

REFORMING THE LEGAL FRAMEWORK OF JUSTICE COLLABORATORS IN INDONESIA: BALANCING LEGAL CERTAINTY, FAIRNESS, AND LAW ENFORCEMENT EFFECTIVENESS

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Abstract

This paper examines Indonesia's legal framework governing *justice collaborators*—offenders who cooperate with law enforcement in exchange for leniency or protection. Although the mechanism plays a vital role in combating corruption and organized crime, it remains normatively fragmented and lacks a firm statutory foundation. Current regulations, such as the 2011 Supreme Court Circular and the Joint Regulation, rely on administrative discretion, raising concerns over fairness, proportionality, and legal certainty. Using a normative juridical approach, this study analyzes the interplay between domestic regulations, human rights principles, and Indonesia's obligations under the United Nations Convention against Corruption (UNCAC). The paper argues that comprehensive reform is necessary to codify the justice collaborator mechanism, enhance judicial oversight, and harmonize national law with international standards to ensure both effectiveness and justice within Indonesia's criminal justice system.

Keywords: Justice collaborator, cooperating offender, criminal justice reform

Background

The concept of a *justice collaborator* commonly referred to in Indonesia as *saksi pelaku yang bekerja sama* (cooperating offender) has emerged as a crucial legal innovation in the country's ongoing efforts to reform its criminal justice system. It represents an instrument through which an offender who confesses and cooperates with law enforcement authorities may receive leniency or special protection in exchange for assisting the state in uncovering other perpetrators or complex criminal networks. This mechanism was developed to address crimes that are typically systemic and difficult to prove through traditional evidentiary means, such as corruption, organized crime, terrorism, and money laundering (Thalib, 2021).

In Indonesia, the justice collaborator mechanism is not codified under a single legislative act but instead relies on a fragmented set of regulatory instruments. The most important among these are the Supreme Court Circular Letter (Surat Edaran Mahkamah Agung) No. 4 of 2011 and the Joint Regulation of 2011 issued by five national authorities—the Minister of Law and Human Rights, the Attorney General, the Chief of Police, the Chair of the Corruption Eradication Commission (KPK), and the Chair of the Witness and Victim Protection Agency (LPSK). These regulations collectively define the justice collaborator, outline procedural guidance for their recognition, and set the scope of protection and leniency that may be granted to them (Mahkamah Agung, 2011; Peraturan Bersama, 2011).

While these administrative instruments have filled a normative gap in the absence of explicit provisions in the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, Law No. 8 of 1981), their non-legislative nature raises persistent questions regarding legal certainty, hierarchy of norms, and judicial consistency. Courts and prosecutors often rely on discretion to determine whether an offender qualifies as a justice collaborator and what degree of leniency may be appropriate. This situation risks inconsistency, arbitrariness, and unequal treatment before the law (Ginting, 2019). Moreover, since the 2011 Joint Regulation has not been formally integrated into statutory law, its enforceability largely depends on institutional coordination rather than a binding legal obligation.

The justice collaborator mechanism must also be viewed within the broader framework of Indonesia's witness and victim protection regime, governed by Law No. 13 of 2006 and its amendment, Law No. 31 of 2014, concerning the Witness and Victim Protection Agency (LPSK). The LPSK plays a central role in ensuring the physical, psychological, and procedural protection of witnesses and victims, including justice collaborators. Nevertheless, in practice, coordination between LPSK and law enforcement agencies such as the police, prosecutors, and the KPK often encounters administrative and procedural challenges. These include the lack of standardized procedures for

determining eligibility, delays in granting protection, and limited post-trial support for individuals who face retaliation or social stigmatization (LPSK, 2020).

Several empirical studies and policy evaluations indicate that justice collaborators frequently face risks even after cooperating with the authorities. Some have reported receiving threats, retaliation, or discrimination during detention and after release (Indonesia Corruption Watch, 2019). Such circumstances highlight a major structural weakness: the absence of a coherent long-term protection system for cooperating offenders. Consequently, while the justice collaborator policy contributes to law enforcement effectiveness, it remains insufficiently grounded in the principles of human rights and procedural fairness.

