RESEARCH ARTICLE

Adoption of the Plea Bargaining Concept to Improve Judicial Efficiency during the Covid-19 Outbreak

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Abstract

Plea Bargaining can be interpreted as a statement of guilt from a suspect or defendant. Plea Bargaining is widely embraced in countries that adhere to the Common Law legal system. Plea Bargaining developed in the common law legal system has inspired the emergence of mediation in the practice of justice based on criminal law in the Netherlands and France, known as "transactie". This paper is intended to analyze the concept of plea bargaining on improving judicial efficiency during Covid-19 Pandemic in Indonesia. This research confirmed that plea Bargaining is categorized as an attempt to resolve outside the court and its users are also based on certain reasons. Whereas the presence of the concept of special route is also a concern if we see that the defendant's confession of guilt can be reinstated as the basis for a judge to issue a verdict. The purpose of this paper is to find out and analyze the application of plea bargaining in the midst of the global Covid-19 pandemic in Indonesia.

Keywords: *Plea Bargaining; Criminal Justice System; Judicial Efficiency*

1. INTRODUCTION

"The law has not been enforced. Why? Why doesn't it stay upright? What the hell should be accused of being the culprit?

Why can the law be enforced in the neighboring country, while in your own country it is not like that? Inevitably, because the enforcement of the law is something that is sine qua non for the preservation of an orderly life and because it is also happy, efforts must be made to find a solution. Inevitably, steps that are scientifically strategic and politically tactical must be taken immediately?" (Wignjosoebroto, 2013: 3-4).

The statement by a legal expert above is a piece of intellectual anxiety in responding to Indonesian law enforcement and the reflections that occur around him related to the Indonesian law enforcement system. In fact, the purpose of law is none other than certainty, order, justice, benefit, and happiness of society. Law is needed as a social controller, a means of state control and ensuring order in society.

The Criminal Justice System is a crime control system consisting of several institutions, namely the Police, Prosecutors, Courts and Penitentiary Institutions. One of the principles and principles used in the criminal justice process is that the trial is carried out in a simple, fast, and low-cost manner. Regarding the principle of speedy trial, it has also been described in the Law of the Republic of Indonesia Number 12 of 2005 concerning Ratification of the International Covenant on Civil and Political Rights which states that one of the objectives of the principle of speedy trial is to protect the rights of the accused, namely not to be detained taking too long and ensuring legal certainty for the defendant himself in order to realize the legal objectives (Crespo, 2018; Wilford, Wells, & Frazier, 2021).

Despite the principle of simplicity, speed, and low cost, we still pay attention to accuracy and precision in seeking truth and justice. However, in practice this principle is often neglected in the criminal justice process in Indonesia, such as the length of the case settlement process and the high cost of resolving cases. This has implications for many things, one of which is the accumulation of criminal cases in court (Ariyani, 2020; Ruchoyah, 2020).

Moreover, Indonesia itself is entering a global problem, namely the Covid-19 Pandemic, making this principle set aside because it prioritizes health. This can be proven by the issuance of a policy on the Assimilation program issued by the Minister of Law and Human Rights

of the Republic of Indonesia (Nelson & Santoso, 2020; Nelson, 2019).

From the brief description above, further the author would like to discuss the problem of solving the accumulation of criminal cases in Indonesia through the adoption of the Plea-Bargaining Concept in the midst of the Covid-19 Pandemic in the Jokowi Government Era. This paper aims to contribute ideas to the world of justice in Indonesia.

2. METHOD

This study analyze two main points, *first*, how is the concept of applying the Plea Bargaining System in the criminal justice system in France and Italy as Common Law countries? And *second*, what is the urgency of implementing the Plea Bargaining System in the midst of the Covid-19 Pandemic in the Jokowi Government Era in Indonesia?

