(REVIEW ARTICLE)

Balancing Legal Certainty and Moral Justice in Indonesia's Justice Collaborator Mechanism

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Abstract

This study examines Indonesia's justice collaborator mechanism as a policy instrument balancing legal certainty and moral justice within the criminal justice system. Using a normative juridical and qualitative approach, it analyzes statutory regulations, judicial practices, and comparative models such as Italy's pentiti and the U.S. cooperation framework. Findings show that Indonesia's fragmented legal framework scattered across the Witness and Victim Protection Law, Supreme Court Circulars, and KPK guidelines undermines predictability and moral coherence. The paper argues that codification, judicial accountability, and moral proportionality are essential to harmonize efficiency with fairness. Strengthening institutional oversight through a unified legal framework and ethical safeguards would transform the justice collaborator policy into a transparent, credible, and morally grounded component of Indonesia's criminal justice reform.

Keywords: Justice Collaborator; Legal Certainty; Moral Justice; Leniency; Indonesia; Criminal Justice Reform

1. Introduction

The concept of the *justice collaborator* an offender who cooperates with authorities to expose broader criminal networks has emerged as a key instrument in Indonesia's criminal justice reform. It reflects a pragmatic response to the difficulties of investigating organized crimes such as corruption, narcotics trafficking, and money laundering, where insiders' testimony often becomes indispensable (Thalib, Rahman, and Semendawai, 2017). Yet, this mechanism remains normatively fragile, positioned between the imperatives of legal certainty and moral justice. While it promises efficiency and truth-finding, it simultaneously challenges foundational principles of equality before the law and proportional punishment (Siregar and Rakhmawati, 2021).

Formally, Indonesia does not yet have an explicit statutory provision recognizing justice collaborators. The 1981 Criminal Procedure Code (KUHAP) does not regulate plea bargaining or cooperation agreements (Law No. 8 of 1981). The legal foundation is instead derived from several non-statutory instruments, including the Joint Regulation of 2011 issued by the Minister of Law and Human Rights, the Attorney General, the Chief of Police, the Chair of the Corruption Eradication Commission (KPK), and the Chair of the Witness and Victim Protection Agency (LPSK), as well as the Supreme Court Circular (SEMA) No. 4 of 2011. These instruments encourage leniency for cooperating offenders who provide substantial assistance to law enforcement. However, because they are merely administrative or policy-level instruments, they lack the binding authority and normative clarity of formal legislation (Mahkamah Agung RI, 2011).

The Witness and Victim Protection Act (Law No. 13 of 2006, amended by Law No. 31 of 2014) indirectly accommodates the justice collaborator concept. It empowers LPSK to provide protection and recommend leniency for cooperating perpetrators, reflecting partial compliance with Article 37 of the United Nations Convention against Corruption (UNCAC,

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2004), which encourages states to consider mitigation or immunity for cooperating offenders. Nevertheless, these provisions focus primarily on physical protection, not the substantive criteria, procedures, or judicial validation of leniency (UNODC, 2017).

This normative gap creates tension with the constitutional principles of legal certainty (kepastian hukum) and equality before the law, as enshrined in Articles 27 and 28D of the 1945 Constitution. In the absence of explicit statutory guidance, judges exercise broad discretion in sentencing, resulting in inconsistent recognition of collaborator status and unpredictable sentencing outcomes (Dwiyanti, 2025). Legal scholars have noted that, in practice, the mitigation granted to justice collaborators depends heavily on the subjective assessment of prosecutors and judges rather than objective procedural standards (Diponegoro Law Review, 2017).

Such inconsistency has serious implications for public trust and the moral legitimacy of Indonesia's justice system. On one hand, cooperation by insiders has helped reveal high-profile corruption cases involving state officials, confirming its instrumental value to law enforcement (Indonesia Corruption Watch, 2019). On the other hand, arbitrary or opaque application of leniency has fueled perceptions of selective justice, where influential defendants can negotiate lighter punishment under the guise of cooperation (Siregar and Rakhmawati, 2021). This condition exemplifies the classic dilemma between efficiency and justice, where instrumental law enforcement goals risk overriding moral proportionality.

