






Implementation of Plea Bargaining in the Indonesian Criminal Justice System

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ABSTRACT

There is a need for a new system in the Indonesian Criminal Justice System that is thought to make case handling more efficient, specifically by adopting plea bargaining as a problem-solving method for the Indonesian criminal justice system. In this study, the issue formulation is how to implement plea bargaining in the present criminal justice system and the urgency of plea bargaining in the renewal of the Indonesian criminal justice system. The Normative Juridical Research technique was employed to generate this research. Normative Juridical Research is a type of legal research that involves literature study or just secondary information. The regulation on the application of Plea Bargaining in the current criminal justice system is not based on the value of justice, as Article 4 paragraph (2) of Law No. 48 of 2009 concerning Judicial Power mandates that the judicial process must be carried out quickly. At a low cost, but based on the problems that the author described in the previous sub-chapter, the criminal justice process has not been able to reach a simple judiciary to this day. The complexity of the criminal justice process in Indonesia now prevents simple, quick, and low-cost judicial implementation from being accomplished in the criminal justice process in Indonesia. In this case, there is a need for a renovation of Indonesia's criminal justice system. This is the legal basis for the urgent need to establish Plea Bargaining in Indonesia.

Keywords	Criminal Justice System; Implementation; Plea Bargaining
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PRELIMINARY

The notion of a quick, simple, and light trial exists in the criminal judicial system. Simple Courts imply that every examination and case processing is done successfully, efficiently, or uncomplicatedly. The fast principle, a generic or universal principle, refers to a time-to-end solution that is neither protracted nor long-lasting. The idea refers to a specific statement: justice delayed, justice denied; the word suggests a sluggish judiciary that makes achieving justice difficult. The low-cost concept states that instances can be reached cheaply or reasonably. The above premise is enshrined in Legislation No. 48 of 2009 concerning Judicial Power and the legislation governing criminal processes. Judicial power is an autonomous authority that administers justice to protect the rule of law and justice. This is stated in Article 24, paragraph (1) of the Republic of Indonesian Constitution of 1945 (UUD

1945). Establishing judicial power can ensure that the Indonesian people receive justice and legal certainty in line with relevant legal laws. The judicial power in Indonesia must be an autonomous organization or institution to ensure the development of justice and legal certainty for the Indonesian people. True justice is a requirement for a society's existence; in this instance, judges play a crucial role in the implementation of criminal law in order to attain the justice that is anticipated and aspired to. As a result, the position of judges in our country is quite important.¹

Other government bodies or institutions should not have any influence over the judiciary.

Furthermore, this judicial power must not be influenced or impacted by other organizations or institutions of government power. In Indonesia, judicial authority is exercised by a Supreme Court and subordinate judicial organizations within the general court, religious court, military court, state administrative court, and Constitutional Court, according to Article 24 paragraph (2) of the 1945 Constitution. The Supreme Court is the highest court among all judicial organizations, and it is immune from interference from other government institutions in carrying out its responsibilities and authority. As indicated above in Article 24, paragraph (1), judicial authority is autonomous. Interference in judicial issues by parties other than the judicial authority is banned, save in cases specifically mentioned in the 1945 Constitution.²

Judges have unlimited and unrestricted rights to judge because a judicial institution is an autonomous entity. The freedom of judges in Indonesia has been guaranteed in the Indonesian constitution, namely the 1945 Constitution, which was further implemented in Law Number 14 of 1970 concerning the Principles of Judicial Power, which has been amended and replaced by Law Number 48 of 2009, namely amendments to Law Number 4 of 2004. Independence or independence of judges is described as total freedom and non-interference in judicial power. This contains three aspects: (1) independence from any power, (2) cleanliness and honesty, and (3) professionalism. In essence, this flexibility is inherent in all judiciaries.³