From the perspective of international law, Indonesia's justice collaborator framework is consistent with its obligations under the United Nations Convention against Corruption (UNCAC), ratified through Law No. 7 of 2006. Article 37 of the UNCAC encourages State Parties to provide incentives for individuals who cooperate in corruption cases and to protect them from potential harm or retaliation (United Nations, 2004). However, the translation of this international obligation into domestic law remains partial. Indonesia has yet to adopt a comprehensive legislative framework specifying the rights, procedures, and standards applicable to justice collaborators. As a result, the system relies on a patchwork of administrative and prosecutorial guidelines rather than a uniform statutory basis (Simanjuntak, 2020).

Furthermore, the institutional landscape governing justice collaborators has evolved following major legal and political reforms in Indonesia. The amendment of the Corruption Eradication Commission Law (Law No. 19 of 2019) altered the authority, independence, and procedural structure of the KPK, which had previously been at the forefront of applying the justice collaborator mechanism in corruption cases. These institutional changes have generated concerns about the consistency and credibility of justice collaborator assessments, especially when prosecutorial discretion is exercised without transparent judicial oversight (Butt, 2020).

Another dimension of reform relates to the ongoing discussion surrounding the revision of the Criminal Procedure Code (KUHAP), which has been under deliberation for more than a decade. Many scholars and civil society organizations advocate for the inclusion of justice collaborator provisions in the revised KUHAP to ensure normative clarity and due process safeguards (Siregar & Rakhmawati, 2021). Incorporating such provisions would align Indonesia's criminal procedure with international best practices, similar to those found in Italy's *pentiti* framework and the U.S. plea bargaining system, which provide structured legal pathways for cooperation while maintaining judicial oversight (Mazzacuva, 2014).

The reform debate also emphasizes the need for proportionality and fairness. Granting leniency to offenders who cooperate with law enforcement must be balanced with the principle of equality before the law and the rights of victims. In some cases, lenient sentencing for justice collaborators has been criticized as undermining deterrence and moral accountability, particularly in high-profile corruption cases (Kurniawan, 2022). To address this dilemma, scholars propose establishing a transparent and standardized evaluation process to assess the reliability and material value of the collaborator's contribution before granting benefits.

Institutional coordination remains a persistent challenge. The Joint Regulation of 2011 envisages a collaborative process among the LPSK, law enforcement agencies, and the judiciary. However, the operational reality shows overlapping mandates, bureaucratic delays, and inconsistent application. Reforming this coordination framework is essential to ensure that the justice collaborator mechanism functions not merely as a discretionary privilege but as a structured and accountable component of criminal justice administration (Hiariej, 2018).

In light of these challenges, comprehensive legal reform is urgently needed to provide a clear normative foundation and procedural safeguards for justice collaborators. Such reform should include:

1. Codification within the Criminal Procedure Code or a specific statute, defining justice collaborator criteria, procedural rights, and obligations.
2. Judicial oversight to review prosecutorial decisions granting leniency or protection, ensuring transparency and consistency.
3. Integration of protection measures under LPSK with post-trial monitoring mechanisms, ensuring long-term safety and reintegration of collaborators.

4. Harmonization of domestic law with international standards, particularly those under the UNCAC and United Nations Office on Drugs and Crime (UNODC) guidelines.

Ultimately, the justice collaborator mechanism reflects a broader tension in Indonesia's legal reform process—between *effectiveness* in combating crime and *fairness* in administering justice. The mechanism's success depends not only on its operational outcomes but also on its alignment with constitutional values, human rights norms, and the rule of law. A reformed justice collaborator framework could significantly strengthen Indonesia's criminal justice system by ensuring that cooperation serves both truth and justice, reinforcing public trust and legal legitimacy.

Discussion

The justice collaborator mechanism represents one of the most distinctive yet underdeveloped elements of Indonesia's contemporary criminal justice system. Designed to encourage offenders to assist law enforcement in uncovering criminal networks, the mechanism has played a central role in corruption, terrorism, narcotics, and organized crime prosecutions. Despite its instrumental value, the legal basis for this mechanism remains normative rather than statutory, relying on circulars and joint ministerial regulations instead of parliamentary legislation. This normative fragility raises significant questions concerning legal certainty, equality before the law, and judicial accountability—three pillars of Indonesia's constitutional order under Article 28D(1) of the 1945 Constitution of the Republic of Indonesia.

