

Designating Prisoners as Justice Collaborators in the Pursuit of Justice

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Abstract

This research studies is the authority of the prosecutor's office in determining prisoners as justice collaborators. This research is research with a normative juridical type, statutory approach, conceptual and comparative approach, as well as deductive legal material analysis techniques to analyze the types and sources of primary and secondary legal materials. The aim of this research is to analyze the urgency of the Republic of Indonesia Prosecutor's authority in determining justice collaborator status for prisoners and its concept. The research results reveals that this concept of regulating the authority of the Republic of Indonesia Prosecutor's Office in determining justice collaborator status for convicts is in the form of a concept. First, the concept of regulating the designation of prisoners as justice collaborators based on Law No. 8 of 1981 concerning Criminal Procedure Law. Second, the designation of convicts as justice collaborators with a benefit orientation as a legal goal. Third, the concept of determining prisoners as justice collaborators is oriented towards justice as a legal goal. From these several concepts, the author urges the immediate formulation of legislative regulations in Indonesia to fill the legal vacuum in determining prisoners as justice collaborators, especially the Indonesian Attorney General's Office and the Indonesian DPR to make changes (revisions) to Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Witness and Victim Protection. Also, the DPR RI also changed Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Indonesian Attorney General's Office by increasing the authority of the Prosecutor in determining justice collaborators for prisoners in this law.

1. Introduction

The Republic of Indonesia is a state based on law, this statement is stated in Article 1 paragraph (3) of the 1945 Constitution, which reads "The Republic of Indonesia is a state based on law". Indonesia as a country based on law has criminal law as a positive law that regulates criminal acts or criminal acts. Current technological developments have changed human thinking patterns and behavior to become more modern. Humans become logical and practical in everyday life. Human thinking patterns in the world have changed from traditional humans to humans who are competently organized and more rational. Thus, currently, humans are filled with various kinds of structures or a society that is structured more rationally.

The typology of crime also changes along with the changes that occur in society. The patterns of criminals are changing from conventional crimes to modern and organized crimes. Crime is no longer only committed by lower economic class groups who commit crimes to simply meet their daily needs. Nowadays, many crimes are committed by people from high socio-economic classes, in order to fulfill their luxurious lifestyle. Organized crime is a crime that involves more than one perpetrator who has the same goal and is carried out systematically. Narcotics trafficking, corruption, terrorism and human rights violations are some examples of crimes that can be categorized as organized crime. Disclosure of organized

crime should be able to dismantle the criminal network up to the arrest of the main perpetrator so that it can be ensured that organized crime will not be able to commit crimes again.

In disclosing crimes, there is a main obstacle, namely when the perpetrators keep secrets or do not provide information regarding their criminal networks. Organized crime originated from the Sicilian Mafia and Cosa Nostra crime groups. Organized crimes carried out by the mafia, such as the heroin (narcotics) trade, then expanded to various countries in the world. Organized crime groups exist in various countries in the world, there are cartels in Colombia, Triads in Japan, Mafiya in Russia, and Yakuza in Japan. Organized crimes or crimes committed by corporations in their disclosure have many obstacles in their detection and prosecution as a result of unequal professionalism between law enforcers and criminal perpetrators.

Cases of organized crime that are increasingly occurring should be able to be uncovered by law enforcement officials as a whole that action is not limited to just some of the perpetrators of the crime. However, disclosure of organized crime cases by law enforcement officers is more often revealed by individuals rather than holding corporations accountable. Law no. 8 of 1981 concerning Criminal Procedure Law or what is more often referred to as the Criminal Procedure Code does not recognize corporate criminal liability, but the Criminal Procedure Code recognizes crown witnesses as a way for law enforcement officials to uncover organized crimes. Suppression of organized crime requires more efforts, especially those related to organized crime such as corruption. In International Regulations, efforts to eradicate organized crime are by providing special treatment to perpetrators so that they become cooperative with law enforcement.¹

Whistleblowers and justice collaborators can play a big role in exposing corrupt practices of public institutions, governments, and private companies. One of the forms of protection for justice collaborators is life safety for both individuals and their families, while awards include relief from criminal sanctions up to the granting of remissions and conditional release. The concept of a justice collaborator is similar to the concept of a crown witness, both of whom use the testimony of one of the perpetrators as a form of cooperation with law enforcement officials to dismantle organized crime networks. However, the existence of the crown witness legal instrument is not without conflict, the increasing development of the field of science, especially legal science, is currently causing changes to legal regulations to occur more frequently, one of which is the existence of the crown witness legal instrument which is considered unable to be applied to determine new suspects in a criminal incident. According to them, investigators cannot determine someone as a suspect based on the testimony of the crown witness.

The opposing opinion regarding the concept of crown witnesses is that crown witnesses cannot be presented at trial because it violates human rights. One of the guarantees and protections for human rights is "not to be forced to testify against oneself or to confess guilt" or not to be forced to give testimony against oneself, or to be forced to admit guilt, known as "non-self discrimination". The concept of cooperation between criminals and law enforcement officers is known as Justice Collaborator, which in positive law in Indonesia is referred to as a perpetrator witness who collaborates with law enforcement officers. The pattern of

¹ Nurma Rosyida, Kadek Deddy Permana Artha and Lintang Yudhantaka, "The Position of Justice Collaborator to Reveal Corruption in Financial Management of Regional Government," *Yuridika* 35, no. 1 (2020): 102.

cooperation between criminals and law enforcement officials in which criminals provide information and information to law enforcement officials to uncover their criminal networks. Due to this cooperation, someone who is designated as a justice collaborator receives protection and appreciation.

In positive law in Indonesia, the regulations regarding justice collaborators are in Law No. 31 of 2014 concerning Amendments to Law 13 of 2006 concerning Protection of Witnesses and Victims. One of the substances or materials of these changes is regarding the scope of who can become a justice collaborator. In Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, the concept of providing a justice collaborator is only limited to the judicial process or before a judge's decision is made. This means that justice collaborator can only be requested by the suspect or defendant. Meanwhile, in Law of the Republic of Indonesia no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims, the concept of justice collaborator has a wider scope, namely that it can be applied by the convicted person. Awards for someone who has been designated as a justice collaborator are then also divided based on the status of justice collaborator in the judicial process. If the status is that of a suspect and/or defendant, the award given is in the form of a reduced sentence. Meanwhile, if the status is a prisoner, the reward will be in the form of remission and conditional release.

The role of justice collaborator is very important in obtaining relevant information, uncovering criminal networks and bringing perpetrators to justice. Justice collaborators can provide testimony and information that conventional law enforcers cannot access. They can also provide valuable evidence and clues to strengthen the case and identify other perpetrators. However, the role of justice collaborator also has challenges and risks. Some of the problems faced include the security and protection of justice collaborators, public trust in them, as well as a fair assessment of the benefits given to them. Therefore, a strict monitoring mechanism is required to ensure success and fairness in the implementation of legal partners.²

This protection is necessary because the reporter or revealer of criminal practices can be faced with a situation that threatens himself and his family, also threatens his job if the reporter is a subordinate at a job, or even faces attempts at criminalization through accusations of defamation, etc.³ Regulations regarding the procedures for granting special justice collaborator status to a prisoner are then regulated in Article 34A and Article 43A of Government Regulation No. 99 of 2012 concerning the Second Amendment to Government Regulation No. 32 of 1999 concerning Requirements and Procedures for Implementing the Rights of Correctional Inmates. Remission will be given to convicts in cases of criminal acts of terrorism, narcotics and narcotics precursors, psychotropic substances, corruption, crimes against state security, serious human rights crimes, and other organized transnational crimes. A prisoner is obliged to cooperate with law enforcement officials to play a role in exposing the crimes he has committed. Cooperation is realized by working together with law enforcement officials as

² Fraganta Cherissa Ratmoko dan Erny Herlin Setyorini, "Peran Justice Collaborator Dalam Tindak Pidana Pembunuhan Berencana" 2, no. 1 (2023): 140, <https://jurnal.untag-sby.ac.id/index.php/sosialita/article/view/8754/5672>.

