RECONCEPTION OF THE REGULATION OF WITNESS PERPETRATORS (*JUSTICE COLLABORATORS*) ACCORDING TO LAW NO. 31 OF 2014 CONCERNING AMENDMENTS TO LAW NO. 13 OF 2006 CONCERNING THE PROTECTION OF WITNESSES AND VICTIMS AND *MASLAHAH* PERSPECTIVE

DESCRIPTION

By:

Balqis Beta Achlam Gizella

NIM 200203110073

STUDY PROGRAM OF CONSTITUTIONAL LAW (*SIYASAH*)

FACULTY OF SHARIA

MAULANA MALIK IBRAHIM MALANG STATE ISLAMIC UNIVERSITY

2024

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2024

STATEMENT OF THESIS AUTHENTICITY

For God's sake,

With awareness and a sense of responsibility for scientific development, the author states that the thesis with the title:

"RECONCEPTION OF THE REGULATION OF PERPETRATOR WITNESSES (*JUSTICE COLLABORATORS*) ACCORDING TO LAW NUMBER 31 OF 2014 CONCERNING AMENDMENTS TO LAW 13 OF 2006 CONCERNING THE PROTECTION OF WITNESSES AND VICTIMS AND THE PERSPECTIVE OF *MASLAHAH*"

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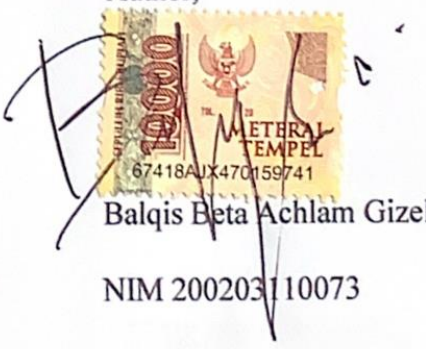

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MOTTO

"...وَعَسَىٰٓ أَن تَكۡرَهُواْ شَيۡـٔٗا وَهُوَ خَيۡرٞ لَّكُمۡۖ وَعَسَىٰٓ أَن تُحِبُّواْ شَيۡـٔٗا وَهُوَ شَرّٞ لَّكُمۡۗ وَٱللَّهُ يَعۡلَمُ وَأَنتُمۡ لَا تَعۡلَمُونَ"

".....But it may be that you dislike something, even though it is good for you,

And you may like something, but it is not good for you. Allah knows, and you do not know."

(Q.S. Al-Baqarah: 216)

INTRODUCTION

Alhamdulillahirabbil'alamin, praise the presence of Allah SWT who has given grace and help to the author, so that the writing of the thesis with the title:

RECONCEPTION OF THE REGULATION OF WITNESS PERPETRATORS (*JUSTICE COLLABORATORS*) ACCORDING TO LAW NO. 31 OF 2014 CONCERNING AMENDMENTS TO LAW NO. 13 OF 2006 CONCERNING THE PROTECTION OF WITNESSES AND VICTIMS AND *MASLAHAH* PERSPECTIVE

We can finish it well. Shalawat and salam we devote to the Prophet Muhammad SAW who mediates the teachings of Islam to all of us and provides a good example to us in living this life. By imitating him, may we be classified as people who believe and get his intercession on the last day, Amin.

With all the teaching, guidance/appreciation, and service assistance that has been provided, the author humbly expresses his deepest gratitude to:

1. Prof. Dr. H. M. Zainuddin, MA, as the Rector of Maulana Malik Ibrahim State Islamic University Malang.
2. Prof. Dr. Sudirman, M.A. CHARM, as the Dean of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang.

3. Dr. H. Musleh Herry, S.H., M.HUM, as the Head of the Constitutional Law Study Program (Siyasah), Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang.
4. The proposal seminar examiners and thesis examiners who have provided direction so that this thesis can be better.
5. Iffaty Nasiy'ah S.H., M.HUM, as the author's thesis supervisor. Thank you to him for providing guidance, advice, and motivation during the lectures.
6. Dr. H. Musleh Herry, S.H., M.HUM, as the Author's Guardian Lecturer. Thank you to him for providing guidance, direction and motivation from the beginning of the lecture period to the stage of this final project.
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8. Both parents of the author who have provided extraordinary support to the author both morally and materially. I would like to express my deepest gratitude for the love, affection and prayers that have never stopped for the author and become the reason for the author to always be enthusiastic about getting a bachelor's degree. May you always be given health, abundant sustenance, and always be protected by the grace of Allah SWT.
9. Haikal Haq as the author's special friend, thank you for contributing a lot in writing this thesis. For accompanying me, spending time, energy, thoughts and material and encouraging me to move forward and believe without knowing words.

give up in achieving the author's dream. Thank you for being a home figure who is always present and part of the author's life journey. Thank you for being patient.

10. My friends who cannot be mentioned one by one. Thank you for being a friend while overseas and thank you for listening to the author's complaints while in Malang, especially when worried about writing this thesis.

Malang, May 28, 2024

Balqis Beta Achlam Gizella

TRANSLITERATION GUIDELINES

A. General

Transliteration is the transfer of Arabic writing into Indonesian writing (Latin), not the translation of Arabic into Indonesian. Included in this category are Arabic names of Arabs, while Arabic names of non-Arabs are written as the spelling of their national language, or as written in the book being referred to. The author of the book title in *footnotes* and bibliography, still uses this transliteration provision.

There are many choices and transliteration provisions that can be used in writing scientific papers, both international, national and publisher-specific provisions. The transliteration used by the Faculty of Sharia at Maulana Malik Ibrahin State Islamic University Malang uses EYD plus, which is a transliteration based on a joint decree (SKB) of the Minister of Religion and the Minister of Education and Culture of the Republic of Indonesia, dated January 22, 1998, No. 158/1987 and 0543. B/U/1987, as stated in the Arabic Transliteration guidebook (*A Guide Arabic Transliteration*), INIS Fellow 1992.

B. Consonants

The list of Arabic letters and their transliteration into Latin letters can be seen on the following page:

Arabic letters	Name	Latin letters	Name
ا	Alif	Not Symbolized	Not Symbolized
ب	Ba	B	Be
ت	Ta	T	Te
ث	Ṡa	Ṡ	Es (dot on top)
ج	Jim	J	Je
ح	Ḣa	Ḣ	Ha (Dot on top)
خ	Kha	Kh	Ka and Ha
د	Dal	D	De
ذ	Ż	Ż	Zet (dot on top)
ز	Ra	R	Er
ش	Zai	Z	Zet
ض	Sin	S	Es
ش	Syin	Sy	Ice and Ye
ص	Ṣad	Ṣ	Ice (Period below)
ض	Ḍad	Ḍ	De (dot below)
ط	Ṭa	Ṭ	Te (dot below)
ظ	Ẓa	Ẓ	Zet (dot below)
ع	⁼Ain	⁼..... ..	Reverse Apostrophe
غ	Gain	G	Ge
ف	Fa	F	Ef
ق	Qof	Q	Qi

ك	Kaf	K	Ka
ل	Lam	L	El
و	Mim	M	Em
ٌ	Nun	N	En
و	Wau	W	We
ٌ	Ha	H	Ha
ء/أ	Hamza	..... '	Apostrophe
ي	Yes	Y	Ye

Hamzah (Á) at the beginning of a word follows its vowel without any sign. If it comes in the middle or at the end, it is written with a sign (').

C. **Vowels, Lengths and Diphthongs**

Every Arabic writing in the form of Latin writing fathah vowels are written with -a‖. Kasroh with -i‖, dlommah with -u‖, while the long readings are each written in the following way:

Short Vowels		**Long Vowels**		**Diphthongs**	
ٍ	A		Ā		Ay
ِ ِّ ِ َ	I		Ī		Aw
ُ ُّ ُ َ	U		Ū		Ba'

Long vowel (a) =	Ā	For example	قَالَ	Become	Qāla
Long vowel (i) =	Ī	For example	قِيْلَ	Become	Qīla
Long vowel (u) =	Ū	For example	دُوْنَ	Become	Dūna

Especially for the reading of ya' nisbat, it should not be replaced with -i‖, but still written with -iy‖ so that it can illustrate the ya' nisbat at the end. Likewise, for diphthong sounds wawu and ya' after fathah are written with -aw‖ and -ay‖. Consider the following example:

Diphthong (aw) =		For example	قَوْلٌ	Become	Qawlun
Diphthong (ay) =		For example	خَيْرٌ"	Become	Khayrun

D. Ta'Marbuthah

Ta" marbuthah is transliterated with "t" if it is in the middle of a sentence, but if the ta" marbuthah is at the end of a sentence, it is transliterated with "t".

transliterated with -h‖ e.g. رِسَالَةٌ لِلْمُدَرِّسَةِ انسانٌ نَوْسٌ نَهْ

becomes *al- risalat li al-mudarrisah*, or if it is in the middle of a sentence consisting of *mudhaf* and *mudhaf ilayh*, then it is transliterated by using *t which is* connected to the next sentence, for example فِيْ رَحْمَةِ اللهِ becomes *fi rahmatillah.*

E. Compound Words and *Lafdh Al-Jalalah*

The article -al‖ (ال) is written with a lowercase letter, unless it is located at the beginning of a sentence, while the -al‖ in lafadz jalalah which is in the middle of a sentence (idhafah) is omitted. Consider the following examples:

1. Al-Imam al-Bukhariy said.....
2. Al-Bukhariy in the muqaddimah of his book explains.....
3. Billah "azza wa jalla

F. Indonesianized Arabic Names and Words

In principle, every word derived from Arabic must be written using the transliteration system. If the word is an Arabic name of an Indonesian or Indonesianized Arabic, it does not need to be written using the transliteration system.Consider the following example:

> -.....Abdurrahman Wahid, former President of the fourth Republic of Indonesia, and Amin Rais, former Speaker of the MPR at the same time, had agreed to eliminate nepotism, collusion, and corruption from the face of Indonesia, one of the ways was through intensifying prayers in various government offices, but....

Note that the names -Abdurrahman Wahid‖, -Amin Rais‖ and the word -salat‖ are written using the Indonesian writing procedure adapted to the writing of the name. These words are also of Arabic origin, but they are the names of Indonesians and are Indonesianized, so they are not written as -Abd al-Rahman Wahid‖,

-Amin Rais‖, and not written as -Prayer.

LIST CONTENTS

ABSTRAK

Balqis Beta Achlam Gizella, (200203110073), 2024, ***Rekonsepsi Pengaturan Terhadap Saksi Pelaku (Justice Collaborator) Menurut Undang-Undang Nomor 31 Tahun 2014 Tentang Perubahan Atas Undang-Undang 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban Dan Perspektif Maslahah,*** Skripsi, Program Studi Hukum Tata Negara (*Siyasah*), Fakultas Syariah, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Pembimbing Iffaty Nasyi'ah, M.H.

Kata Kunci : Sistem Pemidanaan, *Justice Collaborator*, Putusan Majelis, *Maslahah*

Penelitian ini membahas sistem pemidanaan bagi saksi pelaku (*Justice Collaborator*) berdasarkan Undang-Undang Nomor 31 Tahun 2014 tentang Perlindungan Saksi dan Korban, serta pandangan *Maqasid Syari'ah* dalam studi putusan nomor 798/Pid.B/2022 . *Justice Collaborator* adalah pelaku tindak pidana yang bekerja sama dengan penegak hukum untuk mengungkap suatu kejahatan. Penelitian ini bertujuan untuk menganalisis dan mendeskripsikan mekanisme pemidanaan tersebut, serta memberikan rekomendasi untuk penegakan hukum yang lebih adil dan berkeadilan. Metode penelitian yang digunakan adalah yuridis normatif dengan pendekatan undang-undang (*statue approach*) dan studi kasus (*case approach*). Penelitian ini menggunakan tiga sumber bahan hukum, yakni bahan hukum primer berupa perundang – undangan, bahan hukum sekunder berupa buku, jurnal, ensiklopedia dan berita, bahan hukum tersier berupa kamus hukum dan KBBI.Hasil penelitian menunjukkan bahwa meskipun regulasi telah ada, implementasi perlindungan dan penghargaan bagi *Justice Collaborator* masih menghadapi berbagai tantangan, seperti tidak adanya standar pemidanaan yang jelas yang ditakutkan akan membuat kecemburuan antara saksi pelaku satu dengan yang lain atas hasil putusan final majelis di peradilan. Dalam perspektif *Maslahah*, sistem pemidanaan harus berlandaskan pada prinsip keadilan untuk mencegah perbuatan keji dan melindungi umat. *Maslahah* juga meninjau dari sisi kemaslahatan yang dibagi menjadi 3 yakni *Dharuriyat, Hajiyyat, Tahsini*. Kebutuhan pada standart sistem pemidanaan memiliki tujuan yang relevan dengan *Maslahah* sebagai pedoman tujuan dari persyaratan hukum yakni kemaslahatan umat manusia.

ABSTRACT

Balqis Beta Achlam Gizella, (200203110073), ***Reconception of The Regulation of Witness Perpetrators (Justice Collaborators) According to Law Number 31 of 2014 Concerning Amendements to Law Number 13 o 2006 Concerning The Protection of Witnesses and Vicvtims and Maslahah Perspective ,*** Thesis, Constitutional Law (*Siyasah*) Study Program, Faculty of Sharia, Maulana Malik Ibrahim State Islamic University Malang, Supervisor Iffaty Nasyi'ah, M.H.

Keywords : Sentencing System, *Justice Collaborator*, Decision o The Panel, *Maslahah*

This research discusses the punishment system for witnesses (*Justice Collaborator*) based on Law Number 31 of 2014 concerning Witness and Victim Protection, as well as the view of *Maqasid Shari'ah* in the study of decision number 798/Pid.B/2022. Justice Collaborators are perpetrators of criminal acts who cooperate with law enforcement to uncover a crime. This research aims to analyze and describe the punishment mechanism, as well as provide recommendations for fairer and more just law enforcement. The research method used is normative juridical with a *statue approach* and *case approach*. This research uses three sources of legal materials, namely primary legal materials in the form of legislation, secondary legal materials in the form of books, journals, encyclopedias and news, tertiary legal materials in the form of legal dictionaries and KBBI. The results showed that although regulations already exist, the implementation of protection and rewards for *Justice Collaborators* still faces various challenges, such as the absence of clear standards of punishment that are feared to create jealousy between perpetrator witnesses with one another over the results of the final decision of the panel in court. In the perspective of *Maslahah*, the punishment system must be based on the principle of justice to prevent heinous acts and protect the people. *Maslahah* also examines from the perspective of benefits, which are divided into three categories*: Dharuriyat, Hajiyyat, and Tahsini.* The need for a standard penal system has goals that are relevant to the *Maslahah* as guidelines for the objectives of legal requirements, namely the welfare of humanity.