3. RESULT AND DISCUSSION

A. Plea Bargaining System: Concept and Context

The interesting thing in discussing the Plea Bargaining System is the connection between a confession as a means of resolving a case and the torture carried out by the apparatus to obtain that confession. basically, everyone has the right to be free from torture, but in reality confession and torture are two things that cannot be separated from the criminal justice system in Indonesia. This is evidenced by the results of research by the Jakarta Legal Aid Institute in the period 2007-2008 with 367 respondents in the Greater Jakarta area, finding that 83.65% of respondents experienced torture when questioned by the police.

Basically, the confession of a suspect or defendant as a result of the practice of torture basically cannot be used as evidence or the basis for determining the guilt or innocence of a person. In accordance with the principle of Exclusionary Rules, which stipulates that the court must reject the evidence submitted if the evidence was obtained illegally, including through torture or intimidation. Illegally Secured Evidence. However, in practice, suspects are still often found who plead guilty to being tortured and he finds it difficult to prove the torture he experienced using the evidence mechanism regulated in the Criminal Procedure Code and ultimately leads to the criminalization of innocent

people or commonly referred to as cases of wrongful arrest (Ruchiyah, 2020; Kurniawan, Hapsari, Prasetya, 2021).

In a criminal case, in determining a person to be a suspect then he becomes a defendant and gets a punishment according to the criminal act carried out through a process that broadly involves three institutions, namely the police, the prosecutor's office, and the judiciary. The general process is that the investigation is carried out by the police and the prosecution is carried out by the prosecutor.

The development of the criminal justice system in several countries that adhere to the Common Law and Civil Law legal systems has not undergone much change from the traditional characteristics that are often distinguished in the "*due process model*" and "*crime control model*". Significant changes in the application of the two models in several developed countries, both those that adhere to the "civil law" and "common law" legal systems, are limited to deviations from the mediation system of criminal justice processes as practiced in the Dutch Criminal Procedure Code and the French Criminal Procedure Code, with provisions regarding "transactie".

The Plea Bargaining System is broadly defined as a statement of guilt from a suspect or defendant. Plea Bargaining is widely practiced in countries that follow the Common Law legal system. Plea Bargaining which was developed in the "common law" legal system has inspired the emergence of "mediation" in judicial practice based on criminal law in the Netherlands and France, known as "transactie". Plea Bargaining is categorized as a settlement effort outside the court and its users are also based on certain reasons.

In the practice of criminal justice in common law countries, especially in America, it is known as Plea bargaining, which is known as the practice of handling criminal cases, where between the public prosecutor and the defendant or his legal advisor there has been negotiations about the type of crime involved. will be charged and the threat of punishment that will be prosecuted in court later. The voluntary admission of guilt from the defendant becomes the benchmark for the public prosecutor to determine the criminal threat to be submitted before the trial. So with this concept, a criminal justice which should require a fairly long process, becomes more efficient and

faster. Judges in this system only impose punishments according to the results of negotiations that have been agreed upon by the public prosecutor and the defendant (Crespon, 2018; Wilford, Wells, & Frazier, 2021).

B. Application of the Plea-Bargaining System in the Criminal Justice System In France

That plea bargaining in France was introduced in 2004 and has drawn various arguments and debates because it is considered to violate the presumption of innocence and also the right to be tried in a fair and reasonable trial (due process of law). Wikipedia explains that "The introduction of a limited form of appeal (*comparution sur reconnaissance préalable de culpabilité* or CRPC, often abbreviated as *plaider coupable*) in 2004 was highly controversial in France. imprisonment, the agreement, if accepted, must be accepted by the judge. Opponents, usually lawyers and left-wing political parties, argue that a plea bargain would grossly violate the right to defense, the longstanding constitutional right of presumption of innocence, the rights of suspects in police custody, and the right to a fair trial" (Leturmy & Bossan, 2019; Soubise, 2018).

Robert Badinter expressed the risk that if plea bargaining was implemented in France, it would be dangerous if this system would be used by the defendant to avoid a heavier sentence. "For example, Robert Badinter argued that a plea bargain would give the public prosecutor too much power and would encourage defendants to accept sentences simply to avoid risking a greater sentence in court, even if they did not really deserve it. Only a small proportion of criminal cases are resolved by that method: in 2009, 77,500 out of 673,700 or 11.5% of decisions by correctional courts" (Badinter 2019; Badinter 2017).