However, from the perspective of Sudikno Mertokusumo, judges as an instrument of law enforcement in Indonesia today have a wrong public impression since so many judges' rulings need to agree with public expectations. It is also evident that the judiciary in Indonesia has flaws. The above explanation highlights the important function of a judge at a court hearing in Indonesia, from making the law to calculating punishment and determining who committed a crime. A person's life and death at a court hearing can even be said to be in the hands of a judge. Furthermore, because of the importance of a judge in a judicial session, there is an adage that the judge is the 'Representative of God' on earth. Furthermore, additional investigation reveals that due to the vast authority wielded by the panel of judges in the trial, there is a significant probability of fraud occurring, raising public concerns about Indonesia's present judicial system.⁴

There must be legal issue solutions, as detailed in the renewal of Indonesia's criminal justice system, which stems from an appraisal of the present system. The reform will take the form of implementing a new system in Indonesia's criminal justice system, which is expected to

¹ Saleh, P. A. (2013). *Tinjauan Yuridis Terhadap Putusan Hakim yang Mengabaikan Bukti Keterangan Saksi di Dalam Persidangan*. *LEX ET SOCIETATIS*, 1(1). <https://doi.org/10.35796/les.v1i1.1313>, hlm. 85

² Koswara, P. & Megawati. (2023). *Analisis Prinsip Independensi Hakim Konstitusi di Indonesia*. Ahmad Dalam Legal Perspective, 3(1). <https://doi.org/10.12928/adlp.v3i1.7902>, hlm.52

³ Mulingka, Firman A. (2015). *Fungsi dan Kedudukan Hakim dalam Sistem Peradilan Pidana Kaitannya dengan Kemandirian Hakim*. *Lex Administratum*, 3(6), hlm. 34

⁴ Suhariyanto, Budi. (2015). *Eksistensi Pembentukan Hukum oleh Hakim dalam Dinamika Politik Legislasi di Indonesia*. *Jurnal Rechtsvinding Media Pembinaan Hukum Nasional*, 4(3). doi:10.33331/rechtsvinding.v4i3.14, hlm. 416-417

result in a more effective and efficient criminal justice procedure. The new mechanism will use the Plea Bargaining mechanism. The Plea Bargaining System is a bargaining process between the prosecution and the defendant or his defense. The primary aim is to expedite the process of resolving criminal cases so that it can run effectively and efficiently. Negotiations must be founded on the defendant's desire to admit his acts and the public prosecutor's willingness to threaten a reduced penalty.⁵ The Plea Bargaining System is implemented by entering a guilty plea or making a guilty statement, and the defendant who makes the statement is paid in the form of a reduced sentence.⁶ Plea negotiating is closely tied to a suspect's or defendant's guilty plea. Plea bargaining is connected to confession, and it can occasionally be used to complete the process of investigating a case and the method used by law enforcement to acquire guilty pleas by torturing suspects or defendants.

In the use of the Plea Bargaining System in the United States, according to figures from the United States Department of Justice in 2000, as many as 37,188 defendants used the Plea Bargaining mechanism, accounting for 87.1% of all defendants, while just 5.2% went to court. The United States Supreme Court has recognized the Plea Bargaining process as a necessary and desirable component of its criminal justice system. In the United States, up to 95% of accusations are handled with a guilty plea from the defendant. The high success rate of adopting the Plea Bargaining System in the United States in managing matters that get to court, particularly criminal cases, may be observed from these figures. At first look, the Plea Bargaining System is similar to the notion of Restorative Justice since both employ the concept of settlement by deliberation. However, there are several key differences between the two. In light of the facts described above and the effectiveness of the Plea Bargaining System's implementation in the United States, the author believes that the Plea Bargaining System is critical for the renewal of the Criminal Justice System in Indonesia, given the Criminal Justice System's numerous problems.

Based on the preceding, the challenge is defined as how to implement Plea Bargaining in the existing Indonesian criminal justice system and the urgency of Plea Bargaining in the renewal of the Indonesian Criminal Justice System.

