



Conceptualization of Grant of Justice Collaborator Status to Main Actors in Criminal Actions

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Abstract: The concept is not the main actor in determining *Justice collaborators* reap debate. This is because Richard Eliezer in the Brigadier J murder case was the main executor, even though he was the only person who was ordered to do so, but his position was that they were both perpetrators, but in fact it was accepted by the panel of judges. This research is a legal research with normative juridical approach and is aimed at examining the conceptualization of granting *justice collaborator status* to the main actors in criminal acts and the authority to grant *justice collaborator status* to the main actors in criminal acts. The results of the study state that the conceptualization of granting *justice collaborator status* to the main actors in criminal acts leads from the subjective pendulum to the objective pendulum. This means that so far the determination has been based on the subject, namely the main actor. However, with the rejections of *Justice collaborator* witnesses previously determined by the KPK or Prosecutors, the judge sees the objective actions of the perpetrators, this is what is called objective, no longer subjective whether the perpetrators themselves are the main actors or not. Determining the status of a *justice collaborator* who is awarded with a decision is the authority of the judge.

Keywords: Conceptualization, Granting Status, and Justice Collaborators

INTRODUCTION

Witness testimony is one of the most important pieces of evidence in a criminal case. The witness is a key to be able to reveal a crime, without witnesses it will be difficult for a case to reveal the truth. The existence of a witness is needed to uncover a crime that is difficult to prove, which is usually carried out in a systematic and organized manner or what is known in Indonesia as a congregational crime.¹

One way to dismantle organized criminal acts that are difficult to uncover is through cooperation with other actors who also commit these crimes. Someone who conveys an

¹Widyo Pramono, 2014, *Protection of Witnesses Who Collaborate in Handling Serious and Organized Crime*, Attorney General's Office, Jakarta, p.15

alleged crime to law enforcement officials, but he is also a person involved in a crime. In the concept that applies internationally, people with this kind of status are referred to as *Justice collaborators*.² In difficult cases such as the murder of Brigadier J, for example, disclosure through Richard Eliezer is urgently needed, because previously there were fake scenarios aimed at obscuring criminal events.

The basic concept of *Justice collaborator* is a joint effort to seek the truth in order to reveal justice to be conveyed to the community. The search for truth together is the context of *collaborators* from two diametrically opposite sides: law enforcers and law breakers.³

The birth of a law that facilitates the cooperation of witnesses, perpetrators who cooperate (*Justice collaborators*) with law enforcement was first introduced in the United States in the 1970s. This facility is none other than to deal with the mafia, which has long implemented omerta (the oath of silence is also the oldest law in the Sicilian Mafioso world).⁴The definition of a *Justice collaborator* is based on the Supreme Court Circular Number 4 of 2011 Concerning the Treatment of *Whistleblowers* and *Justice collaborators* as a perpetrator of a particular crime, but not the main actor who admits his actions and is willing to be a witness in the judicial process.⁵

Based on the conception of the perpetrators of certain crimes, but not the main actors, this is the basis for rejecting several defendants of criminal acts to be appointed as *Justice collaborators*. There were several defendants who failed to be appointed as *Justice collaborators*, including the following:

Table 1. Justice collaborators

No	Name	Case	Information
1.	Abdul Khoir	Maluku BPJN IX Bribery Case at the Central Jakarta Corruption Court	The Panel of Judges rejected <i>the Justice collaborator status</i> granted by the KPK on the grounds that Abdul Khoir was the Main Actor. Even though it was later appealed, <i>the Justice collaborator status</i> was returned to Abdul Khoir by the Panel of Appeal Judges.
2.	Rinelda Bandaso	Corruption Crime	Rienelda Bandaso has obtained <i>Justice collaborator status</i> determined by the KPK with various considerations, although until now no other actors have been named as Defendants except for those who have been exposed to OTT, namely Irenius, Stiadi, Dewi Yasin Limpo and Bambang and Rienelda herself, all of whom have been affected by OTT. Even so, the Corruption Eradication Commission continues to grant <i>Justice collaborator status</i> to Rienelda Bandaso, who is a special staff member for Dewi Yasin Limpo. In the end the Panel of Judges rejected the status of <i>Justice collaborator</i> Rienelda Bandaso.
3.	Kosasih Abbas	Corruption Crime	<i>Justice collaborator status</i> from the KPK, but because his case files were merged with other cases, the Defendant's sentence was increased so that his <i>Justice collaborator status</i> was set aside .
4.	Rohadi	Corruption Crime	Rohadi is considered as the main actor which is a factor excluded as JC.
5.	Abdul Khoir	Corruption Crime	The judge considered that the determination of JC according to the decision of the KPK leadership was inappropriate, so

² Abdul Haris Semendawai, SH, LL.M, The Existence of a Justice Collaborator in Corruption Cases, Notes on the Urgency and Juridical Implications of His Determination in the Criminal Justice Process. Presented at the General Stadium of the Faculty of Law, Indonesian Islamic University, Jogjakarta, 17 April 2013.

³Kurniawan Tri Wibowo, 2021, *Plea Bargaining as Legal Reform in the Indonesian Criminal Justice System*, Literature Library, Surabaya, p. 36

⁴Lilik Mulyadi, 2015, *Legal Protection Against Whistleblowers and Justice Collaborators in Efforts to Mitigate Organized Crime*, PT. Alumni, Bandung, h. 5.

