



Urgensitas *Plea Bargain* In The Criminal Justice System In Indonesia

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Abstract: *Crime in Indonesia continues to increase year after year, a situation that is not commensurate with the capacity of law enforcement officers and the effectiveness of judicial institutions, resulting in a backlog of cases and high costs of law enforcement in Indonesia. One of the stages of the modern criminal justice system to address these issues is the Plea Bargain stage. This is where an agreement is reached between the defendant and the public prosecutor that allows the defendant to plead guilty in exchange for a lighter sentence or demand. This can be both an opportunity and a challenge for all law enforcement officers*

Keywords: *Plea Bargain, Criminal Justice System, Law Enforcement Officers*



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PENDAHULUAN

Indonesia is a State of Law as affirmed in the Constitution of the Republic of Indonesia in 1945 in Article 1 paragraph (3),¹ which places Law as the Main Foundation in the implementation of a State Power, so that this has the consequence that every action taken by law enforcement officials must be based on laws and regulations that guarantee legal certainty, justice, and the protection of human rights².

In the context of Criminal Law, this is reflected in the Criminal Procedure Law which regulates the procedures for criminal law enforcement and the application of criminal sanctions to Suspects and Defendants from the start of the process of Investigation, Prosecution, Trial in Court, to the implementation of the Criminal Decision. In *the Fair Trial* process as a criminal justice system in Indonesia, it is necessary to create a fair legal system for all communities as one of the principles of *Equality Before The Law* (all people are equal before the law). Which means that there is no partiality in *the Fair Trial*.

Basically, this has been enshrined in the 1945 Constitution of the Republic of Indonesia in Article 28D paragraph (1) in Chapter XA concerning Human Rights which states that "Everyone has the right to fair legal recognition, guarantee, protection, and certainty, as well as equal treatment before the law"³. Which in essence is constitutionally that the right to fair and impartial treatment is an inseparable part of human rights. In Law Number 48 of 2009 concerning Judicial

¹ Constitution of the Republic of Indonesia of 1945

² M. Yahya Harahap, *Discussion of Problems and Implementation of the Criminal Code: Examination of Court Hearings, Appeals, Cassation, and Review*, Sinar Grafika: Jakarta, 2006, p. 321.

³ Basic Law,

Power, there are applicable principles regarding the provisions regarding a fair and impartial Judiciary, which is then regulated into regulations both formally and materially.

In the legal literature, law enforcement using a systems approach is also known as the criminal justice system. In general, the criminal justice system can be interpreted as a process of working several law enforcement agencies with a mechanism approach. The mechanism includes several stages starting from the investigation stage, prosecution,

The Criminal Justice System was formed as a system with the aim of controlling crimes that occur in society. According to Benedict S. Alper, the problem of crime is the oldest social problem and in connection with the problem of crime has been recorded in more than 80 international conferences starting from 1825 to 1970, which among them discussed efforts to overcome crime⁴.

The globalization that has now occurred has hit the world, including in Indonesia, of course it will also affect the forms of crime and countermeasures in society. The calls of the World Organization outlined in international instruments are certainly very much considered in the framework of understanding the symptoms of crime and its countermeasures⁵.

The process works sequentially, meaning that one stage should not jump over another. The whole process works in a system, so that each institution is a subsystem that is interconnected and influences one another. In a criminal justice system, it works on the components of functions that each must relate and work together. As Alan Coffey said, *"Criminal justice can function systematically only to the degrees that each segment of the system takes into account all other segments. In order words, the system is no more systematic than the relationship between police and prosecution, Police and Court Prosecution and Corrections, Corrections and law, and so forth. In the absence of functional relationships between segments, the criminal justice system is vulnerable to fragmentation and ineffectiveness"*⁶.

Satjipto Raharjo interprets the principle of law as a basic truth that is recognized by the legal community, because the ethical and social considerations of the community that enter into the law are based on these legal principles, therefore the principle of law becomes like a source that gives life to the legal system with morals, ethical and social values of society⁷. Apart from being a fundamental truth, Satjipto Raharjo also stated that the legal principle is the heart of legal regulations based on two reasons, namely: first, because the principle of hkkum is the broadest basis for the birth of a legal regulation and second, it is the ratio legis of legal regulations or the reason for the birth of legal regulations⁸.