Internationally, countries with structured cooperation regimes such as the *pentiti* model in Italy or statutory plea and cooperation agreements in the United States integrate clear legislative provisions with judicial oversight to ensure fairness and transparency (Maugeri, 2019). These models demonstrate that legal certainty and moral justice can coexist when cooperation is governed by statute, executed through written agreements, and supervised by independent courts. In Indonesia, by contrast, the lack of codified standards leaves decisions largely discretionary, raising questions about due process and equal treatment.

Furthermore, the 2019 amendment to the KPK Law (Law No. 19 of 2019) significantly changed the institutional landscape by altering the Commission's independence and its authority to manage investigations and prosecutions. Scholars have expressed concern that this reform could weaken institutional coordination in cases involving justice collaborators, potentially reducing the deterrent impact of anti-corruption enforcement (Butt and Lindsey, 2020). At the same time, the 2023 Criminal Code (Law No. 1 of 2023) offers an opportunity to codify cooperation provisions, providing clearer procedural safeguards and integrating leniency mechanisms within the formal criminal justice system.

In the realm of moral justice, the justice collaborator mechanism presents a philosophical and ethical dilemma. While it promotes restorative goals by enabling confessions and uncovering the truth, it also raises moral questions about proportionality and victim justice. From a retributive perspective, granting leniency to offenders even those who cooperate can be viewed as undermining the principle of accountability. Yet, from a consequentialist or restorative standpoint, such cooperation can enhance the collective moral good by dismantling systemic criminality (Fitz-Gibbon and O'Brien, 2018). The challenge, therefore, lies in striking a balance between these competing moral imperatives within a rule-of-law framework.

Empirical observations also reveal procedural weaknesses. Studies by the LPSK show that justice collaborators often face intimidation and lack adequate post-cooperation protection, including threats to family members (LPSK, 2022). Additionally, there is no standardized mechanism for verifying the truthfulness or significance of the information provided by collaborators. This absence of procedural rigor further undermines both legal certainty and fairness. Without codified rules on verification, prosecutors and judges are left to make subjective determinations, which may lead to unequal treatment among similarly situated defendants (Thalib et al., 2017).

To address these challenges, scholars and policymakers have proposed several reforms. First, Indonesia should codify the justice collaborator mechanism either within the Criminal Procedure Code or in a dedicated statute, defining eligibility criteria, procedural safeguards, and the scope of leniency. Second, judicial oversight should be mandatory to ensure that cooperation agreements are voluntary, verified, and consistent with proportional sentencing principles. Third, LPSK's role must be strengthened through binding authority to enforce protection and to monitor compliance. Finally, transparency in prosecutorial and judicial decisions concerning cooperation would enhance both legal predictability and moral legitimacy (Dwiyanti, 2025; UNODC, 2017).

Ultimately, achieving a balance between legal certainty and moral justice requires a dual approach: normative codification to guarantee predictability, and ethical oversight to ensure fairness and proportionality. The Indonesian

justice collaborator mechanism has proven effective in uncovering major corruption cases, yet its legitimacy remains conditional on procedural transparency and statutory clarity. Unless these foundations are solidified, the mechanism risks functioning as a discretionary tool vulnerable to manipulation, undermining both the rule of law and public trust. Embedding cooperation within a clear legal framework supported by judicial accountability and moral principles will thus be essential for realizing justice that is both effective and fair.

2. Research methodology

This study employs a normative juridical approach, focusing on the consistency between Indonesia's justice collaborator regulations and the principles of legal certainty and moral justice. The research is qualitative and doctrinal, analyzing legal norms and judicial practices rather than empirical data. Primary sources include the 1945 Constitution, Criminal Procedure Code, Law No. 31 of 2014 on Witness and Victim Protection, Law No. 19 of 2019 on the Corruption Eradication Commission, Law No. 1 of 2023 (New Criminal Code), and UNCAC 2004. Secondary sources consist of academic journals and institutional reports (e.g., Butt and Lindsey, 2020; Maugeri, 2019). Legal materials were examined through descriptive and conceptual analysis to evaluate how Indonesia's justice collaborator framework balances the rule of law with ethical justice values and to propose reforms toward a more codified and accountable system.

