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THE URGENCY OF IMPLEMENTING PLEA BERGAINING IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM

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ABSTRACT
Plea Bargaining is a legal process in which a accused in the process of examining a criminal case voluntarily admits his guilt or is willing to admit his guilt or is willing to admit his guilt or several charges filed by the public prosecutor. This process aims to reach an agreement between the public prosecutor and the accused regarding the confession of sin and the sentence imposed, without going through a complete trial. Plea Bargaining was implemented for the first time in the United States which adheres to the common law legal system. Indonesia, through its KUHAP reform plan, intends to implement plea bargaining, but it has a different concept from that found in the United States. The writing of this article will analyze the concept of Plea Bargaining contained in the reform of the Criminal Procedure Code and the realization of protection for the rights of suspects and accuseds at every stage of the criminal investigation process. This article was written using a normative research method with a conceptual approach. The results of this research are that the application of Plea Bargaining in criminal procedural law in the future will result in fair law enforcement and legal certainty if it pays attention to the rights of suspects and accuseds. The concept of plea bargaining in the draft KUHAP needs to be based on the principle of protecting the rights of suspects and accuseds.

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1. INTRODUCTION

Ethical theory argues that law should reflect the highest level of justice in the structure of society. In other words, the main goal of law is to achieve justice. Hans Kelsen explains that a general rule is considered "fair" if it is applied consistently to all relevant situations. Conversely, the rule is considered “unfair” if it is applied in one case but ignored in other similar cases. Justice in this context means maintaining the integrity of the positive legal system through faithful application of its principles. This justice is a form of justice based on law.(Miswardi et al., 2021)

Law is seen as a tool for resolving disputes. Conflicts or disputes often arise in society, such as between family members which can damage family relationships, or between business partners which can end cooperation. Disputes can relate to marriage, inheritance, contracts, land boundaries, and so on. Resolution of this dispute is necessary. In society, some disputes are resolved through formal institutions such as courts, while some are resolved independently by the parties involved with the help of people around them (outside the court).

In a number of developed countries that adopt a common law system, especially in the United States, the pretrial stage is now considered more important than the criminal process itself. The final outcome of the conference often reflects the results of the examination at this stage. Not infrequently, violations of the suspect's and victim's rights occur during the pretrial phase (Iskandar, 2023)In other

words, at this stage, suspects and victims are often in a vulnerable position. In civil procedural law, mediation is known as a method of settlement outside of court, while in criminal law, systems such as Restorative Justice, Plea Bargaining, and *Rechtelijk Pardon* are also applied to resolve cases outside of the court process.

In this context, restorative justice means justice that is restored or re-established. Every party involved in a criminal act is given the opportunity to discuss, with an emphasis on welfare and justice. The application of restorative justice in criminal law enforcement through Plea Bargaining is a method of resolving criminal cases that is carried out peacefully between the perpetrators of criminal acts and law enforcement officers. This process can be carried out at any stage in the integrated criminal justice system to achieve restorative justice. Based on the formulation in the fourth paragraph of the Preamble to the 1945 Constitution(Irmawanti & Arief, 2021), there are goals of "social defense" and "social welfare" which must be reflected in national development goals.

Apart from the importance of harmonization in the development of universal law to maintain legal order between nations in the era of complex globalization, the aim of positive law is to protect all the people of Indonesia and its territory as well as provide general welfare, educate the life of the nation, and contribute to world order based on freedom, eternal peace and social justice. Based on the purpose of the law, Soedjono Dirdjosisworo stated that the true purpose of the law is to create harmony and peace in life together. Law functions to create a safe and peaceful life at all levels of society.(Nurdiansah, 2023)

In other words, criminal law reform must function to protect all Indonesian people and territories, improve general welfare, make the nation's life intelligent, and contribute to world order based on independence, lasting peace and social justice. Mochtar Kusumaadmadja stated that reform could be carried out through the creation of statutory regulations, court decisions, or a combination of both. According to him, "law must be a development tool" which will then be included in national legal development policies.(Aulia, 2019) Criminal law reform is a step to achieve social welfare as well as to realize the objectives of the law itself.