⁵SEMA Number 4 of 2011 Concerning Treatment for Whistle Blowers and *Justice Collaborators*

			it could not be used as a guideline
6.	Stepanus Robin Pattuju	Corruption Crime	The judge is of the opinion that what the defendant will disclose has no relevance to the a quo case and the defendant is also the main actor in this case so that the panel is of the opinion that the defendant's application must be rejected

The concept is not the main actor in determining *Justice collaborators* reap debate. This is because Richard Eliezer in the Brigadier J murder case was the main executor, even though he was the only person who was ordered to do so, but his position was the same as the perpetrators, but in fact he was accepted by the panel of judges and given a very light sentence compared to the other perpetrators. In addition, the authority to determine a *Justice collaborator* is still a matter of controversy. This can be seen from the cases of Rinelda Bandaso, Kosasih Abbas and Abdul Khoir who have been appointed as *Justice collaborators* by the KPK but was rejected by the Panel of Judges. This is in contrast to Richard Eliezer, who the prosecutor believed to be the main executor, so he was charged with 12 years, but the judge was sentenced to 1 year and 6 months as a reward for becoming a *Justice collaborator*. This certainly raises an interesting anomaly to be studied scientifically.

LITERATURE REVIEW

Protection Witness

testimony is the main thing in a criminal case, or it can be said that a criminal case is inseparable from the evidence of witness testimony. Almost every proof of a criminal case is always based on examining witness statements and in accordance with other evidence. The witness is a party involved in a criminal case, he occupies an important role and function in an examination of a case before a court. Without witnesses, a crime will be difficult to reveal the truth. The purpose of the judge questioning witnesses is to provide an opportunity to declare that the suspect is innocent, or if guilty admits his guilt.⁶

The Criminal Procedure Code Article 1 point 26 states that:

"Witness is a person who can provide information in the interest of investigation, prosecution and trial regarding a criminal case that he has heard for himself, saw for himself and experienced for himself."⁷

Likewise with Law Number 13 of 2006 Article 1 point 1 also states that:

"Witness is a person who can provide information for the purposes of investigation, investigation, prosecution and examination at court hearings regarding a criminal case that he himself heard about, saw for himself, and/or experienced himself".

In terms of meaning, there is nothing different, it's just that there is a slight refinement of the language. Wirjono Projodikoro interprets that a witness is a mere human or an ordinary human being. He can deliberately lie, and can also honestly tell something, as if the truth were actually not true. A witness must tell what was past, and depending on the memory of the individual, whether it can be trusted for its truth.⁸ With the understanding of this witness shows how meaningful a testimony is in the criminal justice process, so that a criminal act is revealed. Thus it can be concluded that a witness is someone who provides information in the criminal justice process to find a bright spot whether a crime actually occurred as he himself heard, saw for himself and/or experienced it himself.

⁶Andi Hamzah, 2006, *Introduction to Criminal Procedure Law*, Ghalia Indonesia, Jakarta, p . 162.

⁷Soenarto Surodibroto, 2007, *Criminal Code and Criminal Procedure Code Completed Jurisprudence Supreme Court And Hoge Raad*, Radjagrafindo Persada, Jakarta, p . 355

⁸ Wirjono Projodikoro, 2004, *Indonesian Criminal Procedure Code*, PT. Raja Gravindo, Jakarta, p . 7.

A witness has a very important role in disclosing a crime. The success of resolving a criminal case is highly dependent on whether or not there are witnesses who report the criminal incident. Even though witnesses have an important position in the justice system in Indonesia, namely playing a role in assisting the police in uncovering a crime, the Criminal Procedure Code sees witnesses more as part of evidence and does not regulate witnesses as parties who need to be protected. Legislators prioritize the position of suspects or defendants, all of which are contained in the Criminal Procedure Code.

Witness testimony is the first piece of evidence referred to in Article 184 of the Criminal Procedure Code. Rules _ Specifically regarding witness testimony, it is only regulated in 1 (one) article, namely Article 185 of the Criminal Procedure Code, which among other things explains what is meant by witness testimony and how the strength of evidence is concerned. Article 185 KUHAP formulates as follows:

- (1) Witness testimony as evidence is what the witness stated in court.
- (2) The testimony of a witness alone is not enough to prove that the defendant is guilty of the actions he is charged with.
- (3) The provisions referred to in paragraph (2) do not apply if accompanied by other valid evidence.
- (4) The statements of several independent witnesses about an incident or situation can be used as a legal means of evidence if the statements of the witnesses are related to one another in such a way as to justify the existence of a certain event or situation.
- (5) Both opinions and conjectures, which are obtained from mere thoughts, are not witness statements.
- (6) In assessing the truth of a witness's testimony, the judge must seriously pay attention to:
 - a. Correspondence between one witness and another
 - b. Conformity of witnesses with other evidence.
- (7) Reasons that may be used by witnesses to give certain statements.
- (8) The way of life and decency of witnesses as well as everything that in general can influence whether or not the testimony can be trusted.
- (9) Statements from witnesses who are not sworn in, even though they agree with each other, do not constitute evidence, however, if the statements are in accordance with the statements of witnesses who are sworn in, they can be used as additional legal evidence.

Barda Nawawi Arief state that definition protection can seen of 2 meanings, namely:

- a. can interpreted as " protection". law For No become a victim of an act criminal” (mean protection of human rights or interest law someone).
- b. can interpreted as " protection". For obtain guarantee / compensation law on suffering / loss of people who have become a victim of an act criminal” (So identical with " victim compensation "). Form compensation That can form recovery Name good (rehabilitation), recovery balance inner (among others with forgiveness), gift change loss (restitution, compensation, guarantee/ compensation). well-being social), and so on.⁹

Protection according to the Indonesian dictionary is an attempt to defend one's rights and obligations with rules or laws as limitations. Meanwhile, according to Law no. 13 of 2006 concerning Protection of witnesses and victims are all efforts to fulfill rights and provide assistance to provide a sense of security to witnesses and/or victims that must be implemented by witness and victim protection agencies in accordance with the provisions of this law.

Law Number 13 of 2006 Concerning the Protection of Witnesses and Victims, the rights of witnesses are regulated in Article 5 Paragraph (1) which formulates:

⁹ Barda Nawawi Arief, 2007, *Problems Law Enforcement and Criminal Law Policy in Countermeasures Crime*, Publisher Kencana, Jakarta, p . 61.