Criminal Justice is a legal system that applies in Indonesia with the main goal of tackling crimes that can threaten and disrupt public order and the sense of security of the community, besides that criminal justice is also an effort to control the occurrence of violence so that it remains at acceptable tolerance⁹ limits. In addition, the main purpose of criminal justice is as a system, criminal justice is also part of efforts to realize the legal function as stated by Lawrence M. Friedman, namely: social control, dispute settlement, social engineering¹⁰, therefore when talking

⁴ Arief Amrullah, *Corporate Crime*, Bayumedia Publishing: Malang, 2006, p. 4.

⁵ Muladi, *Kapita Selekta of the Criminal Justice System*, Diponegoro University Publishing Board: Semarang, 1995, p. IX.

⁶ M. Faal, *Screening of Criminal Cases by the Police Directorate of Police*, Pradnya Paramita: Jakarta, 1991, p. 5

⁷ Satjipto Raharjo, *"The Role and Position of Legal Principles in the National Legal Framework"* Seminar and Workshop on General Provisions of Laws and Regulations, Jakarta, 2000.

⁸ Satjipto Raharjo, *Legal Science*, Citra Aditya Bakti, Bandung, 1991, p. 25.

⁹ Edi Setiadi and Kristian, *Integrated Criminal Justice System and Law Enforcement System in Indonesia*, Kencana, First Printing, Jakarta, 2017, p. 19.

¹⁰ Lawrence M. Friedman, *Law and Society an Introduction*, Prentice Hall, New Jersey, 1977, hlm. 11-12.

about law, it cannot be separated from the values that live and develop in society, because law is a reflection and embodiment of the values that apply in a society¹¹.

The process of implementing the criminal justice system, until now, has not found a common perception by scholars, is tied to what institutions or elements and apparatus are involved or part of the criminal justice process. One of them, according to V. N. Pillai, who formulated that the implementation of the criminal justice system is carried out by institutions, the criminal justice system is defined by the provisions of the police, prosecutor's office, courts and correctional institutions which are component parts of the structure of criminal justice procedures and are described as a continuation of things that run in an orderly¹² manner.

Many institutions are involved or part of the criminal justice system, so it can be seen how long the criminal justice process is which starts from the stages in the police, prosecutor's office, district court, high court, and Supreme Court, so it is logical if this has implications for the accumulation of criminal cases in court¹³.

In 2025 there are still 76,623 cases left in 2024 that must be resolved in 2025, so that these cases are also added to the number of cases that will be entered in 2025 as many as 2,925,137, of which until the end of 2025 there are still 79,559 left, so that there is an additional burden of cases that must be resolved by the courts is 3,025,152 cases. The accumulation of cases that occurred shows that in the implementation of criminal justice there are still many shortcomings and shows that the sense of justice and legal certainty aspired to by the community has not been achieved, basically in the criminal justice system there is still a lot of improvement needed to achieve the fulfillment of legal needs and ensure the protection of the rights of citizens.

One of the resolutions issued by the United Nations in the 9th congress in 1995, regarding developments in the world of criminal law, especially criminal *procedure* law which requires all countries to consider judicial management based on *privatizing some law enforcement and justice functions*, which when interpreted as privatizing several law enforcement and justice functions and *alternative dispute resolution* (ADR) to overcome the accumulation of cases in court¹⁴.

Alternative settlement as the *alternative dispute resolution* (ADR) is mentioned, in addition to being intended to address the accumulation of cases, it is also intended to create the principle of simple, fast and low-cost justice which is explicitly contained in the provisions of article 2 paragraph (4) of the Judicial Power Law which states: "Courts are conducted simply, quickly and at a low cost", or also termed as *informal procedure and can be motion quickly*. Which means that the trial process must be carried out as simply as possible and at an affordable cost, as well as a protracted trial time, which is the duty of the court as a place to seek justice and legal certainty from the people, without reducing and ignoring the precision and meticulousness in seeking truth and justice¹⁵.

