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan dan Pranata Sosial* (2020).

⁵ Dwi Oktafia Ariyanti and Nita Ariyani, "Model Pelindungan Hukum Terhadap Justice Collaborator Tindak Pidana Korupsi Di Indonesia," *Jurnal Hukum Ius Quia Iustum* 27, no. 2 (2020): 328–344. <https://doi.org/10.20885/iustum.vol27.iss2.art6>

⁶ Tami Rusli and Gustian Sapta Ningrat, "Penerapan Justice Collaborator Dalam Pemidanaan Pelaku Tindak Pidana Narkotika Berdasarkan Surat Edaran Mahkamah Agung Nomor 4 Tahun 2011 (Studi Putusan Nomor 90 / Pid . Sus / 2022 / Pn . Liw)," *Pagaruyuang Law Journal* 6, no. 2 (2023): 235–248. <https://doi.org/10.31869/plj.v0i0.4068>

adjusted to the severity of the perpetrator's crime. Even though the provisions concerning sanctions imposed on Justice Collaborator are not regulated in any provisions, that judges in this case may take the reasons for Justice Collaborator's confession during trials from investigation to court trials into consideration has actually provided a clear path for the enforcers. With the law to uncover criminal murder cases, a panel of judges takes their own considerations to render criminal sentence sanctions to Justice Collaborators.⁷

Some of the studies only focused on Justice Collaborator's position and effectiveness. The provisions concerning justice collaborator protection are set forth in SEMA No. 4 Year 2011 and Joint Regulation of Minister of Law and Human Rights, Attorney General, Indonesian National Police, Corruption Eradication Committee, and LPSK concerning Protection for Reporters, Reporting Witnesses, and Collaborating Witnesses. Human rights protection and fulfillment have not been taken into consideration. Therefore, the researcher desired to examine it further from human rights' perspective, regarding how the history of Justice Collaborator formulation, Justice Collaborator's position and function in Code of Criminal Procedure's perspective, and Human Rights assessment towards Justice Collaborators.

Human rights are a set of rights inherent in human as God Almighty's creature and are gift that the state, law, government and everyone need to respect, uphold and protect for the sake of human dignity and honor protection. Each of human rights creates basic obligations and responsibilities that need to be mutually respected and it is the government's duty to protect, promote and uphold them. Thus, researchers want to study human rights further so as to formulate the history of Justice Collaborator, its position and function in Code of Criminal Procedure's perspective, and its assessment from Human Rights' perspective. This aims to examine the history of Justice Collaborator, its position and function from Code of Criminal Procedure's perspective and its assessment from Human Rights' perspective.

RESEARCH METHODS

This study used a juridical-normative legal research method, through examining currently controversial legal cases⁸, and correlating them with legislation, court decisions, and legal theories. Through a qualitative approach, the research examined library materials (legal research) referring to the legal norms in Indonesia's legislation. The data were from secondary library materials including books, legal journals, legal theories, expert opinions and legal research results. The legal theory used, which was the relative theory or theory of purpose (*utilitarian or doeltheorieen*) with the meaning of the crime, was not just to retaliate or reward people for the crimes they have committed, but for certain useful purposes. The basis of justification for punishment according to this theory lies in its purpose. Criminals are punished not because people have committed crime, but for them not to commit any crime. Fadli Rajab Sanjani believes that Justice Collaborator is a perpetrator of a crime with the status of reporter, informant or witness who assists law enforcers. Additionally, the research by Adi Syahputra Sirait on Justice Collaborator's Position and Effectiveness in Code of

⁷ Ni Nyoman et al., "Justice Collaborator Dalam Pengungkapan Kasus Tindak Pidana Pembunuhan," *Jurnal Analogi Hukum* 5, no. 1 (2023): 8–13. <https://doi.org/10.22225/ah.5.1.2023.8-13>