³ A Irawan Setiyanto & Rusda Irawati Mega Mayasari, "Pengaruh Faktor-Faktor Individual Terhadap Niat Melakukan Whistle-Blowing Internal Dan Eksternal Pada Akuntan Di Batam," *Jurnal Gama Societa* 2, no. 1 (2019): 48-53.

stated in writing. What was then determined was that the law enforcement agencies that were given the authority to issue justice collaborator designations for prisoners were:

- a. *Komisi Pemberantasan Korupsi;*
- b. *Kepolisian Negara Republik Indonesia;*
- c. *Kejaksaan Republik Indonesia;*
- d. *Badan Narkotika Nasional.*

The history of justice collaborators starts from the provisions of Article 37 paragraph (2) of the United Nations Convention Against Corruption (UNCAC) in 2003. Then Indonesia ratified it with Law no. 7 of 2006 concerning ratification of the United Nations Convention against Corruption. where it is emphasized that "each state party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offense established in accordance with this convention" (each participating state is obliged to consider, provides the possibility in certain cases, of punishing an offender who provides substantial cooperation in the investigation or prosecution of a crime provided for in this Convention).

Then in article 37 paragraph (3) UNCAC regulates "each state party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offense established in accordance with this convention". (Each participating country must consider the possibility in accordance with the basic principles of its country's law, to provide immunity from prosecution for persons who play a substantial role in the investigation or prosecution of a criminal offense established under this Convention). If you look at the initial idea of the justice collaborator concept, it does not mention that convicts can apply as justice collaborators. The initial idea was simply to provide leniency and even legal immunity for criminals who play a role in collaborating with law enforcement officials in uncovering their criminal networks. This can then give rise to pros and cons regarding whether or not a prisoner is worthy of being designated as a justice collaborator, considering that the trial process has been completed and during the trial, the person did not apply to be a justice collaborator. Another regulation that was later used as a guideline was the Joint Regulation between the Minister of Law and Human Rights, the Attorney General, the Head of the National Police of the Republic of Indonesia, the Corruption Eradication Commission, the Chair of the Witness and Victim Protection Agency (LPSK), No.: M.HH-11.HM.03.02.th.2011; NO.: PEIR-045/A/JA/12/2011; NO.: 1 of 2011; NO.:KEIPB-02/01-55/12/201; NO.: 4 of 2011 concerning Protection for Whistleblowers, Reporting Witnesses and Cooperating Perpetrator Witnesses. However, these two regulations were born before Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Victim Witnesses began to be enacted.

In the absence of regulations regarding the procedures for determining justice collaborator status for prisoners, legal uncertainty will occur. Any information or information provided by a prospective justice collaborator must be relevant, reliable, and significant for uncovering serious criminal acts. Thus, the information or information provided must be able to be tested for its truth using formal criminal law, bearing in mind that a justice collaborator will ultimately also be a witness in the trial. So ideally information or information is given to

institutions that have the authority to carry out investigations into the criminal justice system in Indonesia. Therefore, in the practice of many law enforcers in the field of organized criminal acts, it is not uncommon for strategies and approaches to be implemented through the appointment of perpetrator witnesses (justice collaborators) who collaborate in law enforcement as occurs in narcotics crimes, trans-national crimes, money laundering, terrorism and no exception to criminal acts of corruption.⁴

Investigation is an activity to determine a criminal incident. Meanwhile, investigation is an activity of searching for and collecting evidence and then determining who the suspect is. So that the information or information provided by prospective justice collaborator prisoners must be able to be tested legally. The Criminal Procedure Code is a norm that regulates restrictions on the authority of law enforcement officials in order to protect people's rights. In other words, the provisions in the Criminal Procedure Code are intended to prevent law enforcement officers from carrying out arbitrary actions.⁵

The Prosecutor's Office of the Republic of Indonesia according to Government Regulation no. 99 of 2012 concerning the Second Amendment to Government Regulation no. 32 of 1999 concerning Requirements and Procedures for Implementing the Rights of Prisoners. Corrections are given the authority to determine the status of justice collaborator proposed by prisoners. A request for determination of justice collaborator status if submitted by a convict in a criminal corruption case certainly does not cause problems because the Indonesian Prosecutor's Office, apart from being a public prosecutor, can also act as an investigator and investigators in corruption cases as regulated in the explanation of article 30 (d) of Law no. 16 of 2004 concerning the Indonesian Prosecutor's Office. It will create an obstacle when the Republic of Indonesia Prosecutor's Office receives a justice collaborator request letter from a prisoner where the Republic of Indonesia Prosecutor's Office does not have the authority to investigate narcotics crimes.

In positive law in Indonesia, one of the material changes in Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning the Protection of Witnesses and Victims is an expansion of the scope of justice collaborators, namely that apart from suspects and defendants, convicts are also given the right and opportunity to become justice collaborators. The incident of granting a justice collaborator to Muhammad Nazarudin's brother as a convict in a criminal case of corruption and money laundering at the athlete's house, the convict received a reduction in his sentence (remission), and conditional release then also gave rise to debate and problems. From this incident, the Ministry of Law and Human Rights of the Republic of Indonesia, through the Director General of Corrections, believes that the reduction in sentence (remission) and conditional release received by Muhammad Nazarudin was because he had fulfilled the requirements as a justice collaborator, whereas according to the Corruption Eradication Commission (KPK) through his spokesman that Muhammad Nazarudin was not a justice collaborator but rather a whistleblower. After all, he only reported a criminal act that he knew about which he was not involved in.

⁴ B Pratama, B. D., & Budiarsih, "Analisis Kebijakan Kedudukan Justice Collaborator Dan Whistleblower Dalam Tindak Pidana Korupsi," *Bureaucracy Journal* 3, no. 1 (2022): 313-27.

⁵ Nelson, "Lemahnya Penegakan Hukum di Indonesia," *Jurnal Multilingual* 3, no. 4 (2023): 634.

2. Methods

This study employs several approaches to achieve accurate objectives. Specifically, it utilizes the statutory approach, conceptual approach, and comparative approach.

3. Results and Discussion

3.1. Regulation of the Authority of the Republic of Indonesia Prosecutor's Office to Determine Prisoners as Current Justice Collaborator

Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims as the main regulation in regulating justice collaborators, does not regulate clearly and firmly how to determine justice collaborator status for prisoners. Law enforcement officials are hesitant to follow up on letters requesting the appointment of justice collaborators from prisoners. The prosecutor, as a functional position in the Republic of Indonesia Prosecutor's Office, also feels hesitant in accepting or rejecting a letter of application for a justice collaborator from a prisoner. Several law enforcement institutions still encounter several obstacles regarding justice collaborators. These obstacles include justice collaborator requirements, application procedures, institutions that determine justice collaborator status as well as protection and rewards for Justice Collaborators.