- (1) A witness and victim has the right:
 - a. Obtain protection for personal, family and property security, and be free from threats relating to testimony that will be, is being given, or has been given;
 - b. Participate in choosing and determining forms of security protection and support;
 - c. Give information without pressure;
 - d. Got a translator;
 - e. Free from ensnared questions;
 - f. Obtain information regarding the progress of the case;
 - g. Obtain information about the progress of court decisions;
 - h. Knowing in case the accused was acquitted;
 - i. Got a new identity;
 - j. Get a new residence;
 - k. Obtain reimbursement of transportation costs as needed;
 - l. Obtain legal advice, and/or;
 - m. Obtaining temporary living expenses assistance until the protection deadline expires.

Justice Collaborator

Birth facilitating legislation cooperation witness actors who cooperate (*Justice Collaborator*) with enforcer law first introduced in the United States in the 1970s. Facilitation the nothing else for confront the mafia, which has long been apply the omerta (oath closed mouth at a time is law oldest in the Sicilian Mafioso world).¹⁰ Draft base *Justice collaborators* are effort together For look for truth in framework reveal the justice you want be delivered to society. Search truth in a manner together that's context *collaborators* from two diametrically opposite sides: enforcement laws and offenders law.¹¹

Understanding *Justice collaborator* based on Circular Letter Supreme Court Number 4 of 2011 About Treatment for *Whistleblower* and *Justice collaborator* is as a perpetrator follow criminal certain, however No perpetrator major acknowledged _ do and be ready become witness in the judicial process. ¹²Mr. Ahmad Santosa¹³ give understanding about *Justice collaborators* namely:

“*Justice collaborators* or cooperating actors is someone to help apparatus enforcer law with give reports, information, or possible testimony reveal something follow criminal where is that person involved inside follow criminal the or follow criminal other. What was revealed by the perpetrators who worked The same This among others is perpetrator main follow criminal, assets results follow criminal, mode of action crime, and network follow criminal.”

Term *Justice collaborators* in the United States own Lots equivalents, like *informant witnesses*, *confirming evidence*, *corroborative evidence*, *crown witnesses*, as well *state witness*. Several other countries also provide different terms. In Holland more famous with designation *krongetuige*. German call it with *staatszeugen* or *kronzeuge* ; in Italy known as *pentiti* or *pentito* and later become *collaborators della giustizia* . It is known in England and Northern Ireland with designation *supergrass*, in France call it with *repenti*, in Belgium with *spijtoptant*, and in Spanish called with *arrenpenditos*.¹⁴

¹⁰ Lilik Mulyadi, *Op cit.*, p . 5.

¹¹ Detik News, 12 May 2012, *convention " together between the Supreme Court*, Kemenkumham, Attorney General's Office, KPK, Polri and LPSK as of 19 July 2011.

¹²SEMA Number 4 of 2011 Concerning treat for Whistle Blowers and *Justice Collaborators*.

¹³Mr. Ahmad Santosa, *Op cit.*,

¹⁴ Dwinanto Agung Wibowo, 2011, *Role Witness Crown in Justice Criminal in Indonesia*, Thesis: Faculty of Law, University of Indonesia, p . 50.

To Witness Cooperating Actors, Judges instructed based on SEMA Number 4 of 2011 For determine punishment to be dropped with consider things drop criminal as following:

1. Drop criminal test conditional special; and/ or
2. Drop criminal the lightest prison among defendant other proven guilty in the matter in question. Giving treatment special in form relief criminal, must judge did still must attention to justice society.

Inside judge determine punishment to be dropped can consider drop criminal test conditional special for Witness Cooperating Actor (Justice *Collaborator*) or drop criminal form criminal the lightest prison among Defendant other proven guilty in the matter in question. In gift treatment special and shape relief permanent judge must consider fairness society.

Authority

Authority according to HD. Deep Stout Juniarso Ridwan and Achmad Sodic Sudrajat defined as throughout relevant rules with acquisition and use authority rule by subjects law public inside connection law public.¹⁵ Authority own position important in study law constitution and law administration. So importance authority this, then draft That can said as the most important thing in constitutional law and law state administration. Besides matter the in authority there is necessary rights and obligations run. Whereas according to P Nicolai in Juniarso Ridwan and Achmad Sodic Sudrajat said:

Ability For do action law particular (ie intended actions For raises consequence law, and covers about arising and disappearing consequence law). Rights contain freedom For door No do action certain or according to other party for do action certain, meanwhile obligation load must For door No do action certain.¹⁶

According to Bagir Manan, authority in Language law No The same with power (*macht*). Power only describe right For door No do. In law, authority at a time means rights and obligations (*rechten en plichten*). In connection with autonomy area, right contain understanding power For arrange Alone (*zelfregelen*) and manage Alone (*zelfbesturen*), whereas obligation horizontally means power For organize government as should. Vertical means power For operate order taker in One orderly bond government in a manner whole.¹⁷

Along with the main pillars of the rule of law, namely principle legality (*legaliteitsbeginsel* or *het beginsel van wetmatigheid van bestuur*), based on principle This implied that authority government originate from regulation legislation. kindly theoretical, sourced authority from regulation legislation That obtained through three method that is attribution, delegation and mandate.¹⁸ About understanding attribution Indroharto put forward that is meant with attribution is gift authority a new government by a provision in legislation whether done by the *original legislator* or *delegated legislators*".¹⁹

HD. van Wijk argue, that understanding from delegation is " Submission authority government from an entity or official government to the body or official government other". Then van Wijk explain more further, that authority that can from delegated Again to subdelegatarian . More he continued Again He express:

Form normal delegation is form where in agency First something authority represented government to something institution government submitted by the institution This to institution another government. However, parties which is delegated also sometimes

¹⁵ Juniarso Ridwan and Achmad Sodic Sudrajat, 2010, *State Administrative Law and Policy Public Service*, Shades, Bandung, p . 136.

