

Constitution Reposition of the 1945 Constitution in Justice Collaborators Based on Human Rights

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Abstract

Arrangements for the implementation and granting of the status of collaborating witnesses or known as Justice Collaborator Which invites the issue of pros and cons about the benefits and consequences that can be used as legal commodities, as well as subjectivity in the provision of its determination. To answer the question that has become public unrest, a comprehensive interpretation of the law is needed both grammatically, historically and juridically in order to obtain an understanding of whether the legal politics in the LPSK Law which regulates the Justice Collaborator has been in accordance with the objectives in terms of uncovering the main actors and restoring state losses related to the economy and development. Furthermore, to examine why the determination of Justice Collaborator on corruption crimes does not immediately realize a social justice as in paragraph IV of the Preamble to the Republic of Indonesia Constitution Th. 1945. It is very possible that the existing norms are incomplete, so they must be reconstructed by accommodating the principles of expediency and justice while still having a progressive nature of law enforcement in order to create ideal norms.

Keywords

justice collaborator; 1945 constitution of the republic of indonesia; human rights



I. Introduction

Problems in law enforcement faced by the Republic of Indonesia can result in various sectors, including problems in the development and economic fields, which are caused by criminal acts of corruption, human trafficking, illegal mining, narcotics trafficking and various types of crimes that cause massive other.

Law enforcement efforts that occur both at the stage of the investigation process and until the process in court today have degraded public trust. The phenomenon of law enforcement efforts by involving the *Justice Collaborator* is expected to be able to reveal the bigger perpetrators or the main actors of crime and can restore state losses. One indicator of the growing number of cases of criminal acts of corruption is marked by the large number of Hand Arrest Operations in various regions and defendants who are brought to court. This shows that corruption has a wide scale. Even the consequences caused by the criminal act of corruption have penetrated the morality of norms and the judicial process.

Positive legal efforts to deal with the problem of special crimes have been carried out so far through several changes to laws and regulations. The difficulty factor in law enforcement to eradicate corruption lies in the difficulty of revealing the statements of witnesses to prove the crime of corruption in court.

KUHAP stipulates the basic principle *Presumption of Innocence* (presumption of innocence) which upholds a person's dignity and is declared and must be treated as an innocent person, even though his status as a suspect or a defendant does not support the ease of proving the case. Therefore, professionalism, *humanism*, skills and credibility of law enforcement must be prioritized. Facing the challenges of professionalism and the obligation to uphold human rights in law enforcement, especially in the evidentiary process, it is necessary to innovate the general evidence law by incorporating new provisions and patterns, especially for the purpose of recovering state losses due to criminal acts, as a form of eradicating corruption.

Circular letter of the Supreme Court of the Republic of Indonesia Number 4 of 2011 concerning the treatment of criminal whistleblowers and witnesses of perpetrators who cooperate in certain serious criminal cases such as corruption, terrorism, narcotics crime, money laundering, trafficking in persons, as well as other criminal acts of an organized nature, and a serious threat to stability and security, peace and endangering the development and economy of the country. Development is a systematic and continuous effort made to realize something that is aspired. Development is a change towards improvement (Shah, M. et al. 2020).

Justice Collaborators involved in criminal acts of corruption deserve absolute legal protection, this is an effort to foster public participation in order to uncover criminal acts as referred to in the goals and dignity contained in the Law on the Eradication of Criminal Acts of Corruption and the Law on the Protection of Witnesses and Victims, Therefore, a conducive climate must be created, among others, by providing legal protection and special treatment to everyone who knows, reports, and/or discovers something that can help law enforcers to uncover and deal with criminal acts effectively.

II. Research Method

Normative juridical research with *deductive to inductive* methods, starting with the Law approach method By identifying the laws and other regulations governing the Law of the Republic of Indonesia Number 31 of 2014 concerning amendments to the Law of the Republic of Indonesia Number 13 of 2006 regarding the Protection of Witnesses and Victims, what is the purpose of the formation and the mandate contained therein. Furthermore, it examines what regulations regulate and implement the mandate of the Act, and how they form and how their history is, so that legal materials are obtained as research that uses the application of historical approaches and conceptual approaches.