After ratifying the Criminal Code (KUHP) on December 6 2022, the Indonesian government plans to revise the Criminal Procedure Code (KUHAP) which has been in effect since 1981. Based on an informal agreement between Commission III and the government, the Draft Law The law (RUU) regarding changes to the Criminal Procedure Code is an initiative of the People's Representative Council (DPR). The revision of the KUHAP includes three main aspects, namely Coercion, Evidence, and giving a greater role to Advocates. With these various considerations, the author decided to raise the topic of the Plea Bargaining System in the context of Criminal Justice in Indonesia.

2. RESEARCH METHOD

This research is included in the legal research category. According to Soerjono Soekanto, legal research is a scientific activity that uses certain methods, systematics and thinking to study one or several legal phenomena by analyzing them.(Susanti, 2018) This process also involves an in-depth examination of legal facts and the search for solutions to discovered problems. The type of research used in this study is normative legal research or a normative juridical approach, because the problems studied are closely related to the laws stated in the book, namely by expressing problems in accordance with normative provisions using secondary data. Secondary legal materials in this research include books, journals, papers, research reports and other writings relevant to the topic discussed, while tertiary legal materials include dictionaries. This research uses descriptive specifications, which aim to describe something in a certain spatial and temporal context. In legal research, a descriptive approach must present legal materials accurately, examine regulations, and reveal legal facts thoroughly.

3. RESULT AND DISCUSSION

The criminal justice system was established to overcome crime, provide punishment to perpetrators in accordance with the purpose of punishment, and restore the cosmic balance that was disturbed due to criminal acts. This system is not a deterministic system with results that can be predicted with certainty, but rather a probabilistic system whose results cannot be predicted definitively. The criminal justice system is physical because it consists of various bodies or institutions that form the components of the system, such as police, prosecutors, courts and prisons, which work in an integrated manner to achieve common goals.(Ramadhani & Eriko, 2022) As an abstract system, the components of the criminal system are interrelated and form an integrated whole, creating interdependence between these parts.(Muladi, 1995)

So that law enforcement can run well, case resolution can be carried out through alternative channels other than litigation or judicial institutions, namely through non-litigation processes or outside the court. In the RKUHP, the criminal justice concept called the Special Route is often considered equivalent to the Plea Bargaining system because the defendant's confession can speed up the justice process. The parties involved in the Special Track (Plea Bargaining) process include the Public Prosecutor, Legal Counsel, and/or the Defendant, while the involvement of Judges in this process is relatively rare.

According to Black's Law Dictionary, Plea Bargaining is "an agreement between the public prosecutor and the defendant in which the defendant admits his guilt to one or more charges in exchange for a lighter sentence or the dismissal of charges on other charges by the public prosecutor."(Bryan et al., 2014) In other words, Plea Bargaining consists of an agreement (formal or informal) between the defendant and the prosecutor. The prosecutors usually agree with reducing prison sentences, which overrides the constitutional right of non-self in crime and the right to trial of the accused.

There is no definite definition of Plea Bargaining, but several experts provide the following explanation:(Montero Molera, 2023)

1. The process in which the prosecutor and public prosecutor in a criminal case reach an agreement through a guilty plea that provides benefits for both parties and ultimately requires court approval.
2. Negotiations between the defendant and the prosecutor regarding the prosecutor's offer of a lighter sentence if the defendant admits his guilt.
3. An agreement between the prosecutor and the general public where the seller admits guilt and as a balance, one of the public transmitters will give the fraudster a lighter charge.