¹⁶*Loc city*.

¹⁷*Ibid .*, p . 137.

¹⁸ *Ibid .*, p . 139

¹⁹ *Ibid .*, p . 138

Can deliver authority this, so We can speak about subdelegation. For subdelegation applies *mutatis*, the same rules like For delegation.²⁰

In matter bestowal authority government through delegation the there is conditions as following:

- 1) Delegation must definitive and giver delegation No can Again use Alone authority that has bestowed it.
- 2) Delegation must based on provision regulation legislation, that is delegation only only possible if There is provision For That in regulation legislation.
- 3) Delegation No to subordinate, that is in connection hierarchy staffing No allowed exists delegation.
- 4) Obligation give adverb (explanation), meaning delegation authorized For request explanation about implementation authority the.
- 5) Regulation policy, that is delegate give instructions (hint) about use authority the.²¹

Obtained authority through attribution and delegation Can mandated to the body or employee subordinate If obtaining official authority That No able For do alone. HD. van Wijk explain the meaning of the mandate is an organ of government allow authority run by other organs above his name. Different with delegation, regarding mandate, giver mandate still authorized For do Alone authority if He want, and give instruction to mandatory about what does he want. Mandans or giver mandate still responsible answer on actions taken by the mandate as said by Van Wijk, as following :

On mandate We No can speak about transfer power or authority in a juridical sense, now has handled by and above Name institution government concerned, the handling is also submitted to institution such; speak in a manner juridical, anyway is decision institution That alone. here We speak about something form representative institution government. giver mandate or mandans also remained authorized For handle Alone authority when is it want, he Can give to the mandates all the form it considers necessary, is entirely responsible answer on all decision taken based on mandate. kindly juridical, saying mandatory No other than words mandans.²²

Based on whole the description above will get concluded that, attribution is gift authority over the agency or certain state institutions/officials good by shaper Invite Constitution and shaper Invite Invite, meanwhile delegation, that is submission or bestowal authority from the body/ institution state administration officials to other state administration officials agencies or institutions with consequences not quite enough answer switch on receiver delegation. then mandate just bestowal authority with not quite enough answer Still held by the giver mandate, different with overall delegation responsibility switch to the delegated person.

Research Method

This research is alegal research with normative juridical and empirical juridical approaches. The normative juridical approach is used to examine legal principles, law in abstracto, in concreto, vertical and horizontal synchronization, comparative law, and legal history²³ which through this research the authors identify various rules (norms) that are related to the conceptualization of granting justice collaborator status to the main actors in criminal acts. Thus the author uses several approaches, namely the statutory approach, the

²⁰Ridwan HR, 2011, *State Administrative Law, Revised Edition*, PT Raja Grafindo Persada, Jakarta, p . 103.

²¹ Juniarso Ridwan and Achmad Sodic Sudrajat, *Op cit .*, p . 139

²² *Ibid .*, p . 139-140

²³ Soerjono Soekanto, 1986, *Introduction to Legal Research*, UI Press, Jakarta, hlm. 51

conceptual approach, the case approach and the comparative approach to examine the conceptualization of granting justice collaborator status to the main actors in criminal acts.

RESULT AND DISCUSSION

1. *Justice Collaborator Status Against Main Actors in Criminal Acts*

In an effort to get a bright spot in a criminal case, evidence is needed to support that a crime has occurred, while the evidence in question is evidence related directly or indirectly to a crime. For direct evidence, among others, is the existence of victims who are clearly harmed, both physical losses and spiritual losses they suffer, while there are witnesses who see, know or hear themselves that a crime has occurred.²⁴

Mas Achmad Santosa gave an understanding of *Justice collaborators*, namely:

“ A *justice collaborator* or cooperating actor is someone who helps law enforcement officials by providing reports, information, or testimony that can reveal a crime in which that person is involved in that crime or another crime. Things that were revealed by the perpetrators who collaborated included the main perpetrators of criminal acts, assets resulting from criminal acts, modes of criminal acts, and networks of criminal acts.²⁵

A *Justice Collaborator* has several advantages such as imposing special conditional probation, granting remission and assimilation, parole, imposing the lightest sentence among other defendants who are proven guilty, special treatment, and so on. The existence of the *JC* was based on several provisions in the 2003 *United Nations Convention Against Corruption* (UNCAC) preamble which had been ratified by Law Number 7 of 2006 concerning Ratification of the *United Nations Convention Against Corruption, 2003* (United Nations Convention Against Corruption, 2003), which emphasized that corruption as an extraordinary crime must be fought because it has a massive impact on the life of the country. So that eradication must be carried out in an extraordinary way.

In the Supreme Court Circular Letter Number 4 of 2011 Concerning the Treatment of *Whistleblowers* and Witness Collaborating Actors (*Justice Collaborators*) it is interpreted that *Justice Collaborators* are one of the perpetrators of organized crime but the status of the perpetrator is not the main actor. Supreme Court Circular Letter Number 4 of 2011 concerning the treatment of *Whistleblowers and Collaborative Witnesses* stipulates special treatment of *Justice Collaborators*, but this is only for cases of certain serious crimes such as criminal acts of corruption, criminal acts of terrorism, narcotics, money laundering, trafficking in persons, and other criminal acts that cause widespread problems and threats.²⁶

Supreme Court Circular Letter Number 4 of 2011 regarding the guidelines for granting *Justice Collaborator* status to witness witnesses who cooperate with law enforcement officials, the importance/urgency of determining the main perpetrator in an organized crime case or a criminal offense where the number of perpetrators is more than one person is to determine who is not the main actor who has a role in uncovering serious and organized criminal acts, this is explained as criminal acts of corruption, terrorism, not narcotics crimes, money laundering crimes, trafficking in persons or other organized criminal acts.