III. Results and Discussion

The state, in principle, wants the creation of prosperity for all the people, as emphasized in the preamble to the 1945 Constitution of the Republic of Indonesia "that after that to form a government of the Indonesian state which protects the entire Indonesian nation and protects all of Indonesia's bloodshed and advances the general welfare, educates the life of the nation and participate in carrying out world order based on freedom, eternal peace and social justice."

The purpose of the 1945 Constitution will be realized if the Indonesian people can optimize all their potential to the maximum, but various factors cause efforts to realize this noble goal to face many obstacles. Various research results show that one of the causes is the existence of perpetrators of corruption as the nation's main problem that must be addressed immediately. Corruption in Indonesia is plural and has a long history, even

longer than the history of the Unitary State of the Republic of Indonesia itself. In 1970, Bung Hatta in his capacity as an adviser to the President stated that corruption had become "entrenched" in Indonesia.

History also records that since the Dutch colonial period, corruption has been rampant, even the VOC of a state-owned company owned by the Dutch government in charge of exploiting Indonesia was forced to go out of business in 1979 due to corruption problems. The VOC was replaced by the colonial government of the Dutch East Indies, when the practice of corruption flourished. After the independence period, the old order era, the new order, until the post-reformation period in 1998, corruption remained fertile.

The development of criminal acts of corruption has spread in society, as a result of which the state suffers enormous losses, threatens the stability and security of society because it can weaken law enforcement agencies and democratic values, ethical values, justice, and threaten the rule of law that corruption also damages the mentality of state administrators. This means that acts of corruption have shifted from *corruption by need* to *corruption by greed*.

Therefore, corruption can no longer be classified as an *ordinary crime* but has become an *extraordinary crime*. Corruption is no longer a local problem of a country but has become a transnational phenomenon that requires international cooperation in prevention and eradication.

In order to uphold the rule of law, the Indonesian government has laid a strong policy foundation in an effort to combat corruption. Various policies are contained in the legislation. Among them are Law No. 28 of 1999 concerning State Organizers who are clean and free of KKN, Law No. 31 of 1999 Juncto Law No. 20 of 2001 concerning the Eradication of Corruption Crimes. As well as Law Number 46 of 2009 concerning the Court of Criminal Acts of Corruption. To support measures to eradicate corruption in the reform era, the government also enacted Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering and Law Number 13 of 2006 Juncto Law Number 31 of 2014 concerning Protection of Witnesses and Victims.

Not only legislation policy, from the perspective of law enforcement to eradicate corruption, the government has established a special institution based on Law Number 30 of 2002 concerning the Corruption Eradication Commission as mandated in Article 43 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2002. 2001, that it is necessary to establish an independent Corruption Eradication Commission, with the task and authority to eradicate corruption. The Corruption Eradication Commission functions as a trigger and empowerment of existing institutions in eradicating corruption, namely the police and the prosecutor's office (*trigger mechanism*).

Currently, the protection of witnesses for cooperating perpetrators has been practiced in various countries, for example in the United States, it gives the authorities the authority to provide security for witnesses who are willing to cooperate and are willing to testify in cases involving organized crime or criminal acts, other serious crimes by means of separation of detention.

Regarding the regulation of *Justice Collaborator* in corruption cases, Article 32 of the United Nations Convention against Corruption, 2003 (*United Nations Convention Against Corruption, 2003*) as ratified into Law Number 7 of 2006 emphasizes that every participating country is obliged to provide physical and psychological protection against witnesses and experts in the disclosure of corruption.

Furthermore, Article 37 also stipulates awards for cooperating perpetrator witnesses, including:

- a. Each participating country is obliged to consider, provide the possibility in certain cases to reduce the sentence of an actor who provides substantial cooperation in the investigation or prosecution of a corruption crime;
- b. Each participating country is obliged to consider the possibility in accordance with the basic principles of its national law to provide immunity from prosecution for persons who provide substantial cooperation in the investigation or prosecution (*Justice Collaborator*) of a criminal act of corruption. In Indonesia, the protection and fulfillment of the rights of Justice Collaborators in the criminal justice process, both in the pre-trial stage (*pre-adjudication*), the trial stage in court (*adjudication*), and the post-trial stage (*post-adjudication*). Conducted by law enforcement agencies including the KPK, Correctional Institutions and Witness and Victim Protection Institutions based on Law Number 13 of 2006 Juncto Law Number 31 of 2014 concerning Protection of Witnesses and Victims.

