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Plea Bargaining as a Reform in Criminal Procedure Law: An Analysis of Article 199 of the Draft Criminal Procedure Code

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Abstract

The criminal justice process in Indonesia is characterized by lengthy proceedings, significant costs, and a growing prison population, highlighting the need for new policies to address these challenges. The adoption of the plea-bargaining concept, prevalent in common law jurisdictions, offers a potential solution for the Indonesian criminal justice system. Article 199 of the Draft Law on Criminal Procedure introduces a similar concept, allowing defendants who admit guilt to crimes punishable by no more than seven years in prison to have their cases transferred to a shorter trial process. This normative juridical research employed both statutory and conceptual analyses to evaluate the relevance of plea bargaining in the Indonesian context. It aims to assess whether the plea bargaining provisions in Article 199 of the Draft Criminal Procedure Code align with the principles of simplicity, speed, and cost-effectiveness, and whether they conform to Pancasila, the foundational ideology of Indonesia.

A. Introduction

The Criminal Justice System comprises a procedural framework that involves multiple institutions with authority across various stages of the criminal justice process, including *osporing* (investigation), *vervolging* (prosecution), *rechtspraak* (judicial examination), *executie* (execution of judgments), and supervision of court decisions. This system is designed to address criminal cases that the public perceives as disturbing and contrary to legal norms.[1] The process aims to effectively combat crime through the coordination of law enforcement officials and various institutions, including the police, prosecutor's office, courts, and correctional facilities.[2]

[1] Tim MaPPI-FHUI, *Bunga rampai Kejaksaan Republik Indonesia* (Depok: Badan Penerbit FHUI, 2015).
[2] Mardjono Reksodiputro, *Sistem Peradilan Pidana* (Depok: PT Raja Grafindo, 2020).

Plea bargaining, or plea negotiations, is a practice also employed in several countries such as Singapore, Canada, Poland, and Japan. In common law jurisdictions, such as the United States, plea bargaining is a significant component of the criminal justice process, with a reported success rate of 95% in resolving cases efficiently.[3] For example, on August 4, 2020, Kevin P. Dooley J. upheld a judgment from the County Court of Broome County, convicting the defendant following a guilty plea to attempted arson in the second degree. Initially indicted on charges of arson in the second and fourth degrees, the defendant initially rejected the prosecution's offer but later agreed to plead guilty to the reduced charge of attempted arson in the second degree. This plea agreement included a prison term of 3.5 years followed by 2.5 years of post-release supervision and the waiver of the right to appeal. The plea bargaining arrangement enabled the defendant to resolve the initial charge and other pending charges with a lesser charge and the minimum sentence for a Class C felony of violence. [4]

Plea bargaining in the Black Law Dictionary is defined as:

"A negotiated agreement between a prosecutors and a criminal defendant whereby the defendant pleads guilty to lesse offense or to one of multiple charges in exchange for some concession by the prosecutor, more lenient sentence or dismissal of the other charges."

Plea bargaining is a negotiation process between the public prosecutor and the defendant, wherein the defendant agrees to admit guilt for one or more charges in exchange for certain concessions from the prosecutor, such as a reduced sentence or dismissal of additional charges. According to Federal Rules of Criminal Procedure Rule 11, the judge must ensure that the defendant's agreement to the plea bargain is voluntary and informed. This includes confirming that the defendant is aware of their rights, including the right to a trial by an impartial judge and jury, and the right to appeal. The judge also must ensure that the confession is made without coercion and that the defendant is aware of the potential consequences of their plea.[5]

In the United States, plea bargaining is applicable across all types of crimes, including those punishable by death. In contrast, Indonesian law, as outlined in Article 199 of the Draft Law on Criminal Procedure, introduces a plea bargaining system within its criminal justice reform framework. Under this system, if the defendant is charged with a crime punishable by no more than seven years of imprisonment, the public prosecutor may opt for a short criminal trial. The defendant's guilty plea must be recorded in the court minutes and signed by both the prosecutor and the defendant. Similar to the U.S. system, Indonesia's approach to plea bargaining is designed to resolve cases efficiently and cost-effectively, encouraging defendants to admit guilt in exchange for reduced legal penalties.[6]

The concept of an admission of guilt serves as a pivotal benchmark in the procedural process within criminal justice and could offer significant considerations for case resolution in Indonesia, where several issues persist:

Firstly, the resolution of criminal cases in Indonesia is plagued by prolonged durations, high costs, and a growing backlog of cases. The Supreme Court's 2018 Annual Report highlighted that 132,070 cases from 2017 remained unresolved, while 6,123,197 new cases were filed in 2018. This led to a total caseload of 6,255,267, with 133,813 cases pending resolution, which would carry over into the following year. The backlog is exacerbated by the

[3] Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer* (Jakarta: Penerbit Kencana Prenada Media Group, 2010).

