

The Role of The Prosecutor in Implementing The Concept of Plea Bargaining in The Indonesian Prosecution System

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Abstract. *For prosecutors, the concept of plea bargaining presents both an innovation and a solution, as well as a challenge in its implementation due to adjustments to the Indonesian criminal justice system and the readiness of Indonesian legal structures to comply with the legal substance, legal philosophy, and legal principles adopted by the Indonesian criminal justice system. This tension between the goal of efficiency and the demands of justice places plea bargaining in the shadow of justice and legal certainty in its application. The aim of this research is to find out and analyze (1) the mechanism of the plea bargaining system applied in several countries as a comparative perspective, (2) the role of prosecutors in implementing the plea bargaining system in the Indonesian criminal justice process, (3) legal construction problems that hinder prosecutors in implementing the plea bargaining system. The approach method used in this study is normative juridical. The specifications of this study are descriptive analytical. The data source used is secondary data. Secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. The research results and discussion can be concluded: (1) In the criminal justice system in the United States, a guilty plea or plea bargaining can occur during the “arraignment” and “preliminary hearing” periods or before the trial examination. However, before accepting a guilty plea or nolo contendere, the defendant must be placed under oath and the court must speak directly with the defendant in open court. (2) The role of the Public Prosecutor in the implementation of the Plea Bargaining mechanism is very important because the actors who have legal standing in the implementation of this system are only the public prosecutor and the defendant or his legal counsel. The public prosecutor will also notify the defendant regarding the waiver of his rights. (3) Some aspects of the problem of plea bargaining applied by the Prosecutor, one of which is that the defendant has the right to deny in the trial, which is an important point in the weakness of the application of this plea bargaining, the main weakness is the defendant's right to deny or*

remain silent regarding questions and crimes committed and the evidence that must be proven by the public prosecutor for the mistakes or crimes accused of him.

Keywords: *Plea Bargaining; Prosecution; Role of the Prosecutor.*

1. Introduction

As we know that Indonesia is a country based on law, this sentence is clearly stated in Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia, where this sentence broadly means that Indonesia is a country that adheres to the concept of a state based on law.¹ where the law is inherent in society, which is a hope to continue to develop and continue to adapt to all kinds of changes that will occur.

This aligns with Roscoe Pound's theory of "Law as a tool of social engineering," meaning that law serves as a tool for societal reform. Our perspective on law enforcement in Indonesia inevitably involves discussions about law enforcement itself, particularly regarding issues within the country's criminal justice system.²

According to Mardjono, the Criminal Justice System (CJS) is a crime control system consisting of the police, prosecutors, courts, and correctional institutions. Mardjono further explained that the criminal justice system is a system within a society for addressing crime.³ The process of handling criminal cases is carried out in stages and through several stages such as investigation (Opsporing), prosecution (Vervolging), trial (Rechtspraak), implementation of the judge's decision (Executie), as well as supervision and observation of court decisions.⁴ All of these series are called the Criminal Justice System.

Meanwhile, the purpose of punishment is a crucial part of criminal law, not only in Indonesia but throughout the world. This is because the development of a nation's civilization is determined, among other things, by the extent to which

¹Andi Pradikta Alvat. Politics of Law Human Rights Protection in Indonesia, Jurnal Daulat Hukum, 2 (4) December 2019, p. 513

²Novianti Pratiwi. Implementation of the Plea Bargaining System into the Reform of the Criminal Justice System for Corruption Crimes. Scientific Study of Law and State (KIHAN). 2 (2) 2023, p. 79

³Mardjono Reksodiputro, The Indonesian Criminal Justice System (Looking at Crime and Law Enforcement within the Boundaries of Tolerance), FH UI, Jakarta, 1993, p. 1.