Stephen C. Thaman also stated that in France, the Public Prosecutor will make recommendations on punishment after the defendant's guilty plea. The aim of accelerating the judiciary to be more efficient can also be noted in 2009, approximately 77,500 cases (11.5%) were completed through plea bargaining a total of 673,700 cases (Thaman & Bachmaier, 2021).

C. Application of the Plea-Bargaining System in the Criminal Justice System in Italy

In Italy itself, plea bargaining is only allowed for perpetrators of criminal acts whose punishment is not more than 5 (five) years in prison. If the defendant pleads guilty, his sentence will be reduced by 1/3. The Italian Criminal Trial describes that plea bargaining (*patteggiamento*) is not about bargaining charges, but about a verdict or sentence, reduced by one third. When the defendant considers that the sentence to be concrete, the threat is not more than five years in prison (or that it will only be a fine), the defendant can bargain defense with the prosecutor. The defendant is rewarded with a reduced sentence and has other advantages (such as that the defendant does not pay fees at the trial). no matter how serious the charges are. Sometimes, the prosecutor agrees to reduce the charge or to drop several charges in exchange for an admission of guilt for the accused, often for a lesser offence. bid application (Vergine, 2019; Langer, 2017).

By looking at the comparison of plea bargaining in the countries above it can be seen that the plea bargaining adopted by these countries is not always the same as that applied in America. However, fundamentally the technical implementation of the plea-bargaining system raises several problems. Zimring and Frase (1980) as also emphazied by Atmasasmita (1996) mention some of these problems as follows:

1) The system of requesting leniency in practice usually makes reports and other investigations against the background of the accused ineffective.
2) The informality and variation in practice among prosecutors and judges in court regarding requests for leniency causes confusion and a sense of injustice among defendants.
3) The system of requesting legal leniency makes professional criminals take full advantage of getting leniency from poor defendants who cannot afford legal experts.
4) An innocent defendant can be made guilty because of fears that he will be punished even more severely if he is convicted after a trial or he spoils the publicity because of a very unpleasant accusation.

In this case, the authors can conclude that the application of Plea Bargaining in the two countries above is carried out outside the court or before the case process goes to court, in which case the Prosecutor is allowed to negotiate to determine the severity of the crime or criminal charges that will be addressed to the defendant. In the practice of plea bargaining, the agreement to admit errors obtained outside the trial is the basis for judges to decide cases.

D. The Urgency of Implementing the Plea-Bargaining System in the Midst of the Covid-19 Pandemic

Constitutionally, Indonesia itself has regulated the right to legal certainty, which is contained in Article 28D Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "Everyone has the right to recognition, guarantee, protection, and legal certainty that is fair and equal treatment before law".

Based on the above provisions, the Indonesian people have the right to obtain fair legal certainty and equal treatment before the law in every process of their lives, one of which is as the author's focus in this paper that everyone who is a suspect/accused in a criminal act is obliged to obtain legal certainty. justice in every process/stages of settlement of criminal cases, one of which is the right to obtain legal certainty from the continuation of the case he is experiencing.

The plea-bargaining concept applied in Indonesia is related to the development of criminal law politics in Indonesia, which according to Najih (2014) classifies criminal law politics in several branches and scopes of criminal law politics, namely:

1) criminalization policy,
2) punishment policy (Penal and Non-Penal Policy),
3) criminal justice policy (Judicial Criminal Policy),
4) criminal law enforcement policies (Law Enforcement Policy), and
5) criminal justice administration policy.

However, Indonesia itself has not been able to implement the above criminal law political efforts. This is because criminal justice in Indonesia is still far from good, this can be seen from the various problems that arise regarding the implementation of the criminal justice process

in Indonesia, where these problems are a real reason for the need for reform of the criminal justice system in Indonesia.