METHOD

The normative juridical research approach was applied in this study. This is a descriptive and analytical study. This research investigates and recommends methods that may be implemented to dissuade offenders from internet betting violations. This study material was gathered from both primary and secondary legal sources.

RESULT AND DISCUSSION

Implement Plea Bargaining In The Existing Indonesian Criminal Justice System

Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) governs criminal procedural law in Indonesia. Since the Dutch colonial reign, Indonesian procedural law has experienced significant modifications. There were several codifications of criminal procedural law regulations in Indonesia at the time, such as the reglement op de rechterlijke organisatie (RO. Stb 1847-23 jo Stb 1848-57) which regulates the organizational structure of the judiciary; the Inladsch reglement (IR Stb 1848 No. 16) which regulates criminal and civil procedural law in courts for those classified as residents of Indonesia and the Foreign East, and the reglement op de strafvordering (Stb. 1849 No. 63) which regulates the provisions of criminal procedure law for European and equal populations, landgerechtsreglement (Stb 1914 No. 317 jo Stb. 1917 No. 323) regulates proceedings before

⁵ Atmasasmita, Romli. (2010). *Sistem Peradilan Pidana Kontemporer*. Kencana, hlm. 119

⁶ Nelson, Febby M. (2020). *Due Process Model dan Restorative Justice di Indonesia*. Jurnal Hukum Pidana dan Kriminologi, 1(1). doi: 10.51370/jhpk.v1i1.5, hlm. 105

courts and adjudicates summer cases for all classes of the population. The terms of the Inlandsch Reglement were modified to Het Herzein Inlandsch Reglement (HIR), which was approved by the Volksraad in 1941.⁷

The HIR includes a reform of the determination process and a revision of the statute on preliminary exams. With the advent of this HIR, the Public Prosecution Agency arose, which was no longer under the *pamongpraja*, but directly under the Officer van Justice and Procedure General. There were few significant changes except for the elimination of the Raad van Justice as a court for Europeans during the Japanese occupation. As a result, the criminal procedure remained unchanged. District courts, high courts, and supreme courts are subject to HIR and the rules of the Buitengewesten and Landgerechtlelement.⁸

Following Indonesia's independence on August 17, 1945, many attempts were made to alter the law by repealing and eliminating several earlier rules and unifying the procedural legislation to arrange the unity of the structure, powers, and processes of all district courts and high courts. In this respect, by implementing emergency law number 1 Drt of 1951, all district courts and high courts were confirmed for civil criminal procedural law against the public prosecutor, nevertheless led by HIR with revisions and additions.⁹

In the context of development in the field, as referred to in the State Guidelines (Decree of the People's Consultative Assembly of the Republic of Indonesia Number IV / MPR / 1978), it is necessary to make efforts to improve and refine national legal development by reforming the codification and unification of the law in a summary of the archipelago insight. Finally, in 1981, Indonesia had its own Criminal Code. "The Criminal Procedure Code is regarded as an Indonesian masterpiece to replace HIR and is a source of pride for Indonesian legal specialists. The "Het Herziene Inlandsch Reglement" (Staatsblad of 1941 Number 44) refers to the existence of the Code of Criminal Procedure and Law No. 1 Drt. of 1951 (State Institution of 1951 No. 59, Supplement to the State Gazette No. 81) and all it is implementing regulations and provisions stipulated in other laws and regulations, insofar as it concerns criminal procedural law, needs to be repealed because it is not by the ideals of national law and replaced by the criminal procedure law new ones that have codification and unification characteristics based on Pancasila and the 1945 Constitution.