⁴Tolib Effendi, The Principle of Opportunity in the Indonesian Criminal Justice System, in the book Anthology of the Indonesian Prosecutor's Office, Publishing House of the Faculty of Law, University of Indonesia, Jakarta, 2015, p. 322.

that nation treats its convicts. Therefore, it can be said that the purpose of punishment reflects a nation's philosophy.⁵

As part of the criminal justice system, one of the most important processes is the prosecution process. The institution that carries out the prosecution process in Indonesia is the Prosecutor's Office. The Prosecutor's Office holds a central position and strategic role in a state governed by the rule of law, particularly in the Indonesian Criminal Justice System, as it acts as a filter between the investigation and the examination process.⁶ That the Prosecutor's Office determines whether or not a court case will be escalated (case controller or *Dominus litis*).

The Prosecutor's Office plays a crucial role in determining the number of cases that must be handled by judges, which influences whether or not cases have been decided in court. The Prosecutor's Office is an institution with comprehensive duties and authorities, but in actuality, the Prosecutor's Office has a central role as controller of the case process (*dominus litis*) while also facing various interrelated problems in Indonesian criminal justice among other sub-systems of the criminal justice system, such as:

- 1) Case backlog, the accumulation of criminal cases at various levels, including the Prosecutor's Office, Police and Courts;⁷
- 2) The high costs of criminal proceedings in court, accompanied by the long process of resolving cases;⁸
- 3) The "Prison-Centric" paradigm, which involves excessive use of criminal law (over-criminalization) and tends to send perpetrators to prison, whereas philosophically the option of imprisonment should be the last resort (*ultimum remedium*);⁹

The Prosecutor's Office, as the case controller, plays a significant role in addressing these criminal problems by implementing a system concept that can create an effective and efficient justice system without compromising the

⁵Romli Atmasasmita. *Selected Chapters on Criminal Law and Criminology*. Bandung: Mandar Maju, 1995, p. 90

⁶Marwan Effendi, *Indonesian Attorney General's Office; Its Position and Function from a Legal Perspective*, Gramedia Pustaka Utama, Jakarta, 2005, p. 2.

⁷I Made Agus Mahendra Iswara. *Strengthening the Prosecutor's Office in Handling Criminal Cases through Plea Bargaining*. *Journal of Advocacy*. 7 (1) 2017, p. 26

⁸Ruchayah, *Legal Problem Solving the Backlog of Criminal Cases in Indonesia Through the Adoption of the Plea Bargaining Concept to Realize Effective and Efficient Criminal Justice*. *Legal Spirit Journal*, 2 (2) 2018, p. 2.

⁹Ramdan Kasim. *Dehumanization in the Excessive Application of Criminal Law (Overspanning van het Straftrecht)*. *Jambura Law Review*, 2 (1) January 2020, pp. 3-5

essence of justice, legal certainty, and expediency. One such concept is the plea bargaining system.

Black's Law Dictionary states that "Plea bargaining is the process by which 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 a lesser offense or to only one or several of the counts of multi counts charged in return for a lighter sentence than that possible for the grave charge".¹⁰

Plea Bargaining System is a negotiation between the public prosecutor and the accused¹¹ or their defense attorney, whose primary motivation is to expedite the criminal case resolution process, thereby ensuring an effective and efficient process. The nature of the negotiation must be based on the defendant's willingness to admit their actions and the prosecutor's willingness to impose a lighter sentence. The plea bargaining system is similar to the idea of "restorative justice" already implemented in Indonesia. It is said to be similar because both systems apply the concept of resolution through deliberation.

Plea Bargaining System The plea bargaining system itself has been implemented in several countries and has been proven to resolve many cases filed in court, while also preventing costly litigation and time-consuming resolutions. Several countries have implemented the plea bargaining system, including the United States, where 95% of criminal cases are resolved using this mechanism. Therefore, criminal justice in the United States has been able to create an effective and efficient criminal justice system.¹²

The implementation of plea bargaining in the United States involves negotiations between the public prosecutor, the defendant, or legal counsel, regarding the type of crime for which the defendant will be sentenced and the potential penalty. A voluntary guilty plea from the defendant serves as a reference for the prosecutor in determining the potential penalty to be proposed at trial. This concept significantly reduces the time required for trials, resulting in a speedy and efficient process.¹³

Despite Indonesia's civil law tradition, which historically has not recognized formal plea bargaining, a tendency to adopt a similar spirit is beginning to

¹⁰Henry Campbell Black. Black's Law Dictionary: Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern. 11th Ed., West Publishing Company. Michigan, 1968. p 1037.