ملخص

بلقيس بيتا أحلام جيزيلا، (200203110073)، 2024 **إعادة تصور اللوائح المتعلقة بالشهود الجناة (المتعاونين مع العدالة) وفقًا للقانون رقم 31 لعام 2014 المتعلق بتعديل القانون رقم 13 لعام 2006 بشأن حماية الشهود والضحايا ومن منظور المصلحة** أطروحة، برنامج دراسات القانون الدستوري (السياسة الشرعية)، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية مالانج، المشرف إفات ناسيعة، ماجستير في الحقوق.

كلمات مفتاحية: نظام العقوبات، المتعاون مع العدالة، قرار المجلس ، مصلحة

تتناول هذه الدراسة نظام العقوبات للشاهد الجاني (المتعاون مع العدالة) بناءً على القانون رقم 31 لعام 2014 بشأن حماية الشهود والضحايا، وكذلك منظور مقاصد الشريعة في دراسة الحكم رقم 798 Pid.B/2022/. المتعاون مع العدالة هو مرتكب الجريمة الذي يتعاون مع جهات إنفاذ القانون لكشف جريمة معينة. تهدف هذه الدراسة إلى تحليل ووصف آلية العقوبات هذه، وتقديم توصيات لتعزيز العدالة والإنصاف في إنفاذ القانون.

تستخدم الدراسة منهجًا بحثيًا قانونيًا معياريًا مع مقاربة قانونية (نهج القانون) ودراسة الحالة (نهج الحالة). تعتمد هذه الدراسة على ثلاثة مصادر من المواد القانونية: المواد القانونية الأولية مثل القوانين واللوائح، المواد القانونية الثانوية مثل الكتب، المجلات، الموسوعات والأخبار، والمواد القانونية الثلاثية مثل القواميس القانونية (KBBI) وقاموس اللغة الإندونيسية.

تُظهر نتائج البحث أنه على الرغم من وجود التنظيمات، إلا أن تنفيذ الحماية والتقدير للمتعاونين مع العدالة يواجه تحديات مختلفة، مثل عدم وجود معايير عقوبات واضحة مما قد يثير الغيرة بين الشهود الجناة حول نتيجة الحكم النهائي للمحكمة. من منظور مقاصد الشريعة، يجب أن يستند نظام العقوبات إلى مبدأ العدالة لمنع الفساد وحماية المجتمع.

تنظر مقاصد الشريعة أيضًا من جانب المصالح التي تنقسم إلى ثلاث فئات: الضروريات، الحاجيات، والتحسينيات. الحاجة إلى نظام عقوبات معياري لها أهداف تتماشى مع مقاصد الشريعة كإرشادات لأهداف المتطلبات القانونية، وهي مصالح البشرية.

CHAPTER I

INTRODUCTION

A. Background

The punishment system is a fundamental element in criminal law enforcement that aims to impose sanctions on perpetrators of crimes. In the context of Indonesian law, the system of punishment is regulated by various laws that regulate the implementation of criminal law, including Law No. 31/2014 on Witness and Victim Protection.[1] This system is designed to ensure that the punishment imposed is commensurate with the act committed, as well as to prevent future crimes from occurring. In Indonesia, although the country upholds democracy and equal rights, there are weaknesses in law enforcement that can be seen in the large number of cases that are not fully resolved. Cases involving organized criminals often do not result in adequate prosecutions, while smaller cases are often dealt with quickly by law enforcement officials. This indicates a gap in law enforcement that needs to be addressed.

One important aspect of the criminalization system is the existence of witnesses or *Justice Collaborators*. *Justice Collaborators* are perpetrators of criminal acts who cooperate with law enforcement to uncover a crime. Their role is very crucial in the judicial process, especially in

complex cases such as corruption and premeditated murder. The use of *Justice Collaborators* first emerged in the United States and was later adopted by Indonesia

[1] Dewan Perwakilan Rakyat Indonesia, "Undang Undang No 31 Tahun 2014 Tentang Perlindungan Saksi Dan Korban," *Undang-Undang Republik Indonesia* 3, no. 3 (2014): 103–11.

through Law No. 7/2006 on the Ratification of the United Nations Convention Against Corruption[2] on the Ratification of the United Nations Convention Against Corruption.

However, although there are regulations governing the protection and rewards for *Justice Collaborators*, their implementation still faces various challenges. Law Number 13 Year 2006[3] on Witness and Victim Protection, for example, is still considered not optimal in protecting perpetrator witnesses. Therefore, it requires renewal and special treatment as stipulated in Law No. 31/2014.[4]

The presence of witnesses in Indonesian courts is a very important aspect in maintaining the integrity of the justice system and ensuring that the truth is revealed.[5] Witnesses have a central role in assisting the investigation and trial of a criminal offense by providing honest and accurate testimony, this is stated in Article 184 of the Criminal Procedure Code.[6] In its application to the practice of criminal justice in Indonesia, there are many cases where a suspect often acts as a witness to testify for other suspects or defendants in the same case.[7] This leads to multiple

[2] Dewan Perwakilan Rakyat Indonesia, "Undang - Undang Nomor 7 Tahun 2006 Tenatng Pengesahan United Nations Convention Against Corruption" 2, no. 1 (2006): 8–10.
[3] Dewan Perwakilan Rakyat Indonesia, "UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 13 TAHUN 2006 TENTANG PERLINDUNGAN SAKSI DAN KORBAN," 2006.
[4] Dewan Perwakilan Rakyat Indonesia, "Undang Undang No 31 Tahun 2014 Tentang Perlindungan Saksi Dan Korban."
[5] Mal Thes Zumara, "FUNGSI LEMBAGA PERLINDUNGAN SAKSI DAN KORBAN (LPSK) DALAM KASUS PELANGGARAN HAM DIKAITKAN DENGAN UNDANG- UNDANG NOMOR 13 TAHUN 2006 TENTANG PERLINDUNGAN SAKSI DAN KORBAN," no. 13 (2010): 54.
[6] Arif Wicaksana and Tahar Rachman, "Analisis Yuridis Terhadap Perlindungan Hukum Bagi SAKSaksi Peradilan Pidana Di Indonesia," *Angewandte Chemie International Edition, 6(11), 951–952.* 3, no. 1 (2018): 10–27, https://medium.com/@arifwicaksanaa/pengertian-use-case-a7e576e1b6bf.
[7] Adi Syahputra Sirait, "Kedudukan Dan Efektivitas Justice Collaborator Di Dalam Hukum Acara Pidana," *Jurnal El-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan Dan Pranata Sosial* 5, no. 2 (2020):

interpretations or blurring of the applicable norms, where the reward or award of leniency to the *Justice Collaborator* follows the standard of leniency of criminal penalties as a witness or as a perpetrator.

One example of a case involving a *Justice Collaborator* that is still controversial is the murder (shooting) of Brigadier Josua by Bharada Eliezer on orders from Ferdy Sambo. The witness status of the perpetrator pinned to Bharada Eliezer made the Panel of Judges of the South Jakarta District Court (PN) handed down a prison sentence of 1 year and 6 months to Bharada Richard Eliezer. Richard Eliezer's sentence was far below the public prosecutor's demand, which was 12 years in prison[8]

The need for a witness perpetrator (*Justice Collaborator*) is a form of law enforcement efforts to find out or find the main perpetrator in a criminal offense. In general, people who have knowledge of this kind of crime also have involvement in it and benefit from the crime. Historically, the emergence of *Justice Collaborators* for the first time began in the 1970s in the United States which sought to uncover organized crime committed by the United States by the Italian mafia. However, this was hindered by the Italian mafia's code of silence, Omerta. In the beginning, the first step was how the United States government protected *Justice Collaborators* who tried and acted in good faith in order to eradicate and dismantle crimes that involved many people and were well organized. Therefore, the United States Government ordered the Federal Bureau

241–56, https://doi.org/10.24952/el-qonuniy.v5i2.2148.

[8] Ema Mar'Ati Sholecha et al., "Kedudukan Dan Fungsi Justice Collaborator Terhadap Hak Perlindungan Saksi Pelaku Dalam Perspektif Hukum Pidana Di Indonesia," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 6, no. 1 (2023): 131–43, https://doi.org/10.24090/volksgeist.v6i1.7246.

of Investigation (FBI) to strictly protect Joseph Valaci who was feared to be hunted down by his accomplices because he had provided information to the government about their whereabouts and all forms of criminal activity they committed, this is the basis for the application and the beginning of the emergence of the *Justice Collaborator* system in the United States in seeking witnesses who cooperate in revealing the truth.[9]

In Indonesia, witnesses who cooperated before the enactment of the Law on Witness and Victim Protection and SEMA No. 4 of 2011 [10] were known as crown witnesses, while the term crown witness is not recognized in the Criminal Procedure Code is known as the crown witness, while the term crown witness is not recognized in KUHAP.[11] Although there is no precise definition of a crown witness (*kroon getuide*) in KUHAP, practically and empirically there are crown witnesses. Here, the term "c r o w n witness" is defined as: "A witness who comes from and/or taken from one or more suspects or other defendants who jointly commit a criminal offense and in this case the witness is given a crown." The crown given to a witness who is a defendant takes the form of an acquittal from prosecution of the case or a very lenient sentence imposed on him at the time the case is brought to court or a pardon for the wrongdoing committed by the witness.

The Supreme Court of the Republic of Indonesia as the main pillar for law

[9] Bambang Sugiri, Nurini Aprilianda, and Hanif Hartadi, "The Position of Convict as Justice Collaborator in Revealing Organized Crime," *Padjadjaran Jurnal Ilmu Hukum* 8, no. 2 (2021): 256–57, https://doi.org/10.22304/pjih.v8n2.a5.
[10] Mahkamah Agung Republik Indonesia, "Perlakuan Terhadap Pelapor Tindak Pidana (Whistleblower) Dan Saksi Pelaku Yang Bekerjasama (Justice Collaborator) Di Dalam Perkara Tindak Pidana Tertentu," *Surat Edaran Nomor 4 Tahun 2011*, 2011.
[11] Sholecha et al., "Kedudukan Dan Fungsi Justice Collaborator Terhadap Hak Perlindungan Saksi Pelaku Dalam Perspektif Hukum Pidana Di Indonesia."

enforcement in Indonesia has made an attention-grabbing move by issuing Supreme Court Circular Letter No. 4/2011 on the treatment of whistleblowers and cooperating witnesses [12] on the treatment of *whistleblowers* and *justice collaborators* [13] A *Justice Collaborator* is an individual who is involved in a crime, admits his/her guilt, and provides testimony, but is not the main perpetrator in the crime. On the other hand, a whistleblower is someone who reports a specific criminal offense without being involved in the crime they report. A *Justice Collaborator* has the opportunity to obtain leniency for helping law enforcement uncover crimes, and leniency can be granted by the prosecutor.[14]

With the circular letter, Law No. 31 of the Year 2014[15] on Witness and Victim Protection which regulates various protection mechanisms as well as the rights and obligations of criminal witnesses.[16] The government has shown a positive response to criminal law enforcement with the establishment of LPSK to focus on providing protection for witnesses and victims as mandated by Law No.13/2006 and in order to comply with the principles of good governance, namely the upholding of the rule of law.[17] and in order to comply with the principles of good

[12] Mahkamah Agung Republik Indonesia, "Perlakuan Terhadap Pelapor Tindak Pidana (Whistleblower) Dan Saksi Pelaku Yang Bekerjasama (Justice Collaborator) Di Dalam Perkara Tindak Pidana Tertentu."
[13] Mahkamah Agung Republik Indonesia.
[14] Yenny Fitri Z Yogi Alfiandra, Sukmareni, "PERANAN JUSTICE COLLABORATOR (SAKSI PELAKU) YANG BEKERJA SAMA DALAM MENGUNGKAP TINDAK PIDANA PEMBUNUHAN BERENCANA (Studi Kasus Richard Eliezer)," *Rio Law Jurnal* 4 (2023): 55–72, http://dx.doi.org/10.36355/.v1i2.
[15] Dewan Perwakilan Rakyat Indonesia, "Undang Undang No 31 Tahun 2014 Tentang Perlindungan Saksi Dan Korban."
[16] Supriyadi Widodo Eddyono, "Masukan Terhadap Perubahan UU No. 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban," *Koalisi Perlindungan Saksi Dan Korban*, no. 13 (2006): 25.
[17] Dewan Perwakilan Rakyat Indonesia, "UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 13 TAHUN 2006 TENTANG PERLINDUNGAN SAKSI DAN KORBAN."

governance, namely the upholding of the rule of law.[18]

Article 10 paragraph 2 of Law Number 31 Year 2014[19] on Witness and Victim Protection regulates the relationship between the testimony of a *Justice Collaborator* and the sentence given and states: "A witness who is also a suspect in the same case cannot be exonerated from criminal charges if he is proven legally and convincingly guilty, but his testimony can reduce the sentence that will be imposed on him." Currently, the application of Article 10 paragraph 2 is variously understood by the public and law enforcement officials in Indonesia[20]

Based on the academic paper, the protection described in Article 10 paragraph (2) refers to the legal protection given to witnesses who are also perpetrators or suspects in a case. This means that a witness who is also a suspect in the same case cannot be free from criminal charges if proven legally and convincingly guilty.[21] Cited in several sources, the arguments in the academic paper show that the concept of this provision in Law No. 13/2006 is not without foundation [22] is not without basis. Nonetheless, his testimony can be taken into consideration by the judge to reduce the sentence to be given. In general, such

[18] Lia Fadjriani Syamsir Hasibuan, Budwi Pramono, Emy Hajar Abra, Amsal Sulaiman, "ANALISIS YURIDIS TERHADAP PERLINDUNGAN HUKUM BAGI SAKSI DALAM TINDAK PIDANA MENURUT UNDANG-UNDANG NOMOR 13 TAHUN 2006 TENTANG PERLINDUNGAN SAKSI DAN KORBAN JURIDICAL," *Jurnal Ilmiah Hukum Universitas Riau Kepulauan Indonesia* 1 (2022): 44–55, https://www.journal.unrika.ac.id/index.php/JIH.
[19] Dewan Perwakilan Rakyat Indonesia, "Undang Undang No 31 Tahun 2014 Tentang Perlindungan Saksi Dan Korban."
[20] Ni Nyoman et al., "Justice Collaborator Dalam Pengungkapan Kasus Tindak Pidana Pembunuhan" 5, no. 1 (2023): 8–13.
[21] Dewan Perwakilan Rakyat Indonesia, "Naskah Akademik Rancangan Undang-Undang Republik Indonesia Tentang Tindak Pidana Kekerasan Seksual Badan Legislasi," 2021, 1–140.
[22] Dewan Perwakilan Rakyat Indonesia, "UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 13 TAHUN 2006 TENTANG PERLINDUNGAN SAKSI DAN KORBAN."

witnesses are often referred to as *Justice Collaborators*.[23]

In the *Maslahah* perspective, the punishment system must be based on the principle of justice which aims to prevent heinous acts and protect the people. *Maslahah* emphasizes the importance of justice in sentencing based on valid evidence, including testimony from fair witnesses. This is in line with the main objective of the punishment system, which is to teach a lesson and prevent similar mistakes in the future.