In positive law in Indonesia, there is currently only 1 (one) regulation that is used as the legal basis for law enforcement officials to decide whether to accept or not accept a justice collaborator application from a prisoner, namely Government Regulation No. 99 of 2012 concerning Requirements and Procedures for Implementing the Rights of Correctional Inmates. If in daily practice in the field law enforcement officers only follow government regulations, the author believes that this will give rise to two legal problems. The first problem is: That Government Regulation No. 99 of 2012 concerning Requirements and Procedures for Implementing the Rights of Correctional Inmates, passed two years before Law of the Republic of Indonesia No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Witness and Victim Protection was passed. What are the provisions in Government Regulation no. 99 of 2012 concerning the Second Amendment to Government Regulation no. 32 of 1999 concerning Requirements and Procedures for Implementing the Rights of Correctional Inmates can be used as implementing regulations and have the same legal substance as Law of the Republic of Indonesia No. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning Witness and Victim Protection. The second problem is: In the explanation of articles 34A and 43A it is determined: what is meant by "law enforcement agency" is the agency that handles related cases, among others:

- a) *Komisi Pemberantasan Korupsi (KPK);*
- b) *Kepolisian Negara Republik Indonesia;*
- c) *Kejaksaan Republik Indonesia;*
- d) *Badan Narkotika Nasional.*

According to the author, the inclusion of the four institutions mentioned above creates vague legal norms when connected with the word "related" in the previous sentence. Because all these agencies have different authorities when it comes to investigating criminal cases. As the author explained previously, prisoners who apply to become justice collaborators must provide significant and reliable information to uncover serious and organized criminal acts.

As a country of law, testing the veracity of information from prisoners should be through the applicable criminal procedural law.

Government Regulation No. 99 of 2012 concerning Requirements and Procedures for Implementing the Rights of Correctional Inmates also limits what criminal acts a prisoner can apply for as a justice collaborator, namely serious and organized criminal acts, as follows:

- 1) Criminal acts of terrorism;
- 2) Crime of narcotics, narcotics precursors, psychotropic substances;
- 3) Corruption crime;
- 4) Crimes against state security;
- 5) Serious human rights crime;
- 6) Other organized transnational crimes.

The problem is that the four institutions mentioned above do not all have the authority to carry out investigations into the types of criminal acts for which prisoners can apply for justice collaborators based on Government Regulation No. 99 Years Concerning Requirements and Procedures for Implementing the Rights of Corrections Inmates. Only the police institution can carry out investigations into all criminal acts.

Thus, the author interprets two meanings of the word "related", namely:

- 1) Regarding the criminal act; or
- 2) Regarding which agencies have handled cases committed by the prisoner.

If the designation of a prisoner as a justice collaborator is based on thoughts related to criminal acts committed by the prisoner, then this means that only the agency or institution that has the authority to carry out investigations in accordance with the criminal acts committed by the prisoner can decide to accept or reflect the prisoner's request for a justice collaborator. However, if the appointment of a prisoner as a justice collaborator is based on the idea of which agency has handled the case committed by the prisoner, then the investigating agency and the public prosecution agency are the ones who have the authority. It does not matter what type of crime the prisoner committed. If we use this model, a conclusion can be drawn that the Prosecutor's Office of the Republic of Indonesia has the authority to decide whether to accept or reflect a justice collaborator application letter from a prisoner, because the Prosecutor as a public prosecutor is guaranteed to handle all criminal cases. If a statutory regulation is considered to have multiple interpretations, the potential for questioning the actions of law enforcement officials will tend to be high because other parties interpret a legal action carried out by a law enforcement agency as being legally flawed. Likewise, with the multiple interpretations of Article 34A paragraph (1) letter a Government Regulation no. 99 of 2012 concerning the Second Amendment to Government Regulation no. 32 of 1999 concerning Requirements and Procedures for Implementing the Rights of Correctional Inmates. For this reason, it is necessary to formulate a legal arrangement that does not have multiple interpretations so that law enforcement officials, especially the Indonesian Prosecutor's Office, are not questioned in order to realize the objectives of the law itself.

Sudikno Mertokusumo explains the division of criteria for the enactment of law into: law that applies in the present (*ius constitutum*) and law that is envisioned in the future (*ius constituendum*). Formulating legal arrangements for determining prisoners as justice collaborators means discussing *ius constituendum*. The formulation of a statutory regulation

should guide the meaning of legal objectives, namely justice, benefit, and legal certainty. Apart from having to fulfill the three elements of legal objectives, the formation of a statutory regulation must also be effectively implemented. Lawrence Meir Friedman argues regarding the effectiveness of law, that there are three main elements in the legal system, namely:

- a. Legal Substance, is a case law issue in itself. Processing and feasibility testing of legal rules is carried out by the legislative body. A legal policy must be in accordance with what the community expects and needs.
- b. Legal Structure, Legal institutions in Indonesia consist of institutions that have a role in the supremacy of law and have their job descriptions in realizing law enforcement.
- c. Legal Culture, Legal culture is something that grows and develops and becomes a habit in society.⁶

Meanwhile, Achmad Ali added two more elements to the legal system, namely:

- a. Professionalism, which is an element of personal ability and skills of law enforcement figures;
- b. Leadership is also an element of personal abilities and skills of law enforcement figures, especially among high-ranking law officials.

The implementation of a regulation by law enforcement officials that only focuses on the aim of legal certainty will cause conflict in society so that public trust in law enforcement institutions and even the substance of the law itself will tend to decline. The case of petty theft, which some time ago was reported in the media, was considered to have violated the sense of justice in society when the case which had been investigated by the police was transferred to court by the prosecutor. However, law enforcement officials cannot be completely blamed because, in the civil law tradition, legal certainty is prioritized. Thus, a professional leader is needed in carrying out his position, so that the regulations that have been made can be ensured to be implemented while fully fulfilling the legal objectives. The obstacles to legal protection for whistleblowers and justice collaborators in statutory regulations are still vague, partial, and sectoral as can be seen at a glance in the Witness and Victim Protection Law. In the provisions in the context above, regulations regarding procedures, mechanisms and systems for disclosing facts carried out by whistleblowers or justice collaborators are not regulated.

In positive law in Indonesia, the regulation of justice collaborators currently involves many agencies/institutions. As in the Joint Regulation of the Minister of Law and Human Rights, Attorney General, Chief of Police, Corruption Eradication Commission, Chairman of LPSK, No: M.HH-11.HM.03.02.th.2011; No:PEIR-045/A/JA/12/2011; NO. :1 Year 2011; NO. :KEIPB-02/01-55/12/201; NO. : 4 of 2011 concerning Protection for Whistleblowers, Reporting Witnesses and Collaborating Perpetrator Witnesses. From the joint regulations alone, it can be seen that 5 (five) institutions are involved in regulating justice collaborators.

The formulation of regulation regarding justice collaborators in general and the regulation of prisoners as justice collaborators, in particular, stems from the current justice collaborator regulations. It seems that what has been explained previously is that the arrangement of prisoners as justice collaborators is not regulated clearly and firmly. Primarily regarding who has the authority to designate a prisoner as a justice collaborator considering

⁶ Askari Razak, "Mewujudkan Pemilu Adil dan Bermartabat: Suatu Tinjauan Sistem Hukum Lawrence M. Friedman," *Jurnal Fundamental* 12, no. 2 (2023): 477-482.

that the trial process has been through and the prisoner even during the investigation process up to the trial never volunteered as a justice collaborator at all.