The procedure for dealing with criminal matters is carried out in stages. The steps of the criminal case handling procedure are carried out in several systems that include investigation (*Opsporing*), prosecution (*Vervolging*), the court (*Rechtspraak*), execution of judge's judgments (*Executie*), and supervision and observation of court decisions. The Criminal Justice System refers to this collection of systems. The prosecution procedure is one of the most significant. "The Prosecutor's Office is the entity in charge of the prosecution process in Indonesia. The Prosecutor's Office has a crucial and essential position in a state of law, particularly in the Indonesian Criminal Justice System, since the Prosecutor's Office institution serves as a filter between the investigation and examination processes. The Prosecutor's Office decides whether a court case will be heard (case controller or *Dominus litis*).¹⁰

Japan has implemented a new mixed system (judge and jury) in which career judges are blended with lay people. We (the Criminal Procedure Bill drafting team) may draw from this that the Criminal Procedure Code must be amended to reflect current demands. In addition to the previously mentioned changes, the Criminal Procedure Code was renewed to reflect the idea and concept of material criminal law reform (KUHP) as a logical consequence

⁷ Hartono, Sunaryati. (2015). *Analisa dan Evaluasi Peraturan Perundang-undangan Peninggalan Kolonial Belanda*. Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia, hlm. 11.

⁸ *Ibid*, hlm. 12.

⁹ Mardiana, Indra. (2015). *Manajemen Penyidikan antara Penyidik Polri ke Jaksa Penuntut Umum dalam Penyelesaian Berkas Perkara*. Jurnal Aplikasi Administrasi: Media Analisa Masalah Administrasi 18(2). doi: 10.30649/aamama.v18i2.34, hlm. 84.

¹⁰ Fratama, Rezky A. (2021). *Jalur Khusus (Plea Bargaining) dalam Hukum Acara Pidana*, Badamai Law Journal 5(2). doi: 10.32801/damai.v5i2.10755, hlm. 231.

of the purpose of criminal procedural law, namely to seek material truth contained in the Criminal Code.

The goals and purposes of this Criminal Procedure Bill are to seek material truth, protect the rights and independence of people and citizens, balance the rights of the parties, people who are in the same circumstances and are prosecuted for the same offense must be tried by the same provisions, defend the Republic of Indonesia's constitutional system against criminal offenses, and maintain peace and security of humanity and prevent crime. Its goal is for state officials and citizens to carry out their obligations in investigation, prosecution, trial, and defense in Court smoothly, as well as for the wider community to understand and appreciate Indonesian criminal procedural law. Trials in Indonesia must be simple, rapid, and low-cost, according to Article 2 paragraph (4) of the Law of the Republic of Indonesia No. 48 of 2009. However, the fact that case arrears are relatively significant in the Court implies that the efficiency of resolving cases in Indonesia could be better.¹¹

This is evidenced by the numerous cases still awaiting resolution from the investigative stage (police) to the court (judiciary). Each year, roughly 160,000-180,000 cases are not advanced to prosecution at the level of inquiry. The police can only complete half of the reports they get each year. The reasons for the buildup of cases include a lack of staff (investigators), a restricted budget, and inadequate facilities and infrastructure.

A similar situation occurs in treating cases at the prosecution stage (to the Prosecutor's Office), but not to the same extent as the Police arrears, and there are still arrears of cases moved to the court. The arrears result from incomplete files, a lack of suspects and evidence, or funds or staff. This is what impedes the Prosecutor's Office's law enforcement procedure. Similarly, there is a significant backlog of cases from the first court level to the Supreme Court.

In the Criminal Procedure Bill, several new norms are the result of the adoption of the criminal justice systems of countries with standard law legal systems, such as those already implemented by Japan and Singapore, "... The special lane system in article 199 of the Criminal Procedure Bill more or less adopts the Plea Bargaining System", the regulation regarding particular paths in the Criminal Procedure Bill is "... efforts to speed up the process of solving cases and to reduce overcapacity in prisons as well as the realization of the principle of conducting criminal procedures simply, quickly, and at low cost".