⁸ Kornelius Benuf, Siti Mahmudah, and Ery Agus Priyono, "Perlindungan Hukum Terhadap Keamanan Data Konsumen Financial Technology Di Indonesia," *Refleksi Hukum: Jurnal Ilmu Hukum* 3, no. 2 (2019): 145–160. <https://doi.org/10.24246/jrh.2019.v3.i2.p145-160>

Criminal Procedure explains that Witness Collaborator who is Cooperating (Justice Collaborators) is very effective, as perpetrator's or witness of perpetrator's involvement in disclosing real criminal events considerably helps law enforcers eradicate the crimes to the root of the problem. The primary legal materials, meanwhile, were the Criminal Code (KUHP) and the Code of Criminal Procedure (KUHAP). The data were collected through library research for the main points of the research problems which were literature based. In addition, the research also used valid sources from the internet related to the problems studied.

ANALYSIS AND DISCUSSION

History of Justice Collaborator

The history of the justice collaborator started in 1970s, where the United States tried to expose the organized crimes committed by the Italian mafia. This was, however, prevented by the Italian mafia world's code of silence, *omerta*. At the beginning, the very first step was how the United States government protected the witnesses of perpetrators who collaborated (*justice collaborators*) trying and having good intentions in the context of eradicating and exposing a crime with many people involved and was well organized.⁹ Thus, the US Government ordered the Federal Bureau of Investigation (FBI) to strictly protect Joseph Valaci that he feared he would be hunted by his gang for giving the government information on their whereabouts and all forms of criminal activities (Thalib, Rahman, & Semendawai, 2017)., This was the basis of justice collaborator system application in US in seeking witness's testimony on truth.

In Indonesia, there were perpetrator's witness who collaborated before the enactment of Law on Witness and Victim Protection and SEMA No. 04 Year 2011 known as crown witness, while the term crown witness was non-existing in the Code of Criminal Procedure. Despite no exact definition of crown witness (*kroon getuide*) in the Code of Criminal Procedure Code, but practically and on empirical perspective there was crown witness. Here, the term "crown witness" is defined as: "witness who comes from and/or is taken from one or more suspects or other defendants who has jointly committed a criminal act and in which case the witness is given a crown. The crown given to the witness under defendant status is in the form of waiving the prosecution of his case or very light charge imposed on him when the case is submitted to the court or forgiving for the witness's mistakes."¹⁰

Justice Collaborator's Functions and Position

Norms are human's deliberative products and actions. Laws containing general rules serve as guidelines for individuals to behave in the society, both related to fellow individuals and to the society. These rules set limitation to the society in burdening or taking action against individuals. These rules' existence and implementation raise legal certainty. Judge's role in realizing legal certainty, justice and legal benefits can, among others, be observed through their decisions, in a

⁹ Triwanto Triwanto and Esti Aryani, "The Urgency of Granting Authority to Assess Corruption Justice Collaborators," *Bestuur* 8, no. 1, 2020, <https://doi.org/10.20961/bestuur.v8i1.42720>. <https://doi.org/10.20961/bestuur.v8i1.42720>

¹⁰ Bambang Sugiri, Nurini Apriandi, and Hanif Hartadi, "The Position of Convict as Justice Collaborator in Revealing Organized Crime," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* (2021).

judiciary there is an icon that can regulate and control the trial, namely the judge, basically the judicial process can run well depending on how the judge is carry out its main duties and functions. Judges in this case play a very important role to uphold justice and truth and prioritize legal interest. Therefore, judges must make a decision which may give the people a sense of security and describe legal certainty, justice and expediency. Witness's position in procedural law is very decisive as the main evidence. Witness's role in Law of criminal procedure is to reveal the merit of the case, from investigation to examination stages in trial, in accordance with article 184 of Code of Criminal Procedure (KUHAP). Witnesses greatly influence judges' confidence in deciding a case, but this is inversely proportional to witness's disclosure before the judges when they are asked for information which may actually be not true as expected in the principle of proof.¹¹ Evidence aims to seek material truth, and without evidence, the decision will be considered legally defective and robbing a person of his human rights. Thus, in proof, the judges will use their authority to find the ultimate truth, including applying justice collaborator submitted by the defendant in a jointly committed crime. Justice collaborator is a special criminal, but not as the main perpetrator admitting his actions and desiring to be a witness in the trial.¹² The provisions on justice collaborators are regulated in Supreme Court Circular (SEMA) Number 4 Year 2011 concerning treatment for whistleblowers and justice collaborators. This rule was strengthened by a joint decree of the Witness and Victim Protection Agency (LPSK), Office of Attorney General, Indonesian National Police, Corruption Eradication Commission and Supreme Court.