The following discussion explores two major dimensions of Indonesia's justice collaborator mechanism. First, it analyzes the legal and institutional framework governing its application, identifying structural weaknesses and inconsistencies within the current regulatory regime. Second, it examines the necessary reform strategies to establish a codified, accountable, and rights-based justice collaborator policy that aligns with international standards such as the United Nations Convention against Corruption (UNCAC) and the International Covenant on Civil and Political Rights (ICCPR). Together, these analyses provide a foundation for understanding both the normative deficits and reform imperatives within Indonesia's evolving legal landscape.

1. Legal and Institutional Framework of the Justice Collaborator Mechanism in Indonesia

1.1 Historical and Normative Context

The recognition of *justice collaborators*—offenders who cooperate with law enforcement to expose criminal activity—emerged in Indonesia during the early 2000s, particularly within the context of corruption and terrorism prosecutions. However, it was not until the issuance of the Joint Regulation of 2011 (*Peraturan Bersama antara Menteri Hukum dan HAM, Jaksa Agung, Kapolri, Ketua KPK, dan Ketua LPSK Nomor: M.HH-11.HM.03.02 Tahun 2011, PER-045/A/JA/12/2011, 1 Tahun 2011, KEPB-02/01-55/12/2011, KEP-06/LPSK/XII/2011*) that Indonesia formally articulated guidelines for the treatment of “reporters, whistleblowers, and cooperating offenders.” This regulation was reinforced by the Supreme Court Circular No. 4 of 2011 (SEMA 4/2011), which instructed judges to consider lighter sentences for justice collaborators who provide “significant assistance” to the judicial process (Mahkamah Agung Republik Indonesia, 2011).

Despite its importance, SEMA 4/2011 and the Joint Regulation are non-legislative instruments, lacking formal binding force under Law No. 12 of 2011 on the Formation of Legislation, as amended by Law No. 13 of 2022. They fall within the lowest tier of Indonesia's regulatory hierarchy (*tata urutan peraturan perundang-undangan*), below statutes (*undang-undang*), government regulations, and presidential decrees. Consequently, their implementation depends heavily on institutional discretion rather than legal obligation (Siregar & Rakhmawati, 2021).

This normative weakness has created substantial inconsistency in practice. Prosecutors and judges often differ in interpreting what constitutes “substantial assistance,” while the absence of codified standards allows uneven recognition of justice collaborators across cases. In several corruption cases, such as the Anggodo Widjojo case (2010) and the Angelina Sondakh case (2012), requests for justice collaborator status were granted in one instance but denied in another despite comparable cooperation (Indonesia Corruption Watch, 2019). This inconsistency undermines predictability and equality before the law.

1.2 Relationship with Existing Legislation

The concept of a justice collaborator intersects with several existing statutes, yet none of them explicitly codify it. The Criminal Procedure Code (KUHP) of 1981, Indonesia's principal procedural law, does not recognize plea bargaining, cooperation agreements, or leniency mechanisms. Instead, it provides judges with broad sentencing discretion under Article 197, allowing mitigation only for "circumstances that reduce the culpability of the defendant." This lack of specificity renders the justice collaborator mechanism *de facto* dependent on prosecutorial initiative and judicial interpretation rather than *de jure* entitlement (Ginting, 2019).

Similarly, Law No. 31 of 2014 on Witness and Victim Protection (amending Law No. 13 of 2006) grants the Witness and Victim Protection Agency (LPSK) authority to protect cooperating offenders. Article 10A explicitly permits offenders who assist law enforcement to apply for protection and possible sentencing recommendations to the court. However, the law remains silent on procedural criteria for recognition or the extent of leniency available. In practice, LPSK's recommendation has persuasive but not binding force on prosecutors or judges (Simanjuntak, 2020).

The Corruption Eradication Law (Law No. 31 of 1999 as amended by Law No. 20 of 2001) also does not regulate cooperating offenders explicitly. Nevertheless, the Corruption Eradication Commission (KPK) has institutionalized internal guidelines that encourage defendants to cooperate in exchange for leniency or witness protection. Yet, such internal policies operate administratively rather than normatively, creating an uneasy relationship between anti-corruption objectives and procedural fairness.