This research aims to analyze and describe the punishment system for perpetrator witnesses (*Justice Collaborator*) according to Law 31 of 2014 concerning Witness and Victim Protection, as well as in the review of *Maslahah*[24] on Witness and Victim Protection, as well as in the review of *Maslahah*. By using the normative juridical research method and Statue Approach also Conseptual Approach, This research is expected to provide a comprehensive overview of the criminalization system for perpetrator witnesses and provide recommendations for fairer and more equitable law enforcement.

B. Problem Formulation

1. How is the Mechanism of the Criminal System for Witness Perpetrators (*Justice Collaborators*) According to Law 31 of 2014[25] On Witness and Victim Protection?
2. How is the Witness Offender (*Justice Collaborator*) Punishment System

[23] Eddyono, "Masukan Terhadap Perubahan UU No. 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban."
[24] Dewan Perwakilan Rakyat Indonesia, "Undang Undang No 31 Tahun 2014 Tentang Perlindungan Saksi Dan Korban."

in *Maslahah* Riview?

C. Research Objectives

Based on the formulation of the problem above, the objectives that the author wants to achieve is :

1. Analyze and describe the punishment system for witnesses (*justice collaborators*) according to Law Number 31 of 2014.[25]
2. Analyzing and describing the punishment system for witnesses (*justice collaborator*) according to *Maslahah*.

D. Research Benefits

1) Theoritical Benefits

The results of this study are expected to be a reference as well as literature material for research in law, especially criminal science and state administration regarding the Reconception of Arrangements for Witnesses (*Justice Collaborators*) over time.

2) Practical Benefits

The results of this study are expected to provide valuable contributions as guidelines for law enforcement institutions, especially the Police and the Prosecutor's Office, which are responsible as investigative agencies in the early stages of handling criminal offenses. The main objective is to create a safe environment and increase public participation in revealing the truth facts related to a criminal offense.

[25] Dewan Perwakilan Rakyat Indonesia.

E. Research Methods

a. Type of Research

The type of research used by the author is normative juridical research, which is an approach in legal research conducted based on primary legal materials, such as legal theories, concepts and principles. This approach examines the law as what is stipulated in laws and regulations or as principles or norms governing human behavior that are considered appropriate. This research method uses sources of literature or secondary materials such as literature and other documents, as well as systematic legal research to identify definitions, principles, norms, rules from laws, agreements and regulations doctrine. The normative juridical approach is also known as the literature approach, where researchers examine books, laws and regulations and other documents relevant to their research.

b. Research Approach

Analyzing the formulation and scope of the problem previously described by the researcher, the legal research approach is carried out with a sociological approach and a normative approach.[27] This research method uses the statutory approach (*Statue Approach*) and Conseptual Approach.

a. *Statue Approach* yaitu is a research approach that is carried out by examining all laws and regulations related to the legal issues and problems being studied.[26]

[26] Zulfi Diane Zaini, "Implementasi Pendekatan Yuridis Normatif Dan Pendekatan Normatif

b. *Conseptual Approach* is a research approach that is carried out based on views and doctrines that develop in legal science. This research approach was chosen to find answers to legal issues in a legal research. Therefore, the main consideration in choosing this approach is its suitability for the legal issues discussed.[27]

c. Types of Legal Materials

In normative legal research, data collection techniques are carried out by conducting literature studies on legal materials. The legal materials used in this research include primary legal materials, secondary legal materials and tertiary legal materials.

a. Primary Legal Materials

Primary legal materials used by the author are statutory provisions relating to the system of punishment of perpetrator witnesses (*Justice Collaborator)* starting from the 1945 Constitution of the Unitary State of the Republic of Indonesia, Law 31 of 2014[28] concerning Witness and Victim Protection and Judge Decision Number: 798/Pid.B/2022/PN Jkt.Sel [29] which is the reference for this research.

b. Secondary Legal Materials

Secondary legal material is a complement to primary legal material. The

Sosiologis Dalam Penelitian Ilmu Hukum," *Pranata Hukum*, 2011, http://jurnal.ubl.ac.id/index.php/PH/article/view/159.

[27] Muhaimin, *Metode Penelitian Hukum*, Mataram: Mataram University Press, 2020, 55-56

[28] Dewan Perwakilan Rakyat Indonesia, "Undang Undang No 31 Tahun 2014 Tentang Perlindungan Saksi Dan Korban."

[29] MAHKAMAH AGUNG, *PUTUSAN MAHKAMAH AGUNG REPUBLIK INDONESIA NOMOR : 798/Pid. B/2022/PN. Jkt.Sel. DEMI*, 2022.

secondary legal materials that will support this research are previous research results, books, scientific journals, opinions and news.

c. Tertiary Legal Materials

Tertiary legal materials are complementary to primary and secondary legal materials. The tertiary legal materials used by researchers in this scientific work in addition to the two legal materials above are legal dictionaries, encyclopedia and others.[30]

d. Legal Material Collection Method

Researchers used the method of collecting legal materials through literature studies and using internet access. Literature studies and internet access are carried out by examining various literature, regulations, articles, scientific papers, print media, and electronic media relevant to the research topic. Literature study is a search for written information about the law that comes from various sources and has been widely published, which is important in normative legal research.

e. Legal Material Processing Method

In this research, the author uses normative legal research, namely Normative legal research is a scientific research method that centers on the analysis and interpretation of legal norms contained in laws and regulations as well as relevant legal theories. This research includes not only an analysis of laws and regulations, but also of legal theories, court decisions, and the views of legal experts. Normative legal research uses qualitative analysis and focuses on legal principles, legal systematics, legal inventory, clinical law, level of legal

[30] Muhaimin, Metode Penelitian Hukum (Mataram : Mataram University Press,2020),64

synchronization, legal comparison, and legal history.[31]

The characteristics of normative research analysis are prescriptive, where the goal is to provide arguments for the results of research that are has been done. This argumentation is carried out with the intention of providing prescriptions or evaluations related to truth or error, as well as legal norms, legal principles and principles, doctrines, or legal theories that should be applied based on the facts or legal events that are the object of research.

F. Previous Research

Research related to the Witness Offender Punishment System (*Justice Collaborator*) according to Law Number 31 of 2014[32] has certainly been carried out by several researchers, but with slightly different discussions and objects. Of course, several researchers have conducted research, but with slightly different discussions and objects. To avoid the similarity of the discussion, the researcher lists several similar studies that have been studied before. The previous research is as follows:

1. A journal written by Mahrus Ali, Islamic University of Indonesia 2023 entitled "*Reward and Punishment for Whistleblower and Justice Collaborator in Indonesia: A Relatory Analysis*"..[33] the conclusion in this journal is that the current legal rules for whistleblowers and justice

[31] Vidya Prahassacitta, Penelitian Hukum Normatif dan Penelitian Hukum Yuridis, Agustus 2019, diakses tanggal 21 Mei 2024, https://business-law.binus.ac.id/2019/08/25/penelitian-hukum-normatif-dan-penelitian-hukum-yurudis/.
[32] Dewan Perwakilan Rakyat Indonesia, "Undang Undang No 31 Tahun 2014 Tentang Perlindungan Saksi Dan Korban."
[33] Mahrus Ali, "Reward and Punishment for Whistleblower and Justice Collaborator in Indonesia: A Regulatory Analysis," *International Journal of Law and Politics Studies* 5, no. 1 (2023): 01–06, https://doi.org/10.32996/ijlps.2023.5.1.1.

collaborators are still inadequate because of their failure to encourage someone to report a criminal situation to law enforcement officials. In order to encourage cases and prevent the falsification of testimonies before the court that negatively affect the rights of others, they must be treated with respect balanced in terms of *reward* and *punishment*. A whistleblower needs to be given a career advancement in a job, incentives in the form of money or goods, a reduction in the amount of tax obligations and others. The form of punishment is a criminal charge with an additional sanction of one-third of the community sentence, a service order accompanied by supervision, demotion, postponement of promotion for a certain period of time and dismissal from a job. Rewards for *Justice Collaborators* are in the form of *judicial* clemency, probation, elimination of prosecution and clemency. Meanwhile, the sanctions imposed are in the form of a fine with an additional one-third of the sentence, the replacement of a lighter play criminal sanction to a heavier social work sentence accompanied by supervision, termination of employment and revocation of the right to nominate public prisoners. The difference that lies in this journal with the researcher's research is the focus of the topic of discussion, namely only on the perpetrator witness (*Justice Collaborator*), while this journal discusses two subjects, namely *Whistleblower* and *Justice Collaborator*. The renewal of this research is in the process of punishment of the perpetrator witness and the rules regarding the award of the sentence to be given to the perpetrator witness which there is no specific legislative

arrangement in the new legislation or in other decisions reviewed using the *maslahah* perspective.

2. A journal written by Fikria Nabila Rif'at, Faculty of Law, Sebelas Maret University 2024 entitled "Implementation of the Granting of Relief Law for *Justice Collaborators* in Corruption Crimes".[34]

   The conclusion of this journal is that the role of *justice collaborators* and the possibility of rewarding the testimony of *justice collaborators are* regulated in Law Number 31 of 2014 concerning Witness and Victim Protection, SEMA RI 2014, and the International Convention Against Corruption (UNCAC). as regulated in the law, Protection and the provision of relief in the form of awards for *justice collaborators* is very important for efforts to create a conducive climate for the disclosure of *organized crime* in the context of community involvement. The award should be given as an affirmation that the person concerned has contributed to law enforcement efforts, the implication is that if there is an award for the perpetrator witness, it will encourage public interest in disclosing a criminal act that he knows to law enforcement. An ideal legal construction is needed regarding the reduction of punishment for *justice collaborators* in corruption crimes in Indonesia, namely: (a) parties in the mechanism of granting *justice collaborator* status; (b) mechanism for submitting / granting *justice collaborator* status; (c) qualifications / provisions of

[34] Fikria Nabila, "Pelaksanaan Pemberian Keringanan Hukum Bagi Justice Collaborator Dalam Tindak Pidana Korupsi" 13, no. 1 (2024): 62–69.

testimony that can significantly assist law enforcement officials; (d) certainty mechanism for granting *rewards in the* form of reduction / leniency of punishment for *Justice Collaborators.*

The difference between this journal and the researcher's research is the subject of the crime, where this journal discusses the crime of corruption while the researcher discusses the crime of murder in accordance with the case study studied. The renewal in this study is the process of punishment of the perpetrator witness and the rules regarding the award of the punishment to be given to the perpetrator witness which there is no specific statutory regulation in the new legislation or in other decisions reviewed using the *maslahah* perspective.

3. A journal written by Mita Nurasiah, Beniharmoni Harefa, Riki Perdana Raya Waruwu, Faculty of Law, National Development University "Veteran" Jakarta and the Supreme Court of the Republic of Indonesia 2022 entitled “Criminal Disparity Against *Justice Collaborators* in Corruption Crime“.[35] The conclusion in this journal is that disparity in punishment is a common thing in the criminal justice system, but it becomes unfair if the judge makes a decision that is out of proportion and violates the principles of public justice. This research highlights corruption court decisions in the Central Jakarta District Court, where it was found that although there were no glaring disparities in prison sentences, there

[35] Mita Nurasiah, Beniharmoni Harefa, and Riki Perdana Raya Waruwu, “Disparitas Pidana Terhadap Justice Collaborator Dalam Tindak Pidana Korupsi,” *Esensi Hukum* 4, no. 1 (2022): 88–98, http://dx.doi.org/10.35586/esh.v4i1.155.

were disparities in the sentences imposed significant in custodial sentences in lieu of fines.

Factors causing this disparity, according to the results of interviews and literature studies, include Indonesia's philosophy of punishment which gives judges the freedom not to be bound by previous decisions, the independence of judges as stipulated in Article 3 paragraph (2) of Law Number 48 of 2009 concerning judicial power, as well as the demands of the public prosecutor which sometimes become a reference for judges in deciding cases. In addition, the role of the defendant in the case, such as malicious intent, difficulty in the case, the consequences of the actions, and contribution as a *Justice Collaborator*, also affect the judge's decision. The difference between this journal and the research conducted by the researcher is in the subject of the crime, namely the crime of corruption. The renewal in this study is the process of punishing the perpetrator witness and the rules regarding the award of the sentence to be given to the perpetrator witness, which there is no specific statutory regulation in the new legislation or in other decisions that are reviewed using the *maslahah* perspective.