Legal regulations regarding the procedures and procedures for determining justice collaborators, both those with suspect or defendant status and those with prisoner status, can be categorized into formal criminal law regulations or procedural law. The concept of justice collaborator itself is how to uncover or expose serious and organized criminal acts by utilizing information and information from one of the perpetrators who is currently undergoing the pre-adjudication and adjudication process or is currently carrying out the criminal process (post-adjudication). In Indonesia, there are no real regulations regarding justice collaborators related to prisoners. Law No. 31 of 2014 concerning the protection of witnesses and victims only regulates protection for witnesses and victims, not for informants. Justice Collaborators as informant witnesses are part of the perpetrators in Law No. 31 of 2014 Article 10 paragraph 2 concerning the protection of witnesses and victims if their testimony can be used as a consideration to facilitate sanctions and can be given mitigating sanctions.⁷ For example, the determination of LPSK protection for perpetrator witnesses can be provided with the following conditions:

- a) The criminal acts disclosed are specific cases according to LPSK decisions;
- b) The importance of testimony from perpetrator witnesses in uncovering criminal acts;
- c) Not as the main actor;
- d) Willing to return assets obtained from crimes committed and must provide a written statement; And
- e) There is a real threat, physical or psychological pressure on both the perpetrator witness and his family of the true nature of the crime is revealed.

The legal objective of the justice collaborator arrangement is how someone who is designated as a justice collaborator can obtain their rights as guaranteed in Law of the Republic of Indonesia No. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning protecting witnesses and victims, including providing remission and conditional release for those with prisoner status. Then what are the benefits of the justice collaborator instrument itself in the form of assisting law enforcement officials in uncovering serious organized crimes? Meanwhile, in terms of legal certainty, it is the procedures or procedures for realizing prisoner's rights and the benefits obtained by the state. Although it has a clear legal basis, there are still some different interpretations between law enforcement institutions regarding the criteria for cooperating witnesses (justice collaborators). Crucially, the difference in determining when a cooperating witness is in the process itself cannot be ascertained from the beginning when the legal process begins, be it investigation or inquiry. When the investigator processes the investigation, the investigator has his assessment, during the prosecution process the prosecutor has his assessment, during the verdict process the judge also has his assessment. there are many different views on the criteria for someone to be determined as a

⁷ Ria Sintha Devi Tomi Hagai Pinem, Rotua Hotmauli Siayung, Nanci Yosepin Simbolon, "Kedudukan Justice Collaborator Terhadap Pengungkapan Kasus Tindak Pidana Korupsi Dalam Sistem Peradilan Pidana," *Jurnal Rectum* 4, no. 1 (2022): 126.

justice collaborator.⁸ Justice Collaborators in their development must receive special attention considering that the services they provide are very helpful for law enforcement in uncovering crimes that are difficult to prove. The key roles of a Justice Collaborator include uncovering criminal acts, providing important information to law enforcement, and providing testimony in the trial process.⁹

3.2. Prisoners as Justice Collaborators in Several Countries

Law No. 13 of 2006 concerning Witness and Victim Protection initially only allowed suspects and/or defendants to be given status as justice collaborators. In other words, a justice collaborator can only be requested at the stage before a judge's decision is made in court. Meanwhile, the amendment law, namely Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning the Protection of Witnesses and Victims adds that prisoners are also allowed to propose themselves as justice collaborators. The rights or opportunities for justice collaborator status given to prisoners then gave rise to debate. One of them is a legal expert and criminologist, namely Adrianus Meliala, who believes that justice collaborator status can only be carried out in the pretrial and adjudication phases. This opinion is seen from the perspective of assuming that a prisoner has entered the post-judication phase where all information and information has been provided during the evidentiary process by the prosecutor as the public prosecutor at the trial. In other words, prisoners cannot be assigned status as justice collaborators because they have passed the adjudication phase where in that phase prisoners who previously had the status of defendants have provided information regarding the criminal acts they have committed and may also provide information and information about their criminal network.

The terms whistleblower and justice collaborator cannot be separated, historically whistleblower comes from the practice of British officers who would blow their whistles when they saw a crime. In its development, the terms "participant whistleblower", "collaborator with justice" became known. This is because there are people who are involved in a crime and then report the crime they committed with their network to law enforcement officials. Meanwhile, a justice collaborator is a witness who is also a perpetrator of a crime who collaborates with law enforcement officials by providing information and information regarding the crime and the people involved. So that it can help law enforcement in uncovering cases effectively, uncovering other perpetrators who play a more important role so that the punishment received by the perpetrator is fair and returns the assets or proceeds of the crime that has been committed.¹⁰ If studied more deeply, the main idea of the justice collaborator concept is the disclosure of serious criminal acts carried out in an organized manner by using one of the perpetrators to provide information. Then the United Nations Conventions Against Corruption requires each participating country to provide legal immunity and leniency to

⁸ Tofik Yanuar Chandra, *KPK Dan Kewenangan Penetapan Status Justice Collaborator* (Jakarta: PT. Sangir Multi Usaha, 2022).

⁹ Kukuh Sudarmanto Bahrudin Machmud, Muhammad Junaidi, Amri Panahatan Sihotang, "Reposisi Kedudukan Justice Collaborator Dalam Upaya Pemberantasan Tindak Pidana Korupsi," *Jurnal USM* 4, no. 1 (2021): 371-72.

¹⁰ Adi Syahputra Sirait, "Kedudukan Dan Efektivitas Justice Collaborator Di Dalam Hukum Acara Pidana," *Jurnal El-Qanuniy: Jurnal Ilmu-Ilmu Kesyarifan Dan Pranata Sosial* 5, no. 2 (2020): 241-56.

perpetrators who are designated as justice collaborators as compensation for their services or assistance to law enforcement officials.

Several other countries in the world, which were also participants in the 2003 United Nations Conventions Against Corruption, then formulated legislation in their countries to protect and reward justice collaborators. However, there are differences in each country regarding who is then called a justice collaborator. Some countries can only grant justice collaborator status to suspects and/or defendants, but some countries grant justice collaborator status to prisoners. Macedonia has had legislation regarding Witness Protection since 26 May 2005 which has provided a place for Justice collaborators (referred to as Collaborators to Justice). In Article 2 point 2, the definition of Collaborator to Justice is stated as "a person against whom an indictment is filled, is convicted, or member of a criminal group, gang or other association, or has participated in committing a crime in the area of organized crime, but has agreed to cooperate with the bodies authorized to identify, prosecute and trial the criminal acts, particularly to state capacity of witness in the criminal procedure, related to the criminal group, band or other association or any other criminal act connected with organized crime". The law stipulates that a convict is allowed to apply as a justice collaborator.

The idea of justice collaborators in Macedonia was inspired by plea-bargaining in the Anglo-American legal system. However, the implementation in Macedonia is slightly different, especially in terms of the presence of legal advisors in the process of negotiating sentences with prosecutors for justice collaborators. The 2010 Criminal Procedure Code (CPC/KUHAP of Macedonia) determines that in terms of bargaining for punishment between the justice collaborator and the prosecutor, only transfer of the type of crime is permitted, not change of indictment. With the enactment of the new Criminal Procedure Code in 2010, Macedonian legislators have created a modern criminal justice system mainly inspired by the Anglo-American adversarial system.

Albania is also an example of a country that has special legislation regarding Justice collaborators, namely in Law no. 9205 dated March 15 2004 entitled Law on The Justice Collaborator and Witness Protection. There is a special judicial and public awareness of the criminal proceedings involving individuals who are accused of committing serious crimes especially homicides, organized crime, corruption, and trafficking in Albania. The novel dimension of witnesses testifying in organized crime, trafficking, and terrorism cases has created a climate of serious intimidation.¹¹

Article 2 letter b of Law no. 9205, dated 15/03/2004 on the justice collaborators and witness protection, provides the following definition:

"A Collaborator of justice is considered a person that serve a criminal sentence or a defendant in a criminal proceeding, toward whom special measures of protection have been applied due to collaboration, notifications and declarations made during the criminal proceeding on the offences provided in letter "e" of this article, and for these reasons is in a real, concrete or serious danger."