3. Discussion

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

The justice collaborator (JC) mechanism represents one of Indonesia's most progressive tools for combating organized and high-profile crimes such as corruption, narcotics trafficking, and terrorism. It provides leniency or reduced punishment for offenders who cooperate with law enforcement and assist in uncovering wider criminal networks. Conceptually, the JC mechanism bridges two competing legal imperatives: the need for legal certainty ensuring predictable and consistent application of the law and the pursuit of moral justice, which emphasizes fairness, ethical responsibility, and rehabilitation.

The legal foundation of Indonesia's JC mechanism can be traced to Law No. 13 of 2006 on the Protection of Witnesses and Victims, amended by Law No. 31 of 2014, which formally recognizes cooperating offenders as "justice collaborators." Article 10A of the amended law provides that justice collaborators are entitled to special protection and may receive leniency in sentencing. The Supreme Court Circular Letter No. 4 of 2011 (SEMA No. 4/2011) further outlines guidelines for judges, emphasizing that leniency should only apply when the individual's cooperation is significant, voluntary, and supported by credible evidence.

In practice, the JC concept is also intertwined with the Corruption Eradication Commission (KPK) framework, as seen in several high-profile cases such as those involving Nazaruddin and Angelina Sondakh. The KPK has utilized the JC mechanism to dismantle corruption networks within political and bureaucratic institutions. However, the absence of a comprehensive codification since most provisions remain scattered across laws, circulars, and internal guidelines— creates challenges to legal certainty (Butt and Lindsey, 2020).

Legal certainty (*kepastian hukum*) is a foundational value in Indonesia's legal philosophy, rooted in Article 28D(1) of the 1945 Constitution, which guarantees every citizen's right to fair legal treatment. Yet, the JC mechanism's implementation often varies depending on judicial discretion, institutional politics, and media attention (Siregar, 2022). This inconsistency has led to accusations that leniency can become a tool of negotiation rather than a rule-based process (Setiadi, 2021).

In contrast, moral justice (*keadilan moral*) focuses on fairness beyond formal legality. It requires assessing whether the JC mechanism genuinely serves justice by rewarding ethical cooperation and remorse, not merely pragmatic collaboration. As Fuller (1969) argued, a morally coherent legal system must ensure that procedural fairness aligns with substantive moral values. In Indonesia's context, moral justice demands that the system distinguish between opportunistic cooperation and genuine efforts to uphold the truth.

Comparatively, several countries have adopted codified leniency systems that reinforce both legal certainty and moral justice. Italy's *pentiti* law, for instance, clearly outlines procedural safeguards, sentencing reductions, and criteria for credibility (Maugeri, 2019). Similarly, the United States' plea-bargaining model, though controversial, provides

predictable frameworks regulated by judicial oversight. These models show that codification and transparent standards are crucial in preventing moral compromise and legal ambiguity.

Indonesia's fragmented framework, however, leaves much to interpretation. For instance, while SEMA No. 4/2011 encourages leniency, it remains non-binding, and many judges apply it inconsistently. Furthermore, the Law No. 1 of 2023 (New Criminal Code), though progressive, does not yet integrate a clear JC provision. This gap highlights broader structural issue Indonesia's criminal justice reforms often progress through piecemeal regulation rather than comprehensive codification (Nurhaini, 2023).

Therefore, while the JC mechanism supports effective law enforcement, it also exposes a persistent tension between rule-based certainty and ethical fairness. To maintain credibility, the system must ensure that leniency is granted transparently, proportionately, and grounded in moral legitimacy.

3.2. Toward a Balance Between Legal Certainty and Moral Justice in Justice Collaborator Policy Reform

Reforming the justice collaborator mechanism requires not only procedural clarity but also moral coherence. The balance between legal certainty and moral justice can be achieved through three interrelated strategies: codification, judicial accountability, and moral proportionality.

First, codification is essential to prevent arbitrary interpretation. The existing legal instruments are fragmented— distributed among the LPSK Law, SEMA, and various KPK circulars. A unified statute or codified chapter in the Criminal Procedure Code would enhance predictability, ensuring that leniency criteria are clear, measurable, and consistent. Codification should specify the degree of cooperation required, define "substantial assistance," and establish a transparent system of sentence reduction, similar to the Italian *pentiti* model or the UNODC's international best practices (UNODC, 2015). Codification also fulfills the constitutional principle of *lex certa*, minimizing judicial inconsistency and protecting both defendants' and victims' rights.