The principles of simple, fast, and low-cost justice also refer to the most fundamental principles in the application and service of judicial governance by leading to effective and efficient

¹¹ Satjipto Raharjo, *Legal Sociology of the Development of Methods and Choice of Problems*, Genta Publishing, Yogyakarta, 2010, p. 140.

¹² Kadri Husin and Budi Rizki Husin, *Criminal Justice System in Indonesia*, Sinar Grafika, First Edition, Jakarta, 2016, p. 10.

¹³ Kristian and Christine Tanuwijaya, Criminal Case Settlement with the Concept of Restorative Justice in the Integrated Criminal Justice System in Indonesia, *Journal of Mimbar Justicia*, vo. 1, 2015, p. 594.

¹⁴ Lukman Hakim et al., The Application of the Concept of "Plea Bargaining" (in the Draft Criminal Procedure Code (RKUHP) and its Benefits for the Criminal Justice System in Indonesia, Deepublish, First Edition, Yogyakarta, 2020, p. 1.

¹⁵ Ramadan, *Judicial Power (Post-Constitutional Amendment)*, Kencana, Jakarta, 2012, p. 53.

principles¹⁶. Simple can be interpreted as the examination and handling of cases that are carried out effectively and efficiently, and can also be interpreted as a process that is not complicated, not convoluted, straightforward, clear and *non-interpretable*, easy to understand, easy to implement, concrete and structured in every perspective, namely, in the perspective of justice seekers and from the perspective of law enforcement which has various levels of capacity, both in the fields of education, social, economic, cultural, and others¹⁷.

RESEARCH METHODS

This research uses the "Normative Juridical Research" type of research. Legal research is a process to find legal rules, legal principles, and legal doctrines to answer the legal issues faced¹⁸. There is a nature and scope of legal disciplines, where discipline is defined as a system of teachings about reality, which usually includes analytical disciplines and perspective disciplines¹⁹. So that normative legal research is a research that provides the foundation for a system of norms consisting of many aspects in the provisions of norms, legal principles, laws and regulations, adultery, and other doctrines related to the problems studied in this writing.

RESULTS AND DISCUSSION

Plea Bargaining is a system that is included in the legal *problem solving category*. This provision has currently been used as a renewal in the criminal justice system in Indonesia based on the evaluation of the system that applies to the provisions of the old criminal justice system. *Plea Bargaining* in this case is expected to realize an efficient and effective judiciary, without reducing or eliminating the main purpose of a judicial system itself. as explained in Article 1 number 16 of the Criminal Code, and regulated in Chapter III of the Prosecution of the Third Part of Confession of Guilt Article 78 of the Criminal Code.

In a *Blak' Law Dictionary*, explains "*Plea Bargaining is thh process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to the court approach. It usually involves the defendant's pleading guilty to lesser offense or to only one or some of the counts ofulti counts indictment in return for a lighter sentence than that possible for the graver charge*"²⁰. That *Plea Bargaining* is a process in which the Defendant and the Prosecutor in a criminal case, arrange a mutually satisfactory disposition of the case that is subject to the court's approach. This usually involves the Defendant pleading guilty to a lesser offense or only one or more Charges, or multiple Charges in exchange for a lighter sentence than a possible heavier Charge.

In countries with a *Common Law system*, such as in the United States, the United Kingdom, and Canada, this *Plea Bargaining* system has been implemented into the country's legal system, it is also used by France, Germany, and Russia that use *the Civil Law legal system*. *Plea Bargaining* is a negotiation that occurs between the Public Prosecutor and the Defendant, as the purpose or explanation in *Black's Law Dictionary*, that the purpose of *Plea Bargaining* is a confession of guilt for the offense and this can also be a forum for negotiation between the Public Prosecutor and the

¹⁶ Sidik Sunaryo, *Kapita Selekt Criminal Justice System*, UMM Press, 2005, pp. 44-45.