Meanwhile, in the United States, the justice collaborator for prisoners is regulated by the Bureau of Prisons, whose job is to supervise and organize witnesses in prison or convict status

¹¹ Amelia Elisabeth Putri Kusuma dan Ade Adhari, "Kepastian Hukum Ketentuan Pelaku Utama Dalam Kriteria Justice Collaborator di Indonesia," *Indonesia Journal of Criminal Law* 3, no. 2 (2021): 267.

and prepare administration. In the criminal justice system in the United States, the Attorney General has the authority to assess and evaluate justice collaborator applications. As Robert H. Jackson (1940) once famously observed, "The prosecutor has more control over life, liberty, and reputation, than any other person in America." Prosecutors often supervise investigative officials (including police) and may actively engage in criminal investigation.

The Attorney General and public prosecutors in each state in the United States as officials who have discretionary authority over criminal cases, can then carry out plea-bargaining, which is a kind of discretionary right against criminal perpetrators, especially in organized crime cases. Plea-bargaining is applied when the perpetrator admits his actions so that the prosecutor can submit a motion to the judge for a reduced sentence. Prosecutorial discretion in the plea-bargaining process plays an important role in determining the conviction of a crime. Serious charges that were initially field against a defendant may be reduced to less serious ones and concurrent charges involving less serious crimes may be dropped altogether.¹²

This can be understood because some countries in Europe apply the common law legal system tradition, where court decisions are seen as law. This is different from countries adhering to the civil law tradition which is more laws are considered law. Judges in common law countries have discretionary authority in the castles at hand. In some member states example Italy, Luxembourg, Portugal and the Netherlands, the prison sentence can be reduced when collaboration is provided. In some of the member states like Portugal and the Netherlands, this benefit can already be granted by the public prosecutor's office.¹³

Table 1. Justice Collaborator in Several Countries

Country	Indonesia	Amerika Serikat	Macedonia	Albania
Aspect				
Given to	Suspect, Defendant, Convict.	Perpetrators with Witness status.	Accused, convicted, member of a criminal group.	Defendant or Convict.
Authorized institution	Investigator, Public Prosecutor, Judge, LPSK. Specifically for prisoners, it has not been regulated.	<i>US Department of Justice, US Marshal Service, FBI, Bureau of Prison, Immigration.</i> The Attorney General acts as an assessor and evaluates all information	Witness protection department	Prosecutor as the proposer of granting justice collaborator.

¹² Hermawati R, "Studi Perbandingan Hukum Plea Bargaining System di Amerika Serikat dengan Jalur Khusus di Indonesia," *Jurnal Hukum Lex Generalis* 4, no. 1 (2023): 102-115.

¹³ Lilik Mulyadi, *Perlindungan Hukum terhadap Whistleblower dan Justice Collaborator dalam Upaya Penanggulangan Organized Crime* (Bandung: PT Alumni, 2022).

			from the applicant.			
Protection	Protection for yourself and family.	for and	Protection of personal and economic safety for individuals and families.	and	Personal protection, identity confidentiality.	Personal and family protection and special treatment in prison.
Award	Reduction of criminal charges and decisions. Prisoners are given remission and conditional release.	of	Prosecutors are prohibited from promising leniency. Just a motion to the judge.	Transfer of type of punishment but does not change the public prosecutor's indictment.		No award in the form of criminal mitigation.
Type of criminal act	Organized serious criminal acts.		Organized crime racketeering and drug trafficking.	Crimes against the state; against humanity and international law; organized crime; and a crime that carries a minimum of 4 years in prison		Organized crime, corruption, terrorism and murder.

3.3. Legal Framework for Designating Prisoners as Justice Collaborators Under Indonesia's Criminal Procedure Law

As a country that still adheres to the civil law tradition, legislation is needed that is clear and can be implemented without giving rise to multiple interpretations for law enforcement officials. This is to avoid the emergence of lawsuits or objections as a result of actions taken by law enforcement officials. Since the beginning of the development of legal theory and philosophy, especially since the existence of the legal ideals (*idee des recht*) developed by Gustav Radbruch as quoted by Sudikno Mertokusumo, 3 (three) elements of legal ideals must exist proportionally, namely legal certainty (*rechssicherheit*), justice (*gerechtigkei*), and expediency (*zweckmasigkei*).¹⁴ Gustav Radbruch's ideas are often known for legal purposes. The formation of legislative regulations in countries around the world, including Indonesia, should reflect the objectives of the law as initiated by Gustav Radbruch.

¹⁴ Cahya Palsari, "Kajian Pengantar Ilmu Hukum: Tujuan dan Fungsi Ilmu Hukum Sebagai Dasar Fundamental dalam Penjatuhan Putusan Pengadilan," *e-Journal Komunitas Yustitia Universitas Pendidikan Ganesha* 4, no. 3 (2021): 941.

Michael King put forward a model of the criminal justice system based on its nature and objectives as follows:¹⁵

1. Due Process Model (DPM)
Describes that the criminal justice system must work according to the ideas and characteristics contained in the regulations. Covers the rights of the accused, the principle of presumption of innocence, equality before the law and the judiciary.
2. Crime control model
In order to enforce the law and prevent or curb crime, repressive measures are carried out to protect and serve society. In this model, it is known as the presumption of guilt.
3. Medical models
The medical model emphasizes a punishment system that emphasizes rehabilitation of perpetrators and law enforcers (police) have the right to direct perpetrators to social work institutions.
4. Bureaucratic Model
Crimes that have occurred must be processed quickly and the perpetrators must be punished. The effectiveness of trials in court is the main goal.
5. Status passage model
This model emphasizes public and public trials. Punishment hell is intended to discredit the morals of society to create a feeling of shame in the perpetrator of the crime.
6. Power Model
The criminal justice system with this model emphasizes the role of the authorities who have power. Its implementation is also influenced by the dominant group.
7. Just Desert Model
Perpetrators of criminal acts must be punished according to the level of their guilt, suspects must be related according to human rights.

An examination using the Due Process Model system is an examination that upholds human rights values which are based on the principle of the presumption of innocence.¹⁶ Each stage in the Due Process Model is carried out very carefully, for example, the collection of evidence is carried out using strict procedures, namely how to obtain, collect and convert it.

The logical consequence of the regulation of determining prisoners as justice collaborators based on the Criminal Procedure Code is to give full authority to the institution or institution that is given the authority to carry out investigation and investigation activities, namely the National Police of the Republic of Indonesia. Considering that the Criminal Procedure Code is the main formal criminal law in Indonesia. The regulation of the authority to appoint prisoners as justice collaborators should be in line with the Criminal Procedure Code. The key roles of a justice collaborator include uncovering crimes that have occurred or are about to occur, providing important information to law enforcement and providing

¹⁵ Gita Santika, "Peran Kejaksaan Mewujudkan Keadilan Restoratif Sebagai Upaya Penanggulangan Kejahatan," *Jurnal Hukum XVI/No.1/Juni/2021* (2021): 81.