¹¹In some literature, the term "defendant" is found as in the Indonesian Criminal Justice System, in discussions of the Criminal Justice System in common law countries it is referred to as "accused". See: Ruchayah, Legal Problem ..Op.Cit, 2 (2) 2018, p. 3

¹²Romli Atmasasmita. Contemporary Criminal Justice System. Jakarta. Kencana Prenada Media Group, 2014

¹³Novianti Pratiwi. ImplementationOp.Cit. 2 (2) 2023, p. 80

emerge in various legal breakthroughs, such as restorative justice, criminal mediation, and recognition of the role of justice collaborators. In some cases, perpetrators who cooperate, provide complete information, or help uncover larger crimes are expected to receive more lenient treatment. However, in practice, the lack of clear regulations often gives rise to contradictions: defendants or justice collaborators who plead guilty and assist law enforcement are still sentenced to heavy sentences, often equal to or even heavier than those demanded by prosecutors. This situation demonstrates the gap between the idea of efficiency and the realization of justice, and also indicates the fragility of legal certainty when criminal "negotiation" mechanisms are implemented without an adequate normative foundation.

Although the concept of plea bargaining is not adopted in its entirety, the spirit underlying the Special Path, namely the defendant's admission of guilt as the basis for simplifying the process and positioning a lighter sentence as an incentive, indicates a paradigm shift towards a more pragmatic and efficiency-oriented case resolution model.¹⁴

The professionalism and integrity of the Prosecutor's Office in this context are crucial. Public expectations extend beyond the prosecutor's ability to firmly and consistently enforce the law, but also extend to their responsibility to protect the rights of defendants and victims, maintain a balance of interests, and ensure that any agreements reached do not disregard the principle of substantive justice. Without detailed normative guidelines and strict oversight mechanisms, the broad discretionary space in case negotiations can become fertile ground for disparate treatment, the potential for selective criminalization, or, conversely, veiled impunity for certain perpetrators of crimes. This is where concerns arise that the efficiency of law enforcement promised through plea bargaining could actually lead to a degradation of legal certainty and a violation of the public's sense of justice.

The presence of plea bargaining in the Indonesian criminal justice system is no longer a question of whether it will be implemented or not, but rather how to formulate it to maintain a balance between efficiency, justice, certainty and legal benefits.

For the Prosecutor's Office, the concept of plea bargaining presents both an innovation and a solution, as well as a challenge in its implementation due to adjustments to the Indonesian criminal justice system and the readiness of Indonesian legal structures to comply with the legal substance, legal philosophy, and legal principles adopted by the Indonesian criminal justice system. This

¹⁴Banan Prasetya, *Reconstructing the Regulation of Plea Bargaining Implementation in the Criminal Justice System Based on Justice Values*. Doctoral Program in Law, Unissula Semarang, Dissertation. 2022

tension between the goal of efficiency and the demands of justice places plea bargaining in the shadow of justice and legal certainty in its application.

2. Research Methods

Method Research is a method of working to understand the objects that are the target of the relevant science. A method is a guideline for how a scientist studies and understands the environments they are studying.¹⁵ Meanwhile, research is a method based on systematic methods and certain thoughts that aim to solve a scientific problem.

The normative legal approach is an approach based on primary legal materials by examining theories, concepts, legal principles, and laws and regulations related to this research. This approach is also known as the literature approach, namely by studying books, laws and regulations, and other documents related to this research.¹⁶

3. Results and Discussion

3.1. Plea Bargaining System Mechanism Applied in Several Countries as a Comparative Perspective

The development of the world of criminal law, particularly related to the criminal procedure system globally, especially after several United Nations (UN) Congresses were held which became the basis for changes in the orientation of criminal punishment, including in the 9th UN Congress in 1995, in supporting documents related to criminal justice management, it was revealed that all countries need to consider "privatizing some law enforcement and justice functions" and "alternative dispute resolution (ADR)" to overcome the problem of overload (piling up of cases) in the courts.¹⁷

Based on this development, when criminal law efforts (material) are being promoted, Indonesia should update its rigid and imperative criminal justice system into a criminal justice system that prioritizes the humanitarian aspect that upholds justice.¹⁸

Meanwhile, the purpose of punishment is a crucial part of criminal law, not only in Indonesia but throughout the world. This is because the development of a nation's civilization is determined, among other things, by the extent to which

¹⁵Soerjono Soekanto, *Introduction Legal Research*, Jakarta : UI Press, 1986, p. 14.