In certain crimes such as Criminal Corruption, Terrorism and Narcotics, the defendant may propose to be a Justice Collaborator on the ground that the crime is considered extraordinary as it is not committed only by one person, but by people systematically and in an organized manner, while each of them plays an important role in committing such crime.¹³ This also applies to a crime of premeditated murder. Thus, a justice collaborator must be seriously protected and paid attention to, as the person reporting is aware of the crime for law enforcers to disclose it. Such special treatment or handling is expressed in Article 10A of Law Number 31 Year 2014.

Assessment of Justice Collaborator's Human Rights

This is regarding exploration of organized crime. According to Karen Kharmer, at national level, organized crimes such as corruption can be found very difficult and complex to investigate and prosecute.¹⁴ In this regard, regulation on justice collaborator is something new in Indonesia. The initial idea for its domestic regulation can be traced to Presidential Instruction Number 9 Year 2011

¹¹ Zhulfiana Pratiwi Hafid, "Justice Collaborator Ditinjau Dari Undang-Undang Nomor 31 Tahun 2014 Perlindungan Saksi Dan Korban," *Jurnal Al-Qadau: Peradilan dan Hukum Keluarga Islam* 6 no. 1, (2019). <https://doi.org/10.24252/al-qadau.v6i1.9457>

¹² IKHP Susanto and I K Suardita, "Peran Penting Justice Collaborator Dalam Pengungkapan Kasus Tindak Pidana Korupsi Di Indonesia," *Kertha Wicara* 6, no. 2, (2017). <https://ojs.unud.ac.id/index.php/kerthawicara/article/view/26573>

¹³ Ni Luh Made Dwi Pusparini, A. A. Sagung Laksmi Dewi, and I Made Minggu Widyantara, "Urgensi Saksi Pelaku Yang Bekerjasama (Justice Collaborator) Dalam Tindak Pidana Korupsi," *Jurnal Interpretasi Hukum* 1, no. 1, (2020). <https://doi.org/10.22225/juinhum.1.1.2207.179-185>

¹⁴ Rahman Amin, "Analisis Perlindungan Hukum Saksi Pelaku Yang Bekerjasama (Justice Collaborator) Perkara Tindak Pidana Narkotika Dalam Sistem Peradilan Pidana Di Indonesia," *Jurnal Hukum Sasana* 6, no. 2, (2020). <https://doi.org/10.31599/sasana.v6i2.271>

concerning the 2011 National Action Plan for Prevention and Eradication of Corruption. However, these rules have undeniably been regulated in the United Nations Convention Against Corruption, and Indonesia as a state party is obliged to implement them.¹⁵

Actually, in Indonesia's practice of criminal justice, a defendant or suspect is often presented as witness to testify for another defendant of the same case, commonly referred to as crown witness. Such practice is acceptable to the parties involved in Indonesia's criminal justice system, despite frequent objections from the Suspect or Defendant questioned as a witness. The objections raised include, among others, information submitted by the suspect or defendant in their status of witness for the other defendant, which can also be used to ensnare himself. In addition, their information earlier as a witness is made under oath, while defendant's testimony is not made under oath. Thus, the statement will be binding in court trials. This will then be considered violating human rights.

