The Seybold Report

ISSN 1533-9211

DOI 10.17605/OSF.IO/YH7ES

PLEA BARGAINING IN THE DRAFT INDONESIAN CRIMINAL PROCEDURE CODE

MUH. ZUHUD AL KHAER ZAHIR

Hasanuddin University, Indonesia. Email: muhzuhudalkhaer@gmail.com

ANDI MUHAMMAD SOFYAN

Hasanuddin University, Indonesia. Email: andimuhammadsofyan@unhas.ac.id

SYAMSUDDIN MUCHTAR

Hasanuddin University, Indonesia. Email: syams.muchtar@gmail.com

Abstract

This study aims to analyze the urgency and form of legal politics of the Plea Bargaining System in the Draft Criminal Procedure Code. The type of research used is normative legal research. Legal research methods focus on studying legal issues on issues of norms. This approach will focus on examining legal reality from the point of view of a legal substance that regulates or is still being drafted. The results of the study show that (1) The urgency of the plea bargaining system in the Draft Criminal Procedure Code can be seen in several countries that have successfully implemented it with different models and methods such as France and Germany, plea bargaining in the Draft Criminal Code (Special Line) does not apply this method, but emphasizes that plea bargaining only eases demands and speeds up the proceedings. The plea bargain is expected to reduce the burden of cases going to court to speed up the judicial process. Give awards to defendants who admit their guilt; meet the needs of the accused and the public prosecutor; as well as save time and costs. (2) The form of plea bargaining system in its implementation in the Draft Criminal Procedure Code is outlined in Article 199 of the Draft Criminal Code with the nomenclature of Special Tracks, offering the concept of a plea bargaining system with a maximum sentence of not more than 7 (seven) years as an option in accelerating the settlement of cases. The benefits of implementing plea bargaining are 1). Reducing the Burden of Cases in Court; 2). Providing relief for the accused who admits his actions; and 3). Facilitate Public Prosecutors.

Keywords: Political Law, Plea Bargaining System, Draft Criminal Code, Special Line

1. INTRODUCTION

A fair justice system (fair trial) is one indicator of the development of a just society and legal system. The right to fair and impartial treatment is part of human rights and the constitutional rights of citizens. This is reflected in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) Chapter XA concerning Human Rights, in Article 28D paragraph (1) it is stated that every person has the right to recognition, guarantees, protection, and fair legal certainty, as well as treatment equal before the law. Various international instruments have also been ratified to adjust to developments in law and human rights at the international level. Without the application of the principle of a fair trial, citizens' rights before the law are not fulfilled, as stipulated in the constitution so in carrying out their obligations the state forms derivative regulations and institutions to carry out these rights.

In more specific norms, the fulfillment of citizens' rights to a fair trial is contained in the

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/YH7ES

principles that apply to the Criminal Justice system in Indonesia, which are normatively contained in Law Number 48 of 2009 concerning Judicial Power. The principles that apply in the Criminal Justice System in Indonesia aim to protect the rights of citizens as part of the legal and judicial system. Law Number 8 of 1981 Concerning Criminal Procedure Code or better known as the Criminal Code (KUHAP), is a manifestation of the state's efforts to design and create a criminal justice system model, by placing the Criminal Procedure Code as the main legal basis for implementing criminal justice system in an integrated manner, in addition to special provisions in other laws that complement the Criminal Code.

As the main foundation in the implementation of the Criminal Justice System in Indonesia, one of the objectives of issuing the Criminal Code is to protect human dignity. In the Guidelines for the Implementation of the Criminal Code, the objectives of the Criminal Procedure Code have been formulated, namely: "To seek and obtain or at least approach the material truth, namely the complete truth of a criminal case by applying the provisions of the Criminal Procedure Code honestly and appropriate, to find out who the perpetrators can be charged with committing a violation of the law, and then request an examination and decision from the court to determine whether it is proven that a crime has been committed and whether the accused person can be blamed."