¹⁶ Ridwan, Ahmad L. Citrawan, Belardo Prasetya Mega Jaya, Fanny K. Zanah, Khoiruttamam, Anisa Lutfiah dan Norma R. Pratiwi, "Penerapan Due Process Model Terhadap Tersangka Pada Masa Pandemi Covid 19 di Polres Cilegon," *RechtIdee* 18, no. 1 (2023): 66.

testimony in the trial process.¹⁷ Legal protection for justice collaborators can provide a person with a sense of security when giving their testimony to law enforcement. Thus, there must be new regulations or revised regulations that expressly state that the authority to determine justice collaborator status is carried out by the Prosecutor's Office of the Republic of Indonesia as the law enforcement agency that can carry out investigative actions regarding all criminal acts that occur.

3.4. Aligning Prisoner Designation with Benefit-Oriented Legal Objectives

Every legal regulation should be formulated in order to realize legal objectives. In practice, harmonizing the three legal objectives mentioned above is not easy, so in the theory of casuistic priority in modern theory, justice, benefit, and legal certainty are ordered proportionally, according to the case at hand and to be resolved. Many criminal cases have never been touched by the legal process to be tried because not a single witness or victim dared to speak out, while other evidence obtained by investigators was very inadequate. Threats of abuse, kidnapping of victims, witnesses or their family members, and even murder are the main reasons that discourage them from getting involved in giving testimony.¹⁸ Therefore, it is certain that a justice collaborator will receive huge threats and intimidation because the perpetrator or the perpetrator's family or subordinates do not accept the testimony presented in revealing the facts carried out by the justice collaborator.¹⁹

Regarding the current problem of regulating prisoners as justice collaborators which is not regulated firmly and clearly (*recht vacuum*) in Law no. 31 of 2014 concerning Amendments to Law no. 13 of 2006 concerning Protection of Witnesses and Victims and the vagueness of norms (*vague norms*) in Government Regulation no. 99 of 2012 concerning Procedures for Implementing the Rights of Inmates. The author analyzes the urgency of the Indonesian Attorney General's authority in determining justice collaborators for prisoners who prioritize benefits as the main priority in their legal objectives.

For Jeremy Bentham, law will be recognized as law if it provides great benefits or usefulness for many people. In formulating the authority to determine prisoners as justice collaborators in the future, what is to be achieved is how the information provided by prisoners as applicants for justice collaborator status can be used as well as possible by law enforcement officials to uncover larger serious and organized criminal acts. With significant and reliable information, it is hoped that law enforcement officers can take action against serious crimes to create a safe, orderly and peaceful life in society.

The benefits of uncovering or dismantling serious and organized criminal acts and their networks will be very useful for law enforcement officials. This means that in this case formulating a policy within the scope of formal criminal law or criminal procedural law. Satjipto Rahardjo stated that apart from using a legal approach, the criminal justice system should also use a sociological, economic and management approach. The criminal justice

¹⁷ Dwi Oktafia Ariyanti dan Nita Ariyani, "Model Perlindungan Hukum Terhadap Justice Collaborator Tindak Pidana Korupsi Di Indonesia," *Jurnal Hukum Ius Quia Iustum* 27, no. 2 (2020): 328.

¹⁸ Rendi Yun Trisna Putra, "Tinjauan Yuridis Perlindungan Hukum Terhadap Saksi Pengungkap Fakta (Whistle Blower) Terhadap Undang-Undang Nomor 31 Tahun 2014 Tentang Perlindungan Saksi Dan Korban," *Mizan: Jurnal Ilmu Hukum* 27, no. 2 (2019): 150.

¹⁹ Alifia Nur Basanti, "Perlindungan Hukum Terhadap Justice Collaborator Ditinjau Dari UU 31/2014 Dan Hukum Islam," *Jurnal Hukum dan Sosial Politik* 1, no. 3 (2023): 104.

system in Indonesia involves several legal agencies, namely the Police Department and the Republic of Indonesia as the investigator, the Prosecutor's Office of the Republic of Indonesia as the public prosecutor, the Court as the judge and the Correctional Institution as the place of execution of the crime.

The prosecutor as the holder of the *dominus litis* principle can indirectly be justified as the agency that can determine or reject a justice collaborator application from a prisoner. Remembering the Prosecutor as the authority in every criminal case as well as the history of the Prosecutor's Office. In Government Regulation No. 99 of 2012 concerning Procedures for the Implementation of the Rights of Inmates, the Attorney General is determined to be the highest public prosecutor and the highest leader of the Republic of Indonesia's Prosecutor's Office, who is always mentioned when considering granting a reduced sentence and parole for a prisoner before the Minister of Law and Human Rights issues a decision letter. Remission and conditional release are forms of reward promised by law for prisoners designated as justice collaborators.

The Prosecutor's Office does not have the authority to investigate all criminal cases like the Police have, so legally speaking, when the Prosecutor tests information from prisoners using criminal procedural law, it creates the potential for other parties to question the actions taken by the Prosecutor. Such a view will of course hamper the main objective of the justice collaborator instrument itself. The main goal is to dismantle organized crime networks which are difficult to prove. Therefore, a strategy is needed in disclosing it, one of which is utilizing the perpetrators involved in it so that the perpetrators cooperate with law enforcement officials by providing significant and reliable information which is of course useful for law enforcement officials.

The central gravity of the criminal justice system lies with the prosecutor, because in the prosecutor the principle of *Dominus litis* is held, which is the one who owns the case, controls the case, and is responsible for resolving the case. So the Prosecutor is responsible for achieving legal objectives. Because in fact, the aim of the law is not just to enforce the conformity of criminal events with the elements of the article (procedural justice). If the above efforts have been carried out, it will produce prosecutors who are professional and have good moral qualities. The judiciary must be reformed.²⁰

Dominus litis is a principle inherent in prosecutors as public prosecutors in countries around the world. The prosecutor as *Dominus litis* (*procurer die de proceeding vastselat*) is the controller of the case process from the initial stages of the investigation to the implementation of the process of executing a decision. The *Dominus litis* principle is universal as contained in Article 11 of the "Guidelines on the Role of Prosecutors which was adopted by the Eight United Nations Congress to the Prevention of Crime" in the 8th Crime Prevention Congress held in Havana in 1990 in Indonesia also explicitly recognized in Constitutional Court Decision No. 55/PUU-X11/2013.

In its application in the criminal justice system in Indonesia, the *dominus litis* principle begins when the investigator carries out investigative actions. The prosecutor as public prosecutor will then research the case files resulting from the investigation. Research uses

²⁰ Adriansya Mukhtar, Ma'ruf Hafidz dan Muhammad Fachri Said, "Kedudukan Jaksa Selaku Pelaksana Mewakili Negara Dalam Sistem Peradilan Pidana," *Journal of Lex Generalis* 3, no. 4 (2022): 840.

parameters in the form of achieving formal and material requirements for a case. These material requirements and formal requirements are also needed by the prosecutor as a public prosecutor to prepare an indictment. In proving a court case, the prosecutor's basis is the indictment plus evidence to prove the defendant's guilt. The evidence used by the prosecutor as a public prosecutor comes from the results of the investigator's investigative actions. After the public prosecutor, in this case, the prosecutor has finished proving the defendant's guilt, the evidentiary activity closes with the reading of the criminal complaint letter. The judge in handing down a decision against the defendant must also be based on the facts revealed during the evidentiary process at trial. In handing down a decision, the judge has a heavy burden, namely assessing whether the evidence carried out by the prosecutor as a public prosecutor is in accordance with the applicable criminal procedural law so that the defendant is legally proven to have committed a criminal act as stated in the public prosecutor's indictment. Conversely, the judge considers that the public prosecutor's indictment is not sufficient to prove that the defendant committed a criminal act.