¹⁶Hilmi Azhar et al. Juridicial Review of Post-Group C Mining Activities in Kutai Kartanegara District, East Kalimantan. *Lex Suprema Journal*, 4 (1) March 2022, p. 911

¹⁷Barda Nawawi Arief. *Problems of Law Enforcement and Criminal Law Policy in Crime Prevention*. Jakarta: Kencana, 2007, pp. 82-86

¹⁸Lukman Hakim. Ika Dewi Sartika Saimima, Angreyani Hariyani Putri. *Application of the Concept...Op.Cit*, 2020, p. 1

that nation treats its convicts. Therefore, it can be said that the purpose of punishment reflects a nation's philosophy.¹⁹

The world is evolving rapidly. In the 21st century, humans have created numerous conveniences to support human life. However, in this increasingly modern era, many sectors of life must prepare to meet these developments. One of the most crucial is the legal field, where the perception of the law faltering in keeping up with the times is increasingly apparent. Therefore, legal academics should prepare and implement all necessary aspects to refute or minimize this adage.

A fair trial system is one indicator 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. The Indonesian criminal justice system conceptually consists of a series of stages starting from investigation, prosecution, court hearing, decision implementation, and supervision. At each stage, law enforcement agencies with interrelated functions are involved: the police, the prosecutor's office, the courts, and correctional institutions. Normatively, the operationalization of the criminal justice system emphasizes the implementation of statutory provisions to ensure legal certainty and justice in combating crime. However, in practice, the lengthy case resolution process, high costs, and the increasing volume of cases at all levels of the courts make it difficult to realize the ideal of a fast, simple, and low-cost justice system. Limited human resources and state budgets exacerbate this situation and place law enforcement officers under high work pressure, which, if not managed properly, can lead to a decline in the quality of law enforcement and open up room for irregularities.²⁰

The public has long been dissatisfied with legal services and judicial practices in Indonesia, due to lengthy processes and other factors. Yet, we all know that there are principles of speedy, simple, and low-cost justice. Speedy justice means a case is resolved quickly and without unnecessary delay, while simplicity means effective, efficient, and uncomplicated handling. Low-cost justice means a case can be resolved at a relatively low or affordable cost.

Based on comparative studies related to plea bargaining in the countries above, it can be understood that plea bargaining implemented in various countries is not always similar to the concept of plea bargaining in the United States as the country that initiated the concept.

In the world of criminal procedure today, there is a recognition of two distinct systems for handling criminal cases: the accusatory system and the inquisitorial

¹⁹Romli Atmasasmita. *Selected Chapters ... Op. Cit.*, 1995, p. 90.

²⁰Mardian Putra Frans, et al. *Plea Bargaining System, Deferred Prosecution Agreement, and Judicial Scrutiny as Efforts to Overcome Correctional Institution Overcapacity, Legal Perspective*, 24 (3), October 2024, p. 151

system. The former is better known as the Anglo-American Model, while the latter is better known and glorified in Europe, and is thus known as the continental model.²¹

It can be concluded that plea bargaining is essentially a negotiation between the public prosecutor and the defendant or their defense attorney. The most essential motivation for this negotiation is to expedite the criminal case process. The nature of the negotiation must be based on the defendant's voluntary admission to the prosecutor's or defense attorney's demands. The judge, acting as an impartial jury, is involved in the negotiation.²²