4. Journal by Syahla Putri Raharyanti, Lies Sulistiani and Rully Herdita Ramadhani, Faculty of Law, Padjajaran University 2024 entitled "Consideration of the Panel of Judges to Commute the Sentence of Richard Eliezer Reviewed Based on the Theory of the Purpose of Punishment of just Law".[38] The conclusion of this journal is that the judge's decision to

The defendant as a collaborating perpetrator is considered to provide justice and legal certainty based on the SFM Law and SEMA No. 4/2011. The concept of 'certain criminal offenses' has expanded its meaning based on the beliefs of the LPSK and the Panel of Judges. The mitigating factors for the Defendant Richard Eliezer Pudihang Lumiu in Decision Number 798/Pid.B/2022/PN.Jkt.Sel are considered to be in accordance with the theory of relative and combined objectives. The defendant was temporarily isolated from the community with the aim of rehabilitation, but was still punished in accordance with the harm caused. The leniency of the sentence was based on several reasons, including involvement as a *Justice Collaborator* who assisted law enforcement in uncovering the case, polite behavior at trial, no previous convictions, remorse for his actions, a promise not to repeat his mistakes, and forgiveness from the victim's family. The difference contained in the research conducted by the researcher is in the theory used, this journal uses the theory of punishment while this research uses the theory of legal certainty. The renewal in this research is the process of punishment of the perpetrator witness and the rules regarding the award of the sentence to be given to the perpetrator witness which there is no specific statutory regulation in the new legislation or in other decisions reviewed using the *Maslahah* perspective.

5. Journal by Luqmanul Hakim, Erwin Owan Hermansyah, and Lusia Sulastri Faculty of Law Bhayangkara University Jakarta Raya 2023 entitled "*Justice Collaborator Status In Murder Based On Law Number 31*

Of 2014".[36] The conclusion of this journal is that in the case of premeditated murder, the panel of judges should refuse to hold a *Justice Collaborator* because premeditated murder is not included in the category of cases that qualify for *justice collaboration.* However, there is an urgency in disclosing the case so the judge expands the use of *justice collaborators* to fulfill the duties of judges as law enforcers optimally. The difference contained in the research conducted by researchers is that this journal discusses the granting of status while researchers discuss the punishment system. The renewal in this study is the process of punishment of the perpetrator witness and the rules regarding the award of the punishment to be given to the perpetrator witness which there is no specific statutory regulation in the new legislation or in other decisions reviewed using the *maslahah* perspective.

[36] Luqmanul Hakim, Erwin Owan Hermansyah, and Lusia Sulastri, "Justice Collaborator Status in Murder Based on Law Number 31 of 2014," *Indonesian Journal of Multidisciplinary Science* 3, no. 2 (2023): 153–65, https://doi.org/10.55324/ijoms.v3i2.716.

Tabel. 1.1

Penelitian Terdahulu

No.	Name/Instance/Year/Title	Problem Formulation	Result	Difference	Elements Update
1.	Mahrus Ali/Universitas Islam Indonesia/2023/*Reward and Punishmentfor Whistleblower and Justice Collaborator in Indonesia : A Regulatory Analysis*	What are the legal provisions in Indonesia regarding *rewards* and *punishments* related to whistleblowers and perpetrator witnesses who cooperate ?	Ketentuan mengenai reward dan punishment telah diakui dalam undang – undang nasional, namun belum dijelaskan secara komprehensif sejalan dengan perlindungan hukum Pasal 26 Undang – Undang Nomor 5 Tahun 2009 tentang Pengesahan Konvensi PBB Menentang Kejahatan Transnasional Terorganisir. Rumusan pasal di atas hanya mengatur imbalan bagi pelaku *justice collaborator* berupa tindakan atau upaya untuk mendorong insentif, termasuk pengurangan hukuman bagi pelanggar kooperatif. Selain itu, hukuman perlu diberikan kepada pelapor	Fokus topik pembahasan yaitu hanya pada saksi pelaku (*Justice Collaborator*) saja sedangkan pada jurnal ini membahasa dua subyek yaitu *Whistleblower* dan *Justice Collaborator*.	Proses pemidanaan terhadap saksi pelaku dan aturan tentang penghargaan dari hukuman yang akan diberikan kepada saksi pelaku yang belum ada pengaturan perundang – undangan yang spesifik pada perundang – undangannya yang baru maupun pada putusan yang lain yang ditinjau menggunakan perspektif *Maslahah*.

			dan kolaborator keadilan yang memberikan kesaksian palsu.		
2.	Fikria Nabila Rif'at/Fakultas Hukum Universitas Sebelas Maret/2024/Pelaksanaan Pemberian Keringanan Hukum Bagi *Justice Collaborator* Dalam Tindak Pidana	Bagaimana rekonstruksi pengaturan peringanan hukum yang ideal terhadap penanganan hukum bagi *Justice Collaborator* dalam tindak pidana korupsi di Indonesia yang berkeadilan ?	Peran *Justice Collaborator* dan kemungkinan pemberian penghargaan atas kesaksiannya diatur oleh Undang-Undang Nomor 31 Tahun 2014 tentang Perlindungan Saksi dan Korban, SEMA RI Tahun 2014, serta Konvensi Internasional Anti Korupsi (UNCAC). Adanya penghargaan bagi para *Justice Collaborator* sangat penting dalam upaya menciptakan lingkungan yang kondusif untuk mengungkap Kejahatan Terorganisir.	Subyek tindak pidananya, dimana jurnal ini membahas tentang tindak pidana korupsi sedangan peneliti membahas tentang tindak pidana pembunuhan sesuai dengan studi kasus yang diteliti.	Proses pemidanaan terhadap saksi pelaku dan aturan tentang penghargaan dari hukuman yang akan diberikan kepada saksi pelaku yang belum ada pengaturan perundang – undangan yang spesifik pada perundang – undangannya yang baru maupun pada putusan yang lain yang ditinjau menggunakan perspektif *Maslahah*.
3.	Mita Nurasiah, Beniharmoni Harefa, Riki Perdana Raya Waruwu/Fakultas Hukum Universitas Pembangunan Nasional dan	Bagaimana penyebab adanya disparitas pidana terhadap *Justice Collaborator* dan upaya untuk meminimalisi	Disparitas dalam pemidanaan adalah hal yang biasa dalam sistem peradilan pidana, tetapi menjadi tidak adil jika hakim menjatuhkan putusan yang tidak proporsional	Perbedaan pada jurnal ini dengan penelitian yang dilakukan peneliti terdapat pada subyek tindak pidananya yaitu tindak	Proses pemidanaan terhadap saksi pelaku dan aturan tentang penghargaan dari hukuman yang akan diberikan kepada saksi pelaku yang belum ada

	Mahkamah Agung Republik Indonesia/2022/Dispararitas Pidana Terhadap *Justice Collaborator* Dalam Tindak Pidana Korupsi.	r terjadinya disparitas pidana kedepannya dengan menganalisis beberapa putusan pengadilan tindak pidana korupsi pada pengadilan negeri Jakarta Pusat ?	dan merugikan prinsip keadilan masyarakat. Menurut hasil wawancara dan studi kepustakaan, salah satu faktor penyebab disparitas dalam pemidanaan kasus tindak pidana korupsi adalah karena falsafah pemidanaan di Indonesia yang masih mengizinkan hakim untuk tidak terikat pada putusan sebelumnya (yurisprudensi).	pidana korupsi	pengaturan perundang – undangan yang spesifik pada perundang – undangannya yang baru maupun pada putusan yang lain yang ditinjau menggunakan perspektif *Maslahah*.
4.	Syahla Putri Raharyanti, Lies Sulistiani, dan Rully Herdita/Fakultas Hukum Universitas Padjajaran/2024/Pertimhangan Majelis Hakim Meringankan Hukuman Richard Eliezer Ditinjau Berdasarkan Teori Tujuan Pemidanaan Hukum Yang Berkeadilan.	Bagaimana pertimbangan hakim dalam meringankan hukuman terdakwa Eliezer ditinjau berdasarkan regulasi yang berlaku dan teori pemidanaan manakah yang sesuai dengan keputusan hakim ?	Keputusan hakim yang menunjuk terdakwa sebagai pelaku yang berkolaborasi dianggap telah memberikan keadilan dan kepastian hukum sesuai dengan UU PSK dan SEMA Nomor 4 Tahun 2011. Konsep 'tindak pidana tertentu' telah diperluas maknanya berdasarkan keyakinan dari LPSK dan Majelis Hakim. Faktor-faktor yang meringankan Terdakwa Richard	Perbedaan yang terdapat pada penelitian yang dilakukan peneliti terdapat pada teori yang digunakan, jurnal ini menggunakan teori pemidanaan sedangkan penelitian ini menggunakan teori kepastian hukum.	Proses pemidanaan terhadap saksi pelaku dan aturan tentang penghargaan dari hukuman yang akan diberikan kepada saksi pelaku yang belum ada pengaturan perundang – undangan yang spesifik pada perundang – undangannya yang baru maupun pada putusan yang lain yang ditinjau menggunakan perspektif *Maslahah.*

			Eliezer Pudihang Lumiu dalam Putusan Nomor 798/Pid.B/2022/PN.Jkt.Sel dianggap sesuai dengan teori tujuan relative dan gabungan.		
5.	Luqmanul Hakim, Erwin Owan Hermansyah dan Lusia Sulastri/Fakultas Hukum Universitas Bhayangkara Jakarta Raya/2023/*Justice Collaborator Status In Murder Based On Law Number 31 Of 2014*	Bagaimana analisis penetapan *Justice Collaborator* menurut Undang – Undang Nomor 31 Tahun 2014 ?	Kasus pembunuhan berencana seharusnya majelis hakim menolak untuk di adakannya *Justice Collaborator* karena pembunuhan berencana tidak termasuk dalam kategori kasus yang memenuhi syarat untuk mendapatkan *justice collaborato.* Namun, adanya urgensi dalam pengungkapan kasus tersebut maka hakim memperluas penggunaan *justice collaborator* untuk memenuhi tugas hakim sebagai penegak hukum secara optimal.	Jurnal ini membahas tentang pemberian status sedangkan peneliti membahas tentang sistem pemidanaanya.	Proses pemidanaan terhadap saksi pelaku dan aturan tentang penghargaan dari hukuman yang akan diberikan kepada saksi pelaku yang belum ada pengaturan perundang – undangan yang spesifik pada perundang – undangannya yang baru maupun pada putusan yang lain yang ditinjau menggunakan perspektif *Maslahah*.

G. Systematization of Writing

In the preparation of the research entitled "Reconception of Arrangements for Witnesses (Justice Collaborators) According to Law Number 31 of 2014 concerning Amendments to Law 13 of 2006 concerning Witness and Victim Protection and Maslahah Perspective", the thesis will be divided into three main parts, namely the introduction, the content, and the closing section. Then the author will divide the main discussion into 4 chapters using the following writing systematics:

CHAPTER I INTRODUCTION

This thesis begins with an introduction that includes the background of the problems raised by the author, problem formulation, research objectives, research benefits, literature *review,* theoretical framework, research methods, and writing procedures. The introduction aims to provide a comprehensive overview of the context of the research to be carried out.

CHAPTER II LITERATURE REVIEW

Discusses the subchapters of previous research and theoretical framework. Previous research acts as a foundation to prove the originality of this research. It also shows that this research raises themes that have never been studied before.

CHAPTER III RESEARCH RESULT AND DISCUSSION

This chapter contains an explanation of the results of research conducted by the author which includes Reconception of The Regulation for Witnes Perpretators (*Justice Collaborators*) According to Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 Concerning the Protection of Witnesses and Victims and the *Maslahah* Perspective. which includes:

a. Philosophical, Juridical, and Sociological Foundations of the Reconception of Arrangements for Witnesses (Justice Collaborators) According to Law Number 31 of 2014 concerning Amendments to Law 13 of 2006 concerning Witness and Victim Protection.
b. Reconception of Arrangements for Witnesses (Justice Collaborators) According to Law Number 31 of 2014 concerning Amendments to Law 13 of 2006 concerning Witness and Victim Protection and Maslahah Perspective.

CHAPTER IV CLOSING

The concluding chapter contains conclusions from the results of the author's research which are also complemented by suggestions for conclusions and also contains a list of references used to collect references or references from the research conducted.

CHAPTER II

LITERATURE RIVIEW

A. Witness Offender (*Justice Collaborator*)

A Justice Collaborator, also known as a cooperating witness, is an individual who is involved in a crime but is not the main perpetrator, and cooperates with law enforcement by providing information, strong evidence, and testimony under oath to uncover a crime. Witness is a term for a suspect, defendant, or convicted person who cooperates with law enforcement to uncover criminal acts in the same case..[37] A *Justice Collaborator* has two roles at once, namely as a suspect as well as a witness who must provide testimony in court.[41] The following will explain some expert opinions regarding the definition of *Justice Collaborator*:

1. According to Fadli Razeb Sanjani, a *Justice Collaborator* is an offender who cooperates, either as a witness, reporter, or informant, providing assistance to law enforcement by providing important information, strong evidence, or testimony under oath to uncover criminal acts. Those who provide such assistance are involved in the reported criminal offense or even other criminal offenses.[38]
2. According to Abdul Haris Semendawai, *Justice Collaborator* is one of the efforts made to expose an organized crime, such as a mafia network, including corruption which is usually carried out in congregation.[39]

[37] Wisnu Indaryanto, "SAKSI PELAKU DALAM PERSPEKTIF VIKTIMOLOGI," 2019, 477–86.
[38] Fadli Razeb Sanjani, "Penerapan Justice Collaborator Dalam Sistem Peradilan Pidana Di Indonesia," *JOM Fakultas Hukum Vol II Nomor 2* 2 (2015): 113–21.
[39] Hambali Thalib, Sufirman Rahman, and Abdul Haris Semendawai, "The Role of Justice Collaborator in Uncovering Criminal Cases in Indonesia," *Diponegoro Law Review* 2, no. 1 (2017): 5–6, https://doi.org/10.14710/dilrev.2.1.2017.27-39.