In this way, the role and position of the prosecutor as a public prosecutor in the criminal justice system can be seen. If the prosecutor is not careful in receiving the case files resulting from the investigation, the evidence carried out in the trial will also be wrong and ultimately the judge will also be wrong in deciding the image of the Prosecutor as the holder of the *dominus litis* principle, the authority to regulate prisoners as justice collaborators in the future should be given to the Prosecutor. The logical consequence is that it is necessary to amend Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning Protection of Witnesses and Victims, as well as Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Indonesian Prosecutor's Office.

Several forms of urgency in granting authority to determine prisoners as justice collaborators can be implemented, such as changes to Law No. 31 of 2014 concerning Amendments to Law No. 13 of 2006 concerning the Protection of Witnesses and Victims, the first is to give authority to the Prosecutor. With the consideration of the Prosecutor as the controller of every criminal case who knows in full the construction of the case that is being or has been handled. This concept is similar to the procedures for granting remissions and conditional releases in PP No. 99 of 2012 concerning the Second Amendment to PP No. 32 of 1999 concerning Requirements for Procedures for Implementing the Rights of Prisoners, where the Attorney General is always involved in providing considerations or recommendations as a basis for the Minister of Law and Human Rights to issue a decision on remission and/or conditional release. However, the granting of authority to prosecutors is stated in the statutory regulations above PP No. 99 of 2012 concerning Requirements for Procedures for Implementing the Rights of Indigent Residents so that implementation is no longer debated.

Law no. 11 of 2021 concerning Amendments to Law no. 16 of 2004 concerning the Indonesian Prosecutor's Office is also a second option if the government and the People's Representative Council as legislators are serious about overcoming the confusion of prosecutors in the field. Giving complete authority to prosecutors to appoint prisoners as justice collaborators, is something that makes it easier for prisoners to want to work together to dismantle and reveal their criminal networks because in every district and city in Indonesia, a District Prosecutor's Office has been established. And the prosecutor at the local District

Attorney's Office where the prison is located where the prisoner is serving his sentence, will be the supervisor of the implementation of parole. Of course, this makes the justice collaborator instrument for prisoners run effectively and efficiently. If the authority to determine a prisoner as a justice collaborator is given to the investigating agency at the beginning of the case, there will be problems if investigators such as BNN or KPK investigators carry out the investigation. Bearing in mind that BNN and KPK do not have representative offices in every city or district. In other words, it will hamper the process of uncovering larger crimes, because it will be fragmented and give rise to sectoral egos between law enforcement agencies. In this way, there will no longer be any confusion for prisoners regarding which agency to submit their justice collaborator application.

Institutions that protect witnesses can be:

- a) Officials, including a Minister or Legal Secretary, Attorney General, public prosecutor, and Chief of Police;
- b) A multidisciplinary body composed of representatives of the relevant Ministry agencies, prosecution agencies, Courts, or Police. Decisions that have been determined can be taken by majority or majority voting.

Even though justice collaborators have been regulated in the Supreme Court circular no. 4 of 2011 concerning the treatment of criminal reporters and perpetrator witnesses who work together and have been used as guidelines, however these regulations cannot bind the Prosecutor's Office or investigators, because these regulations are only internal regulations in the judicial environment, so they do not have strong authority in ensuring that justice collaborators get special treatment. Thus, legal norms in Indonesia do not provide an appropriate and appropriate place for justice collaborators. Therefore, it is necessary to look for a legal breakthrough to protect justice collaborators, especially prisoners. The sentencing guidelines for Justice Collaborators contain the conditions for a person to be designated as a Justice Collaborator, the protection provided from the investigation stage to the execution after the verdict with a common perception between law enforcers regarding a person's status as a Justice Collaborator, then the sentencing guidelines are formulated such as determining the consequences of the Justice Collaborator's mistakes.²¹

3.5. Redefining the Role of Prisoners as Justice Collaborators to Achieve Legal Objectives

The aim of criminal law is currently oriented towards retaliation to provide appropriate retribution to criminals. This principle reflects the view that individuals who break the law should be held accountable for their actions and should receive punishment commensurate with the severity of the crime they committed.²² The purpose of punishment is not only as revenge for what the perpetrator has done. If the purpose of punishment is only "revenge" then it will place the prisoner as an object in a correctional institution.

Witness and/or victim protection has an important role in the criminal case process. Witness and victim statements that are not given freely due to fear and threats can make it difficult to reveal a criminal act that has occurred. The protection of witnesses and/or victims

²¹ Riki Perdana Raya Waruwu Mita Nurasiah, Beniharmoni Harefa, "Disparitas Pidana Terhadap Justice Collaborator Dalam Tindak Pidana Korupsi," *Jurnal Esensi Hukum* 4, no. 1 (2022): 94.

²² Muchlas Rastra Samara Muksin, "Tujuan Pemidanaan dalam Pembaharuan Hukum Pidana," *Jurnal Sapientia et Virtus* 8, no. 1 (2023): 234.

must receive attention in accordance with statutory regulations. The protection in question includes physical and psychological protection, legal protection, and fulfillment of the procedural rights of witnesses and/or victims.²³

Legal protection can be interpreted as an effort to legally protect various freedoms and human rights of prisoners (fundamental rights and freedoms of prisoners) as well as various interests related to the welfare of prisoners. "Declaration against Torture and Other Cruel in Human Degrading Treatment or Punishment (adopted by the general assembly, 9 December 1975), strictly prohibits all forms of: "persecution or other cruel acts, treatment and punishment that are inhumane and degrading to human dignity and are violations basic human rights."²⁴

Prisoners as people who have been deprived of their liberty and are serving sentences related to crimes they have committed must remain in their position as citizens who still have human rights. The principles contained in the Universal Declaration of Human Rights (UDHR) are principles intended for all individuals without exception, including prisoners. The principles of the UDHR relating to prisoners include: no one may be tortured or treated or punished in an inhumane or humiliating manner (article 5), and all people are equal before the law and have the right to equal legal protection without discrimination, all have the right to equal protection against any form of discrimination that is contrary to this declaration (article 7). The Universal Declaration of Human Rights was accepted and promulgated by the UN General Assembly on December 10, 1948, through resolution 217 A (III).²⁵

In Article 10 Paragraph (1) of the International Covenant on Civil and Political Rights (ICCPR) it is stated that: "Every person who is deprived of his liberty must be treated humanely and with respect for the dignity inherent in human beings.". In 1963, the concept of correctional care was proposed by the Minister of Justice, Sahardjo, one of which was imprisonment, besides causing suffering to the convict due to loss of freedom of movement, guiding the convict to repent, educating him so that he becomes a useful member of socialist society.²⁶

Prisoners' rights are regulated in article 14 of Law of the Republic of Indonesia no. 12 of 1995 concerning Corrections, namely:

1. Carry out worship according to your religion or belief;
2. Get care, both spiritual and physical care;
3. Get education and teaching;
4. Get adequate health and food services;
5. Submit a complaint;
6. Obtain reading materials and follow other mass media broadcasts that are not prohibited;
7. Get wages or premiums for the work done;
8. Receive visits from family, legal advisors, or certain other people;

²³ Parningotan Malau April Yanus Laoly, "Analisis Perlindungan Hukum Terhadap Saksi Dan Korban Dalam Perspektif Perkara Pidana," *Yurisprudencia: Jurnal Hukum Ekonomi* 6, (2020): 169-70.

²⁴ KM Ayu Triandari Purwanto, "Implementasi Perlindungan Hukum Terhadap Narapidana Sebagai Saksi Dan Korban Di Lembaga Masyarakat Kelas II B Singaraja," *E-Journal Komunitas Yustisia Universitas Pendidikan Ganesha. Jurusan Ilmu Hukum* 2, no. 2 (2019): 117.