Although plea bargaining has been a long-standing practice in the handling of criminal cases in the United States, and has even achieved effectiveness in resolving 95% of cases submitted to the United States Court, Romli Atmasasmita argues that this does not mean that this system is without problems in both its conception and implementation. The problem lies not in whether this system is beneficial to the accused or to society, but rather in the implications between the accused's statement (of his guilt) and the trial itself in the scope of the ultimate goal of a process of sentencing someone who is clearly guilty. Constitutionally (according to the American Constitution) this system is considered to weaken the right to protect someone from statements or confessions that could be detrimental to someone in court, and the right to have the opportunity to face witnesses or the party submitting the complaint and the opportunity to obtain witnesses who are favorable to the accused. With this statement, the accused has lost his opportunity to be tried by a jury.²³

However, in fact, based on comparative studies, plea bargaining with all its concepts and mechanisms continues to have a positive influence on criminal justice in the United States and other countries, so that until now, this system is still maintained and continues to be developed with the aim of realizing an efficient and fast case handling process.

3.2. The Role of the Prosecutor's Office in Implementing the Plea Bargaining System in the Indonesian Criminal Justice Process

Expensive judicial practices and lengthy processes render the judiciary not only inefficient but also ineffective, especially with the large number of cases received, often leading to the process being solely focused on punishment. The paradigm of justice as a wastebasket has led to the seemingly trivial cases

²¹Aby Maulana, *Concept of Recognition ...Op.Cit*, June 2015, p 62

²²Romli Atmasasmita, *Justice System ...Op.Cit*, 2014, p. 118

²³Romli Atmasasmita, *Criminal Justice System, Existentialism and Abolitionism Perspective*, Bandung: Binacipta, 1996, p. 114

appearing to be a fixture in Indonesian criminal justice. The judiciary should have alternative channels and a system of elimination for processing cases.²⁴

Often, when handling a case, law enforcement officers are bound by the applicable criminal procedural laws and regulations. This causes law enforcement officers to always have a positivistic perspective, so that in practice, law enforcement officers always pay attention to all existing regulations in addition to looking at the elements violated by those suspected of having committed a crime. Another problem in the process of handling criminal acts is the existence of the inquisitor paradigm,²⁵ the presumption of innocence paradigm²⁶ and the premium remedium paradigm²⁷ which always looms, resulting in the handling of cases and the application of laws and regulations being rigid and overly normative, resulting in a backlog of cases in court.

Observing this condition, if left unchecked, it can certainly have a negative impact on the criminal justice system, so it is necessary to make changes and legal updates, one of which is by adopting the Plea Bargaining System so that effective and efficient justice can be realized.

Looking at the historical development of the criminal justice system, the admission of guilt has long been known since ancient times and has even become a strong basis for judges to decide a case, but along with the development of the times, this admission of guilt has received a lot of criticism because it is considered to violate human rights, when viewed from the perspective of the benefits of this admission of guilt makes the criminal justice system shorter, but on the other hand it is considered contrary to the principle of the presumption of innocence which does not reflect a sense of justice.

²⁴Kurniawan Tri Wibowo, *Law and Justice (The Unfair Trial)*, Papas Sinar Sinanti, Depok, 2020, p. 216

²⁵The "inquisitorial" system (meaning: examination) considers the suspect as an object, an object, whose form must be examined in relation to an accusation. This examination of the form takes the form of hearing the suspect about himself. Because there is already an accusation whose truth has been more or less believed by the accuser through sources of knowledge outside the suspect, then hearing the suspect should be an encouragement to the suspect, to simply admit his guilt. The desire to encourage this admission of guilt is usually related to the nature of the accuser as a mere human being is so strong that in practice this encouragement takes the form of mistreatment of the suspect (pijnbank, torture). See: Wirjono Prodjodikoro, *Criminal Procedure Law in Indonesia*, 9th ed., Sumur Bandung, Bandung, 1977, pp. 18-19

²⁶The presumption of innocence is a fundamental legal principle that states that a person must be considered innocent until a legally binding court decision declares them guilty. This principle protects the human rights of suspects/defendants from arbitrary action by authorities and public opinion. See: Nurbaiti Syarif, et al., *Protection of the Rights of Suspects through the Presumption of Innocent in the Criminal Justice System*. Audi Et AP: Journal of Legal Research, 03 (02) 2024