The purpose of this Criminal Procedure Code can be seen as being in line with the function of law according to Van Bemmelen, namely seeking and finding the truth, making decisions by judges, and implementing decisions. (Mulyadi Lilik, 2007) . One of the efforts that must be carried out so that the objectives of the Criminal Procedure Code as mentioned above are achieved, is the implementation and application of the Criminal Code must be guided by the principles and principles that have been established as guidelines and guidelines for implementation in the field. Among these principles are: the principle of presumption of innocence, the principle of a written order from those in authority over all actions and coercive measures, as well as the principle of justice carried out simply, quickly, and at low cost (content justice).

Fulfillment of citizens' human rights is not only limited to administering justice properly, correctly, and fairly (due process of law), but more than that, there is a need to design and organize a justice system that is by the social, economic, and cultural conditions of society which are constantly evolving. Rapidly. Among these needs is how to design a justice system that is efficient and effective, just, and capable of guaranteeing legal certainty for citizens.

Reducing or making the case process more efficient in terms of criminal procedural law in Indonesia is a definite step in terms of preparing for a new era in the criminal procedural justice system. The problem in criminal procedural law that is often faced is the large accumulation of cases and the time burden which tends to be long resulting in the process of settling cases in the criminal justice system in Indonesia being less effective and efficient. The length of the criminal justice process in Indonesia to this day has resulted in the principle of simple, fast, and low-cost judicial implementation as mandated by Article 4 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power which has not been consistently realized.

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/YH7ES

Therefore, an idea for a solution to this problem is needed which is outlined as a reform of criminal procedural law in Indonesia. This form of renewal can be carried out by adopting other countries' procedural law systems that are relevant and suitable for application in Indonesia. Consolidation regarding the solutive idea of the judicial procedural system has long been rolling among academics and legal practitioners. This can be seen from the inclusion of the idea of a "Plea Bargaining System "in the Draft Criminal Procedure Code proposed by the government and included in the 5-year Prolegnas. The Plea Bargaining System is considered successful in solving the problem of accumulation of cases and speeding up the process and is considered more efficient in resolving cases in the United States.

Plea Bargaining has historical roots dating back to the 18th century in England and the 19th century in the United States (US). However, when it was developed, it was not called plea bargaining, but a quality plea or an admission of guilt. In the United States, plea bargaining has been routinely practiced by prosecutors and defendants since the late 19th and early 20th centuries, although at that time there were no regulations that regulated it in detail. This practice was carried out because of the increasing number of cases handled by law enforcement, as well as the lengthy trial process, especially if the defendant submits a legal action. Plea bargaining only received recognition in 1970 when the court decided the Brady vs United States case.

Plea bargaining in the US is carried out by the prosecutor and the defendant or attorney. Negotiations between the two can be carried out by telephone, in the prosecutor's office, or the courtroom. However, both negotiations were carried out without the involvement of judges. The agreement between the two can be in the form of the prosecutor: 1) not indicting or indicting the defendant for a lesser crime; 2) the judge recommends the sentence to be imposed; 3) agreeing with the defendant for the imposition of a certain sentence. The judge is not bound to decide by the agreement between the prosecutor and the defendant or his attorney.

Criminal cases in the United States can be resolved through the Plea Bargaining mechanism so that criminal justice in the United States can realize effective and efficient criminal justice. The success of the US in using plea bargaining to achieve efficiency and speed in criminal justice has inspired jurists and members of parliament in various countries. Plea bargaining is ideally a form of negotiation between the Public Prosecutor and the Defendant who admits his crime so that the sentence is lighter and that the process is fast. This conception was then tried to be brought to Indonesia by including it in the Draft Criminal Code as a form of criminal procedural law reform to realize the principle of a fast, efficient, and light trial.

Plans to revise the Criminal Procedure Code (KUHAP) and the Criminal Code (KUHP) some time ago drew a lot of media coverage. These two law revision agendas were pushed by the Government, specifically by the Ministry of Law and Human Rights. Since being enacted, the Criminal Procedure Code has been in force since 1981, meaning that it has been in effect for 42 years, therefore in practice the Criminal Procedure Code has received many material tests that have reached the Constitutional Court so that reform of the deficiencies in the Criminal Code needs to be carried out, one of which is in terms of acceleration of the case process to reduce the burden of cases left behind.