3.1 The Constitution of the 1945 Constitution in the Justice Collaborator

The 1945 Constitution of the Republic of Indonesia is a written basic law or *basic law*, the constitution of the government of the Republic of Indonesia.

The Constitution can also be interpreted as a written basic law and the highest source of legal order in the Indonesian state, which contains human rights, rights and obligations of citizens, nation and state of Indonesia as follows:

- a. Regulate norms in Indonesia.
- b. To give birth to citizens who are able to build the Indonesian state, so that it becomes a great and strong country.
- c. Regulate the legal governance process in Indonesia.
- d. To make the Indonesian nation prosperous, just and prosperous.
- e. Making Indonesia a harmonious country in the nation and state.
- f. Protect all Indonesian people.
- g. It is the basis for regulating all Indonesian citizens.
- h. Guaranteed human rights as citizens.
- i. Become a unifying tool of the nation.
- j. Become a reference or guideline in making laws contained under the 1945 Constitution.

As the highest state regulation, the 1945 Constitution becomes a reference and parameter in making the regulations under it, including the Law on Witness and Victim Protection Institutions which regulates *Justice Collaborators*. Therefore, the existing laws and regulations must not conflict with the 1945 Constitution in that there must be harmony, harmony and synchrony. The 1945 Constitution only contains basic provisions so that it can adapt to the development of the times, on that basis, the setting for the determination of the status of *Justice Collaborator* which is not fully regulated, must and must be reconstructed which is also guided by the concept of Human Rights and the principle of benefit and justice.

As mandated by the Preamble to the 1945 Constitution which consists of four paragraphs, it also has very important points of thought, namely:

- 1 The First Main thought, namely: "The state protects the entire Indonesian nation and the entire homeland of Indonesia based on unity by realizing social justice for all Indonesian people". This can also be interpreted implicitly that the State protects all its citizens regardless of their status even though they are facing legal problems to remain independent in their right to choose, accept or reject their position as JC without being pushed by intimidation, pressure or promises of leniency that have no legal certainty;

- 2 The second main idea is: "The state realizes social justice for all Indonesian people". This is the main idea of social justice which is based on the awareness that humans have the same rights and obligations to create social justice in people's lives. This main idea is an embryo for a sense of fairness and justice, especially in this article the author implements the recognition of the certainty of rights for justice seekers regarding
- 3 the rights and obligations that must be carried out by both recipients of *Justice Collaborator*, as well as law enforcers;
- 4 3) The third main idea is: "A sovereign state of the people, based on democracy and deliberation/representation". This shows that the state system established in the Constitution must be based on people's sovereignty and based on deliberation/representation. This point of view explains deductively the process of the birth of dogmatic law which begins as a social habit, then becomes a norm, and then becomes a positive law complete so that it has certainty that creates a sense of peace, so that the law becomes a sovereign and acceptable product in the form of rights and obligations and responsibilities.
- 5 The Fourth Main Thought is: "The state is based on the One Godhead according to the basis of just and civilized humanity". This shows a logical consequence that the Constitution must contain content that obliges the government and other state administrators to maintain noble human character and uphold the noble moral ideals of the people who are fair and without discrimination.

3.2 Human Rights in the *Justice Collaborator*

United Nations (UN) in 1946 formed the Commission on Human Rights and stated the concept of human rights known as the *Universal Declaration of Human Rights*, December 10, 1948 and signed by 48 countries, among others stated: that every human being has human rights, namely

1. The right to freedom and physical security.
2. The right to equal treatment under the law.
3. The right to freely express thoughts and feelings.
4. The right to freedom of expression.

The Indonesian Constitution, as drafted by the second session of BPUPKI and ratified the day after independence, August 18, 1945. The phrase in the 1945 Constitution that the Indonesian nation recognizes and upholds human dignity in the form of human rights with the statement, "*that in fact independence is the right of all nations*" as well as the goals of Indonesia's national development, "to educate the nation's life, promote general welfare, "*protect the entire nation*", and "*participate in carrying out world order*" which means the equal rights of every individual Indonesian nation. The statement of human rights is also in line with the sound of the five precepts of Pancasila which is also stated in the fourth paragraph of the Preamble to the 1945 Constitution.