²⁷Primum remedium refers to the principle of criminal law that is applied as the primary option or first remedy in law enforcement, not as a last resort. See Elsa Priskila Singal, et al. *Primum Remedium in Criminal Law as a Way to Combat White Collar Crime (Money Laundering)*. Lex Crimen, X (6) May 2021, p. 202

In the criminal justice process, evidence is a crucial component of establishing the material truth about an incident. A guilty plea is an integral part of the evidence process, ensuring the judge is convinced of the incident and can render a just verdict. Evidence is a legally mandated process for proving the defendant's guilt.²⁸

In the Criminal Procedure Code itself, the defendant's statement is one of the pieces of evidence, however, this statement can only be used against him/herself and if this statement is given outside of court, it can be used to help find evidence in court as long as it is supported by other valid pieces of evidence.

Regarding the defendant's statement submitted in court, according to Syaiful Bakhri, even though there were thousands of statements, statements and confessions as the perpetrator of the crime and the one responsible for the criminal act he had committed, his confession could not be considered as perfect evidence that was binding and decisive.²⁹ This means that even if the defendant has admitted to the actions he has committed, this does not automatically invalidate the public prosecutor's right not to prove the defendant's guilt.

This is different from countries that adhere to the common law system in their criminal justice practices, where the public prosecutor, defendant/legal counsel can negotiate/negotiate regarding the charges and demands during the trial and the judge only decides based on the negotiations that have been carried out by the public prosecutor and defendant/legal counsel. This is known as plea bargaining.

According to Jeremy Bentham, the aim of law is to provide full benefit and happiness to society based on a social philosophy which states that every society desires happiness and law is a tool to realize this happiness.³⁰

The utility of law can be measured by the amount of happiness it provides to people. The utility of Utilitarianism is intended to ensure that happiness exists regardless of whether a law is good or bad, but rather whether the law can provide happiness to society. The principle of Utilitarianism is that humans can create happiness by reducing suffering through their own actions.³¹

The implementation of the concept of plea bargaining as a representation of progressive law. In progressive legal theory, the idea of progressive law emerged from concern over the state of law in Indonesia. He stated that the legal situation, at a macro level, has not yet approached its ideal state, which is to

²⁸Syaiful Bakhri, *Law of Evidence in Criminal Justice Practice*, Total Media, Yogyakarta, 2009, p. 27.

²⁹*Ibid*, p. 70

³⁰Darji in Hyronimus Rhati Darmodihardjo, *Philosophy ...Op.Cit*, 2011.

³¹Lily Rasjid, *Philosophy ...Op.Cit*, 1984

bring prosperity and happiness to its people. Instead, the opposite has occurred: a decline and decline, resulting in widespread disappointment with the state of the law. This decline occurs because honesty, empathy, and dedication in enforcing the law have become increasingly rare and expensive. As a result, judicial mafias, commercialization, and the commodification of law are becoming increasingly prevalent.

Through progressive law, we seek to find a way to address the decline of the law in a more meaningful way, in the sense of more rapid change, fundamental reversal, liberation, breakthroughs, and so on. This method is carried out first by placing the position of humans and humanity as the main discourse or *primus* in the discussion and enforcement of the law, so that in a pattern of relationships between law and humans, the relationship "law for humans, and not vice versa, humans for law" applies. In such a pattern of relationships, the law does not exist for itself, but for something larger and broader, namely humans and humanity. Therefore, whenever there is a problem in and with the law, it is the law that needs to be reviewed and improved, not humans who are forced to be included in the legal scheme. This pattern of relationships shows that law is not a sterile and esoteric institution, but simply part of humanity.³²

3.3. Legal Construction Problems that Hinder the Prosecutor's Office in Implementing the Plea Bargaining System

The essence of the application of Plea bargaining for the Prosecutor's Office is an important breakthrough in creating an efficient and effective criminal justice system process in responding to the very high criminalization of judicial traffic conditions in Indonesia. And the urgency of implementing plea bargaining in the criminal justice system in Indonesia is an effort to reform criminal law that aims to realize the principles of justice, namely simple, fast and low cost. This principle is contained in Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power.³³ This principle is even mentioned again in the *a quo* Law, specifically in Article 4 paragraph (2) which states "The courts assist those seeking justice and try to overcome all obstacles and barriers to achieve simple, fast and low-cost justice."³⁴