[4] Find Law, https://caselaw.findlaw.com/court/ny-supreme-court/115476778.html, diakses tanggal 11 Juli 2024.

[5] Ichsan Zikry, "Gagasan Plea Bargaining System Dalam RKUHAP dan Penerapan di Berbagai Negara," t.t.

[6] *Plea Bargaining: The Experiences of Prosecutors, Judges and Defence Attorneys* (Chicago: University of Chicago Press, 2006).

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frequent absence of key parties, such as defendants and victims, who are crucial to the adjudication process.[7]

Secondly, the enforcement of criminal law faces significant challenges due to issues within the implementation of procedural law as stipulated by the Criminal Procedure Code. Concerns arise over the effectiveness of legal certainty, particularly for suspects and defendants who may suffer from abuse by law enforcement officials. The procedural focus on legal officers alone remains problematic. For instance, the case of Grandmother Minah in Banyumas, who stole cocoa pods worth only IDR 30,000 (or IDR 2,000 on the market), resulted in her being placed under house arrest, illustrating the disproportionate response to minor offenses.[8]

Thirdly, the rising number of prisoners in correctional facilities has led to unlawful detention and overcrowding issues. This phenomenon contributes to the problem of overstaying, where suspects or defendants who should be released are detained due to administrative delays.[9] This overcrowding-compromises the effectiveness of correctional institutions. For example, the Class IIA Bontang Correctional Institution in East Kalimantan, originally designed for 300 inmates[10], has experienced a capacity swell to 1,635 inmates in 2023[11]. Such conditions underscore the urgent need for legal reforms to address these systemic challenges and better align the criminal justice system with contemporary social needs.

The author believes that there is a pressing need to update the Indonesian Criminal Procedure Code (*KUHAP*), which has been in place since 1981, and this necessity is underscored by the forthcoming enactment of Law Number 1 of 2023 concerning the Criminal Code (*KUHP*), set to take effect in 2026. The renewal is reflected in the Draft Criminal Procedure Code (*RUU-KUHAP*), which incorporates principles from common law systems, such as plea bargaining. Article 199 of the Draft Criminal Procedure Code introduces a "Special Path" clause, aligning with this principle and bridging common law practices with Indonesia's civil law system, which is further influenced by customary law, Islamic law, and the principles of Pancasila, as emphasized by Mahfud MD.[12]

This article aims to analyze the regulation of the "Special Path" clause in Article 199 of the Draft Criminal Procedure Code, particularly its role in the criminal justice process in Indonesia. The objective is to assess the need for plea bargaining and evaluate how the provisions outlined in Article 199 could serve as a reformative measure in criminal law policy. The research employs a normative juridical method, utilizing a statutory regulatory approach and a conceptual framework to interpret doctrines. This approach involves examining regulations, legal texts, academic literature, and expert opinions to elucidate and support the proposed reforms.[13]

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[7] Ruchoyah Ruchoyah, "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, no. 2 (1 Mei 2020), https://doi.org/10.20885/iustum.vol27.iss2.art9.

[8] "Duh... Tiga Buah Kakao Menyeret Minah Ke Meja Hijau," 19 November 2009, https://bola.kompas.com/read/2009/11/19/07410723/duh.tiga.buah.kakao.menyeret.minah.ke.meja.hijau?page=all. Diakses 25 Febuari 2024

[9] Rizki Bagus Prasetio dkk., "Zero Overstaying: Harapan Baru Pasca Lahirnya Undang-Undang Nomor 22 Tahun 2022 Tentang Pemasyarakatan," *Jurnal Ilmiah Kebijakan Hukum* 17, no. 2 (31 Juli 2023): 111, https://doi.org/10.30641/kebijakan.2023.V17.111-134.

[10] Muhammad Syahdiyar, "Darurat Peraturan Tentang Gangguan Keamanan Dan Ketertiban Di Dalam Lembaga Pemasyarakatan," *Jurnal Hukum Samudra Keadilan* 15, no. 1 (7 Juni 2020): 99–111, https://doi.org/10.33059/jhsk.v15i1.2167.

[11] Hafsah, "Lapas Over Kapasitas, Apa Penyebabnya?," 1 Juni 2023, https://radarbontang.com/lapas-over-kapasitas-apa-penyebabnya/. Diakses 25 Februari 2024

[12] Wahyudi Kumorotomo, Fajar Nurhardianto, dan Inu Kencana Syafiie, "Perbandingan Sistem Hukum Civil Law Dan Common Law Dalam Penerapan Yurisprudensi Ditinjau Dari Politik Hukum" 2 (2022).