Likewise, in the articles of the 1945 Constitution, it is stated that Human Rights that can be positioned in the implementation of the determination of *Justice Collaborator* include:

a. Article 28 I

Paragraph (1) Everyone's right to live, the right not to be tortured, the right to freedom and conscience, the right to religion, the right not to be enslaved, the right not to be prosecuted under retroactive laws; the right to be free from discriminatory treatment; protection of the culture and rights of traditional communities; all protection of the state has the right and obligation to participate in the defense and security of the state; Paragraph (2) Contains a statement that everyone is free from discriminatory treatment; Paragraph (3) Human rights are respected for their traditional cultural and community identities in line with the times; Paragraph (4) The government is responsible for the protection and implementation of human rights; Paragraph (5) The implementation of Human Rights in Indonesia is regulated in more detail by laws and regulations.

b. Article 28 J

Article 28 J consists of 2 paragraphs which contain the obligation of everyone to respect the human rights of others. In addition, this article also states that in social life with the guarantee of the protection of human rights, certain restrictions are given so that it remains in accordance with norms and maintains public order.

The examinee may choose to admit or not to the investigator/authority, but cannot be punished for refusing to give information, coercion including torture. Thus, it can be concluded that the right of the suspect or defendant to remain silent and not blame himself is a human right that must be respected and obeyed, except when information against him is disclosed voluntarily without pressure.

The actions of the state or government must not exceed or violate human rights, must not cause a person or group of people to not receive proper legal protection, must not discriminate between people for illegal reasons and all actions or actions of the government must be based on applicable legal provisions.

3.3 Justice Collaborator in Indonesia and in Various Countries

The use of the term *Justice Collaborator* varies between countries, some use the words *Cooperative Whistleblowers*, *Participant Whistleblowers*, *Collaborator with Justice* or *Pentiti* (Italy). In Indonesia, based on the Circular Letter of the Supreme Court Number 4 of 2011 concerning the Treatment of Whistleblowers (*Whistleblowers*) and Witnesses of Cooperating Perpetrators (*Justice Collaborators*) in Certain Criminal Acts, provides a difference between the terms Whistleblower and *Justice Collaborator* reporting witness is called a *Whistleblower*, while the perpetrator witness who cooperates is called a *Justice Collaborator*.

The term *Whistleblowers* term *vane* in Indonesian Criminal Procedure Law. However, in Indonesia there is the term "crown witness" or *crown witness*, in which one of the perpetrators of a crime is drawn as a key witness to reveal the other perpetrators with the lure of reducing the threat of punishment. This system has long been applied in Continental European countries such as the Netherlands, France, and Italy by using the concept of *Protection of Cooperating Persons*, Concept *Whistleblowers* is mostly promoted by Anglo Saxon countries, especially America and *commonwealth* countries (commonwealth countries, former British colony). However, the concept of *Whistleblowers* and the concept of *Protection of Cooperating Person* are two very different things on the concept of *Whistleblowers* are not punished at all, while those who disclose facts on the concept of *Protection of Cooperating Person* can still be punished but get leniency. The concept of *Protection of Cooperating Person* is more concentrated on

perpetrators who cooperate with law enforcement (*Justice Collaborator*) in uncovering the complexity of cases.

Then the term *Justice Collaborator* is also the same as the perpetrator's witness as regulated in Law Number 13 of 2006 Juncto Law Number 31 of 2014 concerning Protection of Witnesses and Victims.

Article 1 paragraph (2) confirms that the perpetrator's witness is a suspect, defendant, or convict who cooperates with law enforcement to uncover a criminal act in the same case.

Romli Atmasasmita, distinguished between *Whistleblowers* and *Justice Collaborators* are every person, usually a victim, who then testifies to provide information to investigators regarding the ins and outs of a criminal act that he knows and hears about himself. With that he gets a guarantee of protection for security (physical) under the supervision of the police. You do this by changing your identity, placing it in a certain location and being under the super-tight supervision of the police intelligence. The purpose and existence of the Whistleblower is to facilitate the task of the investigator so that a case can be fully disclosed to the *intellectual-dader* and the leadership of the crime organization. Meanwhile, a *Justice Collaborator* is any suspect who is involved in a criminal organization and has committed a criminal act either on his own initiative or at the request of the legal apparatus to cooperate with law enforcement in finding evidence and evidence so that the investigation and prosecution can run effectively. Protection against *Whistleblowers* is different from *Justice Collaborator*. Legal protection for *Whistleblowers* is limited to physical protection, while protection for *Justice Collaborators* is not limited to physical but also "the leniency that can be offered."