Consequently, the justice collaborator framework in Indonesia exists as a patchwork of administrative and statutory references without a unified codified basis. The mechanism's legal authority stems more from practice and coordination among institutions—KPK, LPSK, the Attorney General's Office, and the judiciary—than from clearly enacted rights and duties.

1.3 Institutional Coordination and Overlapping Jurisdictions

The implementation of the justice collaborator mechanism involves multiple institutions, each with distinct mandates:

1. The KPK conducts investigations and prosecutions of high-level corruption cases;
2. The Attorney General's Office handles general criminal prosecutions;
3. The National Police investigates ordinary criminal offenses; and
4. The LPSK provides protection and recommendations for leniency.

While this multi-agency structure is intended to foster comprehensive protection and accountability, it often results in jurisdictional overlaps and inconsistent procedures. For example, some agencies interpret LPSK's recommendations as mandatory, while others regard them as merely advisory. This lack of procedural uniformity contributes to uncertainty in recognizing justice collaborators, undermining confidence in the fairness of the process (Kurniawan, 2022).

Furthermore, coordination challenges have intensified since the 2019 amendment to the KPK Law (Law No. 19 of 2019), which restructured the Commission's institutional framework. The establishment of a Supervisory Board and reclassification of KPK employees as civil servants have been criticized for reducing institutional independence. Some scholars argue that this could indirectly affect the objectivity and transparency of justice collaborator recognition, as political or bureaucratic influences may shape discretionary decisions (Butt, 2020).

To address these institutional challenges, a clear delineation of authority among agencies is necessary. Ideally, the determination of justice collaborator status should follow a sequential and integrated process: initial verification by investigators, confirmation by the prosecutor, recommendation by LPSK, and final approval by the judiciary. However, without codified procedures, this sequence remains aspirational rather than operational.

1.4 Human Rights and Legal Certainty Dimensions

Indonesia's justice collaborator mechanism also implicates constitutional principles of due process, equality before the law, and legal certainty, all guaranteed under Articles 27(1) and 28D(1) of the 1945 Constitution. The current

regulatory structure, which relies heavily on discretion and internal coordination, risks violating these principles when similar acts of cooperation yield disparate legal outcomes.

The absence of statutory clarity also affects the credibility of Indonesia's criminal justice system vis-à-vis its international commitments. As a State Party to the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention against Corruption (UNCAC), Indonesia is obliged to ensure fairness, transparency, and predictability in the treatment of cooperating offenders (United Nations, 2004). UNCAC Article 37 specifically requires State Parties to consider providing "the possibility of mitigating punishment" for those who assist in investigations or prosecutions. While Indonesia has formally acknowledged this obligation, it has yet to translate it into legislative form.

Moreover, from a rule-of-law perspective, the overreliance on institutional discretion in granting leniency can blur the line between legal justice and policy-based convenience. This tension risks undermining public trust, particularly in high-profile corruption and terrorism cases, where allegations of favoritism or selective leniency frequently arise (Hiariej, 2018).

Ultimately, the existing justice collaborator framework reflects a fragmented legal architecture—one that combines statutory references, administrative circulars, and institutional practices without a coherent legislative core. This fragmentation not only hampers effective implementation but also weakens judicial accountability and the protection of individual rights.

The following section therefore examines the normative and procedural reforms necessary to transform this mechanism into a codified, accountable, and rights-compliant system aligned with Indonesia's broader agenda of criminal justice reform.

2. Reforming the Justice Collaborator Policy Toward a Codified and Accountable Criminal Justice System

2.1 The Imperative of Codification

The central weakness of Indonesia's justice collaborator policy lies in its lack of statutory foundation. As discussed in the previous section, reliance on the Joint Regulation of 2011 and SEMA No. 4/2011 has produced fragmented enforcement and discretionary application. Codification within a formal statute—either as part of the revised Criminal Procedure Code (KUHAP) or through a dedicated *Justice Collaborator Act*—is therefore indispensable.