3. According to Romli Atma Sasmita, *Justice Collaborator* is any suspect involved in the activities of a criminal organization, either committing a crime on his own initiative or at the request of law enforcement, cooperating with law enforcement to reveal tools and evidence. The goal is that investigations and prosecutions can take place effectively.[40]

The history of the first use of the term *Justice Collaborator* is that in 1984, Sicilian Mafioso Tommaso Buscetta turned against the mafia by becoming a *justice collaborator* and getting official witness protection because with his help law enforcement officials had taken approximately 350 mafia people to prison. After that case, by the end of the 1990s Italian law enforcement had benefited from the services of approximately 1000 *justice collaborators*. The concept of *justice collaborators* is based on the idea that information from an informant is the most effective way to uncover organized crime.[41]

B. Sentencing System

The punishment system is defined as the entire legal regulations that regulate the implementation and operationalization of punishment, as well as the entire system in legal regulations that regulate the application and enforcement of criminal law concretely.[42] In this view, the punishment system is identical to the

[40] Justice Collaborator, Mungkinkah? | Gagasan Hukum (wordpress.com) dikunjungi pada tanggal 12 Mei 2024 pukul 23.27 WIB
[41] Sugiri, Aprilianda, and Hartadi, "The Position of Convict as Justice Collaborator in Revealing Organized Crime."
[42] Ketut Mertha, "Buku Ajar Hukum Pidana," *Buku Ajar Hukum Pidana Universitas Udayana*, 2016, 2.

criminal law enforcement system which consists of parts of the material/substantive criminal law system, formal criminal law and criminal execution law. The punishment system can also be interpreted as the entire system of rules/norms of material criminal law for punishment or the entire system of rules/norms of material criminal law for the provision/imposition and execution of punishment.[43]

The KUHP does not set out the objectives and principles of punishment, so that punishment is interpreted according to the perspective of law enforcement officials and judges, each of which can have different interpretations. In such a Criminal Code punishment system, judges do not have the authority to choose the appropriate punishment for criminal offenders.[44] For example, regarding the provision of *rewards* and *punishments* for *Justice Collaborators,* there is no system for providing sanctions and only waiting for the decision of the judicial judge as a consideration for the sanctions that will be imposed on the perpretator witness.

In criminal cases, court decisions in the form of imposition of punishment must also be accompanied by factors used to consider the severity of criminal sanctions, as specified in Article 197 paragraph (1) letter f of the Criminal Procedure Code which reads:

"Articles of laws and regulations that form the basis of punishment or action and articles of laws and regulations that form the legal basis of the verdict, along with aggravating and mitigating circumstances "[45]

[43] Tim Kerja BPHN Mudzakkir, "Perencanaan Pembangunan Hukum Nasional Bidang Hukum Pidana Dan Sistem Pemidanaan (Politik Hukum Dan Pemidanaan)," *Badan Pembinaan Hukum Nasional Departemen Hukum Dan Hak Asasi Manusia*, 2008, 11, https://www.bphn.go.id/data/documents/pphn_bid_polhuk&pemidanaan.pdf.
[44] Mudzakkir.
[45] Bab Ii, Ruang Lingkup, and Bab Vi, "KITAB UNDANG-UNDANG HUKUM ACARA PIDANA

The Memorie van Toelichting of the Strafwetboek of 1886 also provides guidelines for the consideration of the severity of criminal sanctions as follows:

"In determining the level of punishment, the judge for each crime must pay attention to the objective and subjective circumstances of the crime committed, must pay attention to the act and the perpetrator. What rights have been violated by the commission of the crime? What harm has been caused? Is the crime for which he is blamed the first step on a misguided path or is it an act which is a repetition of a previously manifested evil character?".[46]

These guidelines aim to consider the severity of the punishment, generally expecting the consideration to include both the objective aspects of the criminal act committed and the subjective circumstances of the offender. Guidelines for considering the severity of criminal sanctions are important for judges, so that they can impose sentences that are appropriate and fair as possible, and minimize discretion in sentencing. Therefore, it would be better if the KUHAP includes a formulation of sentencing guidelines.

C. Justice Theory

The theory of justice in the development of criminal law is also used in determining criminal sanctions, alternative punishments and punishment mechanisms. Justice is an important thing and one of the main factors in discussing every legal issue and in the formation of laws and regulations because every

(KUHAP) Undang-Undang Nomor 8 Tahun 1981," 1981.

[46] Tristan Pascal Moeliono, "Terjemahan Beberapa Bagian Risalah Pembahasan Wetboek van Strafrecht Dan Wetboek van STrafrecht Voor Nederlandsch Indie," 2019.

individual wants justice.[47] John Rawls defines the principle of justice as the *different principle and the principle of fair equality* [48] and *the principle of fair equality of opportunity* [49], which means that social differences must be regulated in order to provide great benefits for the disadvantaged.[50]

According to Rawls, justice must be given to every deserving individual without compromising the interests of other individuals. According to Rawls, justice is realized when everyone has equal rights to basic freedoms, including the weak (*maximum minimorum*). In other words, for In order to achieve justice, the freedom of each individual must be maximized (*Maximisation of Liberty*). Restrictions that exist are only meant to protect liberty itself.[51]

When viewed from Rawls' principles of justice, the 1945 Constitution Chapter XA Article 28D number (1)[52] which reads that " everyone has the right to recognition, guarantees, protection and certainty of a fair law and equal treatment before the law, has regulated the guarantee of rights for each individual so that the fulfillment of individual rights can be guaranteed". Rawls uses the principle of fair equality with a theory known as "*Justice as fairness*", meaning that justice is a measure that must be given to achieve a balance between personal interests and

[47] Hidayatullah, *Filosofi Justice Collaborator* (Pasuruan : Qiara Media,2021),73-74
[48] Inti dari the different principle pada teori keadilan John Rawls adalah bahwa perbedaan sosial harus diatur agar memberikan manfaat yang paling besar bagi mereka yang paling kurang beruntung.
[49] Sedangkan the principle of fair equality of opportunity merujuk pada mereka yang paling kurang mempunyai peluang untuk mencapai prospek kesejahteraan, pendapat dan otoritas. Mereka itulah yang harus diberi perlindungan khusus.
[50] Gladys Donna Karina, "Analisa Teori Keadilan John Rawls Dan Teori Utilitarianisme Jeremy Benthan Terhadap Konsep Pemenuhan Hak Korban Menurut Perspektif Viktimologi," *Syari'ah Journal of Indonesian Comparative of Syari'ah Law* 6, no. 2 (2023): 265–66.
[51] Roy Satria Perdana Muhammad Abelco Djuans Octaviano, Muhammad Liwa Ulham, "Ketidakadilan Pembinaan Terpidana Berdasarkan Modalitas Dalam Perspektif Teori Keadilan Menurut John Rawls," (2023.): 5
[52] "Undang - Undang Dasar Negara Republik Indonesia 1945" Bab XA Pasal 28D Nomor 1 (1945).

common interests. Rawls mentions three principles of justice, namely:

1. The Principke of Equal Freedom : Every individual should have an equal right to the broadest basic freedoms, with the same degree of freedom for all individuals. This principle is the most fundamental human right that all people should have.
2. Difference Principle : Social and economic inequalities should be managed to address them. The aim is to provide the greatest possible benefit to disadvantaged communities, and to emphasize that under the same circumstances and opportunities, all positions should be open to everyone.
3. The Principle of Equality : this principle is the principle of objective difference, which means that it guarantees the realization of proportionality in the exchange of rights and obligations of the parties, so it is reasonable to accept differences in exchange as long as they meet the requirements of good faith and reasonableness.[53]

D. Maslahah

Etymologically, *Maslahah* comes from Arabic which means care, profit, goodness, welfare. While *Maslahah* according to the term according to Imam Shathibi is everything that has benefits in it, either how to bring it or how to reject and protect it. The benefit that is the goal of *sharia* must be able to take care of five

[53] M Yasir Said and Yati Nurhayati, "A Review on Rawls Theory of Justice," 2021, 32.

things, namely *addien* (religion), *nafs (*soul), *al- aql* (reason), *nasl* (offspring) and *maal* (property).[54]

Maslahah also refers to the concept of understanding the wisdom, values, and objectives of sharia that are expressed and implied in the Al-Quran and Hadith, which are determined by Allah for humans. The ultimate goal of the law is one of goodness or benefit and the welfare of mankind, both in this world and in the hereafter.

The scope of *Maslahah is not* only based on the general *Shara'* ruling, but also on customs and human relationships. This scope is the main choice for achieving the *benefit*. *Maslahah* is anything that causes an action, in the form of good things. Mustafa Shalbi concluded in two definitions. First, *Majaz, Maslahah* is something that conveys to benefit. Second, *Hakiki, Maslahah* is the result that arises from an action itself.

The strength of *Maslahah* can be seen in terms of the purpose of *Shara'* in establishing laws that are directly or indirectly related. According to Imam Syatibi, the purpose of enacting laws in Islam is divided into three levels:

A. *Maslahah Al – dharuriyyat* (primary needs)

Al-dharuriyah according to the scholars of ushul fiqh is everything that is necessary for the continuity of human benefit, both in religious and worldly aspects. If this is not present or not properly maintained, then human life in this world and the hereafter will be damaged. In other words, al- dharuriyah is an essential goal in

[54] Djazuli, *Fiqh Siyasah (Hifdh al-Ummah dan Pemberdayaan Ekonomi Umat),* Bandung:Kencana, 2013, 393.

human life to maintain their welfare. The purpose of Islamic law in this form of *al-dharuriyah* requires the maintenance of five very essential needs for humans known as *al-dharuriyat al-khams*: 1) *Hifdzu din* (protecting religion) 2) *Hifdzu nafs* (protecting the soul) 3) Hifdzu *aql* (protecting the mind) 4) *Hifdzul mal (protecting* property) 5) *Hifdzu nasab* (protecting offspring).

B. *Maslahah Al – hajiyyat* (secondary needs)

The need to obtain a benefit, in the event that if it is not pursued, it will not actually cause negligence benefit as a whole, will only result in *masyaqqah* (difficulty).

C. *Maslahah Al – tahsini* (tertiary needs)

Needs that are considered good according to public opinion. Approximately, if it is not attempted, it will not make the loss of benefit or the condition of difficulty (*masyaqqah*), but it is only complementary to the existence of maslahat *dharuriyyat* or *hajiyyat*.

CHAPTER III

RESULT AND DISCUSSION

A. The Concept of Criminalization Arrangements or Witnesses According to Law Number 31 o 2014 Concerning Amendments to Law 13 o 2006 Concerning Witness and Victim Protection.

The existence of a punishment system is a legal norm in a law relating to the provision of sanctions and punishment. Basically, the punishment system is the authority of the power to impose punishment. It must be noted that the meaning of punishment itself is not only viewed in a narrow/formal sense but can also be seen in terms of a broad/material sense. From a narrow/formal sense, it means an authority to impose or provide criminal sanctions according to the law by authorized law enforcement officials. As for the broad/material sense, the punishment system is a spearhead of the legal enforcement process of law enforcement officials who have the power, starting from the investigation process, prosecution, ending in a criminal decision imposed by the court carried out by law enforcement officials.[55]

According to the views of legal experts, the purpose of punishment will appear if the perpetrator of the crime gets a punishment that is appropriate for every act he commits. In addition, the range of measures of effectiveness of a punishment system cannot be assessed by the disappearance of crime on earth, but is more aimed

[55] Noveria Devy Irmawanti and Barda Nawawi Arief, "Urgensi Tujuan Dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana," *Jurnal Pembangunan Hukum Indonesia* 3, no. 2 (2021): 219, https://doi.org/10.14710/jphi.v3i2.217-227.

at reducing and minimizing the possibility of a criminal act [56] In addition, an inadequate punishment system will make the perpetrator increasingly underestimate the sanctions that will be imposed on him.

The provision of criminal sanctions does not only apply to perpetrators of criminal acts, in this study witnesses who are also perpetrators, hereinafter referred to as witnesses of perpetrators (*Justice Collaborators*) can also be given criminal penalties under the applicable conditions. In this case, witnesses who are also perpetrators are used as an alternative assistance to law enforcement officials in uncovering the flow of a criminal event or finding the main perpetrator.

In revealing a criminal case, law enforcement officers are sometimes hampered by the lack of sufficient evidence such as letters, witnesses, suspicion, confessions and oaths, so the presence of Witnesses of the Perpetrator in the settlement of a criminal offense is an effective shortcut to solve complete the fulfillment of the evidence.[57] According to Law No. 31/2014 on the protection of witnesses and victims [58], a perpetrator witness is a suspect, defendant or convict who cooperates with law enforcement to reveal a criminal offense in the same case.[59]

The role of perpetrator witnesses has an important position in the process of resolving criminalization, many perpetrator witnesses still receive physical and

[56] Unung Sulistio Hadi, "Membumikan Sistem Pemidanaan Islam Di Indonesia," *Pengadilan Agama Semarang Jawa Tengah*, 2010, 1–2.
[57] Rusli Muhammad, "Pengaturan Dan Urgensi Whistle Blower Dan Justice Collaborator Dalam Sistem Peradilan Pidana," n.d., 214.
[58] Dewan Perwakilan Rakyat Indonesia, "Undang Undang No 31 Tahun 2014 Tentang Perlindungan Saksi Dan Korban."
[59] Pasal 1 Ayat 2 Undang – Undang Nomor 31 Tahun 2014 tentang Perlindungan Saksi dan Korban.

non-physical pressure which causes perpetrator witnesses to have difficulty providing information to assist law enforcement officials. In Law Number 31 of 2014[60] on Witness and Victim Protection implicitly regulates the protection of perpetrator witnesses. The regulations governing special treatment by providing criminal leniency and / or other forms of protection are explicitly in the Supreme Court Circular Letter Number 4 of 2011 concerning Treatment for *Whistleblowers* and Witnesses of Cooperating Actors (*Justice Collaborators*) in Certain Criminal Cases.[61]

The above regulations have actually been able to provide justice to perpetrator witnesses with protection and special treatment for perpetrator witnesses, but the protection of perpetrator witnesses will be more effective and maximized if has a clear and definite legal system. The system in question is the punishment system, namely the provision of *rewards* (*Reward*) and punishments (*Punishment) to perpetrator witnesses* who want to cooperate, *rewards* (*reward*) for perpetrator witnesses can be given in return for good faith in the form of cooperation to reveal all organized crimes. The purpose of the existence of *justice collaborators is* to encourage further perpetrator witnesses to be brave enough to provide information and make it easier for law enforcement officials to uncover a crime, from these implications. Then the award in the form of reward deserves to be obtained because it has been considered meritorious for law enforcement

[60] Dewan Perwakilan Rakyat Indonesia, "Undang Undang No 31 Tahun 2014 Tentang Perlindungan Saksi Dan Korban."
[61] Mahkamah Agung Republik Indonesia, "Perlakuan Terhadap Pelapor Tindak Pidana (Whistleblower) Dan Saksi Pelaku Yang Bekerjasama (Justice Collaborator) Di Dalam Perkara Tindak Pidana Tertentu."

efforts.[62]

1. Dynamics o the Implementation o the Criminal System for Witnesses (*Justice Collaborator*)

Dynamics are movements in the social environment continuously, from these movements cause changes in the way of life of society.[63] Dynamics occur because of the needs of society that always develop following the changing times, dynamics can occur in social, group, psychological, population, law and others. Dynamics in law is important, because the law is made for the interests and needs of society, there will be no law if there is no subject (human) being regulated. Legal dynamics in this case, one of which occurs in murder cases Ferdi Sambo.[64] to Yosua Hutabarat who found it difficult to find the truth about the case. Because the presiding judge considered the case too long, he offered Richard Eliezer, who was not the main perpetrator, to provide testimony to help the judge's consideration. For his testimony, Richard Eliezer was designated as a *Justice Collaborator* and *rewarded* with a reduced prison term by the presiding judge.[65]

The Yosua murder case above is one form of legal dynamics, because the process is long and long, it requires assistance for the judge's consideration, so it is necessary to witness the perpetrators who work together so that the settlement of

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[62] Jupri, "Reward Keringanan Sanksi Pidana Bagi Juctice Collaborator," *Jurnal Transformative* 4, no. 2 (2018): 13–32.