The provisions for the unique path of Criminal Procedure Bill Article 199 are as follows:

1. When the public prosecutor reads the indictment, the defendant confesses to all the acts charged and pleads guilty to committing a criminal offense for which the criminal threat charged is not more than 7 (seven) years, the public prosecutor may transfer the case to a brief examination hearing.
2. The confession of the accused is set forth in the minutes signed by the defendant and the public prosecutor
3. The judge shall:
 - a. Notify the defendant of the rights he waived by giving confession as referred to in paragraph (2);
 - b. Inform the defendant of the length of the crime that may be imposed; and
 - c. Ask whether the recognition referred to in paragraph (2) is given voluntarily
4. The judge may reject the confession referred to in paragraph (2) if the judge has doubts about the correctness of the confession of the accused.
5. Exempted from article 198 paragraph (5), the criminal conviction of the accused as referred to in paragraph (1) shall not exceed 2/3 of the maximum criminal offense charged.

The adoption of the basic concept of a plea bargaining system in the Criminal Procedure Bill does not necessarily change the entire current criminal justice system, 131 but will provide its own space in criminal justice, particularly in solving criminal cases whose

¹¹ Iswara, I. Made A. M. (2017). *Penguatan Kejaksaan dalam Penanganan Perkara Pidana melalui Plea Bargaining*. Jurnal Advokasi, 7(1), hlm. 26.

criminal threat is less than 7 (seven) years in prison efficiently and quickly, and supported by the defendant's guilty plea as a basis for judges to gain confidence in deciding cases. The formulation of a unique path in the Criminal Procedure Bill is still oriented towards the defendant (of fender centered) and benefits only the defendant, because if a defendant has pleaded guilty before the court and the judge accepts the confession, then he is entitled to criminal relief, and the victim's rights are ignored. This differs from the plea bargaining used in Poland and Georgia, where the victim must be directly involved in determining the acceptability or denial of an admission of guilt, and even the victim can ask the public prosecutor to prosecute so that the defendant pays compensation for rights compromised as a result of the crime.

The judge has the essential duty at the stage after Plea Bargaining, which is to determine whether or not the defendant made a voluntary confession. It can also allow the defendant to cancel his commitments at the Plea Bargaining stage. The judge must additionally warn the defendant of the consequences of pleading guilty, specifically:¹²

1. The accused's right to deny his confession if the court plans to sentence him harshly in comparison to the penalty proposed by the public prosecutor; (2) tell the defendant that by admitting guilt, he has also renounced his right to trial at trial;
2. Inform the defendant about the possibility of specific sentences, as well as the possibility of deportation (if the defendant is not a citizen);
3. Ensure that the defendant understands every element of the plea agreement he made;
4. Ensure that the plea agreement was made voluntarily and that the plea bargaining process was carried out on a factual basis; and
5. Decide whether to accept or reject the accused's confession.

The court's warning to the accused is a critical step since it is one of the elements of the defendant's voluntary confession, which ensures that the accused's rights are preserved. In addition to being required by law, efficient justice is required since the reality of our criminal justice system is still creating a backlog of cases and, on the other hand, there is still insufficient funding for case handling expenses. As a result, a solution (*ius constituendum*) is required, and Plea Bargaining is the solution. When we look at the idea of the Criminal Procedure Bill, we do not find the phrase Plea Bargaining in the draft, but there is a specific Line term in the Criminal Procedure Bill.

The following are the distinctions between the Criminal Procedure Bill's unique path and Plea Bargaining:¹³

1. Removal of access to conversations (bargaining process) between the prosecution and the defendant over the length of the sentence and the kind of charges to be brought against him.
2. The active participation of the judge in the trial (special prosecutor) separates it from plea bargaining (passive judge since a case is regarded as a disagreement between the state and the accused in the adversarial system).
3. In a trial, the accused confesses on a particular line in front of the court, but in a plea deal, the confession is carried out in front of the public prosecutor.
4. In the unique pathway, there is a restriction on the offenses that may be addressed through this route, which is cases under 7 (seven) years, but in Plea Bargaining, all sorts of penalties, including the death penalty, can be carried out.