The Covid-19 pandemic is one of the biggest problems and this is one of the causes of the lengthy process of resolving cases, the high cost of resolving cases, and the accumulation of criminal cases in court that never ends. If we examine even this Global Pandemic situation, there is still a process of resolving cases in court. However, this cannot reduce cases that have not been resolved. Therefore, it is important to apply plea bargaining in the criminal justice system in Indonesia, so that an effective and efficient criminal justice process will be realized.

The plea bargaining system was adopted in Indonesia with some modifications to suit the justice system in Indonesia. However, the author is of the opinion that there must still be improvements in the Special Track system, especially the inclusion of the prosecutor's authority to negotiate with the accused and/or legal counsel. However, there must still be supervision so that there are no indications of corruption in its implementation. Supervision can be directly carried out by the Head of the District Attorney's Office, the Head of the High Prosecutor's Office, the Attorney General, NGOs, and the community (especially the families of the victims).

Of course, each system has its drawbacks. Concepts, forms, stages, as well as failures and successes in the application of plea bargaining so that policy makers need to formulate a system that can reduce the pile of cases and accelerate the process of seeking justice.

To get an effective and efficient trial, the Special Path must be perfected, the Special Path must still provide room for bargaining between the prosecutor and the defendant and/or legal advisor, of course with some strict supervision. In order to prevent any indication of corruption in the implementation of this Special Route, the implementation of supervision in each of these processes is arranged.

This supervision process can be carried out by the leadership of the Prosecutor's Office at each level (Head of the District Attorney's Office, Head of the High Prosecutor's Office, and the Attorney General) to examine the use of this Special Path. With this supervision, transactional efforts that have an impact on a corrupt system will not occur. In addition, there is a need for a participatory role from the

community and NGOs to monitor the implementation of this system.

Plea Bargaining does not have a definite definition universally, but some experts define Plea Bargaining as follows:

1) Plea Bargaining is a process in which the public prosecutor and the defendant in a criminal case carry out negotiations that benefit both parties and then seek court approval. This usually includes admitting the defendant's guilt in order to obtain leniency or to obtain some other advantage that allows for leniency.
2) Plea Bargaining is a negotiation process in which the public prosecutor offers the defendant some concessions to get a guilty plea.
3) Plea Bargaining contains an agreement between the public prosecutor and the defendant or his legal advisor which leads to an admission of guilt by the defendant. the public prosecutor agreed to give a lighter charge (to get a lighter sentence) compared to going through a trial mechanism that might harm the defendant because of the possibility of getting a heavier sentence (Tongat, 2010: 73-74).

The Plea Bargaining System began to emerge in the mid-19th century as a form of special treatment for the accused because he had done good to the victim. In addition, the condition of the criminal justice system at that time was ineffective due to the large number of incoming cases resulting in a long period of time for the settlement of a case. The main reason for the public prosecutor to carry out plea bargaining is due to two things, first because the caseload is so large that it makes it difficult for the public prosecutor to work effectively considering the time factor, second because the public prosecutor is of the opinion that the probability of a successful prosecution is very small due to lack of material. evidence or the defendant is a person who is considered "respectable" among the jury. Now the Plea Bargaining mechanism has developed into an action by the public prosecutor which influences the defendant to make a guilty confession and puts aside his right to be tried before a trial.

The closed system in the Special Path can be seen when the defendant who admits his crime is unable to reach an agreement with the prosecutor regarding the length of his sentence. They are also unable to negotiate what charges

will be indicted against the accused because the opportunity for an admission of guilt will only exist after the Public Prosecutor has read the indictment before the trial. The RKUHAP stipulates that judge still play an important role in imposing sentences. However, judges are limited to not exceeding 2/3 of the maximum penalty for the offense charged.

Plea Bargaining also has a close relationship with torturing. In the past, law enforcement officials required a confession from the defendant to facilitate the judicial process, but to obtain a confession it was done by means of violence, while Plea Bargain also aims to get a confession, but by offering benefits that can be received by the defendant if he confesses. The public prosecutor in the Plea Bargaining process will offer the defendant the threat of a lighter sentence compared to the possible sentence he would receive if he was tried before a court.