Codification would confer legal certainty, a constitutional value enshrined in Article 28D(1) of the 1945 Constitution, and ensure that the rights and obligations of all parties are clearly defined. This reform aligns with Indonesia's current legislative agenda, which includes the long-awaited KUHAP revision bill, intended to modernize criminal procedure by incorporating restorative and participatory elements (Siregar & Rakhmawati, 2021).

A codified justice collaborator provision should address at least five core dimensions:

1. **Definition and Eligibility** — The law must clearly distinguish between *whistleblowers* (non-offenders) and *justice collaborators* (offenders cooperating with authorities). Eligibility should depend on the nature and gravity of the offense, as well as the collaborator's level of involvement and sincerity.
2. **Procedural Mechanism** — Cooperation agreements should be formalized in writing, witnessed by legal counsel, and submitted for judicial approval to prevent coercion or manipulation.
3. **Judicial Oversight** — The court, rather than the prosecutor, must determine the extent of leniency, ensuring that sentencing remains within the judiciary's constitutional domain (Article 24 of the Constitution).
4. **Scope of Leniency** — The law should specify the permissible range of sentence reductions, possible suspension of prosecution (*opportuiniteitsbeginsel*), or exemption from imprisonment in minor participation cases.
5. **Accountability and Transparency** — All leniency decisions should be documented, reasoned, and subject to appeal or judicial review.

Codification is not merely a technical legal reform; it is a constitutional necessity to reconcile Indonesia's dual commitment to effective law enforcement and the rule of law. Without it, the justice collaborator mechanism will remain vulnerable to arbitrary application and inconsistent judicial interpretation.

2.2 Integrating Human Rights and Fair Trial Guarantees

A reformed justice collaborator mechanism must not only enhance efficiency but also respect the fundamental rights of defendants as protected under both domestic and international law. Article 14 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to a fair trial, including protection against self-incrimination and coercion. This implies that cooperation with authorities must be voluntary, informed, and legally safeguarded.

The risk of coercion is particularly significant in Indonesia's adversarial investigations, where suspects often face prolonged detention and intense pressure to confess. Without strict judicial oversight, cooperation agreements could degenerate into coerced confessions, violating constitutional protections of human dignity (Article 28G of the 1945 Constitution). Therefore, reform must include procedural safeguards such as:

- a. The presence of legal counsel during all negotiations of cooperation;
- b. Written consent outlining the terms, scope, and expected benefits of collaboration;
- c. Judicial verification to ensure voluntariness and proportionality; and
- d. The exclusion of coerced or false testimony from evidentiary use.

Such safeguards would harmonize Indonesia's mechanism with international best practices. For example, in Italy's *pentiti* system and the United States' *Rule 35(b)* framework, judicial confirmation serves as the cornerstone of legitimacy (Mazzacuva, 2014; Butt, 2020). Without comparable oversight, the Indonesian system risks undermining the credibility of both law enforcement and the judiciary.

A rights-based reform also entails the non-discrimination principle. Justice collaborator status must be available to all cooperating offenders, regardless of political influence or case profile. Reports by Indonesia Corruption Watch (2019) indicate that leniency is more readily granted in politically sensitive cases, suggesting selective justice. Codification and judicial transparency can address such perceptions by subjecting all cooperation agreements to uniform procedural standards.

2.3 Strengthening Institutional Coordination and Oversight

Institutional fragmentation remains one of the most persistent obstacles to the effective implementation of the justice collaborator policy. Multiple agencies—the Corruption Eradication Commission (KPK), Attorney General's Office (AGO), National Police (Polri), and LPSK—operate within overlapping jurisdictions, each guided by distinct procedural cultures.

To resolve this fragmentation, reform should pursue a two-tier institutional model:

- Operational Level: Coordination between investigators, prosecutors, and LPSK for the assessment and recommendation of justice collaborator status; and
- Supervisory Level: Establishment of a *National Coordination Committee for Justice Collaborators* comprising representatives from the four institutions, tasked with issuing joint procedural guidelines, monitoring consistency, and reporting annually to the President and the House of Representatives.

This model would provide a coherent institutional architecture, ensuring that all actors adhere to uniform standards. It also aligns with the *check-and-balance* principle inherent in Indonesia's presidential system, whereby independent agencies and law enforcement bodies are subject to inter-institutional accountability (Hiariej, 2018).