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/YH7ES

In the Draft Criminal Procedure Code (RKUHAP) there are several new provisions drawn up by the government to accommodate the dynamics and legal needs of society. One of them is contained in Article 199 RKUHAP as an effort to shorten and speed up the procedural procedures in criminal cases in court. In the academic text of the Draft Criminal Code, it is stated that there is a plea bargaining mechanism that is entitled to a special pathway in the settlement of criminal cases. In Article 199 of the Draft Criminal Code, it is stated that the concept of a plea bargaining mechanism is that when the Public Prosecutor reads out an indictment where the criminal threat charged is no more than 7 years in prison and the defendant admits all of his guilt, the Public Prosecutor can transfer the case to a brief examination session.

Study of the plea bargaining system must be examined in depth because Indonesia's criminal and criminal framework and criminal responsibility are certainly different from the United States. In terms of the legal system, it is very different, where the United States adheres to common law, while Indonesia tends to a civil law legal system. A Criminal is a punishment/sanction imposed intentionally by the state, namely through a court where the penalty/sanction is imposed on someone who has legally violated the criminal law and the sanction is imposed through the criminal justice process. The criminal justice process is a structure, function, and decision-making process by many institutions such as the police, prosecutors, courts, and correctional institutions about the handling and trial of crimes and perpetrators of crimes.

Punishment is sentencing as a legal effort based on the law to impose sanctions on someone who through the criminal justice process has been legally and convincingly proven guilty of committing a crime. So the criminal talks about the punishment and the punishment talk about the process of imposing the sentence itself. The theoretical framework above needs to be linked to synchronization between the plea bargaining system concept that is to be adopted and the foundations and theories that exist in Indonesia. Based on the description above, this discussion focuses on how the concept of a plea bargaining system will be adopted by Indonesia in the Draft Criminal Code and what is the urgency of its application in Indonesia.

This is what underlies the author's want to examine further by conducting research on the Plea Bargaining System in the Draft Criminal Procedure Code. With the hope that there will be results that provide concrete solutions to all problems of criminal procedural law, especially in the adoption of the concept of plea bargaining which is included in the Draft Criminal Code with the name "Special Track".

2. METHOD

This writing uses a type of legal research with a normative approach, namely focusing on the study of legal issues on issues of norms. This approach will focus on examining legal reality from the point of view of the substance of the governing law. This means that the root of the legal issues related to this research will be emphasized in terms of the system of norms, not the effectiveness of implementation. Normative legal research includes studies on (a) legal principles; (b) Legal systematics; (c) Legal synchronization level; (d) Comparative law, and (e)

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/YH7ES

Legal history. One example is what Sumitro put forward, namely research in the form of an effort to find a lawyer that is appropriate to a particular case.

The collection of legal materials in this research will be carried out through library research, namely legal materials will be collected, both primary, secondary, and tertiary. These legal materials can be in the form of official documents, reports, or publications in print or electronic form.

3. RESULTS AND DISCUSSION

3.1 Plea Bargaining Concept

Indonesia is a country that tends to adopt a civil law legal system, while the concept of a plea bargaining system is purely a legal concept adopted by common law countries. Therefore, it is necessary to have an in-depth discussion on the convergence of the legal system between common law and civil law.

In its development, countries have done a lot of convergence so for now it cannot be said to be a phenomenon. The legal system between common law and civil law has combined, borrowed from each other, and used concepts from other legal systems. So to explore the convergence of several countries, it is necessary to see a compare of countries from countries that have converged.

a) French

Plea bargaining in France was introduced in 2004 and has drawn various arguments and debates because it is considered to be detrimental to the principle of the presumption of innocence and also the right to be tried in a fair and reasonable trial (due process of law).

The introduction of a limited form of bargaining application (comparison sur reconnaissance préalable de culpabilité or CRPC, often shortened as more plaid coupable) in 2004 was highly controversial in France. Under this system, the public prosecutor can propose to suspects of crimes that carry relatively minor sentences not exceeding one year in prison, an 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 of defense, the longstanding constitutional right to the presumption of innocence, the rights of suspects in police custody, and the right to a fair trial (Siregar, 2019).