Substance number 9 concerning Treatment for *Whistleblowers and Witness Collaborators in Certain Crimes* regulates guidelines for granting *Justice Collaborator* status, namely :

²⁴R. Soesilo, 2012, *Criminal Procedure Law (Procedure for Settlement of Criminal Cases According to the Criminal Procedure Code for law enforcers)*, Politea, Bogor, p . 54.

²⁵Mas Achmad Santosa, *Protection of Collaborative Actors (Justice Collaborator)*, paper presented at the international workshop on the protection of whistleblowers as *Justice Collaborators*, Jakarta, 2011.

²⁶Abdul Haris Semendawai, 2011, *Understanding Whistleblowers, Witness and Victim Protection Agency*, LPSK, Jakarta, p. 10

"Guidelines for determining a cooperating witness witness (*Justice Collaborator*) are as follows:

- a. The person concerned is one of the perpetrators of a certain crime as referred to in this SEMA, is not the main actor in said crime and provides information as a witness in the judicial process;
- b. The public prosecutor in his charge states that the person concerned has provided very significant information and evidence so that investigators and/or public prosecutors can uncover the crime in question effectively, uncover other actors who have a bigger role and/or recover assets. – assets/proceeds of a crime;
- c. For this assistance, against the Collaborating Witness as referred to above, the judge in determining the sentence to be imposed may consider the following matters of criminal imposition:
 - I. Imposing special conditional probation sentence; and/or
 - II. Imposing the lightest prison sentence among the other defendants who were proven guilty in the case in question. In granting special treatment in the form of criminal relief, judges are still obliged to consider the sense of justice of society.
- d. The Chief Justice in distributing cases pays attention to the following matters:
 - i. Providing related cases revealed by Collaborating Witnesses to the same panel as far as possible; And
 - ii. Prioritizing other cases revealed by Collaborating Witnesses "

In Article 10 A of Law Number 31 of 2014 concerning the protection of witnesses and victims explaining the protection of witnesses and victims through the Witness and Victim Protection Agency (LPSK) explains that:

- 1) Perpetrator witnesses can be given special treatment in the process of examination and appreciation for the testimony given.
- 2) Special handling as referred to in paragraph (1) is in the form of:
 - a. separation of places of detention or places of serving a crime between the Witnesses and suspects, defendants, and/or convicts whose crimes have been disclosed;
 - b. separation of filings between the dossiers of the perpetrator witnesses and the dossiers of suspects and defendants in the process of investigation and prosecution of the criminal acts they disclosed; and/or
 - c. testify before the court without dealing directly with the defendant whose crime was revealed.
- 3) The award for the testimony as referred to in paragraph (1) is in the form of:
 - a. relief from sentencing; or
 - b. conditional release, additional remissions, and other convict rights in accordance with the provisions of the laws and regulations for Perpetrator Witnesses with convict status.
- 4) In order to obtain an award in the form of reduced criminal conviction as referred to in paragraph (3) letter a, the LPSK shall provide a written recommendation to the public prosecutor to include in its charge to the judge.
- 5) To obtain awards in the form of parole, additional remissions, and other convict rights as referred to in paragraph (3) letter b, the LPSK provides written recommendations to the minister administering government affairs in the field of law.

Protection for perpetrators who cooperate with law enforcement officials, should be in the Supreme Court Circular Number 4 of 2011 concerning Treatment for Whistleblowers *and* Witness Collaborators *in* Certain Crimes must follow the following criteria: which has been written in article 10A of Law Number 31 of 2014 concerning the protection of witnesses and victims explains the protection of witnesses and victims and the Joint Regulations signed by the Minister of Law and Human Rights, the Attorney General, the Chief of the Indonesian

National Police, the Corruption Eradication Commission and the Head of the Witness and Victim Protection Agency (LPSK), in order to clarify the criteria in determining the perpetrator witness (*Justice Collaborator*).

The criteria for *Justice Collaborators* are not yet clearly regulated. Even though it was clear, they were not the main perpetrators, in fact, in the trial, *Justice Collaborators were still found*. Some of the witnesses who were the main actors but were made *Justice Collaborators* include the following:

Tabel 2. Justice Collaborators

No	Name	Case	Information
1.	Gatot Pujo Nugroho (Former Governor of North Sumatra)	Corruption Crime	Prof. __ main.
2.	Tripeni Irianto Putro (Former Head of the Medan Administrative Court)	Corruption Crime	<i>Justice collaborator</i> status by the Indonesian KPK, even though he received a bribe of USD 20,000 from OC Kaligis and Gerry
3.	Damayanti Wisnu Putranti (Former Member of Commission V DPR RI)	Corruption Crime	The defendant was given a <i>Justice collaborator</i> by the KPK even though he was actively involved in a corruption case at Balai BPJN IX Maluku and North Maluku at the Ministry of Public Works and Public Housing. Damayanti is an active bribe taker and main actor who plans and organizes all meetings between businessmen acting as bribers and several members of Commission V DPR RI
4.	Richard Eliezer	Murder Crime	Richard Eliezer is considered a <i>Justice collaborator</i> despite his role as chief executor.

Circular Letter of the Supreme Court (SEMA) Number 4 of 2011 can only function internally as an official letter within the Supreme Court which contains explanations or instructions regarding 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 a *Justice collaborator* should appear from the investigation, investigation and prosecution stage, to the examination stage at trial, while this SEMA only regulates *justice collaborators* who have entered the trial stage while at the pre-trial stage this SEMA is only a copy so it is not too binding in its implementation it depends on other law enforcement officials, whether to follow the rules in the SEMA or not.

Without coercion against other law enforcement officials who do not comply with the provisions stipulated in the SEMA, because it does not mention the granting of *Justice collaborator status* at the level of the law and this will have an impact on the actors who cooperate will only appear or dare to show themselves at the trial stage, so that it will make it difficult for some important actors as masterminds of certain crimes to be investigated, tried, and sentenced, maybe even able to escape the law.