Indeed, Indonesia does adhere to the Civil Law legal system and does not recognize the Plea Bargaining system, but currently in the RKUHAP which is being discussed in the legislature, there is a special article known as the Special Path. This Special Track arrangement has the same spirit as Plea Bargaining because the RKUHAP drafting team has conducted comparative studies of criminal procedural law from several countries such as Italy, Russia, the Netherlands, France, and the United States. After visiting America, the drafting team of the RKUHAP included the subtitle "Plea Bargaining" in the RKUHP Academic Manuscript.

Indeed, the breakthroughs in the RKUHAP are quite significant because many bring new substances that are different from the current criminal procedure law.

In the RKUHAP there are arrangements regarding the Special Path. This special pathway provides the opportunity for judges to conduct a brief examination session if the defendant pleads guilty to committing the crime he is accused of. Plea Bargaining is currently included in the RKUHAP under the name of the Special Path. Provisions regarding this special route are regulated in Article 199 of the Draft Criminal Procedure Code.

Article 199

1) At the time the public prosecutor reads the indictment, the defendant admits all the acts that have been charged

and admits that he is guilty of committing a crime for which the criminal penalty for which the indictment is not more than 7 (seven) years, the public prosecutor may delegate the case to a trial for a brief examination.

2) The defendant's confession is stated in the official report signed by the defendant and the public prosecutor.
3) Judges must:
   a. notify the defendant of the rights he has relinquished by giving the confession as referred to in paragraph (2)
   b. notify the defendant of the length of the sentence that may be imposed; and
   c. ask whether the recognition as referred to in paragraph (2) is given voluntarily.
4) The judge may reject the confession as referred to in paragraph (2) if the judge doubts the truth of the defendant's confession.
5) Except for Article 198 paragraph (5), the punishment for the defendant as referred to in paragraph (1) may not exceed 2/3 of the maximum criminal offense charged.

The regulation regarding the Special Path in the RKUHAP is an effort to accelerate the process of resolving cases and to reduce over capacity in the judiciary as well as a manifestation of the principle of implementing simple, fast, and low-cost criminal procedures.

In the Special Track, there is a regulation regarding confession that gives advantages, namely a situation where the defendant admits all the acts he has been accused of and admits he is guilty of committing a crime whose punishment is not more than seven years, when the public prosecutor reads the indictment. When the confession is given by the defendant, the trial of the case he faces can be carried out through the Special Path, so that the defendant will benefit from a short judicial process and a lighter decision when compared to the judicial process in general. In the RKUHAP, the Special Track has a goal similar to the plea bargaining system, namely to shorten the defendant's judicial process so that it can reduce the accumulation of current cases and as a manifestation of a simple, fast and low-cost trial.

However, in the RKUHAP, the Special Path can only be decided by the judge in the trial for reading the indictment. The Special Track does not provide space for prosecutors and legal advisors and/or defendants to

negotiate and agree on charges and criminal threats. This is the fundamental difference between the Special Line and plea bargaining, which are different systems. The Special Path can be applied with the main condition that the defendant admits to the crime for which he/she has been charged.

Recognition is a key condition in the application of the Special Path. Recognition before a judge at trial is a one-sided statement, both written and verbal that is firm and stated by one of the parties in a trial case, which confirms either wholly or partly an event, right or legal relationship proposed by his opponent, which results in an examination by the judge not need more.

The brief examination program in the RKUHAP is carried out in cases where the case for proof and application of the law is easy and simple in nature. In the brief examination of the case without using an indictment, the public prosecutor only needs to include the articles that have been violated. The trial is only conducted by a single judge. In addition, the judge is also obliged to reaffirm the defendant's confession, if the judge is in doubt, the judge can reject the defendant's confession and the case is returned to the ordinary examination procedure.

In addition, according to Eko Budi (2018), states that the formulation of criminal law includes:

1) Criminal law is part of the overall law that applies in a country.
2) Acts that are prohibited by criminal law and are threatened with punishment.
3) Criminal law determines which actions are considered as criminal acts.
4) Anyone who commits a criminal act is threatened with a criminal offense.
5) Criminal law regulates criminal liability/criminal responsibility.
6) Some opinions about the meaning of criminal law.
7) Things that need to be emphasized in relation to our understanding of criminal law.