¹² Ruchayah. (2020). *Urgensi Plea Bargaining System dalam Pembaruan Sistem Peradilan Pidana di Indonesia: Studi Perbandingan Plea Bargaining System di Amerika Serikat*. Jurnal Hukum Ius Quia Iustum 27(2). doi: 10.20885/iustum.vol27.iss2.art9, hlm. 404-405

¹³ Bagaskoro, Ladito. (2021). *Rekonseptualisasi Jalur Khusus dalam Rancangan KUHAP sebagai Bentuk Reformasi Sistem Peradilan Pidana Indonesia*. Jurnal Arena Hukum 14(1). doi: 10.21776/ub.arenahukum.2021.01401.10, hlm. 196.

As a result, the modification of the plea bargaining concept in the Criminal Procedure Bill does not necessarily change the entire order of the criminal justice system that currently exists but will provide its own space in criminal justice, particularly in solving criminal cases threatening no more than seven years in prison efficiently and quickly and supported by the defendant's guilty plea as a basis for judges to gain confidence in deciding cases.

Urgency Of Plea Bargaining In The Renewal Of The Indonesian Criminal Justice System

Paragraph (1) of Article 28D of the 1945 NRI Constitution states, "Every Person has the right to be recognized, assured, protected, to have just legal certainty, and to be treated equally before the law." According to these provisions, the Indonesian people have the right to fair legal certainty and equal treatment before the law in all aspects of their lives, including, as the author focuses on in this paper, the right to fair legal certainty in all processes/stages of resolving criminal cases. One is the right to legal certainty based on the case's viability.

A competent criminal justice process may undoubtedly carry out a criminal justice process in a timely, simple, and low-cost manner while still paying regard to the ideals of justice. "According to M. Najih, progressive laws must embody a sense of justice in society."

Because, of course, if a criminal justice process is completed swiftly and efficiently, everyone who is a suspect/defendant in a specific crime will have legal assurance in the procedure and continuation of the case he experienced. This will impact the expenses litigants bear during the court process, resulting in low-cost criminal justice systems.¹⁴

Law is made for man, not the other way around. It is also vital to pay attention to contemporary demands that have not been answered in the regulations connected to the reform of the criminal justice process in Indonesia. According to John Rawls, the main virtue of the presence of social institutions is fairness. According to Rawls, the good for the whole community cannot override or interfere with the feeling of justice of everyone who has earned a sense of justice, even the weak. Rawls specifically established the notion of justice principles by extensively using his concepts known as the original position and the veil of ignorance. Rawls attempted to position the situation equitably and evenly among all members of society, with neither party having a more significant position than the other regarding the position, social standing, degree of intelligence, aptitude, strength, and so on. As a result, these individuals may reach balanced agreements with other parties.

Rawls refers to such conditions as the default position, which is based on the concept of reflective equilibrium based on the traits of reason, freedom, and equality to manage society's basic structure. According to this view, equality must be implemented in law enforcement in order to achieve justice, one of which is social justice. In certain criminal acts, the provision of space to resolve a criminal case through an out-of-court case resolution mechanism is a model that needs to be given in the formation of new norms of criminal procedure law as an effort to reform the criminal justice system in Indonesia for the realization of social justice for all Indonesians.¹⁵

Article 28D paragraph (1) of the 1945 NRI Constitution explains that "every Indonesian citizen has the right to fair legal certainty and equal treatment before the law." This provision includes that every suspect/defendant in a criminal act must get fair legal certainty in every process/stage of solving criminal cases, including the right to get legal certainty from continuing the case he experienced. Article 4 paragraph (2) of Law No. 48 of 2009 concerning Judicial Power states that the judicial process must be carried out quickly. At a low cost, but based on the issues described in the previous sub-chapter, the criminal justice system has yet to realize a simple, quick, and low-cost judicial process. The complexity of the criminal justice process in Indonesia now prevents simple, quick, and low-cost judicial

¹⁴ Ruchoyah, *Op. Cit.* hlm. 395.