[63] https://kumparan.com/pengertian-dan-istilah/arti-dinamika-menurut-ahli-jenis-dan-contohnya-21FvDd8pf3T/full diakses tanggal 18 mei 2024 pukul 22:47 wib

[64] Direktori Putusan et al., *PUTUSAN MAHKAMAH AGUNG REPUBLIK INDONESIA NOMOR 796/Pid.B/2022/PN Jkt.Sel.*, 2022.

[65] AGUNG, *PUTUSAN MAHKAMAH AGUNG REPUBLIK INDONESIA NOMOR : 798/Pid. B/2022/PN. Jkt.Sel. DEMI*.

criminal cases can be resolved immediately. The use of *Justice Collaborator* is an effective alternative in revealing the main perpetrators and the flow of crimes committed in the crime so that the judge can weigh the amount of punishment sanctions that are appropriate to be imposed on the perpetrators of the crime.

The application of *Justice collaborators* first appeared in the United States around the 1970s, the understanding of *Justice Collaborator* entered with the aim of a legal norm in the country, with the factors that caused it, among others, because of the attitude of the United States mafia who did not want to provide information or commonly known as *omerta, which* is a promise so that always keep their mouths shut. Because of this, if the mafia is willing to provide information and help law enforcement officials, a *reward of* protection is given as a *Justice Collaborator*. From this, the understanding of *Justice Collaborators* developed in various countries, such as Italy (1979), Portugal (1980), Spain (1981) and Germany (1989).[66]

Justice Collaborators entered Indonesia starting with the ratification of Law Number 7 of 2006[67] on the Ratification of the *United Nations Convention Against* Corruption in 2003, the ratification of the law comes from the UNCAC Convention in Article 37 paragraphs (2) and (3)[68] regarding the handling of special cases for perpetrators of corruption crimes who are willing to assist law enforcement officials to investigate other suspected perpetrators in cases involving

[66] Sugiri, Aprilianda, and Hartadi, "The Position of Convict as Justice Collaborator in Revealing Organized Crime."
[67] Dewan Perwakilan Rakyat Indonesia, "Undang - Undang Nomor 7 Tahun 2006 Tenatng Pengesahan United Nations Convention Against Corruption."
[68] Pasal 37 Ayat 2 dan 3 Undang – Undang Nomor 7 Tahun 2006 Tentang Pengesahan *United Nations Convention Against Corruption.*

the perpetrator. Initially the law was specifically for corruption cases, but the legal dynamics that occurred required the role of a *Justice Collaborator* in other crimes to accelerate case completion, such as murder, money laundering, human trafficking, terrorism and other crimes committed in an organized manner. The author focuses on the crime of murder. The crime of murder requires specific and explicit legal norms governing witnesses of murder perpetrators who want to cooperate, then the birth of the Justice Collaborator Law Number 13 Year 2006[69] on Witness and Victim Protection. However, the law is still not optimal in realizing the protection of perpetrator witnesses. The discussion and form of protection that is still general (general) causes special protection for perpetrator witnesses to be less clear and strong. Because of this, Supreme Court Circular Letter No. 4/2011 was issued[70] which became one of the reasons for the amendment of Law No. 13/2006[71] which regulates the protection of witnesses, victims, perpetrator witnesses and/or whistleblowers against Law Number 31 of 2014[72] which regulates the special treatment of witnesses, victims, perpetrator witnesses, and/or whistleblowers.[73]

The above description is a factor in the emergence of *Justice Collaborators* from a historical and juridical perspective, while from a sociological perspective is

[69] Dewan Perwakilan Rakyat Indonesia, "UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 13 TAHUN 2006 TENTANG PERLINDUNGAN SAKSI DAN KORBAN."
[70] Mahkamah Agung Republik Indonesia, "Perlakuan Terhadap Pelapor Tindak Pidana (Whistleblower) Dan Saksi Pelaku Yang Bekerjasama (Justice Collaborator) Di Dalam Perkara Tindak Pidana Tertentu."
[71] Eddyono, "Masukan Terhadap Perubahan UU No. 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban."
[72] Dewan Perwakilan Rakyat Indonesia, "Undang Undang No 31 Tahun 2014 Tentang Perlindungan Saksi Dan Korban."
[73] Dewan Perwakilan Rakyat Indonesia.

the lack of public participation due to a sense of public distrust of law enforcement officials. The birth of this distrust comes from the long process of law enforcement in Indonesia which often disappoints the public. Meanwhile, there is no guarantee given to people who participate in law enforcement in order to get protection from law enforcement officials. From the absence of such guarantees, people will hesitate to participate because it leads to loss and disappointment for the community.[74]

The dynamics of law enforcement in Indonesia are in an irregular legal condition starting from law enforcement and legal uncertainty with its regulations. Related to the progress of Indonesia as the largest Democratic country in the world, there is still a lack of law enforcement standards in Indonesia. If this continues to happen, public confidence in law enforcement will decrease, it is based on the fact that even though Indonesia upholds democracy and upholds equal rights as mandated in the 1945 Constitution Article 28D paragraph 1, everyone has the right to recognition, guarantees, and guarantees[75], Every person is entitled to recognition, guarantees, protection, and certainty of a fair law and equal treatment before the law. In fact, justice in Indonesia has not been applied because legal certainty is often questioned, inversely proportional to the claim of a democratic country, but does not implement democracy as a whole. The weakness of law enforcement in Indonesia is evident from the many incomplete settlements of major cases, many organized cases where the perpetrators have not been caught entirely. This is

[74] Hidayatullah, *Filosofi Justice Collaborator*, 23
[75] "Undang-Undang Dasar Negara Republik Indonesia 1945."

inversely proportional to cases involving small people, law enforcement officials are always quick in ensnaring the perpetrators of criminal acts.[76]

The facts of law enforcement above have certainly hurt the hearts of the little people, which has led to public distrust of the rules. A law must be have the line with the dynamics of life where the law has pros and cons from every element of society. However, this is seen from the ideals of a law, the tendency towards community benefits or losses for the community.

The application of the punishment system for the perpetrator witness (*Justice Collaborator*) will definitely have its own dynamics and pros and cons. The absence of a criminalization system for perpetrator witnesses is legal uncertainty, with the criminalization system for perpetrator witnesses having an impact. *One*, accelerating law enforcement officials in investigating and ensnaring perpetrators of organized crime. *Two, it makes* it easier for law enforcement officials to obtain information to assist judges' considerations in resolving cases. *Three,* there is a guarantee of protection for perpetrator witnesses who want to cooperate so that perpetrator witnesses are willing to provide testimony and information. *Four, the* rebirth of public trust in law enforcement officials. The four positive impacts above will certainly realize the ideals of the 1945 Constitution Article 28D paragraph 1[77] because everyone is entitled to guarantees of recognition, protection and legal certainty. From the positive side above, there must be a negative side in the application of the punishment system, according to the author,

[76] Surahmad, "Dinamika Penegakan Hukum Di Indonesia," 2015.
[77] Pasal 28D Ayat 1 Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

there is one important problem if the punishment system for perpetrator witnesses already exists, namely the absence of an objective reference to the leniency given to the subject (*Justice Collaborator*) and the injustice of giving punishment between one perpetrator witness and another perpetrator witness because of the judge's consideration who has prerogative in the trial will still be more dominant in the criminalization of *justice collaborators.*

Justice in *Justice Collaborator is* not only concerned with the interests of victims, but must also pay attention to justice in the special treatment of perpetrator witnesses who are willing to cooperate. This justice has the aim of avoiding the emergence of disparities in the provision of punishment to witnesses of perpetrators who cooperate which can cause a sense of jealousy between fellow witnesses of perpetrators who cooperate. *Justice* must be applied as the main consideration in the participation of *Justice Collaborators* in criminal law enforcement in order to provide guarantees for equitable protection between the interests of victims (in terms of public trust in law enforcement officials) and fellow cooperating perpetrator witnesses.[78]

2. Judges' Considerations in Imposing Criminal Sanctions on Witnesses

[78] Hidayatullah, *Filosofi Justice Collaborator*,20

(*Justice Collaborator*)

Law enforcement is the process of carrying out efforts to straighten or work legal norms realistically as a guide to attitudes in a legal relationship into the implementation of society and the state. Judging from the subject, law enforcement can be carried out by universal subjects and can also be interpreted as an effort for the participation of all legal subjects in every legal relationship.

Understanding of law enforcement can also be seen in terms of its object, namely from a legal perspective. In its legal perspective, it has an understanding that also includes a broad and narrow definition. In a broad definition, law enforcement includes the values of justice enshrined in formal rules as well as the values of justice that live in the reality of society. Whereas in a narrow definition, law enforcement only concerns the enforcement of formal and written regulations.[79] Law enforcement can run well in accordance with the ideals of the state carried out by law enforcement officials, one of which in the judicial sector is the judge.

A judge is not only as stipulated in the law, but he is a social being, therefore the duties and responsibilities of the judge are very noble, because he is not only required to rack his brain, what contributions and changes that can make a fair decision often appear as a form of war of conscience. A judge must be able to adjudicate perfectly to every case before him, even if the case before him is not or has no clear legal reason even though the judge may not reject it. Therefore, before giving his decision on a case, he must have data and events that arise from the

[79] Erna Dewi, "Peranan Hakim Dalam Penegakan Hukum Pidana Indonesia," *Pranata Hukum* 5, no. 2 (2010): 94.

plaintiff or defendant, the evidence raised by the parties during the trial.[80] The judge in resolving a conflict in front of him must be able to resolve objectively based on the governing law, so in the process of ruling Judges' decisions must be independent and free from the influence of any party, even the executive. In making decisions, judges are only concerned with the realities that are in line with and the legal rules that are used as the legal basis for their decisions..[81]

In trying to find the law in a case being processed, the panel of judges can be guided by *one*, the statutory code as positive law. *Two,* customary chiefs and religious advisors (Articles 44 and 15 of the Customary Ordinance). *Three*, Jurisprudence with an emphasis on the judge's guidance in order to provide a sense of justice for the parties. *Four*, Scientific writings of legal experts and other science books that can assist the judge's consideration. If not found in the above sources then the judge must look for it by using the method of interpretation and construction. The interpretation method is the interpretation of texts but is still guided by the sounds of the text. While the construction method is to use logical reasoning to further explore the text of the law, the judge does not ignore the law as a system because the judge is no longer bound and guided by the sound of the text.[82] Jurisprudence is the help of judges' considerations through previous decisions of judges which are believed not to be contrary to the truth, it is one form of freedom and power of judges.

The freedom of judges, which is guided by the independence of judicial

[80] Henry Arianto, "Peranan Hakim Dalam Upaya Penegakan Hukum Di Indonesia," 2012, 154.
[81] N Maulidah, "Peran Hakim Dalam Penegakan Etika Dan Profesi Hukum," *Pengadilan Agama Kabupaten Malang* 16, no. 1 (2016): 2.
[82] Arianto, "Peranan Hakim Dalam Upaya Penegakan Hukum Di Indonesia.",154

power in Indonesia, is mandated in the Indonesian Constitution in 1945[83] which was perfected in Law Number 14 of 1970 concerning the Principles of Judicial Power[88] which was amended by Law Number 35 of 1999[84] jo Law Number 4 Year 2004[85], freedom from executive influence or from other parties. For example, recommendations given by extra-judicial parties, unless permitted by law. As well as the influence of the internal judiciary in making decisions[86] As one of the spearheads to maintain justice and law, judges have a decisive position as mandated by law. In Article 1 point 8 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP), judges are state judicial officials who are given the power by law to adjudicate a series of actions by judges to accept, examine and decide on a criminal case freely, honestly and not inclined to certain parties. Article 1 point 1 of Law Number 48 of 2009 concerning Judicial Power. Affirms that the power The judiciary is a free power of the state to conduct trials to uphold the laws of the Republic of Indonesia.[87]

From the description above, the author uses the example of a case of premeditated murder committed by Ferdy Sambo as the main perpetrator and Richard Eliezer as the other perpetrator, the judge considers the need for a witness who cooperates to help provide the judge's consideration. Therefore, the judge made

[83] "Undang-Undang Dasar Negara Republik Indonesia 1945."
[84] Dewan Perwakilan Rakyak Indonesia, "UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 14 TAHUN 1970 TENTANG KETENTUAN-KETENTUAN POKOK KEKUASAAN KEHAKIMAN" 2, no. October (1970): 765–70.
[85] Dewan Perwakilan Rakyat Indonesia, "UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 4 TAHUN 2004 TENTANG KEKUASAAN KEHAKIMAN," *Demographic Research*, 2018, 4–7.
[86] Erna Dewi, "Peranan Hakim Dalam Penegakan Hukum Pidana Indonesia.",94
[87] Rakha Diof Alghani Mohd. Yusuf DM, Filzah Fadhilah, Audrey Monica Napitupulu, Ribka Eunike Lubis, Saerly Agustin Sartono, Mahfuzoh, "Analisis Peranan Hakim Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Pendidikan Dan Konseling* 5, no. 2 (2022): 396.

an offer to Richard Eliezer to be given the status of a Cooperating Witness (*Justice Collaborator*), as outlined in Supreme Court Decision Number 798/Pid.B/2022 on behalf of Defendant Richard Eliezer Pudhiang Lumiu.[88] One of the considerations of the judge offering Justice Collaborator status to Richard, namely in one of the considerations of the decision which reads:

> " Considering that over time Law No. 31 of 2014 on the amendment of Law No. 13 of 2006 on the Protection of Witnesses and Victims has been passed and enforced, where the guidelines as stipulated in SEMA 4 of 2011 have been accommodated, the Tribunal further sees that the development of justice in society requires *Whistle Blowers* and Witnesses to be protected Cooperating Offenders (*Justice Collaborators*) are not solely based on certain criminal offenses as in SEMA 4 of 2011, but also refer to criminal offenses in certain cases, as determined by Law No. 31 of 2014 concerning amendments to Law No. 13 of 2006 "

Before understanding the reasons for granting Richard *Justice Collaborator* status, it is important to know the chronology of events involving Richard in this premeditated murder case. In the case, Brigadier Yosua was said to have died in a shooting incident with Bharada E at Sambo's official residence on July 8, 2022 at 5pm. However, the shooting case was only revealed to the public on July 11, 2022 or three days after the incident. Then, on Monday, July 11, 2022, Head of the Public Information Bureau of the National Police Public Relations

[88] Ferinda K Fachri, "Berstatus Justice Collaborator, Majelis Vonis Richard Eliezer 1,5 Tahun Bui" Hukumonline, 15 Februari 2023, diakses 21 Mei 2024, https://www.hukumonline.com/berita/a/berstatus-justice-collaborator--majelis-vonis-richard-eliezer-1-5-tahun-bui-lt63ec98cb67324/.