Second, reform must strengthen judicial accountability and oversight. While SEMA No. 4/2011 provides interpretive guidance, it does not mandate uniform application. Judicial discretion should be guided by publicly available reasoning that demonstrates how leniency aligns with both legal and moral standards. The Supreme Court could adopt a standardized jurisprudence framework, publishing key decisions that set benchmarks for JC leniency. Transparency in judicial reasoning would enhance public trust and align with global anti-corruption standards (Transparency International, 2022). Moreover, involving LPSK more directly in sentencing recommendations could institutionalize fairness, as it integrates the victim's perspective and ensures protection from retaliation.

Third, the JC mechanism must integrate moral proportionality ensuring that leniency corresponds not only to cooperation value but also to moral accountability. A justice collaborator should not escape moral responsibility; rather, leniency should reflect sincere remorse and a contribution to broader justice. This perspective resonates with restorative justice theories, emphasizing that moral responsibility and reparation are essential elements of fairness (Braithwaite, 2002). Aligning JC policies with restorative principles can humanize the justice system without undermining deterrence.

In Indonesia, practical challenges remain. Law enforcement agencies often differ in interpreting what constitutes "significant cooperation." In corruption cases, for instance, the KPK may recommend leniency, but the final sentencing rests entirely with the judiciary. The absence of uniform criteria results in uneven outcomes. Some offenders receive major sentence reductions, while others despite similar contributions gain no legal advantage (Yuliana, 2021). This inconsistency undermines both legal certainty and moral credibility.

Another issue is the potential misuse of the JC mechanism. Without strong safeguards, leniency could incentivize false testimony or selective cooperation motivated by self-interest rather than justice. Therefore, procedural checks such as corroboration requirements, verification by LPSK, and transparent documentation must be strengthened. Comparative systems show that judicial oversight and clear evidentiary standards are vital to prevent moral distortion (Maugeri, 2019).

Furthermore, public perception plays a critical role. In Indonesia, societal trust in the criminal justice system is fragile due to historical corruption and political interference (Butt, 2021). Thus, a justice collaborator who receives leniency must be perceived as genuinely contributing to truth and accountability, not merely bargaining for freedom. Maintaining this moral perception is essential to ensure that leniency policies do not erode confidence in the rule of law.

To move forward, Indonesia should establish a Justice Collaborator Commission an inter-institutional body under LPSK or the Ministry of Law and Human Rights to review applications, assess credibility, and recommend standardized leniency measures. This institutional reform would ensure a transparent and ethical balance between enforcement efficiency and justice integrity.

Ultimately, balancing legal certainty and moral justice in Indonesia's JC mechanism is not merely a technical legal task but a philosophical and institutional reform. Legal certainty ensures predictability and uniformity, while moral justice upholds fairness and humanity within the law's application. The ideal equilibrium lies in a justice collaborator system that is codified, transparent, proportionate, and morally grounded serving both the state's interest in crime control and society's demand for ethical justice.

4. Conclusion

Indonesia's justice collaborator mechanism represents a critical intersection between legal pragmatism and moral philosophy. While it enhances the effectiveness of criminal prosecution, especially in corruption and organized crime, its fragmented legal framework threatens consistency and fairness. Achieving a genuine balance requires codified legislation, strengthened judicial accountability, and moral proportionality in the application of leniency.

By embedding these principles into the criminal justice system, Indonesia can ensure that cooperation with law enforcement is not only legally valid but also morally justifiable—transforming the justice collaborator mechanism into a transparent and ethically coherent pillar of the rule of law.

Compliance with ethical standards

The authors declare that this study complies with the ethical standards of research and publication. All procedures performed in this study were conducted in accordance with ethical principles and academic integrity. No human participants or animals were involved in this research that would require formal ethical approval.

Disclosure of conflict of interest

The authors declare that there is no conflict of interest to be disclosed. The authors have no financial, institutional, or personal relationships that could influence the objectivity or integrity of the research.

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