Likewise with the provisions contained in the Joint Regulation of law enforcement officers (Ministry of Law and Human Rights, the Attorney General's Office, Polri, KPK and LPSK) dated December 14, 2011 concerning protection for reporters, reporting witnesses and witness witnesses who cooperate. In its implementation, it has not been able to become a strong legal basis regarding *Justice collaborators* in criminal justice by law enforcement officials, because this Joint Regulation is only technical guidance for law enforcement officials who are in their respective agencies so that they do not have binding force like laws..

Soerjono Soekanto argued that legal effectiveness has 5 (five) factors that are closely related to each other because they are the essence of the law enforcement process and are also a benchmark for the effectiveness of law enforcement. Problems that occur or disturbances to law enforcement originating from laws/laws are caused by (a) the principles of enactment of laws are not followed; (b) the absence of implementing regulations that are urgently needed to implement the law; (c) the unclear meaning of the words in the law which results in confusion in its interpretation and application.²⁷

In addition to the weakness of the law, the inconsistency of the conceptualization of granting *justice collaborator status* to the main actors in criminal acts is in law enforcers, especially judges through the freedom and independence of judges. The judge has the freedom to make an assessment based on his views and beliefs to determine whether the defendant is guilty or not. The judge must consider the facts in the trial and look at mitigating or aggravating factors. Frans Magnis Suseno, argued that with the freedom and independence of judicial power from other branches of state power, it is hoped that the judiciary can exercise legal control over state power in addition to preventing and reducing the tendency to abuse authority or power.²⁸

In the case of the defendant Abdul Khoir in the bribery case for the infrastructure project of the Ministry of PUPR in Maluku. The public prosecutor from the KPK initially demanded that the defendant be imprisoned for 2 years and 6 months, but the panel of judges instead sentenced the defendant to a sentence that exceeded the prosecutor's demands, namely a prison sentence of 4 years. The investigators have named the defendant Abdul Khoir as a *Justice collaborator* and the public prosecutor in his charges has requested that *the Justice collaborator's determination* be considered by the panel of judges as a lightening sentence for the defendant.²⁹

In the case of the murder of Brigadier J, the panel of judges accepted Richard Eliezer's status as a *justice collaborator* in the premeditated murder case of Nofriansyah Yosua Hutabarat or Brigadier J. The panel of judges considered that Richard Eliezer's statement made light of the incident of the murder of Brigadier J. Richard's statement was said to have saved justice that was about to emerge turned upside down because he dared to dismantle the scenario carried out by Ferdy Sambo.³⁰

Seeing the two anomalies above, the writer analyzes that the word not the main actor is not *literal* as its true meaning, but a figurative meaning that is proven materially. The conceptualization of granting *justice collaborator status* to the main actor in a crime leads from the subjective pendulum to the objective pendulum. This means that so far the determination has been based on the subject, namely the main actor. However, with the rejections of *Justice collaborator* witnesses previously determined by the KPK or Prosecutors, the judge sees the objective actions of the perpetrators, this is what is called objective, no longer subjective whether the perpetrators themselves are the main actors or not.

In an effort to find and apply justice and truth, court decisions must be in accordance with the basic objectives of a court decision. The purpose of the court decision is actually:

²⁷Soerjono Soekanto, 2011, *Factors Influencing Law Enforcement*, Jakarta: Raja Grafindo Persada, p. 17-18.

²⁸ Frans Magnis Suseno, 1991, *Political Ethics: Basic Moral Principles of Modern State*, : Gramedia, Jakarta, h al . 298-301.

²⁹ Bagus Diyan Pratama, and Budiarsih, *Policy Analysis of the Position of Justice Collaborators and Whistleblowers in Corruption Crimes*, Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance, Vol. 3 No. January 1 - April 2023, p. 318

³⁰ Singgih Wiryono, Judge Accepts Richard Eliezer's Status as "Justice Collaborator", : <https://nasional.kompas.com/read/2023/02/15/12432221/hakim-accept-status-richard-eliezer-As-justice-collaborator>, accessed on 06 March 2023.

1. Must carry out an authoritative solution, meaning providing a way out of legal problems faced by the parties (plaintiff vs defendant; defendant vs public prosecutor), and no other institution other than a higher court body, which can confirm a court decision;
2. It must contain efficiency, namely fast, simple, low cost, because delaying justice is an injustice;
3. Must be in accordance with the purpose of the law which is used as the basis for the court decision;
4. Must contain aspects of stability, namely social order and public tranquility;
5. There must be fairness, namely giving equal opportunity to litigants.³¹

Rejection of *the Justice collaborator status* that was previously determined by the KPK or the Prosecutor must be seen as a series of processes. At the time of submitting the status of *Justice collaborator*, the Corruption Eradication Committee or the Attorney only operated in the internal space, where their policies could not be tested. Whereas in the evidentiary room, the arguments of the Corruption Eradication Commission or the Prosecutor are tested and assessed by the judge. Thus there is a dialectic of testing whether *the Justice collaborator status* is appropriate for the accused.

This is a problem, where there is no legal certainty regarding the domain of institutional authority to provide protection for *Justice collaborators*. An actor, for example, wants to be a *Justice collaborator*, but because the judge decides otherwise, he will be disappointed and will very likely confuse his testimonies. Therefore, should there be a separate preliminary examination conducted to specifically examine a candidate *for Justice collaborator* together with Prosecutors, Lawyers and Judges before the trial.