Division Brigadier General Ahmad Ramadhan said Brigadier Joshua entered Sambo's wife's room and allegedly committed harassment. According to Ramadhan, Ferdy's wife had screamed, so Bharada E, who was on the second floor, heard it. Then Bharada E walked towards the room, but Brigadier J came out first. Brigadier J is said to have fired seven times and was retaliated by Bharada E five times. None of Brigadier J's shots hit Bharada E , but Bharada E's shot killed Brigadier J . After the incident, Putri called Sambo who was said to be conducting a PCR test outside the house. On Tuesday, July 12, 2022, the National Police Chief formed a Special Team. Brigadier J's death was reported as an alleged premeditated murder by the family to Bareskrim Polri. Meanwhile, the lawyer for Sambo's family reported Brigadier J to the Police Criminal Investigation Unit for alleged harassment and death threats against Sambo's wife to the South Jakarta Metro Police. However, the two cases reported to the South Jakarta Metro Police were taken over by the Jakarta Metro Police and then taken over by the Police Criminal Investigation Unit (Bareskrim).

From the above chronology, the determination of the initial sanction against Richard Eliezer was based on the Prosecution Letter from the Public Prosecutor with Case Registration No.PDM- 246 /JKTSL/10/ 2022 which basically charged the Defendant as follows:

1. Stating that the Defendant RICHARD ELIEZER PUDIHANG LUMIU with the identity mentioned above, is legally and convincingly proven to have committed the crime of taking the life of a person jointly as regulated and punishable in the Primair Indictment in violation of

Article 340 jo Article 55 paragraph (1) to 1 of the Criminal Code;

2. Sentenced the Defendant RICHARD ELIEZER PUDIHANG LUMIU to 12 (twelve) years in prison, with the order that the Defendant be immediately detained;
3. Stating that the evidence is basically requested by the Public Prosecutor as in the petitum of the Public Prosecutor;
4. Determine that the Defendant shall pay court costs in the amount of Rp.5,000, - (five thousand rupiah);[89]

From the charges of the Public Prosecutor, the Panel must still consider the request from the Defendant's Counsel Team Richard Eliezer, which was accompanied by a recommendation from LPSK regarding recommendations for Granting Rights and Special Handling as follows In order for the Defendant to be designated as a perpetrator witness who cooperates (*justice collaborator*). However, the Panel must first consider the criminal offense committed by the defendant, including the part of the criminal offense for which the perpetrator can obtain the status of a cooperating perpetrator witness. After considering the recommendation of the LPSK based on Law Number 31 of 2014[90] on the amendment of Law No. 13/2006 on Witness and Victim Protection.[91] Thus, the Panel granted the request of the Richard Defendant's Advisory Team and LPSK's recommendation to establish Richard Eliezer as a *Justice Collaborator*.

[89] Lihat Amar Putusan Mahkamah Agung Nomor 798/Pid.B/2022 hlm 2
[90] Dewan Perwakilan Rakyat Indonesia, "Undang Undang No 31 Tahun 2014 Tentang Perlindungan Saksi Dan Korban."
[91] Dewan Perwakilan Rakyat Indonesia, "UNDANG-UNDANG REPUBLIK INDONESIA NOMOR 13 TAHUN 2006 TENTANG PERLINDUNGAN SAKSI DAN KORBAN."

Based on the panel's decision to grant LPSK's request to give the defendant the status of a cooperating witness, the defendant was *rewarded* by the Panel for his good faith efforts in providing testimony to enrich the judge's consideration in the premeditated murder case. The award given was in the form of a reduction in the criminal period from 12 years to 1 year and 6 months of detention as outlined in the Supreme Court Decision Number 798/Pid.B/2022 which reads: "Sentencing the Defendant RICHARD ELIEZER PUDIHANG LUMIU to 1 (one) year of imprisonment year 6 (six) months".[92] Before the panel sentenced the defendant Richard Eliezer to 1 year and 6 months, there were a number of matters that became The judge's considerations, such as aggravating and mitigating circumstances, are as follows:

a. Aggravating Circumtances :
   - The close relationship with the victim (Yosua) was not appreciated by the defendant (Richard) and the victim eventually died
b. Matters in Mitigation :
   - The defendant is a *Justice Collaborator.*
   - The defendant was polite during the trial
   - The defendant has never been convicted
   - Defendant is still young expected able to improve his actions in the future
   - The defendant regretted his actions and promised not will not repeat it again

[92] Lihat Amar Putusan Mahkamah Agung Nomor 798/Pid.B/2022 hlm 404-405

- The family of the victim Nofriansyah Yosua Hutabarat has forgiven the actions of the Defendant.

In this series of events, the reduction of the criminal period against Richard was considered *unfair* by the community, considering that Richard's gun shot took Yosua's life in the incident. In practice in Indonesia, there is no law specifically regulating the *Justice Collaborator* punishment system. *Justice Collaborator* arrangements are only regulated in the Law on Witness and Victim Protection which certainly only regulates the protection of witnesses and victims including the protection of victims perpetrator witnesses. The legal basis for cooperating perpetrator witnesses is regulated in Article 10 of the Law on Witness and Victim Protection which basically states that Witnesses, Victims, Perpetrator Witnesses, and/or Reporters cannot be prosecuted legally, either criminally or civilly for testimony and / or reports that will, are being or have been given, unless the testimony or report is given not in good faith. Based on Article 10 of the SFM Law, perpetrator witnesses are guaranteed immunity from criminal and civil prosecution for testimony given in good faith. This legal immunity relates to the information given by the cooperating perpetrator witness. However, immunity from prosecution for criminal offenses committed is not regulated in Indonesia so that the form of *rewards* for cooperating perpetrator witnesses is only in the form of reduced sentences and protection from threats to their safety and that of their families.[93]

In determining the reduction or mitigation of punishment for *Justice Collaborators* in Indonesia, the Panel of Judges only considers the good faith of the

[93] Hidayatullah , *Filosofi Justice Collaborator*, 32

perpetrator witness. In relation to the punishment system, judges need to consider matters as a reference for punishment to achieve the value of truth and justice,[94] among others :

1. Perpetrator error
2. Motive and purpose for committing the crime
3. Manner of committing a criminal offense
4. The inner attitude of the perpetrator
5. Life history and socio-economic circumstances of the perpetrator
6. Attitudes and actions of the perpetrator after committing the crime
7. The effect of punishment on the future of the perpetrator
8. Community views on criminal offenses committed

These things are used as references and guidelines in mitigating the sentence for the *Justice Collaborator* which are then written in the verdict as aggravating and mitigating circumstances.

As for the comparison of the punishment system for witnesses who cooperate (*Justice Collaborator*), in the Netherlands has a significant influence in the development of law in Indonesia because Dutch heritage legal products are still used today. The laws inherited from the Netherlands include civil, criminal and administrative law. This is due to the rapid growth of law in the Netherlands rather

[94] Artidjo Alkostar, "Kebutuhan Responsifitas Perlakuan Hukum Acara Pidana Dan Dasar Pertimbangan Pemidanaan Serta Judicial Immunity," *Makalah Rakernas*, 2011, 7–8.

than Indonesia, one of which is about the rules of punishment and protection of witnesses who cooperate.[95]

The protection of *Justice Collaborators* in the Dutch Criminal Procedure Code uses a system of *witness agreements*, as outlined in Article 226g of the Dutch Criminal Procedure Code which reads "The prosecutor has the authority to regulate witness agreements related to witness testimony in the settlement or prosecution of cases that are qualified as offenses (serious crimes) committed by organized groups." as stated in Article 226g regulated in Article 67 Paragraph 1 of the Dutch Criminal Procedure Code. Furthermore, Article 226g Paragraph 1 of the Dutch Criminal Procedure Code confirms that the Public Prosecutor may enter into an agreement only in cases of serious crimes which are punishable by 8 years imprisonment or a provisional allegation which is punishable by at least 4 years imprisonment and is considered serious organized crime. The public prosecutor's promise of a reduced sentence in a witness agreement must be in writing and contain provisions regarding the extent of the suspect's ability to provide testimony in the commission of the crime. The judge examining the case then has the power to review or scrutinize the validity of the agreement. Analyzing the validity of the witness agreement must be carried out by the judge examining the case and made in the form of a decision.[96]

A Judge in giving a decision on the request of the Public Prosecutor must consider the urgency and important statements to be given by the Cooperating

[95] Hidayatullah, Filosofi *Justice Collaborator*, 106
[96] Hidayatullah, Filosofi *Justice Collaborator*, 107

Witness, the Judge is also entitled to assess the credibility of the witness if the Judge assesses that the agreement is valid according to the law then it must be ratified in the Judge's decision. If the request is rejected by the judge because it is not in accordance with the validity of the agreement, the Public Prosecutor can appeal the decision of the examining judge, this is in accordance with Article 226i Paragraph 2 of the Dutch Criminal Procedure Code.

Justice collaborator's identity can be kept secret or not from other suspects based on the judgment of the judge examining the case, because *Justice Collaborator* statements must be in person.

The provisions regarding the reduction of sentence promised by the Public Prosecutor above must be guided by the rules of Article 44a of the *Criminal Code (Wetboek van Strafrecht)*, hereinafter known as the Dutch *Criminal* Procedure Code. The article reads "The reduction of sentence may not exceed half of the prosecutor's sentence, if it exceeds half it shall be carried out illegally and transferred to another prison."[97]

Reflecting on the Dutch punishment system with the Indonesian punishment system, the absence of a basis for providing a reduction in the sentence period for cooperating perpetrator witnesses causes multiple interpretations of legal norms for cooperating perpetrator witnesses and the general public. To address these issues, there is a need for clear standards in the criminalization system to provide justice to the next perpetrator witness and provide answers to the problems that arise in the community regarding the reduction of the sentence period for the perpetrator.

[97] Hidayatullah, Filosofi *Justice Collaborator*, 113

B. Witness Offender Punishment System from the Perspective of *Maslahah*

Etymologically, *Maslahah* comes from Arabic which means care, profit, goodness, welfare. While *Maslahah* according to the term according to Imam Shathibi is everything that has benefits in it, either how to bring it or how to reject and protect it. The benefit that is the goal of *sharia* must be able to take care of five things, namely *addien* (religion), *nafs* (soul), *al- aql* (intellect), *nasl* ((offspring) and *maal* (wealth).[98] *Maslahah,* etymologically speaking, is the singular form of *al-masalih*, which means "to bring about good". Sometimes another term used is *al-istislah*, which means "seeking good." The term *Maslahah* or *Istislah is* often accompanied by the word *al- munasib*, which means "things that are suitable, appropriate, and appropriate for use." From some of these definitions it can be concluded that everything that contains benefits, both to gain good and to reject harm, is called *Maslahah. Maslahah* also refers to the concept of understanding the wisdom, values, and objectives of the Shari'ah expressed and implied in the Quran and Hadith, which are determined by Allah for humans. The ultimate goal of the law is one of goodness or benefit and the welfare of mankind, both in this world and in the hereafter.[99]

Maslahah is one of the methods of analysis used by *ushul* scholars in determining the law (*istinbat*) for issues that are not explicitly regulated in the Qur'an and al-Hadith. This method emphasizes the aspect of benefit directly. In the

[98] Djazuli, *Fiqh Siyasah (Hifdh al-Ummah dan Pemberdayaan Ekonomi Umat),* Bandung:Kencana, 2013, 393.
[99] Salma, "Maslahah Dalam Perspektif Hukum Islam," *Journal of Chemical Information and Modeling* 53, no. 9 (2013): 2.

context of the science of *ushul al-fiqh*, the word *maslahah* is a technical term that refers to “the various benefits intended by the *Shari'* in determining laws for His people, including the aim of maintaining religion, soul, mind, offspring, and property, and preventing things that can harm these interests.”

The purpose of *Shari'a* in prescribing the rule of law to the *mukallaf* is an effort to create positive things for their lives, these positive things can be realized through rules that are *dharuri*, *hajji* and *tahsini*. From this it can be concluded that *Maslahah* refers to the value content that has become the purpose of legal provisions.

Allah SWT as *shari'* (who establishes the law) does not create laws and rules just like that, but the laws and rules are created with certain goals and intentions, namely for the benefit of the people in the world and the hereafter. In addition to all that, the laws that have been established by Allah SWT must contain justice and in each - every rule that deviates from justice is definitely not a provision of Allah SWT.[105] In addition to some of the laws that have wisdom that is still vague in nature, there are also some other laws that contain clear things that can be used as the basis for legal development and can be used to determine the existence or absence of law. The obvious things that can be used as a basis for legal guidance are called *illat* by the scholars of *Ushul*. Every ruling has an *illah* behind it, so if there is an 'illat, then there is a ruling, and vice versa. Hence the well-known rule:

وعدما احلكم يدور مع علته وجودا

"The ruling revolves around *its* '*illat (*reason), its presence or absence."