The implementation of witness and victim protection cannot be separated from several issues, including law enforcement for witness and victim protection, when witness and victim protection is carried out, forms of witness and victim protection and procedures for witness and victim protection in the criminal justice process.

3.4 Between the right of respect and the risk of a *Justice Collaborator*

Justice Collaborators or witnesses of cooperating perpetrators, have the risk of getting threats or further becoming victims of violence, this is because it helps law enforcement find out, find clarity and uncover criminal acts, including the main perpetrators of a crime criminal act.

Guidelines for determining a person as a Witness to Co-operating Perpetrators (*Justice Collaborator*) are regulated in the Circular Letter of the Supreme Court Number 4 of 2011 addressed to the Heads of High Courts and Heads of District Courts throughout Indonesia signed by the Chief Justice of the Supreme Court Harifin A. Tumpa, in Jakarta on 10 August 2011. The guidelines are as follows:

- a. The person concerned is one of the perpetrators of certain criminal acts as referred to in the Circular Letter of the Supreme Court Number 4 of 2011, admits the crime he has committed, is not the main actor in the crime, and provides testimony as a witness in the judicial process;
- b. The Public Prosecutor in his claim states that the person concerned has provided very significant information and evidence so that investigators and/or public prosecutors can effectively uncover the crime, uncover other actors who have a bigger role and/or return assets. -assets/ proceeds of crime.

Based on the principle of equality before the law which is one of the characteristics of the rule of law, witnesses and victims in the criminal justice process must be given protection guarantees that refer to five aspects, including: respect for human dignity, security, justice, non-discrimination, and certainty law with the aim of providing a sense of security for witnesses and victims in providing information in every criminal justice process.

Taking into account the regulations governing the *Justice Collaborator*, especially regarding the protection of security, it is sufficient, where with various facilities ranging from placing witnesses in certain places, to limiting direct examinations with the reported party and the security guarantees and escorts provided by the state can be categorized as adequate. Likewise, the appreciation of the willingness to reveal the perpetrators in the case has been very beneficial for the recipients of *Justice Collaborator*, it can be seen from the granting of waivers of demands, leniency in serving sentences and various convenience facilities during the investigation period and during the trial process. This can then be misused by the examinee, the suspect in a case or the defendant in a particular case to maneuver in his interest so as not to get a heavy sentence, then by declaring himself to be cooperative with investigators during the case process and stating that he is willing to provide information at trial to provide significant information or state that he has information about who *actor* or actor is, it is highly considered to get status as a witness who cooperates or is known as a *Justice Collaborator*.

With this phenomenon, researchers try to look at regulations and *legal standing* related to regulating, implementing and how *the ratio decidendi* is used to determine the status of a *Justice Collaborator*. As follows:

On December 14, 2011 in Jakarta, a Joint Regulation of the Minister of Law and Human Rights, the Attorney General, the Head of the Police, the Corruption Eradication Commission, and the Head of the Witness and Victim Protection Agency Number: m.hh-11.hm.03.02 was issued. th.2011, Number: per-045/a/ja/12/ 2011, Number: 1 of 2011, Number: kepb-02/01-55/12/2011, Number: 4 of 2011 concerning Protection for Whistleblowers, Reporting Witnesses, and the Witness of Co-operating Perpetrators. Based on the Joint Regulation, the conditions for obtaining protection as a witness of a cooperating perpetrator are as follows:

1. The crime to be disclosed is a serious and/or organized crime;
2. Provide significant, relevant and reliable information to uncover a serious and/or organized crime;
3. Not the main perpetrator in the crime that will be disclosed;
4. Willingness to return a number of assets obtained from the crime in question, which is stated in a written statement;
5. There is a real threat or concern about the threat, pressure, both physically and psychologically against the witness of the perpetrator who cooperates or his family if the crime is revealed according to the actual situation.