²⁵ Fardhan Wijaya Kosasi, "Deklarasi Universal Human Right dan Pemenuhan Hak Asasi Bagi Narapidana," *Jurnal Justitia: Jurnal Ilmu Hukum dan Humaniora* 7, no. 4 (2020): 799.

²⁶ Fardhan Wijaya Kosasi.

9. Get a reduction in the criminal period (remission);
10. Get opportunities to assimilate including leave to visit family;
11. Get parole;
12. Get leave before being released; And
13. Obtain other rights in accordance with applicable laws and regulations.

Being willing to cooperate with law enforcement to help uncover criminal acts committed (justice collaborator) is one of the conditions for a prisoner to receive remission and/or conditional release. The hesitation of law enforcement officials, in this case, the Prosecutor's Office and the police, to determine their position regarding letters requesting justice collaborator status for prisoners has disrupted the prisoner development program in correctional institutions. Prisoners in cases of serious and organized crime (special prisoners) feel that their rights are differentiated from those of general prisoners simply because they are hampered by doubts by law enforcement officers in making decisions, especially prisoners who are willing to cooperate with law enforcement officers to uncover crimes. Hesitancy to follow up is due to the lack of clear regulations regarding who is given the authority to determine justice collaborator status for prisoners.

The value of justice is one of the legal ideals initiated by Gustav Radbruch. Aristotle's view of justice is divided into two, the first is distributive justice, namely the concept of justice where everyone gets something that is their right. The second is commutative justice, namely the determination of fair rights between several equal humans. From Aristotle's concept of justice, a common thread can be drawn that distributive justice is the duty of the government to its citizens to determine what citizens can demand in their country. This construction of justice imposes an obligation on legislators to pay attention to it when formulating the concept of justice in law.

In this concept, the author prioritizes the value of justice as a legal goal, although he does not completely ignore the value of benefit and the value of legal certainty. Because Indonesia is a country that still applies legalistic civil law traditions. The laws and regulations currently in force are considered to give rise to doubts by law enforcement officials in taking action regarding the designation of prisoners as justice collaborators, but changing existing laws and regulations certainly takes time. The proverb "*fiat justisia et pereat mundus (ruat caelum)*", must be realized even if the world ends (even if the sky falls because of it) can be interpreted to mean that justice must continue to be realized and cannot wait for the formation of a new regulation.

This concept is similar to the Integrated Assessment Team in the National Narcotics Agency Regulations, a team consisting of a team of doctors and a legal team determined by the local work unit leadership based on the Decree of the Head of BNN, BNNP, and BNNK. The formation of the Assessment Team for determining prisoners as justice collaborators can shorten the application process for determining justice collaborator status for prisoners. In the Assessment Team determining prisoners as justice collaborators will include representatives from the 4 (four) agencies listed in the explanation of article 34A paragraph (3) of Government Regulation no. 99 of 2012 concerning Requirement for Procedures for Implementing the Rights of Inmates. The form of decision is a joint decision, not an agency decision.

One of the objectives of this joint regulation is a form of cooperation and synergy between law enforcement officials in uncovering serious and organized criminal acts through efforts to obtain information from the public who are willing to become reporters, reporting witnesses and/or perpetrator witnesses who collaborate in criminal cases. However, the joint regulations also do not regulate the procedures and authority for appointing prisoners as justice collaborators.

From several regulatory concepts, determining a settlement as a justice collaborator must essentially fulfill 3 (three) legal objectives as initiated by Gustav Radbruch. The value of justice will be realized when awards as a justice collaborator are given in the form of remission and conditional release as is their right. Of course, these new rights are obtained when compensation has carried out its obligations, namely providing significant and reliable information and information in closing larger cases. Meanwhile, the beneficial value will be realized when the information provided by compensation as a justice collaborator can be utilized by law enforcement officials in uncovering networks of serious and organized criminal acts as is the main objective of the justice collaborator concept. For this reason, there must be strict selection of people who apply for protection as whistleblowers or justice collaborators by doing the following things:

- 1) Develop techniques for identifying the feasibility of an application.
- 2) Identify the truth of the information provided.
- 3) Select an efficient and effective protection model and increase model selection capabilities to the maximum.
- 4) There is a need to harmonize laws and coordinate between law enforcement officials because complex cases emerge which can lead to clashes and divisions of authority between institutions.
- 5) Institutional certainty.
- 6) Geographical conditions.²⁷

Meanwhile, in terms of the value of legal certainty as one of the goals of law, it can be achieved when the regulation of prisoners as justice collaborators is realized in law and can then be implemented in full without causing doubt at the level of implementation by law enforcers since there are still unclear norms which give rise to multiple interpretations by law enforcement, especially the Indonesian Attorney General's Office. The most important thing about setting up prisoners as justice collaborators is that it does not cause conflict between law enforcement officers. The existence of the Justice Collaborator is related to one of the objectives of the law itself, namely realizing balanced justice, as this corresponds to its dimensions, namely, honesty, justification, reasonableness, specificity, and timeliness. This is because the Justice Collaborator is directly related to cases that are being examined by law enforcement officials, so the opportunity to get the truth of a case will be more easily uncovered so that justice can be achieved more quickly.²⁸

²⁷ Fardhan Wijaya Kosasi.

²⁸ Nur Afifah, Iqbal Kamailudin dan Yusril Bariki, "Politik Hukum Progresif Dalam Perkembangan Justice Collaborator Sebagai Upaya Penegakan Keadilan Berimbang Di Indonesia," *Jurnal Crepido* 4, no. 2 (2022): 121.

In addition, it is necessary to review it from the aspect of justice regarding the determination of prisoners as justice collaborators, this review is needed to see whether the punishment given already has the desired justice value. Because often the justice that is realized (procedural) is not like the justice (substantive) desired by justice seekers.²⁹

4. Conclusions

The urgency of regulating the authority of the Indonesian Prosecutor's Office in determining justice collaborators for convicts is also under the legal objectives, namely to search as clearly as possible for a legal event approaching material law by formal law, especially in structured and organized criminal acts. The fact is that law enforcers in Indonesia often ignore the perpetrators who should be part of a series of criminal incidents. This is also important to know because the perpetrators (suspects, defendants, or prisoners) do not receive any reward or legal justice commensurate with the risks they take. Therefore, it is important to regulate the authority of the Indonesian Prosecutor's Office in determining justice collaborators for prisoners for legal purposes. Determining prisoners as justice collaborators with legal justice with an orientation towards benefit as a legal goal is very necessary, this is shown to the prosecutor as the holder of the dominus litis principle who is considered to have the authority to determine the status of justice collaborator for prisoners with the consideration of the prosecutor as the controller, ruler and responsible for all cases. criminal. So that prosecutors can evaluate information and statements from prisoners and determine whether the information is useful for uncovering serious and organized crimes or not. And the main purpose of the justice collaborator instrument is also as a means of dismantling mafia/crime networks that are difficult to prove, for this reason, it is important to regulate the authority of the Indonesian Prosecutor's Office in determining prisoners as justice collaborators. Considering the aspect of justice for prisoners who are applying for status justice collaborator must be realized, this is also following the legal adage "*fiat justisia et pereat mundus (ruat caelum)*".

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²⁹ Haryono, "Penegakan Hukum Berbasis Nilai Keadilan Substantif (Studi Putusan MK No. 46/PUU-VII/2012)," *Jurnal Hukum Progresif* 7, no. 1 (2019): 4.

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