The explanation of the rule is that the existence of the law revolves around

the existence of the '*illat* (cause), so that if there is 'illat then there is a law and if there is no '*illat* then there is no law. Departing from this argument, lately many Muslim intellectuals have voiced to use the process of *talil al - ahkam* towards the *maqasid shari'ah* method which is considered more flexible and can better answer increasingly complex contemporary problems. Therefore, to measure the presence or absence of maslahat in every rule made can be reviewed from the perspective of *Maslahah*.

Islamic *Shari'ah* focuses on benefit and emphasizes the harmony of law to promote the public good. The ultimate goal is that the law should serve the interests of society. These interests can be divided into three categories:

a. *Maslahah* based on changes in *maslahat*;

b. *Maslahah* according to *shara*';

c. *Maslahah is* based on the quality and importance of the *benefit*.

The following is an explanation of each of these categories:

1. *Maslahah* based on changes in *maslahat*:

According to Mustafa ash-Syalabi, an expert on *usul fiqh* from al- Azhar University, there are two forms of maslahat based on this change. First, *al-maslahah as-sabitah*, which is a *benefit* that is fixed and does not change until the end of time, such as the obligation of prayer, fasting, zakat, and hajj. Second, *al-maslahah al-mutagayyirah*, which is a benefit that changes according to changes in place, time, and legal subjects. Examples are muamalah issues and customs, such as variations in food in different regions. This division is intended to draw a line between benefits that are subject to change and those that are not.

2. *Maslahah* based on the existence of *maslahat* according to *shara'*

According to Mustaa ash-Syalabi, this type of *maslahat* is divided into sort of :

a. Al-Maslahah al-Mu'tabarah

Al-maslahah al-mu'tabarah is a *benefit* that is supported by *shara'*, both types and forms. That is, there is a specific evidence that is the basis of the form and type of benefit. An example is the punishment for people who drink alcohol. This form of punishment is understood differently by *fiqh* scholars because of the different striking tools used by the Prophet Muhammad when carrying out the punishment. There are traditions that indicate that the tool used is sandals or footwear 40 times (HR Ahmad bin Hanbal and al-Baihaqi), while other traditions explain that the beating tool is a palm frond, also 40 times (HR Bukhari and Muslim).

b. Al-Maslahah al-Mulgah

Al-maslahah al-mulgah is a benefit that is rejected by *Shara'* because it contradicts the provisions of *Shara'*. For example, *Shara'* stipulates that the person who has sexual intercourse during the day during the month of Ramadan must free a slave, or fast for two consecutive months, or feed 60 poor people (HR Bukhari and Muslim).

Al-Lais ibn Sa'd, a Maliki jurist in Spain, prescribed the punishment of fasting for two consecutive months for a man (the ruler of Spain) who had sexual intercourse with his wife during the daytime of Ramadan. However, scholars viewed this ruling as contradicting the Prophet's hadith, since the forms of

punishment should be applied in sequence: if one cannot free a slave, then two consecutive months of fasting should be imposed. Therefore, the scholars of usul *fiqh* consider that giving precedence to the punishment of fasting for two consecutive months over freeing a slave is a benefit that is contrary to the will of *Shara'* and hence, its ruling is invalidated (rejected) by *Shara'*. This kind of benefit, according to scholarly consensus, is called *al-maslahah al-mulgah*.

c. *Al-Maslahah al-Mursalah*

Al-maslahah al-mursalah is a benefit that is supported by a set of meanings from the *text* (verse or hadith), not by a specific *text*. This benefit is neither supported nor rejected by *Shara'* through specific evidence. This form of *benefit is* divided into two: *benefits* that are not supported by *shara'* either in detail or in general, and *benefits* that are supported by the general meaning of a number of *texts,* although not specifically.

The first *benefit is* called *al-maslahah al-gharibah* (a strange *benefit*), but scholars cannot give an exact example. Even Imam ash-Syatibi said that this kind of benefit exists only in theory, not in practice. The second benefit is called *al-maslahah al-mursalah*, which is supported by a set of meanings from the text (verse or hadith), not by the text itself details.

Ulama *usul fiqh* agreed that *al-maslahah al-mu'tabarah* can be used as a *proof* (reason) in establishing Islamic law and included in the *qiyas* method. They also agree that *al-maslahah al-mulgah* cannot be used as a basis in establishing Islamic law, as well as *al- maslahah al-gharibah* because it is not found in practice. As for the *validity of al-maslahah al-mursalah*, the majority of scholars accept it as

a reason in establishing *shara'a* law, although they differ in opinion regarding the conditions, application, and placement.

3. Maslahah based on the quality and importance of the benefit

The reference to determine the presence and absence of maslahat is with what is a basic human need, in the form of primary, secondary and tertiary needs. As for maslahat in terms of substance can be divided according to its purpose, as follows:

1. *Maslahah Dharuriyat* is the main maslahat, where human life is very dependent on it, both in religious and worldly aspects. *Maslahah Dharuriyat is* protected from two sides: first, its realization and manifestation and second, its maintenance and preservation.
2. *Maslahah Hajiyat* is a secondary maslahat that is needed by humans to facilitate life and eliminate difficulties or constraints. If this maslahat does not exist, there will be difficulties and narrowness whose impact is not to damage life.
3. *Maslahah Tahsiniyat*, namely maslahat related to moral demands and aims at goodness and honor. If this maslahat did not exist, it would not harm anything or make lie difficult for people.[100]

The realization of benefit is the main foundation of justice, so that every decision and policy taken must consider the positive impact on all levels of society. To realize this justice, it must have a basis in order to realize the expected justice,

[100] Ahkmat Mushafirin, "TINJAUAN MAQASHID SYARIAH TERHADAP UNDANG-UNDANGPERLINDUNGAN SAKSI DAN KORBAN DAN PENERAPANYA DI PENGADILAN NEGERI BOYOLALI," 2020.

the basis of justice is found in Surah an-Nisa verse 58 which reads:

اِنَّ اللّٰهَ يَأْمُرُكُمْ اَنْ تُؤَدُّوا الْاَمٰنٰتِ اِلٰٓى اَهْلِهَاۙ وَاِذَا حَكَمْتُمْ بَيْنَ النَّاسِ اَنْ تَحْكُمُوْا بِالْعَدْلِۗ اِنَّ اللّٰهَ نِعِمَّا

يَعِظُكُمْ بِهٖۗ اِنَّ اللّٰهَ كَانَ سَمِيْعًاۢ بَصِيْرًا

"Verily, Allah enjoins you to deliver the trust to its owner. And when you judge between men, judge justly. Verily, Allah gives you the best teaching. Verily, Allah is All-Hearing, All-Seeing."

In practice, to realize justice, provisions are needed that underlie the existence of a rule which is the reason for the emergence of maslahat, for example, standards in the system of punishment and sentencing. One way to determine it can be reviewed in the view of *Maslahah* as a guideline for the purpose of legal requirements.

In the perspective of *Maslahah*, the imposition of punishment must be based on Evidence in the form of confession from the perpetrator or testimony from at least two witnesses who are considered fair. The provision of punishment must also consider the principle of legality and the wrongdoing committed by the perpetrator of the crime.[107] The system of punishment in the view of Islam has the main objective to prevent people from committing heinous acts and to protect the people. The imposition of punishment in Islam also has the aim of correcting taming and correcting irregularities. The punishment given is expected to teach a lesson, correct and prevent someone from making the same mistake in the future.[108] In this era of globalization, Islamic law has a very important role in the development of the people. Its main goal is to create a society that is ideologically based on the

values of justice, solidarity and shared prosperity[101]

It takes a reconception of the arrangements in the criminalization system against the perpetrator witness (*Justice Collaborator) to* have a relevant purpose in the view of *Maslahah. The* regulation of the perpetrator witness in the *maslahah* review has several aspects that need to be considered. Here are some important points:

1. Rewards and Protection: Arrangements for cooperating witnesses must take into account the respect and protection afforded to them. They must receive full legal protection, including guarantees of safety and special treatment, as a basic human right as stipulated in the 1945 Constitution of the Republic of Indonesia.[102]

2. Cooperation with Law Enforcement Officials: Cooperating perpetrator witnesses should be able to effectively disclose the crime and reveal other contributing perpetrators. The Public Prosecutor should include the role of the people the perpetrator testified about in the indictment.[103]

3. Confession and Testimony: Cooperating witnesses must admit their guilt without pressure and be willing to give truthful testimony. This confession is a basis for the Prosecution to review its charges against the perpetrator witness and mitigate the charges.[104]

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[101] Suyitno, "Maqhasid As-Syariah Dan Qishas: Pemikiran As-Syatibi Dalam Kitab Al-Muwafaqat," *Muaddib* 05, no. 01 (2015): 73–94,

[102] Tonicca Alvanso, "Perlindungan Hukum Terhadap Saksi Pelaku Yang Bekerjasama (Justice Collaborator) Dalam Perkara Tindak Pidana Korupsi," *Jurnal Analogi Hukum* 2, no. 2 (2020): 142–47, https://doi.org/10.22225/ah.2.2.1886.142-147.

[103] Nomero Armandheo Simamora Simamora and Edi Pranoto Pranoto, "Tinjauan Yuridis Penetapan Status Seseorang Sebagai Justice Collaborator Di Indonesia," *Iblam Law Review* 3, no. 1 (2023): 49–60, https://doi.org/10.52249/ilr.v3i1.115.

[104] Simamora and Pranoto.

4. Maslahah Mursalah: From a Maslahah Mursalah perspective, the legal protection of cooperating witnesses must prioritize the common good. The role of witnesses is important in conveying the truth to reveal corruption crimes for the benefit of the Indonesian people.[105]

5. Cooperation with Law Enforcement Agencies: The regulation of perpetrator witnesses should take into account cooperation between law enforcement agencies to uncovering corruption crimes. The presence of witnesses who cooperate as informants or insiders is very important in exposing corruption crimes.[106]

6. Legal Arrangements: Legal arrangements must ensure legal certainty to ensure justice. Without legal certainty, it is impossible to achieve the ideal of law, which is justice.[107]

By paying attention to these aspects, the regulation of witnesses who cooperate in a maslahah review can be more effective in uncovering criminal acts and prioritizing the common good.

[105] Tonicca Alvanso, "Perlindungan Hukum Terhadap Saksi Pelaku Yang Bekerjasama (Justice Collaborator) Dalam Perkara Tindak Pidana Korupsi."
[106] Antonius Yoseph Bou, I Nyoman Sujana, and I Ketut Sukadana, "Perlindungan Hukum Terhadap Saksi Pelaku Yang Bekerjasama (Justice Collaborator) Dalam Perkara Tindak Pidana Korupsi," *Jurnal Analogi Hukum* 2, no. 2 (2020): 142–47, https://doi.org/10.22225/ah.2.2.1886.142-147.
[107] Bou, Sujana, and Sukadana.

CHAPTER IV

CLOSING

A. Conclusing

1. The criminalization system for perpetrator witnesses regulated in Law No. 31/2014 on Witness and Victim Protection provides protection and criminal leniency to perpetrator witnesses who cooperate with law enforcement officials to uncover criminal acts. This protection is important to ensure justice and effectiveness in the law enforcement process. The application of the criminalization system for perpetrator witnesses, such as *Justice Collaborators*, must pay attention to the principles of justice stipulated in the 1945 Constitution. Judges in imposing criminal sanctions on perpetrator witnesses need to consider the interests of victims and justice in the court process. Although there are positive impacts in the application of the punishment system, such as accelerating law enforcement and restoring public confidence, it is also necessary to be aware of legal uncertainty and lack of protection for perpetrator witnesses. The absence of a basis for providing a reduced sentence period for cooperating perpetrator witnesses leads to legal uncertainty for cooperating perpetrator witnesses and the general public. To address these issues, there is a need for standards in the punishment system that are clear in order to provide legal certainty to witnesses of future perpetrators and provide answers to the problems that arise in society regarding the

reduction of the sentence of the perpetrator.

2. The reconception of the regulation of perpetrator witnesses or Justice Collaborators in a maslahah perspective plays an important role in a fair and effective punishment system. This arrangement must provide full legal respect and protection to perpetrator witnesses, including guarantees of safety and special handling as basic human rights, as stipulated in the 1945 Constitution of the Republic of Indonesia. The aim is to ensure that perpetrator witnesses feel safe and valued in the law enforcement process. In the perspective of Maslahah Mursalah, legal protection for perpetrator witnesses must prioritize the common good. Their role in conveying the truth to uncover criminal acts, especially corruption, is invaluable to Indonesian society. Therefore, the regulation must pay attention to cooperation between law enforcement agencies to effectively uncover corruption crimes. This is also in line with the objectives of Islamic law, which prioritize the benefit of the people, where the protection of witnesses who reveal crimes can prevent future crimes and create a more just society.

B. Advice

1. This research is expected to contribute ideas and understanding for the improvement of legal provisions in the criminalization system against perpetrator witnesses in order to provide better clarity and legal certainty. There is a need for objective guidance for law enforcement officials in providing criminal leniency to cooperating witnesses so that decisions can be made consistently and fairly.
2. In this case, the government and law enforcement agencies are expected to strengthen legal protection and safety guarantees for perpetrator witnesses who are willing to cooperate. Clear and transparent policies on the rights and obligations of perpetrator-witnesses and fair procedures for their handling should be developed. In addition, training and coordination between law enforcement agencies are needed to ensure effective and consistent implementation. This will increase public confidence in the legal system and support the realization of justice and the benefit of society.

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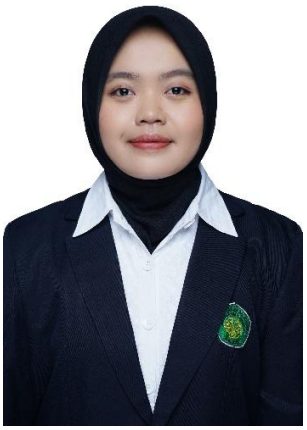

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