Another conceptualization is by bringing up the concept of *plea bargaining*. In the criminal law (procedure) system in the United States known as the *Adversary System*, the way cases are handled by negotiating or negotiating with the parties between the accused and the public prosecutor, is an integral part of the entire applicable law enforcement system. *Plea Bargaining* can be defined as a bargain in which a defendant agrees to plead guilty in exchange for a sentence or a reduced sentence.³²

Kurniawan Tri Wibowo stated that, Actually, the *Plea Bargaining pattern* for criminal acts of corruption has been applied in the context of *Justice collaborators* that have been regulated by the Supreme Court Circular No. 4 of 2011 concerning Treatment for Whistleblowers and Witnesses Cooperating with Actors (*Justice collaborators*). in Certain Criminal Cases and Joint Regulations between the Minister of Law and Human Rights of the Republic of Indonesia (Number M.HH11.HM.03.02.TH.2011), Attorney General of the Republic of Indonesia (No.PER045/A/JA/12/2011), Head Republic of Indonesia National Police (Number 1 of 2011), Republic of Indonesia Corruption Eradication Commission (Number KEPB-02/01-55/12/2011), and Chairman of the Indonesian Witness and Victim Protection Agency (Number 4 of 2011), concerning Protection for Complainant, Reporting Witness and Collaborating Actor Witness.³³

The same pattern in determining the application of *Plea Bargaining* to criminal acts of corruption can be used by using guidelines for determining a person as a Collaborating Witness (*Justice collaborator*). For example, the person concerned is one of the perpetrators of a certain crime, admits to the crime he committed, is not the main actor in the crime and provides information as a witness in the judicial process.³⁴ *Plea Bargaining* is also one of the concepts where, Indonesian positive law has not yet regulated it.

³¹ Artidjo Alkostar, *Dimensions of Truth in Judge Decisions*, Varia Judiciary 281, 2008, p. 37

³² Kurniawan Tri Wibowo, *Op cit* ., p. 131

³³ *Ibid* ., p. 301

³⁴ *Ibid* ., p. 302

In the framework of reforming Indonesian criminal law relating to material criminal law (KUHP) and formal criminal law (criminal procedural law) regarding the regulation of *Criminal Justice collaborators*, it is necessary to study properly and carefully by reviewing the nature of the existence and role of *Criminal Justice collaborators* to be able to formulate it into a policy. good criminal law, so that the politics of criminal law related to *Criminal Justice collaborators* in criminal justice can achieve the desired goals for eradicating Corruption, so that it needs to be studied and analyzed for the future granting *justice collaborator status*, the regulation is not only in the form of a Supreme Court Circular (SEMA) or joint decision of several high-ranking officials, but through law.

2. Justice Collaborator Status Against Key Actors in Criminal Acts

A person who becomes a *Justice collaborator* is a suspect/defendant who uncovers the secret/veil of a crime case, but not for reasons of being called morally, but with the hope of obtaining relief from charges and/or criminal charges .³⁵ Determining a suspect to be a *justice collaborator* requires very careful consideration, considering that granting a request for a *justice collaborator* will result in a reduction in the sentence of the perpetrator concerned, but no less important is who determines a suspect to become a *justice collaborator* . Bagus and Budiarsih even stated that the existence of respective authorities between the Prosecutor's Office, Police, KPK, Ombudsman, PPATK, and LPSK could potentially lead to conflicts of authority between state institutions regarding *justice collaborators* .³⁶

In terms of the rules, the Supreme Court Circular Letter Number 4 of 2011 concerning the Treatment of Whistleblowers and Collaborating Witnesses (*Justice Collaborators*) basically only binds judges in court. Thus, based on S EMA Number 4 of 2011, it is clear that the authority of judges is an attributive authority. Supreme Court Circular Letter Number 04 of 2011 explains that the Supreme Court asked the judges that if they found that there were people who could be categorized as reporters of criminal acts and witness witnesses who cooperated, they could provide special treatment, including providing criminal relief and/or forms of other protection.

On December 14, 2011, a Joint Regulation was issued between the Minister of Law and Human Rights of the Republic of Indonesia (Number M.HH-11.HM.03.02.TH.2011), the Attorney General of the Republic of Indonesia (Number PER-045/A/JA/12 /2011), Head of the Indonesian National Police (Number 1 of 2011), Republic of Indonesia Corruption Eradication Commission (Number KEPB-02/01-55/12/2011), and Chairman of the Indonesian Witness and Victim Protection Agency (Number 4 of 2011), concerning Protection for Complainants, Reporting Witnesses and Collaborating Witnesses. Through the Joint Regulations the right granted is the right of recommendation.

Article 10A paragraph (4) of Law Number 31 of 2014 explains that in order to obtain an award in the form of leniency in sentencing, the LPSK provides a written recommendation to the public prosecutor to be included in his charges, where these charges will be presented to the panel of judges during the trial. The elucidation of this article explains that judges must pay serious attention to recommendations from the LPSK contained in the demands of the public prosecutor. The use of the judge must examine this recommendation because it is related to the imposition of a criminal sentence that will be given to the witness of the perpetrator .³⁷

³⁵Mardjono Reksodiputro, 2013, *Reflections on the Journey of Legal Reform*, National Law Commission of the Republic of Indonesia, Jakarta, p . 363.

³⁶ Good Diyan Pratama, and Budiarsih, *Op cit .*, p. 319

³⁷Firman Wijaya, 2012, *Whistle Blower and Justice Collaborator in a Legal Perspective*, Penaku, Jakarta, p.37

Based on S EMA Number 4 of 2011, Joint Regulation between the Minister of Law and Human Rights of the Republic of Indonesia (Number M.HH-11.HM.03.02.TH.2011), Attorney General of the Republic of Indonesia (Number PER-045/A/JA/ 12/2011), Head of the Indonesian National Police (Number 1 of 2011), Republic of Indonesia Corruption Eradication Commission (Number KEPB-02/01-55/12/2011), and Chairman of the Indonesian Witness and Victim Protection Agency (Number 4 of 2011). 2011) and Law Number 31 of 2014, determining the status of a *justice collaborator* who is awarded with a decision is the authority of the judge. While recommendations for the status of *justice collaborators* are owned by the public prosecutor, both the KPK and the Public Prosecutor's Office, in addition to that, the recommendation authority as well as granting *justice collaborator rights* during the trial is owned by the LPSK.