Indonesia's Criminal Law Enforcement System on Justice Collaborator

The term justice collaborator is widely discussed today. One of the reasons is the news about Bharada E volunteering to be a Justice Collaborator from LPSK in the case of alleged murder of Brigadier J. Historically, justice collaborator was first introduced in 1970s in the United States. This practice emerged as a result of mafia's oath of silence at that time. Thus, certain facilities were given to mafia members for them to provide information, called justice collaborator. Internationally, justice collaborator is regulated by UNCAC (United Nations Convention Against Corruption), especially in Article 37 paragraphs (2) and (3) regulating the handling of special cases for perpetrators of criminal corruption who wish to cooperate with law enforcers aiming for prosecuting other perpetrators in the relevant case. Justice collaborators themselves are perpetrators of jointly committed jointly or organized crimes of any forms but willing to cooperate with law enforcers to testify regarding various forms of criminal acts related to organized and serious crimes.¹⁶

Justice Collaborators play a major role in assisting investigators and public prosecutors with proof of a criminal case, especially in organized crime. Justice Collaborators have essential knowledge of the organized crime's structure, methods of operation, and activities and the organized crime's relation to or networks with other groups. In Indonesia, the Justice Collaborator practice was applied to the Vincentius Amin Susanto, Agus Condro Prayitno, Yohanes Waworuntu, Susno Duadji, and Endin Wahyudin cases.

A country's legal system includes the equality principle in its law formulation. Some of legal concepts, definitions, approaches and legal rules have put protection from discrimination and realized the right to equality to a higher level. However, differences between the international law of human rights and national level's approach to equality hinder its progress. Therefore, great efforts are highly needed to modernize and integrate the legal standards with regard to protection from discrimination and support for equality. Constitutional country's view emphasizes three main notes: supremacy of law, equality before the law, and individual rights based constitution. The principle of equality (equality before the law) as one point of the rule of law in addition to the supremacy or supreme power of law and human rights aims at upholding justice where equality

¹⁵ Abdul Haris Semendawai, "Penetapan Status Justice Collaborator Bagi Tersangka Atau Terdakwa Dalam Perspektif Hak Asasi Manusia," *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)* 3, no. 3 (2017): 468–490. <https://doi.org/10.22304/pjih.v3.n3.a2>

¹⁶ F Karuniawan, "Konsep Whistleblower Dan Justice Collaborator Dalam Tindak Pidana Korupsi," *Jatiswara* 32 no. 2, (2017). <https://jatiswara.unram.ac.id/index.php/js/article/view/120>

of position shall be interpreted as not distinguishing anyone. Thus, this principle is presented to prevent discrimination in a country's legal order. Justice collaborator's position in law of criminal procedure, especially in Indonesia, is strengthened by the *lex specialis derogat legi generalis* principle (a Latin term to mean legal principles implying that rules of a special nature overrule those rules of a general nature). This principle is used to overcome conflicts between laws with a broader regulatory substance and laws with a narrower one. This principle shall apply in case a legal event is related to or violates several regulations to give "criminal" the opportunity to "repent" the crime they have committed. The advantages and privileges of a person serving as a justice collaborator seem to make it easier for him even if the losses resulting from the crime have a big impact. A justice collaborator is also closely related to his participation in the crime.¹⁷

Examining the relation of justice collaborators with investigative agencies and investigators is based on the mutualism concept, in which justice collaborators act as investigators' colleagues and investigators act as law enforcers in uncovering extraordinary crimes, all of which under the Integrated Criminal Justice system. Besides, the disadvantages of using justice collaborators can be observed from the parameters in determining whether or not someone is the mastermind (main actor), which may actually be biased, since this matter is not fully regulated contained in the law. Thus, when each of the perpetrators plays the same role as the others, it will be very difficult to determine who the mastermind among them is.

Regulations on and Challenges for Justice Collaborator in Indonesia

In regulatory context, Law No. 8 Year 1982 does not regulate justice collaborator, although the term crown witness appears in practice. However, crown witness in its development is actually considered violating human rights, especially the right not to provide information that may incriminate the suspect/defendant himself. Meanwhile, Justice Collaborator arises in upholding human rights in criminal justice process as recommended by of the United Nations' international conventions.