[13] Kornelius Benuf dan Muhamad Azhar, "Metodologi Penelitian Hukum sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (1 April 2020): 20–33.

B. Discussion

1. Basis for the Requirement of Plea Bargaining in the Criminal Justice Process

Justice aims to create societal order, equality, and welfare. The concept of plea bargaining, recognized in the United States since the 1800s, originated with plea agreements in cases involving smuggling of alcoholic beverages and other prohibited goods. In recent years, plea bargaining has become a widely used practice. For example, on March 26, 2014, just two days before his 17th birthday, a defendant was charged with multiple offenses after allegedly assaulting a 17-year-old female (Elizabeth Foley J) and brandishing a firearm. The victim sustained a fractured jaw, necessitating a metal plate and screws for stabilization. The prosecution offered a plea deal, but the court, considering the defendant's youth, proposed an alternative. The court suggested that the defendant plead guilty to the most serious charge and enter an outpatient program. Upon successful completion of the program, the defendant would be adjudicated as a youthful offender and receive a one-year sentence, equivalent to the time already served. [14]

Under Law Number 8 of 1981, the Indonesian Criminal Procedure Code (*KUHAP*) mandates that criminal justice should be administered in a manner that is free, open to the public, expeditious, simple, and cost-effective, while being fair and impartial. However, achieving these principles is often challenging, as the reality of case handling frequently involves significant delays and inefficiencies.

Indonesian criminal justice traditionally emphasizes immediate punishment, viewing criminal law as the primary remedy (*primum remidium*) for addressing offenses. This perspective focuses on inflicting suffering rather than considering the broader social implications of punishment. According to Gustav Radbruch, the primary objectives of law are justice, certainty, and expediency. The current system tends to prioritize punitive measures without adequately addressing the subjective and objective aspects of criminal acts. For instance, in the case of Grandmother Minah, who stole a small quantity of cocoa, the response was disproportionate, resulting in house arrest despite the minor nature of the offense.

Justice should align with an individual's rights and obligations, ensuring that legal enforcement is efficient across legal, humanitarian, economic, and social dimensions. Legal certainty implies that the law's application should reflect its formulation. However, many suspects and defendants are still treated without due consideration of their rights, indicating a gap in law enforcement's ability to effectively implement legal provisions. The proposed changes in the *KUHAP* Bill and its academic texts aim to address these issues by incorporating plea bargaining into the criminal justice process. This reform is expected to enhance justice, certainty, and benefits for suspects, defendants, and the community, aligning with the nation's fundamental values.[15]

Criminal law enforcement represents a critical component of the criminal justice process and is integral to public service. It is essential that this process adheres to fundamental principles such as expediency, precision, accuracy, and adequate quality. These principles align with the ideals of prompt, straightforward, accurate, impartial, cost-effective, and free justice as outlined in Law Number 8 of 1981 concerning the Criminal Procedure Code, in conjunction with Law Number 48 of 2009 concerning Judicial Power.

[14] Justia US Law, https://law.justia.com/cases/new-york/appellate-division-second-department/2020/2016-07006.html ,diakses tanggal 11 Juli 2024.

[15] Vera Rimbawani Sushanty dan Ernawati Huroiroh, "TELAAH PERSPEKTIF FILSAFAT HUKUM DALAM MEWUJUDKAN KEPASTIAN, KEADILAN, DAN KEMANFAATAN HUKUM DI INDONESIA" 14, no. 2 (2022).

To effectively uphold these principles of justice, criminal administration must ideally be transparent, efficient, and focused on safeguarding the rights of justice seekers. In the context of criminal proceedings, the defendant is the primary subject. Consequently, in a nation that values human rights, it is imperative to respect the rights of the accused throughout the trial process.[16]

Sudikno Mertokusumo posits that while legal principles are codified into specific articles or regulations—such as the principles of simplicity, expediency, and cost-effectiveness enshrined in the aforementioned laws—the abstract nature of these principles remains a fundamental concept underlying concrete legal provisions. In the realm of civil law, these principles have been operationalized through mediation, as articulated in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, and through the simple lawsuit or small claims court model established by Supreme Court Regulation Number 2 of 2015 concerning Procedures for Settlement of Simple Claims.[17]

Thus, it is crucial to elucidate the connection between the need for incorporating plea bargaining and the principles of simplicity, expediency, and cost-effectiveness in justice. Monang Siahaan delineates the criminal law system into three levels, which include:

1) The first level - principles, especially about positive values, and principles do not regulate actions and sanctions.
2) The second level - positive law. All actions or norms that are not in accordance with the will of the community are formulated in the law and sanctions are determined according to the action.
3) The third level - the court decision which includes law enforcement officials, including police, public prosecutors, and judges as well as correctional institutions.