Based on this authority, it will be very possible for differences in perceptions to determine *Justice collaborators*. Although each institution, such as the Corruption Eradication Commission, the Attorney General's Office and the LPSK, has the right to recommend, the Judge has the authority to make a decision. Thus the issue of refusing *Justice collaborator status* will keep happening. The debate about the conceptualization of the perpetrators of the crime is not the main actor in the crime .

CONCLUSION AND SUGGESTION

Conclusion

Based on the description above, it can be concluded as follows:

- a. *justice collaborator* status to the main actor in a crime leads from the subjective pendulum to the objective pendulum. This means that so far the determination has been based on the subject, namely the main actor. However, with the rejections of *Justice collaborator witnesses* previously determined by the Corruption Eradication Commission or the Prosecutor, the judge sees the objective actions of the perpetrators, this is what is called objective, no longer subjective whether the perpetrators themselves are the main actors or not.
- b. Based on SEMA Number 4 of 2011, Joint Regulation between the Minister of Law and Human Rights of the Republic of Indonesia (Number M.HH-11.HM.03.02.TH.2011), Attorney General of the Republic of Indonesia (Number PER-045/A/JA/12 /2011), Head of the Indonesian National Police (Number 1 of 2011), Republic of Indonesia Corruption Eradication Commission (Number KEPB-02/01-55/12/2011), and Chairman of the Indonesian Witness and Victim Protection Agency (Number 4 of 2011) and Law Number 31 of 2014, determining the status of a *justice collaborator* who is awarded with a decision is the authority of the judge. While recommendations for the status of *justice collaborators* are owned by the public prosecutor, both the KPK and the Public Prosecutor's Office, besides that the authority to recommend as well as the granting of *justice collaborator rights* during the trial is owned by the LPSK.

Suggestion

- a. It is necessary to study and analyze the granting of *justice collaborator status*, the arrangement of which is not only in the form of a Supreme Court Circular Letter (SEMA) or a joint decision of several high-ranking officials, but through a law.
- b. It is better if this is initiated through laws and regulations that regulate a separate preliminary examination to be carried out to examine a candidate *for Justice collaborator* specifically as *an ius constituendum* .

REFERENCES

- Alkostar, Artidjo. *The Dimension of Truth in the Judge's Decision*. Judicial Variations 281. 2008.
- Arief, Barda Nawawi. 2007. *Problem Law Enforcement and Criminal Law Policy in Countermeasures Evil or* Publisher Ken. Jakarta.
- Detik News. May 12, 2012. "together" convention between MAs. Kemenkumham. Attorney General's Office KPK. National Police and LPSK as of 19 July 2011.
- Hamzah, Andi. 2006. *Introduction to Criminal Procedure Law*. Indonesian Ghalia . Jakarta.
- HR, Ridwan. 2011. *State Administrative Law. Revised Edition*. PT Raja Grafindo Persada . Jakarta.
- Mulyadi, Lilik. 2015. *Legal Protection Against Whistleblowers and Justice Collaborators Effort Organized Cirme Countermeasures* PT. alumni. Bandung.
- pramono, Widyo. 2014. *Protection Collaborating Witnesses in Handling follow Criminal Serious and Organized* Attorney General's Office. Jakarta.
- Pratama, Bagus Diyan and Budiarsih. *Policy Analysis of the Position of Justice Collaborators and Whistleblowers in Corruption Crimes*. Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance. Vol. 3 No. January 1 - April 2023.
- Projodikoro, Wirjono. 2004. *Indonesian Criminal Procedure Code*. PT. Gravindo King. Jakarta.
- Reksodiputro, Marjono. 2013. *Contemplation Legal Reform Journey*. The National Law Commission of the Republic of Indonesia. Jakarta.
- ridwan , Juniarmo and Achmad Sodic Sudrajat . 2010. *State Administrative Law and Policy Public Service*. Shades. Bandung.
- Santosa, Mas Achmad. *Protection to Cooperating Actors (Justice Collaborators)*. paper presented at the international workshop on the protection of whistleblowers as Justice Collaborators. Jakarta. 2011.
- Enjoy, Abdul Haris. 2011. *Understanding the Whistleblower. Protection Agency Witnesses and Victims*. LPSK. Jakarta.
- . *The existence of Justice Collaborator in Case Corruption. Notes about Urgency and Implications Juridical on Determination in the Judicial Process Criminal*. Be delivered In Activities at the General Stadium of the Faculty of Law, Islamic University of Indonesia. Yogyakarta. April 17, 2013.
- Soekanto , Soerjono . 1986. *Introduction Legal Research*. UIPress. Jakarta.
- . 2011. *Influencing Factors Law Enforcement*. Jakarta: Raja Grafindo Persada .
- Soesilo , R. 2012. *Criminal Procedure Code (Procedure Settlement Case Criminal According to the Criminal Procedure Code for enforcer law)* . Politea . Bogor.
- Surodibroto , Soenarto . 2007. *Criminal Code and Criminal Procedure Code Completed Jurisprudence Supreme Court and Hoge Raad*. Radjagrafindo Persada . Jakarta.
- Suseno , Frans Magnis . 1991. *Political Ethics : Basic Moral Principles of Modern State*: Gramedia. Jakarta.
- Wibowo , Dwinanto the Great. 2011. *Role Witness Crown in Justice Criminal in Indonesia*. Thesis : Faculty of Law, University of Indonesia.
- Wibowo, Kurniawan Tri. 2021. *Plea Bargaining as Legal Renewal in the Indonesian Criminal Justice System*. Script Library. Surabaya.
- Wijaya, Firman. 2012. *Whistle Blower and Justice Collaborator in a Legal Perspective* . my pen. Jakarta.
- Wiryono, Singgih. *Judge Accepts Richard Eliezer's Status as "Justice Collaborator"*:: <https://nasional.kompas.com/read/2023/02/15/12432221/hakim-accept-status-richard-eliezer-as-justice-collaborator>. accessed on 06 March 2023.