¹⁵ Suheri, Ana. (2018). *Wujud Keadilan dalam Masyarakat Ditinjau dari Perspektif Hukum Nasional*. Jurnal Mortality, 4(1), hlm. 62.

implementation from being accomplished in the criminal justice process in Indonesia. In this case, there is a need for a renovation of Indonesia's criminal justice system. This is the legal basis for the urgent need to establish Plea Bargaining in Indonesia.

The concept of plea bargaining has been recognized by the Indonesian criminal justice system as an effort to achieve effective and efficient criminal justice, among other things:

First, it can be found in the provisions of Article 10A of Law Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning Witness and Victim Protection Institutions (LPSK Law). In essence, the provision intends to provide leniency to witnesses who are also suspects in the same case so that the judge can consider their testimony in mitigating the crime to be imposed. However, the provision's regulation has not explicitly regulated how protection and rewards can be given to witnesses/victims.

Second, whistleblowers are addressed in SEMA Number 4 of 2011 about Treatment for Whistleblowers and Justice Collaborators in Certain Criminal situations, which essentially provides rules for dealing with situations involving whistleblowers. According to the SEMA, a person is a whistleblower if he is a party who knows about and reports certain illegal activities and is not one of the perpetrators of the crime he reveals. According to Article 10A of the LPSK Law, the presence of whistleblowers has no place in the judicial system. In truth, if a witness who is also a suspect in the same case is found legally and conclusively guilty, he cannot be freed from criminal charges. However, the judge can consider his evidence to lessen the offense to be imposed. This was referred to as a whistleblower or complaint by Mardjono Reksodiputro. As a result, whistleblowers are sometimes also engaged and play a little role in the crime, making this ineffective.¹⁶

Third, there is the justice collaborator (the cooperative perpetrator witness). The notion is also included in SEMA Number 4 of 2011 about the Treatment of Whistleblowers and Justice Collaborators in Certain Criminal instances, which essentially sets rules for dealing with instances involving Justice collaborators. According to the SEMA, a person can be considered a justice collaborator if he is one of the perpetrators of certain criminal acts, confesses to the crime he committed, is not the main perpetrator, and testifies as a witness in the judicial process. Whistleblower and justice collaborator are terms comparable to the plea bargaining system in that all three are kinds of confession / supplying information in criminal conduct for specific goals. However, there are significant differences in practice and success in achieving an effective and efficient judiciary across the three.

Fourth, police investigators have discretion. Article 18 paragraph (1) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia states that in the public interest, officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities may act according to their judgment. Discretion is described as independence and the capacity to make sensible decisions to take activities judged suitable or in conformity with the context and conditions faced. Discretion is the freedom to make judgments in any scenario based on one's judgment. In layperson's terms, discretion is the authority to pick instances. In this scenario, discretion is exercised over the subjective judgment of the police themselves to determine whether or not a case may proceed to trial hence there is no apparent legal certainty surrounding the exercise of such discretion.

Fifth, Prosecutor's Regulation Number 15 of 2020 Concerning Termination of Prosecution Based on Restorative Justice, states that the Prosecutor's Office of the Republic of Indonesia, as a government institution that exercises state power in the field of prosecution, must be able to realize certainty of law, legal order, justice, and truth based on law, and must heed religious norms, decency, and decency, and must explore human values, law, and justice that live in community. A legal need of the community and a mechanism that must be built in the exercise of prosecution authority and the renewal of the criminal justice system is the resolution of criminal cases by prioritizing restorative justice, which

¹⁶ Nixson et al., (2013) *Perlindungan Hukum terhadap Whistleblower dan Justice Collaborator dalam Upaya Pemberantasan Tindak Pidana Korupsi*. USU Law Journal 2(2), hlm. 41.

emphasizes restoration to its original state and the balance of protection and interests of victims and perpetrators of criminal acts that are not oriented towards retaliation.