In terms of explanation, the main idea of the concept of plea bargaining for the Prosecutor's Office and the Indonesian criminal justice system is:

1) Reducing the Burden on the Criminal Justice System

One of the problems faced by every judicial institution worldwide is the slow and lengthy trial process. Initially, before the 18th century, criminal procedural

³²Satjipto Rahardjo, *Law in ...Op.Cit.*, 2006, pp. 55-56

³³Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power

³⁴Article 4 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power

models in countries with common law systems implemented efficient procedures. However, two centuries later, the advent of the adversary system and the development of evidentiary law have undergone transformations, reducing the efficiency of the court process.³⁵ This contradicts the nature of criminal case resolution in countries with common law systems, which are initially efficient, simple, short, unprocedural, and prioritize out-of-court settlements. Consequently, the practice of plea bargaining has begun to develop. Although initially met with resistance, plea bargaining has proven effective in addressing the backlog of cases in court.

Plea bargaining is considered functionally effective in easing the burden on the criminal justice system. This is because a speedy resolution process allows the courts to avoid a backlog of cases, freeing up time to resolve other matters. Furthermore, plea bargaining can also reduce the workload of the courts and prosecutors, allowing for effective and efficient use of funds, time, and resources in resolving cases.³⁶

2) Strengthening the Principle of Dominus Litis in the Prosecutor's Office

The word dominus litis itself comes from Latin, namely dominus which means owner and litis which means case or lawsuit.³⁷ This principle affirms that the public prosecutor has the sole authority to monopolize prosecution and control a case. The prosecutor's duty and function is to assess whether a case meets the formal requirements, thus determining whether a case can proceed to trial.³⁸

According to this interpretation, the Prosecutor's role in plea bargaining is a form of strengthening the prosecutor's function as dominus litis, or case controller. In negotiations with the defendant or their legal counsel, the prosecutor is fully able to assess and balance applicable provisions with the principle of expediency in presenting their demands.

Through plea bargaining, prosecutors, as case controllers, can also control cases that are considered less serious, have easy proof, and have admitted their guilt, so that they do not have to go through a complicated and lengthy trial process. Furthermore, public prosecutors can still carry out their duties in the context of representing the interests of victims and the community and can actually expedite the public prosecutor's work in providing justice for victims. Through the plea bargaining process, public prosecutors, as case controllers, can expedite

³⁵Febby Mutiara Nelson, *Plea Bargaining and Deferred Prosecution Agreement in Corruption Crimes*, Jakarta: Sinar Grafika, 2020, p. 191

³⁶Megawati Iskandar Putri, Ufran, and Lalu Saipudin. *Conceptual Arrangement...* Op.Cit, March 2014, p. 25

³⁷Farid Achmad, *The Urgency of Strengthening the Role of Public Prosecutors in the Indonesian Criminal Justice System*, UNS Postgraduate Journal of Law, VII (1), January-June 2019, p. 5

³⁸Asep, N. Mulyana, et al. *Constitutional Mandate*, Jakarta: PT Raja Grafindo Persada, 2020, p. 40

the case resolution process to avoid a backlog of cases that would increase the burden on the criminal justice system. This is in line with the public prosecutor's duty in carrying out their duties, which must adhere to existing regulations and consider their benefits.³⁹

Plea Bargaining Within the scope of the mechanism, strict regulations, multi-layered oversight, and ongoing training for prosecutors are required to ensure substantive justice is maintained. Pilot projects on plea bargaining are needed in several prosecutors' offices with different case characteristics to assess its effectiveness. Furthermore, further comparative studies with other civil law countries can help formulate regulations that are most appropriate for Indonesia. Thus, the opportunity to adopt plea bargaining in Indonesia remains open, but it can only be implemented accountably if the adaptation model is institutionalized through strict regulations, multi-layered oversight mechanisms, and strict restrictions on case types.