The practice of Plea Bargaining in America can be observed through the decisions of the Supreme Court, which has ruled that they can give lighter sentences to defendants who plead guilty, as in the case of Brady v. Wade. United States of America. After the verdict in the case, plea bargaining continued. With Plea Bargaining, criminal justice becomes more effective and efficient and speeds up the resolution of criminal cases. Around 95% of criminal cases in America are resolved through the Plea Bargaining mechanism, so that the criminal justice system in America can achieve high effectiveness and efficiency.(Nugroho & Eskanugraha, 2023)

Plea bargaining involves a defendant's admission of guilt in exchange for a reduced charge and/or a reduced sentence. In this process, the judge no longer needs to conduct an examination in court and can directly impose a sentence. Thus, plea bargaining is considered a cost-effective method and reduces the workload for prosecutors and courts.(Rahayu, 2015) Regulations regarding the plea bargaining system in the United States are regulated in the Federal Rules of Criminal Procedure, specifically in rule 11. Rule 11 sub (d) prohibits the court from accepting a guilty plea without first hearing the defendant's testimony regarding whether the confession was made voluntarily and not due to pressure, coercion, or other promises given by the prosecutor outside the provisions of the Plea Agreement.

Legal certainty is one of the essential characteristics of law, especially written legal norms. Without certainty of value, law loses its meaning because it cannot function as a guide to behavior for individuals. Legal certainty itself is one of the goals of the law itself. Legal certainty must be answered normatively based on applicable laws and regulations, not through a sociological approach. Normative legal certainty occurs when a regulation is created and enforced clearly and logically, so that it does not give rise to doubt or multiple interpretations. This means that these regulations must be part of a norm system that is harmonious with other norms, without giving rise to legal conflict or uncertainty.(Moho, 2019)

Legal certainty can be seen from two perspectives: legal certainty itself and certainty of legal consequences. Legal certainty means that every legal norm must be formulated clearly, without sentences that can give rise to various interpretations. This will influence the level of compliance or disobedience to the law. In practice, legal incidents often occur where the substance of existing legal norms is unclear or incomplete, giving rise to various interpretations which ultimately lead to legal uncertainty.

In the context of updating criminal procedural law, it is essential that formal criminal law supports substantive criminal law. As Sudarto emphasized, "ius puniendi" should be grounded in "ius poenale." The current Criminal Procedure Code, which is based on the old Dutch East Indies Criminal Code (WvS), suggests that the new Criminal Procedure Code should align with the new Criminal Code. Consequently, it is important to examine the principles and norms of the new Criminal Procedure Law in accordance with the updated Criminal Code. According to Lilik Mulyadi, the ideal reform of the Criminal Procedure Code should be guided by specific dimensions, benchmarks, and scopes, and should be oriented towards aspects such as human rights. These rights are fundamental, universal, and enduring, and thus must be protected, respected, and upheld without being ignored, diminished, or violated by anyone.(Faisal & Rustamaji, 2021)

Then, an explanation from Paul Sieghart quoted by Lilik Mulyadi, basic human rights consist of 3 (three) generations, namely the first generation (civil and political), the second generation (economic, social, and cultural), the third generation (group rights) which are all individual rights. The three generations of human rights must be the estuary of reforming the Criminal Procedure Code because it is expected that the law is not following Black's second proposition, "Downward law is greater then upward law", namely the law is like a spider's web, which in its application is discriminatory, the law always oppresses the lower class because of this, the law is declared like water that always flows down. With a dimension that prioritizes human rights, theoretically and in practice, the future Criminal

Procedure Code should consequently apply the following:(Arfisadena, 2008)

1. Everyone must be treated equally before the law without any distinction in treatment.
2. Arrests, detentions, searches, and seizures must be conducted only based on a written order from an authorized statutory authority and in accordance with the law.
3. Every individual who is suspected, detained, prosecuted, or brought before a court shall be presumed innocent until proven guilty by a court decision that is legally final.
4. If someone is arrested, detained, prosecuted, or tried without legal grounds or due to an error regarding their identity or the applicable law, they are entitled to compensation and rehabilitation. Those responsible for violating legal principles, whether intentionally or due to negligence, should be prosecuted, convicted, and/or face administrative penalties.
5. The judiciary must be conducted promptly, modestly, and lightly, ensuring freedom, honesty, and impartiality at all levels of examination.
6. Every individual involved in a criminal case should have the right to obtain legal assistance for their defense.
7. A suspect, from the moment of arrest or detention, must be informed of the charges against them and the legal basis for these charges, as well as be made aware of all their rights.