Another sociological condition is that there are several challenges in implementing criminal justice in Indonesia, such as the duration of the case resolution process, the high expense of resolving cases, and the accumulation of criminal cases in the courts that never end. The problem of stacking cases within the scope of the criminal justice system in Indonesia may be observed in the data gathered by the author from the Website or the official Website of the Supreme Court. According to the statistics, there are still instances in 2017 that need to be addressed in the next year, namely 2018. In 2017, 132,070 cases remained to be handled in 2018, with 6,123,197 additional cases submitted in 2018. Thus, the total number of cases to be decided by the Supreme Court and its subordinate tribunals in 2018 was 6,255,267. In 2019, there are still instances that could not be settled in 2018, particularly 133,813 cases that must be resolved again in the current year, 2019. According to the data, Indonesia's criminal justice system is not yet functional or efficient.

Because law is constantly in the process of continuing to be (law as a process, law in the making), there must be an update in the area of law to accomplish the aim of law. The spirit of legal reform that prevails in Indonesia is eager to improve legal development circumstances. Sunaryati Hartono argued that law, as a tool, is a method and measure taken by the government to construct a national legal system to realize the nation's objectives and the state's aims.

Mochtar Kusumaadmadja remarked that reform might be accomplished by legislation, court rulings, or a mix of the two and that "the law must be a means of development" that would be included in national legal development strategies in the future. Criminal law reform is one of the measures to achieve societal welfare as well as the aims of the law itself. Criminal law politics is a weapon the state uses to fulfill the purposes and functions of the law in society.¹⁷ According to Mahfud MD, legal politics should be viewed as a weapon that operates inside a particular social and legal structure to attain a society's or state's aims.¹⁸

Criminal law reform is essentially a component of criminal law policy. Criminal law reform, as part of criminal law policy, strives to improve criminal legislation in conformity with societal norms. Criminal law reform in Indonesia is carried out as a strategy to develop the best legislation to control, maintain, and maintain consistency in the implementation of state concepts and ideals, as well as to ensure that the relevant criminal law is in agreement with Indonesian people's values.

Muhammad Najih's book "The Politics of Criminal Law" categorizes criminal law politics into numerous areas and scopes, including criminal justice policy. This is consistent with the critical importance of changing the criminal justice system to achieve effective and efficient criminal justice. The duration of the case resolution procedure, the high expense of resolving cases, and the piling of criminal cases in court that never end are all issues in implementing criminal justice in Indonesia. Indonesia's criminal justice system is being reformed by incorporating plea bargaining.

CLOSING

The application of Plea Bargaining in the current criminal justice system is not based on the value of justice. Article 4 paragraph (2) of Law No. 48 of 2009 concerning Judicial Power mandates that the judicial process must be carried out quickly and at low cost, but rather on the problems that the author described in the previous sub-chapter, the implementation of the criminal justice process has not been able to realize a simple judicial process to this day. "This is the legal basis for the urgent need to establish Plea Bargaining in Indonesia. The administration and legislature should promptly rewrite Law No. 48 of 2009, which governs

¹⁷ Farida, Any. (2016). *Teori Hukum Pancasila sebagai Sintesa Konvergensi Teori-Teori Hukum di Indonesia*. Jurnal Perspektif 21(1). doi: 10.30742/perspektif.v21i1.176, hlm. 63.

¹⁸ Ansori, Lutfil. (2018). *Reformasi Penegakan Hukum Perspektif Hukum Progresif*. Jurnal Yuridis 4(2). doi: 10.35586/.v4i2.244, hlm. 150.

judicial power. In plea bargaining, paying attention to the approach of restorative justice ideals should be essential. The judge is obliged to the ideals predominate objectively in society, not merely his sense of personal fairness. The government must ensure the safety of all judges on the job. The well-being of judges should be prioritized, especially for justices in outlying districts. They are increasing facilities and infrastructure to facilitate future judging performance.

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