¹⁷ Ibid, p. 46.

¹⁸ Peter Mahmud Marzuki, *Legal Research*, 11th Edition, Kencana, Jakarta, 2011, p. 35.

¹⁹ Soerjono Soekanto, and Sri Mamudji, *Normative Law Research; A Brief Review*, Raja Grafindo, Jakarta, 2001.h;m. 1-2.

²⁰ *Black's Law Dictionary*, West Publishing Company, Eleventh Edition 2010, p. 1037.

Defendant for a criminal act committed by the Defendant, which aims to speed up the process of resolving criminal cases so that can run effectively and efficiently. And this is based on the Defendant's willingness to admit the criminal act that has been committed and the willingness of the Public Prosecutor to be able to provide a lighter sentence.

If we look at the American state that uses the *Criminal Justice System*, then the *Plea Bargaining stage* falls into the *Arraignment on Information* stage. Meanwhile, the *Preliminary Hearing* or Preliminary Hearing is the mechanism by which if the Defendant admits his guilt in committing a criminal act and the Court declares that the Defendant's guilty plea is accepted, then the Judge can then give a sentence without going through a Trial.

If we pay attention to the Criminal Justice System in Indonesia, in this case it is a place as a processing or a place to elaborate on a criminal act through the trial process. So that the model of the Criminal Justice System in Indonesia requires the involvement of state organs to carry out the process, starting from the level of Investigation in the Police, Prosecution by the Prosecutor's Office, Trial in Court, to the Implementation of Criminal Decisions by Correctional Institutions. These state organs are a support so that the judicial process in the Criminal Justice System can be carried out by presenting justice, certainty and utility.

In the Criminal Justice System, it is also known as several Criminal Justice Models, namely the Crime Control Model and the Due Process Model. According to Herbert L. Packer, there are several models of the criminal justice system in the context of the implementation of criminal justice. It should be explained here that the use of the model here is not something that is visible in reality, but in a system adopted by the State. However, it is a value system built on the basis of observation of criminal justice practices in various countries. Based on the observations made, in the implementation of criminal justice in the United States, two models are known in the process of examining criminal cases, namely the *Due Process Model* and the *Crime Control Model*²¹.

The *Crime Control Model* is based on the assumption that the implementation of the Criminal Justice is solely to suppress criminal behavior, and this is a main goal of the judicial process itself. Because what is prioritized is public order and efficiency. The criminal process is basically a struggle or a kind of war between two interests, namely the interests of the state and the interests of the individual, in this case the Defendant. At this point, the so-called Presumption of Guilt principle applies, which is used for the eradication of crime. In practice, this model is friendly, namely the frequent occurrence of human rights violations²².

Due to the frequent occurrence of human rights violations, a second model, the *Due Process Model*, emerged. This model emerged because there are values that are not considered in the *Crime Control Model*, namely the concept of protecting individual rights and limiting power in the implementation of criminal justice. The criminal process must be controllable to prevent the abuse of power and authoritarian nature in order to achieve maximum efficiency and effectiveness. This model applies a principle that is often used in the Criminal Justice System in Indonesia, namely the *Presumption of Innocent principle*. The two models introduced by Pecker are based on the idea of the relationship between the state and individuals in the criminal process that places the perpetrator of a criminal act as an enemy of society, while the main purpose of punishment itself is to isolate the perpetrator of a criminal act from society. Both models are philosophically based

²¹ Muladi and Barda Nawawi Arief, *Criminal Theories and Policies*, PT. Alumni, Bandung, 2005, p. 10.

²² M. Sholehuddin, *Sanction System in Criminal Law Basic Idea of Double Track System & Its Implementation*, PT. Raja Grafindo Persada, Jakarta, 2003, p. 6.

on the model of war and conflict between the state and individuals that cannot be reunited, so that if a crime occurs, the perpetrator must be immediately processed with placing it as an object in the criminal justice system²³.