Therefore, if you look at the criminal formulation above, using criminal law it is very clear that whoever is guilty will be punished for his actions.

Then according to Carolyn E. Demarest as quoted by Prasidi (2019), there are things that are beneficial for the

Public Prosecutor and the Defendant in the Plea Bargaining mechanism: "The Plea Bargain mechanism is believed to bring benefits, both to the accused and to society. The advantage for the defendant is that he and the public prosecutor can negotiate an appropriate sentence for him. The community benefits because this mechanism will save on the cost of a trial in court, where the defendant admits his crime and will still receive punishment. Although the average sentence given is less than what the judge would decide if it went through a conventional court process, on the other hand this mechanism can have an effect on the criminal justice process because the public prosecutor has more time and can handle more cases."

In addition, John Wesley Hall, Jr. explained that Plea bargaining is carried out in the context of resolving criminal cases without going through a trial, that Plea Bargaining is not an engineered negotiation but must prioritize honesty over the facts that occurred: "If the nature and circumstances of the case guarantee that, the public prosecutor must explore the possibility that the case may be diverted from criminal proceedings. Prosecutors also have a duty to exercise their prosecution policy. Both parties to the defense discussion have an obligation to be open and direct, and the public prosecutor must not knowingly make false statements about the evidence in the process of discussing the defense with the opposing legal counsel (Hall Jr, 1974; Hall Jr, 1976).

Although at this time the concept of plea bargaining has been stated in the RKUHP, in this case it must wait for the ratification of the RKUHP. In fact, in the current situation, more policies or regulations are needed to speed up the steps of law enforcers in resolving cases that have accumulated in court. Therefore, it is important to use Plea Bargaining in the Criminal Justice system, especially in the midst of the Covid-19 Pandemic.

However, plea bargaining still has limitations, including:

1) That this "plea bargaining" is essentially a negotiation between the public prosecutor and the accused or his defense.
2) The main motivation for these negotiations is to speed up the process of handling criminal cases.

3) The nature of the negotiation must be based on the "volunteering" of the accused to admit his guilt and the willingness of the public prosecutor to threaten the punishment desired by the accused or his defense.
4) The participation of judges as impartial referees in the said negotiations is not permitted (Atmasasmita, 2010).

The existence of these limitations illustrates that judges and legal advisors are in a position to protect the defendant from the possibility of confessions obtained from torture and so that the Plea Bargaining Concept cannot be misused by interested parties.

Currently, Indonesia, especially during the Jokowi government era, is in a chaotic condition, a crisis condition in various fields including the legal field. The law that is expected to provide justice for the community is the opposite. In this case, it takes courage for the community, especially law enforcement officers to make breakthroughs in resolving these cases.

Therefore, the use of the plea bargaining concept is considered appropriate to resolve the pile of cases in court. In addition, this system is also considered a very effective and efficient system in handling cases. This is because the trial stage is very short because the defendant has admitted it.

4. CONCLUSION

This study concludes and underlines that 1. the use of the plea bargaining concept is considered appropriate to resolve the pile of cases in court. In addition, this system is also considered a very effective and efficient system in handling cases. This is because the trial stage is very short because the defendant has admitted it. The Plea Bargaining Mechanism and Special Pathways in the Draft Criminal Procedure Code have provided an offer of a solution for handling a confession from a defendant. Apart from the shortcomings that still exist in the Plea Bargaining System and the Special Path in the Draft Criminal Procedure Code, both systems in my opinion offer a new mechanism in dealing with dealing with a confession. Through legal breakthroughs (plea-bargaining) it is hoped that it can provide justice for the community, especially in dealing with the problem of accumulation of cases in the Court, especially in the midst of the Covid-19 Pandemic.

5. DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no potential conflict of interest in the research, authorship, and/or publication of this article.

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Quote

"Justice will not be served until those who are unaffected are as outraged as those who are."

Benjamin Franklin

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