Robert Badinter pointed out the risk if plea bargaining is enforced in France, namely, it will be dangerous if this system will be used by the defendant to avoid a more severe sentence. “For example, Robert Badinter argues that plea bargain would give public prosecutors too much power and would encourage defendants to accept sentences simply to avoid risking a bigger sentence in court, even if they don't deserve one. Only a small proportion of criminal cases were resolved by the plea bargaining method in 2009, 77,500 out of 673,700 or 11.5% of decisions by correctional courts”.

Stephen C. Thaman stated: In France, the public prosecutor will make sentencing recommendations after the defendant's admission of guilt. The aim of accelerating justice to

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/YH7ES

make it more efficient can also be noted in 2009, around 77,500 cases (11.5%) were completed through plea bargaining out of a total of 673,700 cases.

b) German

The concept of Plea Bargaining in Germany is known as Deal (Absprache). The deal process is carried out in secret outside the judicial process. In its development, Plea bargaining (Deal) was included in the Code of Criminal Procedure in 2009. Then the regulation was reviewed and it was decided that the article governing the implementation of Plea bargaining was declared conditionally constitutional with a note that if there are deviations in its implementation, the legislators can change or Eliminate the Plea Bargaining process. The high use of deals in Germany is due to the inability of the judiciary to handle a large number of cases (delinquent cases) as well as the increasing number of regulatory developments and the difficulty in proving a case.

The deal is a process of negotiation between the public prosecutor and legal counsel and involves a judge to provide leniency and replace a lower indictment article (by the public prosecutor). The deal process is carried out outside the judicial process in secret.

The purpose of carrying out this process is to facilitate proof. In 1997 the German Supreme Court decided that the Deal could be carried out by providing additional conditions, namely: (1) The judge may reduce the sentence but if in the process of proving there are other things the reduction of sentence may not be carried out; (2) The accused is obligated to follow the negotiation process (both internally and externally) and the results are published before the court; (3) In cases of decency involving the participation of the victim; (4) The court may not enter into negotiations that cause the defendant to lose his rights.

From the explanation above, it is explained that the convergence of the legal systems carried out by France and Germany to reduce the number of cases that have accumulated in the courts with different implementation methods adapted to the circumstances of the country that is trying to implement it and according to the needs of the country. This can be seen from the emphasis or acceleration of settlement of the number of cases that occurred in France in 2009 with a fairly high rate of 11.5% or 77,500 cases using the plea bargaining method of settling cases out of a total of 673,700 cases. Similar to Germany, which uses plea bargaining or the name of a deal as a solution to the high number of arrears in cases or the accumulation of cases, moreover there are more and more regulatory developments and also difficulties in proving a case.

In terms of the application mechanism between France and Germany using a different technical pattern, this can be seen in France with the technical method 1). Offered by the prosecutor; 2). The defendant's threat does not exceed 1 (one) year; 3). The judge must accept. Then Germany with method 1). The judge may decide to reduce the sentence, but if there is doubt, the judge may not do so (independence of judges); 2). The accused is obliged to participate in the negotiations; 3). The results of the negotiations are published in court; 4). In cases of decency, the victim must be involved; 5). Does not reduce the rights of the accused; 6). The negotiations involve judges.

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/YH7ES

3.2 Plea Bargaining (Special Line) in the Draft Criminal Code and the Urgency of Its Implementation

In the Indonesian context, which is still in the drafting process, it also carries a different technical mechanism but with the same substance or is still in the corridor of the need to accelerate the judicial process and reduce the number of accumulated cases. The Draft Criminal Procedure Code includes a plea bargaining mechanism with the Special Track nomenclature in CHAPTER XII Concerning Examination in Court Sessions, Part Six, Special Track Article 199 of the Draft Criminal Code explains that:

1. When the public prosecutor reads out the indictment, the defendant admits all the acts he was charged with and admits guilty of committing a crime with a criminal penalty of not more than 7 (seven) years, the public prosecutor can transfer the case to a brief examination procedure hearing.
2. The confession of the accused is outlined in the minutes signed by the accused and the public prosecutor.
3. Compulsory Judge:
    a. notify the defendant regarding the rights he has relinquished by giving the confession as referred to in paragraph (2);
    b. notify the defendant regarding the duration 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 meant in paragraph (2) if the judge is in doubt about the veracity of the defendant's confession.
5. Excluded from Article 198 paragraph (5), the sentence imposed on the defendant as referred to in paragraph (1) may not exceed 2/3 of the maximum sentence for the crime charged.