This suggests that abstract legal principles must be integrated with concrete concepts that can be applied in real-world situations. Consequently, the introduction of the plea bargaining concept serves to operationalize the principles of simplicity, expediency, and cost-effectiveness in justice. Therefore, legal principles should underpin and guide the development of practical legal frameworks.[18] The following reasons are examined in the formulation of the *KUHAP* Bill:

1). Philosophical Foundations

Indonesia is grounded in Pancasila, which serves as the foundation for the hierarchy of laws and regulations within the country, with human values as the core benchmark. Legal subjects, being human, are entitled to equal rights before the law, irrespective of their background. [19] Article 28D, paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "everyone has the right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law."

In accordance with these provisions, Indonesian citizens are entitled to fair legal certainty and impartial treatment throughout their lives. This includes, as highlighted in this article, the right to fair legal certainty for suspects and defendants in criminal cases throughout all stages of the legal process. This right to legal certainty is a crucial aspect of ensuring justice in criminal proceedings.

[16] Dr Maroni, "Construction Of The Bureaucratic Criminal Justice Based On The Public Service" 7, no. 4 (2015).
[17] Herdino Fajar Gemilang dan Rosalia Dika Agustanti, "Penggunaan Plea Bargaining Dalam Sistem Peradilan Pidana: Menyeimbangkan Efisiensi Dan Keadilan," t.t.
[18] Nurhikmah Nachrawy dan Herry Tuwaidan, "Penambahan Plea Bargaining Dalam Sistem Peradilan Pidana di Indonesia oleh: Junaidy Maramis2," t.t.
[19] "Naskah Akademik Rancangan Undang Undang KUHAP" (DPR RI, t.t.), http://berkas.dpr.go.id/pusatpuu/na/file/na-176.doc.

2). Juridical Foundation

Administering justice in accordance with Article 28D, paragraph (1) of the 1945 Constitution guarantees legal certainty for all Indonesian citizens, stating that "every Indonesian citizen has the right to fair legal certainty and equal treatment before the law." This provision implies that every person who is a suspect or defendant in a criminal case is entitled to fair legal certainty throughout every stage of their case, including clarity regarding the progress of the proceedings.

This aligns with Article 4, paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, which mandates that judicial processes should be conducted simply, swiftly, and at low cost. However, as discussed in the previous section, the current implementation of the criminal justice process in Indonesia does not fully achieve these ideals. The complexity of the criminal justice process in Indonesia has hindered the realization of a judicial system that is simple, expeditious, and cost-effective.

3). Sociological Foundations

The criminal justice system in Indonesia already incorporates concepts such as plea bargaining to achieve an effective and efficient criminal justice process. These concepts are outlined in various regulations:

Article 10A of Law Number 31 of 2014 concerning amendments to Law Number 13 of 2006 on Witness and Victim Protection (*UU LPSK*). This provision is designed to provide leniency to witnesses who are also suspects in the same case, allowing their testimony to be considered by the judge when deciding on the leniency of the criminal sentence. However, the law does not provide detailed regulations regarding awards to victims.

- Whistleblowers are addressed in SEMA Number 4 of 2011 concerning the treatment of whistleblowers and cooperating witnesses (justice collaborators) in certain criminal cases. According to Article 10A of the *LPSK* Law, a witness who is also a suspect in the same case cannot be absolved of criminal charges if proven guilty. However, their testimony may be considered by the judge in mitigating the sentence.
- Justice Collaborators (witnesses who cooperate) are also covered in SEMA Number 4 of 2011, specifically in point 9. This provision states that if a justice collaborator is one of the perpetrators of a crime and admits to a crime they did not primarily commit while providing information, the judge may consider this cooperation in reducing the sentence.[20]

In this context, it is evident that reforming the criminal justice system in Indonesia is essential. This reform represents a new era for the Indonesian justice system, aiming to adapt to contemporary advancements while still prioritizing the rights of all parties involved in legal procedures. A key aspect of this reform is the implementation of plea bargaining in Indonesia, which underscores the need for a legal framework that aligns with both national and international standards.

Reforming criminal law should not solely rely on Pancasila as the fundamental norm (*Ursprungsnorm*) but should also integrate various international law conventions, provided they are consistent with Pancasila's open ideology. This approach allows for a more comprehensive adaptation of legal principles.[21] The effectiveness of these reforms is influenced

[20] Tenriawaru Tenriawaru dkk., *Perbandingan Penerapan Sistem Hukum Progresif (Plea Bargaining VS Restorative Justice)* (Adab, 2022).