Despite Law No. 13 Year 2006 concerning Witness and Victim Protection, the regulation regarding justice collaborators is insufficient. The Supreme Court later issued Supreme Court Circular No. 4 Year 2011 concerning Treatment for Whistleblowers and Justice Collaborators (Witnesses by Co-operating Perpetrators) in Certain Criminal Acts on 10 August 2011. This SEMA set guidelines on criminal charges against justice collaborators with the following criteria:

1. The concerned person is the perpetrator of a certain crime, admits that he is not the main actor and provides information as a witness in the case;
2. The Public Prosecutor has explained in his indictment that the concerned person has provided significant information and evidence so as to reveal relevant crime.

In the face of such case, the judges examining the case are to decide:

1. Conditional probation; and/or
2. The lightest imprisonment sentence in consideration of justice in the society.

¹⁷ Mohammad Tang, "Kajian Yuridis Implikasi Justice Collaborator Terhadap Perkara Pidana," *Tadulako Master Law Journal* 5, no. 1 (2021). <http://jurnal.untad.ac.id/jurnal/index.php/TMLJ/article/view/14863>

However, due to SEMA's characteristic of binding only judges, a Joint Regulation was formulated by the Minister of Law and Human Rights, Attorney General, KAPOLRI, KPK, and Head of LPSK concerning Protection for Reporting Reporters, Reporting Witnesses, and Collaborating Perpetrator's Witness was enacted on 14 December 2011. Due to the importance of justice collaborator's role, the government and DPR finally amended Law No. 13 Year 2006 by Law No. 31 Year 2014 concerning Witness and Victim Protection. In this case, Article 10 paragraphs (1) and (2) specifically stipulate "Witnesses, victims, perpetrators' witnesses, and/or plaintiff cannot be prosecuted legally, either criminally or civilly, for the testimony and/or report that will be, is being, or has been given, unless the testimony or report is given other than in good faith. "In case of a lawsuit against a witness, victim, perpetrator's witness, and/or reporter for the testimony and/or report that will be, is being, or has been given, the lawsuit must be postponed until the case he reports or he testify for has been decided by court and acquired permanent legal force."

In addition, Justice Collaborator shall receive the following special treatments:

1. As suspect, defendant, and/or convict whose crime has been revealed;
2. Separate examination between the files of Perpetrator's Witness and the files of the suspect and the accused in investigation and prosecution process of the crimes he disclosed; and/or
3. Testimony in front of the trial without directly dealing with the defendant whose crime is revealed.

Meanwhile, Justice Collaborators shall be awarded with:

1. Remission of criminal penalties; or
2. Conditional release, additional remission, and the rights of the other convicts in accordance with the provisions of laws and regulations for Perpetrator's Witnesses who are prisoners.¹⁸

However, applying such witness still has some challenges. First, the term "perpetrator' witness" is not recognized in the Code of Criminal Procedure (KUHAP). The Code only recognizes victim's witness, *a de charge* witness (who relieves the defendant), *a charge* witness (who incriminates the defendant), and *de auditu* witness (who only hears from other people). Besides, the term "crown witness" is also known based on Supreme Court Decision Number 2437 K/Pid.Sus/2011. On some occasions, investigators still rejected the status of perpetrator's witness on the pretext that this status does not exist in the Code of Criminal Procedure. Second, LPSK still finds it difficult to obtain information from investigators related to their investigations in case of perpetrator requesting LPSK to be a witness of the perpetrator. Third, if perpetrator's witness is determined by judge without public prosecutor's request, there is reluctance among public prosecutors to state it in their official report to the correctional institution. Fourth, recommendation as witness for perpetrator is not concentrated on LPSK, but by investigators, prosecutors, and heads of correctional institutions, which may have potential conflict of interest, even corrupt relationship. In such case, LPSK asked the President through Minister of Law and Human Rights to issue a presidential regulation on coordination of law enforcers and LPSK regarding perpetrator's witness. However, the challenge