It can be concluded from the substance of the article above that from the description between France, Germany, and Indonesia, which are still in the draft stage, there are differences, namely: 1). The accused pleaded guilty to all the acts charged and pleaded guilty; 2) The sentence of imprisonment is not more than 7 (seven) years; 3). The judge is obliged to notify the rights of the accused who has been released, inform about the length of sentence that may be imposed, and ask whether the confession was given voluntarily; 4). Judges can reject confessions if there is doubt; 5). In terms of imprisonment for a maximum of 3 (three) years, it may not exceed 2/3 of the maximum sentence for the crime charged.

It can be concluded that in the plea bargaining concept, there is negotiation or bargaining. However, the Draft Criminal Code does not apply this method but emphasizes how plea bargaining only eases demands and speeds up the proceedings. For this reason, a plea bargain is here with the hope of reducing the burden of cases going to court (appeal, cassation) to speed up the judicial process. Give awards to defendants who admit their guilt; meet the needs of the accused and the public prosecutor; as well as save time and costs without eliminating the

The Seybold Report
ISSN 1533-9211
DOI 10.17605/OSF.IO/YH7ES

purpose of punishment. Thus, plea bargaining is an innovation for the effectiveness of governance and legal compliance in the judicial process.

This is in line with data During the January-July 2022 period, the Supreme Court handled 18,753 cases, an increase of 54.70% compared to the same period in 2021 which totaled 12,122 cases. Of the total caseload, 32.87% (6,165) were special criminal cases, 27.21% (5102) stated administrative cases, 21.68% (4066) were civil cases, 7.08% (1327) were civil cases specifically, 5.47% (1025) general criminal cases, 4.52% (848) civil religious cases, and 1.17% (220) military criminal cases. Meanwhile, the number that was successfully decided by the Supreme Court in the January-July 2022 period was 13,801 cases. This number increased by 54.09% compared to the same period in 2021 which amounted to 9,195 cases.

4. CONCLUSION

The concept of the plea bargaining system in the Draft Criminal Procedure Code is to look at the convergence success of countries that have tried it first, namely France and Germany, and are considered successful. However, in terms of the concept of the application contained in the Draft Criminal Code, plea bargaining involves negotiation or bargaining. The Draft Criminal Code (Special Line) does not apply this method but emphasizes how plea bargaining only eases demands and speeds up the proceedings. Plea bargain comes with the hope of reducing the burden of cases going to court to speed up the judicial process. Give awards to defendants who admit their guilt; meet the needs of the accused and the public prosecutor; as well as save time and costs.

Bibliography

1. Alschuler, AW (1979). Plea Bargaining and Its History. Law & Society Review, 13 (2), 211.
2. Atmasasmita, R. (2010). Contemporary Criminal Justice Systems, 1–385.
3. Fishert, G. (2000). Plea Bargaining's Triumph. The Yale Law Journal.
4. Iswara I Made Agus Mahendra. (2017). Strengthening the Prosecutor's Office in Handling Criminal Cases through Ple Bargaining. Faculty of Law Mahasaraswati Denpasar University . Retrieved from http://www. Hukumonline.com/index.php/b
5. Mulyadi Lilik. (2007). Indonesian Criminal Procedure Code. A Special Review of Indictments, Exceptions, and Trial Decisions.
6. Mulyono Bambang. (2000). Criminal and Punishment.
7. Nasution Bahder Johan. (2008). Legal Science Research Methods.
8. Siregar, NO (2019). Plea Bargaining in the Criminal Justice System in Several Countries. The Face of Law, 3 (1), 1. University of Batanghari, Jambi.
9. Turner I Jenia. (2019). Plea Bargaining Across Borders. Aspen Publishers.