Philosophically, Article 28D, paragraph (1) of the 1945 Constitution of the Unitary State of the Republic of Indonesia asserts that "everyone is entitled to recognition, guarantee, protection, and fair legal certainty, as well as equal treatment under the law." Juridically, Article 4, paragraph (2) of Law No. 48 of 2009 concerning Judicial Power requires that judicial proceedings be conducted in a simple, swift, and cost-effective manner. However, the current implementation of the criminal justice process has not yet fulfilled these mandated requirements.

In 2023, there were unresolved cases from 2022, totaling 132,070, that needed to be addressed alongside the new 6,123,197 cases filed in 2023. This brought the total caseload for the Supreme Court and lower courts in 2023 to 6,255,267. By the end of 2023, there were still 133,813 cases pending resolution, which would need to be addressed in 2024.(Gemilang & Agustanti, 2023) This highlights the significant burden on the judiciary to clear cases in the following year. The data indicates that the criminal justice system in Indonesia was less effective and efficient in handling cases.

The lengthy duration of criminal proceedings in Indonesia has led to the implementation of a special procedure in the draft Criminal Procedure Code (Rancangan KUHAP), marking a new step in the reform of Indonesia's criminal justice system. According to Article 199 of the draft KUHAP, the following provisions apply:

1. If, at the time the prosecutor reads the indictment, the defendant admits to all charges and confesses guilt for an offense with a penalty not exceeding 7 years in prison, the prosecutor may submit the case for a summary trial.
2. The defendant's confession must be recorded in a report signed by both the defendant and the prosecutor.
3. The judge: a. must inform the defendant of the rights they are waiving by making the confession as referred to in paragraph (2); b. must inform the defendant of the potential length of the prison sentence; c. must ask whether the confession as mentioned in paragraph (2) is made voluntarily.
4. The judge may reject the confession if there are doubts about its truthfulness.
5. Article 198 paragraph (2) does not apply to the sentencing of the defendant as referred to in paragraph (1), which can be reduced to no more than 2/3 of the maximum penalty prescribed for the offense.

According to Article 199 of the Draft Criminal Procedure Code, defendants who admit to the charges against them are given a special procedure. This confession leads to the defendant being tried through a brief examination hearing. The shift from a standard examination to a brief examination results in a faster trial process, aligning with the principles of a fair trial while ensuring the proceedings are conducted swiftly and simply.

Lilik Mulyadi emphasized that, if implemented correctly, these measures will ensure respect for human rights in law enforcement. He further explained that, beyond focusing on human rights, the reform of the Criminal Procedure Code should also align with the principles used in case examination processes. This involves determining whether the reform will follow the accusatorial system typical of common law courts, the inquisitorial system common in economic courts, or a combination of both (a mixed system). Additionally, the reform should consider its alignment with various Criminal Justice System models, such as the Crime Control Model (CCM), Due Process Model (DPM), Medical Model, Bureaucratic Model, Status Passage Model, Power Model, or Just Desert Model.(Mulyadi, 2012).

4. CONCLUSION

Indonesia could adopt the Plea Bargaining system as Ius Constituendum within its criminal justice system to enhance the rights of suspects and defendants during investigations and trials. The introduction of a Special Path, which partly borrows from common law practices, could improve the criminal justice system in Indonesia and restore the full function of the Witness and Victim Protection Law. Currently, in practice, statements from the perpetrator as witnesses are not yet strong enough as evidence in court. Plea Bargaining is seen as a

potential solution to legal issues, reflecting a reform in Indonesia's criminal justice system.

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