¹⁸ Novitha Sitohang, "Analisis Yuridis Penerapan Justice Collaborator Dalam Tindak Pidana Korupsi (Studi Putusan Mahkamah Agung Nomor 430 K/Pid.Sus/2018)," *Jurnal Hukum Adigama* 4, no. 1, (2021). <https://doi.org/10.24912/adigama.v4i1.11244>

is with perpetrator's position as witness of another perpetrator, as if he will be hostile to his own colleagues. This will raise threat to his or his family's life, safety and physical retaliation. The perpetrator's witness may potentially have their careers and livelihoods busted. The other challenge is that they will face complex and complicated legal processes they need to go through.¹⁹

LPSK is the only institution authorized to determine whether or not a person deserves legal protection. If deemed worthy, a person will have one status, either witness, victim or reporter? Approval for the application shall be expressed into an agreement. The Agreement shall then be used by Prosecutor as reference to make prosecution or be used by Judges as proof for mitigation, since the SEMA emphasizes that Judges are still obliged to take it into consideration. Point 7 of SEMA No. 4 Year 2011 emphasizes that judges are to provide criminal relief and/or other forms of protection to reporters of criminal acts and witnesses who are cooperating. This is also a misleading point, since the authority to provide legal protection is given by Law No. 13 Year 2006 to LPSK instead of judges, unless it is confirmed to be at judges' request to LPSK to provide legal protection, since in examination process, perpetrator's witness deserves protection. Related to point 7 of the SEMA, perpetrator's witness can request Judges for legal protection. In fact, Article 29 letter a in conjunction with Article 32 paragraph (1) letter b of Law No. 13 Year 2006 states "protection for the safety of Witnesses and/or Victims can only be terminated based on the reasons at the request of authorized official in case the request for protection for Witnesses and/or Victims is on the concerned official's request." The provisions in the SEMA which were initially expected to implement guidelines in Article 10 of Law No. 13 Year 2006 even add to the problem. This is due to unclear understanding of the definition of whistleblower, thus the regulation in SEMA No. 4 Year 2011 raises ambiguity. This SEMA contradicts Law No. 13 Year 2006, thus Law No. 13 Year 2006 on the provisions for whistleblowers and justice collaborators needs to be revised and formulated clearly and more detailed.

Justice Collaborator's Implications for Human Rights in Indonesia

So far, policy makers and law enforcement officers focused their attention more on criminal perpetrators but quite least on witnesses and reporters who played actual role in uncovering crimes. In fact, there is a specific law on witness protection, Law No. 13 Year 2006 concerning Protection for Witnesses and Victims. According to the preamble to the law, this law is needed that it takes the importance of witness and/or victim testimony into account as a means of proof in for clarity of criminal acts by perpetrators, while law enforcers often have difficulties as they may not present witnesses and/or as for witness protection, both physically and psychologically, from certain parties. Prior to enactment of Law No. 13 Year 2006, witness protection for certain criminal acts had been set forth in many laws and regulations.²⁰

These regulations differentiate parties needing protection. In human rights violations, for example;

¹⁹ Firman Wijaya, "Rekonstruksi Keadilan Dalam Pengungkapan Tindak Pidana Korupsi Melalui Whistleblower Dan Justice Collaborator," *Jurnal Ilmiah Widya* 3, no. 4, (2017). <http://e-journal.jurwidyakop3.com/index.php/jurnal-ilmiah/article/view/260>

²⁰ Puteri Hikmawati, "Upaya Perlindungan Whistleblower Dan Justice Collaborator Dalam Tindak Pidana Korupsi," *Negara Hukum : Membangun Hukum untuk Keadilan dan Kesejahteraan* 4, no. 1, (2013): 87–104, <https://jurnal.dpr.go.id/index.php/hukum/article/view/197>.