Institutional oversight is also crucial for maintaining the integrity of justice collaborator determinations. A public reporting mechanism should be introduced, requiring agencies to disclose anonymized data on the number of justice collaborator applications, approvals, and rejections each year. This transparency would reduce opportunities for political interference and selective application.

In addition, cooperation between LPSK and law enforcement agencies must be formalized through Government Regulations (Peraturan Pemerintah) derived from Article 10A(4) of Law No. 31 of 2014, ensuring that protection measures—such as relocation, identity change, and confidentiality—are guaranteed by law rather than administrative discretion.

2.4 Harmonizing with Indonesia's Anti-Corruption and Criminal Justice Reforms

The reform of the justice collaborator mechanism cannot be viewed in isolation from broader legal and institutional reforms in Indonesia. It must be integrated into the country's ongoing efforts to strengthen anti-corruption enforcement, judicial integrity, and criminal procedure modernization.

In the field of anti-corruption, codifying the justice collaborator mechanism would directly support the objectives of the Corruption Eradication Commission (KPK) under Law No. 19 of 2019. The KPK's mandate to uncover complex financial and political crimes often relies on insider cooperation. A clear legal framework for justice collaborators would enhance the Commission's investigative capacity while ensuring procedural fairness for cooperating defendants (Kurniawan, 2022).

Moreover, Indonesia's forthcoming revised Criminal Code (KUHP, Law No. 1 of 2023) emphasizes restorative and proportional justice principles, signaling a paradigmatic shift away from purely retributive punishment. Integrating the justice collaborator concept into this broader reform would reflect a holistic commitment to fairness and efficiency in criminal justice (Siregar & Rakhmawati, 2021).

Finally, harmonization with Indonesia's international obligations remains essential. As a signatory to UNCAC and the United Nations Convention against Transnational Organized Crime (UNTOC), Indonesia must ensure that its domestic laws provide mechanisms for offender cooperation that respect human rights. Codification would therefore serve as a dual instrument—fulfilling international commitments and strengthening domestic legitimacy.

2.5 Policy Recommendations

Based on the analysis above, several strategic policy recommendations emerge to guide the reform process:

1. **Enact a Justice Collaborator Statute or Incorporate Provisions into the New KUHP:** Parliament should adopt comprehensive legal provisions defining eligibility, procedure, and judicial oversight for justice collaborators.
2. **Judicial Confirmation as a Mandatory Step:** Sentencing leniency should be granted only after judicial verification of the collaborator's voluntary cooperation and substantial contribution to case resolution.
3. **Strengthen LPSK's Mandate:** LPSK should be empowered with binding authority to recommend protection and leniency, accompanied by statutory safeguards against misuse.
4. **Transparent and Accountable Reporting:** All justice collaborator determinations must be published (with privacy safeguards) and reported annually to the legislature.
5. **Capacity Building and Institutional Training:** Continuous education programs for prosecutors, judges, and investigators should be institutionalized to promote uniform interpretation of the reformed policy.

These recommendations collectively aim to transform the justice collaborator mechanism into a legally certain, procedurally fair, and institutionally accountable system—one that upholds Indonesia's constitutional values and enhances public trust in the justice process.

Conclusion

The justice collaborator mechanism occupies a complex position within Indonesia's criminal justice reform. On the one hand, it serves as a vital instrument for dismantling organized corruption and complex crimes. On the other, its normative and institutional weaknesses—stemming from a reliance on non-legislative instruments—have compromised its fairness, consistency, and credibility.

A comprehensive reform centered on codification, judicial oversight, and institutional coordination is therefore essential. Codification will transform the justice collaborator mechanism from an administrative practice into a

rule-of-law-based legal instrument. Judicial oversight will safeguard proportionality and voluntariness, while institutional coordination will ensure coherence across agencies.

Ultimately, reforming the justice collaborator mechanism is not merely a procedural exercise but a test of Indonesia's broader commitment to the rule of law. A codified, accountable, and rights-respecting justice collaborator policy will not only strengthen law enforcement effectiveness but also affirm the nation's dedication to justice as a cornerstone of democratic governance.

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