Law Number 13 of 2006 in conjunction with Law Number 31 of 2014 concerning Protection of Witnesses and Victims, Protection of LPSK for Perpetrator Witnesses is provided with the following conditions:

Article 28 paragraph (2)

The crime to be disclosed is a crime in certain cases in accordance with the decision LPSK as referred to in Article 5 paragraph (2):

- a) The nature of the importance of the information provided by the Perpetrator Witness in revealing a criminal act;

- b) He disclosed that he was not the main actor in the crime;
- c) Willingness to return assets acquired and criminal acts committed and stated in a written statement;
- d) There is a real threat or concern that there will be threats, physical or psychological pressure on the Witness Perpetrator or his family if the crime is revealed according to the actual situation.

While the rights of *Justice Collaborators* are spread across several laws and regulations as follows:

1. Law Number 7 of 2006 concerning Ratification of *the United Nations Convention Against Corruption*, 2003 (United Nations Convention Against Corruption, 2003). Article 32 affirms:
 - (1) Each participating country is obliged to take appropriate measures in accordance with the legal system in force in its country, and by all means provide effective protection from possible retaliation or threats/intimidation against witnesses and expert witnesses who testify regarding criminal acts established in accordance with this convention, and to the extent necessary for their families and others close to them;
 - (2) The actions described in paragraph (1) of this article may include: without (reducing or eliminating) the rights of the accused, including the right to a fair trial:
 - a. Determine procedures for the physical protection of such persons such as, to the extent necessary and possible relocating them and permitting, where appropriate (non-disclosure) or restrictions on the disclosure of information about the identity and whereabouts of such persons;
 - b. Provide evidence law that allows witnesses and experts to testify in a way to ensure the safety of these people, such as allowing testimony to be given by means of communication technology, video or other appropriate means.
 - (3) The participating countries are obliged to consider entering into arrangements with other countries regarding the relocation of persons as referred to in paragraph (1)
2. Law number 13 of 2006 in conjunction with Law number 31 of 2014 concerning the Protection of Witnesses and Victims regulates the rights of *Justice Collaborators*, in several articles, namely:

Article 10

- (1) Witnesses, Victims, Perpetrators and/or Reporting Witnesses cannot be prosecuted legally, both criminally and civilly for testimonies and/or reports that will be, are being, or have been given, unless the testimony or report is not given in good faith;
- (2) In the event that there is a lawsuit against a Witness, Victim, Witness perpetrator, and/or the reporter for the testimony and/or report that will be, is being or has been given, the lawsuit must be postponed until the case that he reports or he gives testimony has been decided by the court and obtain permanent legal force.

Article 10A

- (1) The perpetrator's witness may be given special treatment in the examination process and award for the testimony given;
- (2) The 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 perpetrator's witness and the suspect, defendant, and/or convict whose crime is revealed;
 - b. Separation of filings between the perpetrator's witness file and the suspect's and defendant's files in the process of investigating and prosecuting the crimes he disclosed, and/or;
 - c. Give testimony before the trial 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. Compensation of criminal penalties, or
 - b. parole, additional remission, and the rights of other convicts in accordance with the provisions of laws and regulations for witnesses of perpetrators who are prisoners.
3. Joint Regulation Number: m.hh-11.hm.03.02.th.2011, Number: per-045/a/ja/12/2011, Number 1 of 2011, Number: kepb-02/01-55/12/2011, Number: 4 of 2011 concerning Protection for Whistleblowers, Reporting Witnesses and collaborating Perpetrators. Witnesses of perpetrators who cooperate are entitled to:
- a. Physical and psychological protection;
 - b. Legal protection;
 - c. Special handling.

The special handling can be in the form of:

- a) Separation of places of detention, confinement or prison from suspects, defendants and/or other convicts from crimes disclosed in the event that witnesses of the perpetrators who cooperate are detained or are serving corporal punishment;
- b) Case filing as far as possible is carried out separately from other suspects and/or defendants in reported or disclosed criminal cases;
- c) Postponement of prosecution against him;
- d) Delays in legal processes (investigations and prosecutions) that may arise due to information on reports and/or testimonies given; and/or
- e) Give testimony before the court without showing his face or without showing his identity;
- f) Award.

The forms of appreciation that can be given to cooperating perpetrator witnesses can be in the form of:

- a) Leniency of sentence demands, including demanding a suspended sentence; and/or.
- b) The granting of additional remissions and the rights of other prisoners in accordance with the applicable laws and regulations if the witness of the perpetrator who cooperates is a prisoner.

3.5 Mechanism of Granting Justice

Collaborator's Rights Justice Collaborator's Rights can be grouped in several forms. First, physical, psychological and legal protection; second, special handling; third, the award (reward).