1. Witness and victim protection is regulated in Article 4 of Government Regulation (PP) No. 2 Year 2002 concerning Procedures for Victim and Witness Protection in Serious Human Rights Violations (implementing regulation of the provisions of Article 34 paragraph (3) of Law No. 26 Year 2000 concerning Human Rights Court),
2. Witness protection in money laundering crime is regulated in Article 5 PP No. 57 Year 2003 concerning Procedures for Special Protection for Whistleblowers and Witnesses of Criminal Money Laundering (implementing regulation of the provisions of Article 40 paragraph (2) and Article 42 paragraph (2) of Law No. 15 Year 2002 concerning Criminal Money Laundering as amended by Law No. 25 Year 2003), and
3. Witness protection in criminal acts of terrorism is regulated in Article 3 of PP No. 24 Year 2003 concerning Procedures for Witness, Investigator, Public Prosecutor, and Judge Protection in Criminal Terrorism Cases (implementing regulation of the provisions of Article 33 and Article 34 of Law Number 15 Year 2003 concerning Stipulation of Government Regulation in Lieu of Law Number 1 Year 2002 concerning Eradication of Criminal Acts of Terrorism to be Law).

The various laws and regulations governing witness protection are considered inadequate, thus there is a need to formulate a law to specifically regulate witness and victim protection as Law No. 13 Year 2006 concerning Witness and Victim Protection. The provisions on witness and victim's protection and rights in Law no. 13 Year 2006 are regulated in Articles 5 to 10. Various rights can be given to a witness and victim for a sense of security for them to provide information in any criminal justice process. These rights include: a. acquire protection for their personal, family, and property security, and freedom from threats related to the testimony that they will, are currently, or have given; b. participate in the process of selecting and determining the forms of security protection and support; c. provide information without pressure; d. have a translator; e. be free from tricky questions; f. obtain information on the case's development; g. obtain information on court decisions; h. be informed of release of the convict; i. get a new identity; j. get a new residence; k. be reimbursed for transportation costs; l. get legal advice; and/or m. obtain temporary living expenses assistance until the end of protection period.²¹

Although the use of justice collaborators significantly contributes to exposing serious crimes such as bringing main criminal perpetrators to justice and successfully stopping and saving the state from losses, however, there are still issues raising from this practice. Granting a justice collaborator status is considered violating the human rights and equalized crown witness. For this reason, there is a need to further examine granting a justice collaborator status in human rights' perspective by having discussion on articles related to suspect's or defendant's statement as referred to in the International Covenant on Civil and Political Rights (ICCPR), comparing justice collaborators with crown witnesses, and showing justice collaborator arrangement in Indonesia's laws and regulations and other applicable regulations. The international community's attention to law enforcement practices in the criminal justice process has led to various international conventions or UN treaties on human rights. Even the ICCPR expressly stated a number of rights to be respected in any criminal justice process, and a number of other more technical conventions to ensure fulfillment of

²¹ Jupri, "Reward Keringanan Saksi Pidana Bagi Justice Collaborator Perkara Korupsi," *Jurnal Transformative* 4, no. 1, (2018).

the rights of suspect, defendant and convict's statuses, such as the UN convention against torture and other cruel, inhuman or degrading treatment or punishment. The United Nations has also issued a number of standards and guidelines to ensure suspect or defendant's human rights are not violated under any circumstances.

CONCLUSION

Based on the foregoing discussion, we may conclude that justice collaborator's position is a rule of specific nature (*lex specialis derogat lex generalis*) as guidance for law enforcers (police, prosecutors and judges) to uncover a gang or syndicate's very deliberate, systematic and organized crimes. Therefore, the application of justice collaborators through law Number 13 of 2006 concerning witness and victim protection which was later translated into the technical regulation (Supreme Court Circular (SEMA) Number 4 Year 2011 concerning Treatment for Whistleblowers and Witness Collaborators) is very effective, since perpetrator's or witness of perpetrator's involvement in disclosing real criminal events is very helpful for law enforcers to eradicate such crimes to the root of the problem. Justice Collaborator's status is different from that of a crown witness that has been widely practiced in criminal justice processes in Indonesia. Crown witness has been widely opposed that it is considered violating the human rights as the initiative to give testimony comes from law enforcers. In such case, occasionally, even after crown witnesses have stated they refuse and are not willing to testify for the accused in the same case, but they are still forced by law enforcers to do so.

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