In the current Criminal Justice System in Indonesia, the judicial process refers to Law Number 20 of 2025 concerning the Criminal Procedure Code, and in this case the regulation of *Plea Bargain* in Articles 78, 205, and 234 of the Criminal Procedure Code. According to Romli Atma Sasmita, the Criminal Procedure Code has 10 (ten) principles used, namely²⁴:

1. The same treatment before the law;
2. Presumption of innocence;
3. The right to compensation (compensation) and rehabilitation;
4. The right to obtain legal aid;
5. The right of the defendant to appear in court;
6. A free judiciary, and conducted quickly and simply;
7. A judiciary that is open to the public;
8. Violations of citizens' rights (arrest-detention-searches and seizures), must be carried out in accordance with the law and with a written warrant;
9. The right of the suspect to be informed of the suspicion and prosecution against him;
10. The court's obligation to control the implementation of its decision;

Based on these ten principles, it can be said that the Criminal Procedure Code adheres to the principle of "due process of law". A fair process of law is essentially the right of a suspect and a defendant to have their views heard on how the crime occurred in the cross-examination of which he has the right to be accompanied by legal counsel, he also has the right to make a defense, and the public prosecutor must prove his guilt before a free court and with an impartial judge²⁵.

According to Mardjono Reksodiputro, the "procedural design" in the criminal justice system included in the Criminal Procedure Code is divided into three stages, namely the stage before the court hearing (*pre-adjudication*), the court hearing stage (*adjudication*), and the stage after the court (*post adjudication*). This view is that the adjudication stage or the court trial stage must be considered dominant in the entire criminal trial process.

Views This is based on the Criminal Procedure Code which states that every decision in any form must be based on the facts and circumstances as well as the evidence obtained from the examination in court. So that a criminal justice system is honest, fair and protects the rights of a citizen who is a defendant. Only in this stage of adjudication can the defendant and his defender stand upright as parties who are completely at the same level as the public prosecutor²⁶.

The integrated criminal justice system is a system that is able to maintain a balance between the protection of the interests of the state and the interests of the community, including the interests of individuals. Moreover, this is also to protect the interests of victims from crimes. *Plea Bargaining*, which is a special provision in Law Number 20 of 2025 concerning the Criminal Procedure Code in Article 78 paragraph (1), the application of this provision must at least meet the conditions for implementation so that this Confession of Guilt mechanism can be fulfilled, namely "*provisions on criminal acts that are threatened with a maximum prison sentence of 5 (five) years*

²³ Effendi Mukhtar, Implementation of Criminal Theory in Psychotropic Case Decisions by Judges at the Yogyakarta District Court, UII Yogyakarta Postgraduate Master's Program, 2008.

²⁴ Muladi, Kapita Selekt Kriminal Justice System, UNDIP Semarang Publishing Agency, Semarang, 1995, p. 41.

²⁵ Ibid, p. 42

²⁶ Ibid, p. 42.

or a maximum fine of category V", and the provisions stipulated in Article 23 paragraph (1) of the Criminal Procedure Code are "criminal acts that are threatened with a maximum prison sentence of 7 (seven) years".

When the Defendant admits guilt for the criminal act committed by him, the examination process is switched, which was initially processed with the usual trial process to be turned into a short examination as stipulated in Article 78 paragraph (9) of the Criminal Code regulates "*post-Confession of Guilt examination becomes a short examination and becomes the authority of the single Judge*". Confession of Guilt in this case needs to be understood as a balanced mechanism, namely where the Defendant admits guilt and waives certain procedural rights, while the Defendant obtains leniency for the sentence imposed by the judge in the court decision.

CONCLUSION

The Confession of Guilt in the latest Criminal Procedure Code arrangements, as stipulated in Law Number 20 of 2025 concerning the Criminal Procedure Code, is one of the breakthroughs that not only embarrasses the Defendant, but also as a mechanism to cut the trial process as triggered in the Criminal Justice System. However, it is also necessary to carry out strict supervision in the implementation of the process, so that the rights of the Defendant can also be accommodated for the sake of maintaining and implementing the Due Process of Law as aspired in the Integrated Criminal Justice System.

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