Abdul Haris Samendawai suggests the mechanism for granting rights- Justice Collaborator as follows:

- a. Mechanisms for providing physical and psychological protection:
 1. The granting process is facilitated by LPSK on the initiative of the application for protection that is submitted (can) come from the Justice Collaborator or other law enforcement agencies, after the Attorney General or the KPK has determined the person as a Justice Collaborator;
 2. It is not possible for the suspect / defendant to directly apply for protection to LPSK if the status as Justice Collaborator has not been determined;
 3. LPSK conducts an examination process for the fulfillment of all requirements, then LPSK must, either alone or with the support of other parties, provide physical and psychological protection for Justice Collaborators.

- b. Mechanism of giving special treatment:
 1. With regard to the provision of protection in the form of placing a separate detention room from other perpetrators in the disclosed case, LPSK coordinates with the party carrying out the institution that has the authority to handle detention (Ministry of Law and Human Rights);
 2. With regard to delays in legal proceedings arising from the information, reports and/or testimonies given, there is no need for setting up a special mechanism to obtain them, because it has been regulated in the law that there is an obligation for law enforcement officers to do good things;
 3. This should have been done automatically by law enforcement officials, unless there are conditions where it cannot be done

- c. Reward mechanism
 1. The awarding process is made in the form of a contract between the public prosecutor and the Justice Collaborator;
 2. Applications can be submitted by the Justice Collaborator itself or through law enforcement officers who handle the case;
 3. Applications can be submitted directly to the highest officials in the field of prosecution, both the Attorney General and the KPK (related to corruption), LPSK can provide recommendations to the Attorney General or the chairman of the KPK to recognize this;
 4. Specifically for awarding Justice Collaborators in the form of remissions and pardons, the role of the Attorney General or the Chairperson of the KPK is only to give consideration to the Minister of Law and Human Rights and the President.

Lilik Mulyadi stated that the practice of legal protection for *Justice Collaborators* has taken place in several countries, including;

- a) United States,
The regulation of legal protection for *whistleblowers* and *justice collaborators* is regulated in the *Whistleblower Act 1989*;
- b) Netherlands,
The practice of protecting *Justice Collaborators* in the Netherlands uses the witness agreement mechanism (*Witness Agreements*);
- c) Germany,
The practice of witness protection in Germany was not initially carried out simultaneously. Witness protection has only been implemented throughout Germany since 1984. Institutionally under the Inspectorate General of the German Police.

From the positive law described above, it can be concluded that the purpose of witnesses who cooperate, either in the form of *whistleblowers* or as crown witnesses and witnesses who cooperate with investigators in certain cases where file separation has been carried out or known as *splitsing*, can or allow obtaining *Justice Collaborator status*. This shows that the witness testimony which is one of the evidences has a very important position. However, the important nature of the testimony should not be a weakness of law enforcement in that the *bargaining position* between the information given is not necessarily *factual* or just a lie in order to achieve the goal of lightening the sentence.

The witness with his testimony is an important factor in the case, especially in determining the clarity of an offense, so it is not justified to conduct an examination under pressure in any way that can cause the suspect or witness to explain different things which are not considered as statements of free thought.

From the results of research using primary legal materials and interviews, researchers can obtain scientific studies regarding the incompleteness of norms, this can subjectively be manipulated to deviate from the noble goal of establishing a law enforcement system by using witnesses who cooperate or are known as *Justice Collaborators*. By finding these problems for the next stage of scientific research will be aimed at the ideal formulation.

IV. Conclusion

This scientific article is expected to contribute to the pattern of thought to reconstruct the *Justice Collaborator* that meets the principles of legal certainty and justice and upholds human rights values. theoretical analysis which ranks the most abstract and occupies the highest position in the layer of Science can be implemented in the development of practical law, namely the practice of law enforcement with regard to the resolution of legal problems with the aim and nature of the implementation of the process of uncovering crimes by using the method of collaborating perpetrator witnesses /*Justice Collaborator* So as not to be mistaken interpreted as a legal commodity for the purpose of mitigating punishment and in fact it becomes legal politics that is not in accordance with the noble ideals in eradicating corruption. The determination of the status of *Justice Collaborator* must be in line with the Constitution UD RI of 1945 and the concept of upholding human rights.

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