This approach ensures that efforts to improve the efficiency of the criminal justice system do not compromise the fundamental value of substantive justice, which is at the heart of criminal law. Implementing this mechanism requires coordination between prosecutors, judges, and correctional institutions to ensure consistent procedures. Furthermore, ongoing training for prosecutors is crucial to ensure the implementation of the adaptation model in accordance with the principles of justice and efficiency.

From the perspective of legal philosophy, theoretically, the implications of progressive legal theory are that the essence of the application of plea bargaining for the Prosecutor's Office can be implemented through legal reasoning in facing all implementation problems with the implication of the progressive legal theory that in order to bring the written and rigid law to life, substantive lawmaking is very necessary. One way to bring it to life, which means substantive lawmaking, is by reading the regulations not solely using the logic of the regulations, but reading the reality or what happens in society. Regulations that contain reductions to social reality, even on various occasions are often said to contain defects and that since their birth, need to be interpreted progressively. Interpreting regulations by reading the reality in society, is a way to be more "just," "justify," "straighten" and "ground" the law.⁴⁰

4. Conclusion

1. In the United States criminal justice system, plea bargaining can occur during the arraignment and preliminary hearing periods, or before a trial. However, before accepting a plea of guilty or *nolo contendere*, the defendant must be

³⁹Megawati Iskandar Putri, Ufran, and Lalu Saipudin. *Conceptual Arrangement...* Op.Cit, March 2014, p. 26

⁴⁰Satjipto Rahardjo, *Law in*Op.Cit, 2006, pp. 163-177

sworn in, and the court must speak directly with the defendant in open court. The judge must ensure that the defendant's guilty plea does not waive his or her rights, including the right to a trial. The implementation of plea bargaining in the criminal justice system in England and Wales has had a significant impact, increasing the rate of quick and efficient case resolution. Another benefit is avoiding the caseload that often interferes with the performance of prosecutors and judges in deciding cases. England and Wales implement plea bargaining as one of the methods primarily used by prosecutors to secure testimony from individuals accused of conspiracy crimes who have been charged with more serious crimes. Plea bargaining in Canada also arises from problems faced by the Canadian criminal justice system, namely lengthy and demanding trials. These lengthy trials also lead to a large backlog of cases in the courts. The initial implementation of plea bargaining in Canada was met with much opposition and suspicion that it could mislead or violate the principles of justice. However, after the 1975 Martin Report, based on recommendations from judges, prosecutors, public prosecutors, and legal experts, recommended the use of plea bargaining in the criminal justice system, Canadian law reform bodies and courts were willing to recognize plea bargaining as a legitimate part of the criminal justice process and even support and encourage its use in resolving criminal cases in Canada.

2. The role of the Public Prosecutor in the implementation of the Plea Bargaining mechanism is very important because the actors who have legal standing in the implementation of this system are only the public prosecutor and the defendant or his legal counsel. The public prosecutor will also notify the defendant regarding the waiver of his rights in the form of (a) Waiver of the right to appeal; (b) Waiver of the right to non-self-incrimination, by admitting guilt for the crime he admits he committed, but he cannot be forced to provide other information that may implicate him as a defendant. Substantially, the legal elaboration of the mechanism carried out by the Prosecutor's Office in implementing the plea bargaining concept based on Article 78 of Law Number 20 of 2025 concerning the Criminal Procedure Code, namely (1) The Prosecutor's Office filters cases based on the provision that a guilty plea can only be applied with the following requirements: first time committing a crime, for a crime that is threatened with a maximum imprisonment of 5 (five) years or a maximum fine of category V, willing to pay Compensation or Restitution; (2) The Public Prosecutor asks the Defendant who is accompanied by his legal counsel whether the Defendant is guilty or not; (3) If the Defendant admits guilt, the Prosecutor's Office ensures that the Defendant must be accompanied by an Advocate and the admission is stated in the minutes. The results of the negotiations between the Public Prosecutor, the Defendant, and the Advocate, including the reasons for reducing the Defendant's sentence, A statement that the Admission of Guilty agreement is binding on the parties who agree and applies like the Law; and evidence of the defendant committing a crime to ensure that the defendant committed a crime.

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