[21] Zhu Lehua, "Analysis of the Plea Leniency System and Plea Bargaining System in the Era of Big Data," *Applied Mathematics and Nonlinear Sciences, Vol 9, Iss 1 (2024)*, 1 Januari 2024, https://doi.org/10.2478/amns.2023.2.00035.

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by the judicial principles applied, particularly given that legal violations often stem from institutional inefficiencies, leading to delays in the judicial process.[22]

Indonesia has ratified several international conventions, including the United Nations Convention Against Corruption[23], the International Convention Against Torture, and the International Covenant on Civil and Political Rights. These conventions, ratified after the adoption of the Criminal Procedure Code, are directly relevant to criminal procedural law. As Rudolf Jhering noted, the incorporation of foreign laws into a national system should be guided by the efficacy of the legal framework being adopted and the specific needs of the recipient country.

Aligned with Law Number 1 of 2023, which updates and reviews key aspects of criminal law—such as prohibited acts, criminal responsibility, and sanctions—there is an increased emphasis on balancing rights and obligations among victims, perpetrators, and the community. This reform reflects a shift from the traditional Dutch-influenced views of the old Criminal Code (*Wetboek van Strafrecht*) to a more adaptive and locally relevant legal framework. Despite the fact that Law Number 8 of 1981, concerning the Criminal Procedure Code, was an Indonesian legal product, the transition to the new Criminal Code marks a significant shift from a monodualistic view towards a more Pancasila-oriented perspective. This reform represents a political effort to enhance community welfare through the implementation of a more effective and responsive criminal law system.[24]

2. Provisions Regarding the Special Route Clause in the Draft Criminal Procedure Bill

The requirement to have a legal basis for all actions in social, national, and state affairs—encompassing the political implementation of criminal law—is a logical consequence of establishing the principle of legality as a fundamental aspect of a legal state. This principle serves as a cornerstone for recognizing and protecting human rights, which is a primary objective of the rule of law. In practice, the principle of legality within the framework of the rule of law encompasses three key elements;

a. Rule of law. This means that every action in the life of a nation and state in a legal state must refer to the law and obtain legal legalization.
b. Law is used as the basis for every action in society, nation and state, only law has motivation and provides space for realizing the recognition and protection of human rights.

   3) Reject the existence of laws that are incompatible with the recognition and protection of human rights. This means that the principle of legality does not allow society and the government to use laws that conflict with the recognition and protection of human rights as the legal basis for every action in society, nation and state.

Referring to the fundamental function of law, it can be asserted that the primary objective of the political dimension of criminal law is to implement criminal law policies that effectively protect citizens from crime, thereby enhancing societal welfare. As a reform policy, criminal

[22] Maroni, Sopian Sitepu, dan Nenny Dwi Ariani, "Humanistic Law Enforcement As The Application Of The Value Of Justice, Expediency And Legal Certainty Based On Pancasila.," *Journal of Legal, Ethical and Regulatory Issues* 4, no. 2 (2019).

[23] Farida Azzahra, "Pemberlakuan Sanksi Administratif: Bentuk Upaya Paksa Meningkatkan Kepatuhan Pejabat Atas Pelaksanaan Putusan Peradilan Tata Usaha Negara (Teori Efektivitas Hukum)," *Binamulia Hukum* 9, no. 2 (2020): 127–40, https://doi.org/10.37893/jbh.v9i2.368.

[24] Bagus Satrio Utomo Prawiraharjo, "Implementasi Ide Keseimbangan Monodualistik Dalam Undang-Undang Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana," *Jurnal Hukum Progresif* 11, no. 2 (30 Oktober 2023): 159–71, https://doi.org/10.14710/jhp.11.2.159-171.

law politics aim to create adaptive legal effectiveness. This effectiveness emphasizes that each legal rule should not only regulate society but also serve as a standard for achieving improved conditions within social subsystems.[25]

The comparative study conducted by the academic drafter of the Draft Criminal Procedure Code, which involved an examination of practices in countries such as the United States, France, Russia, and Italy, reveals that the adoption of plea bargaining—originally developed in the United States—provides a valuable reference. This approach has proven successful in minimizing case backlogs, protecting the rights of suspects and defendants, and enhancing procedural efficiency. Plea bargaining allows public prosecutors to negotiate with suspects to achieve the primary objectives of justice and truth.[26]

The reform proposed in the Draft Criminal Procedure Code represents a significant renewal within the substantive framework of criminal law. It involves a reevaluation of criteria for punishable acts and the nature of criminal responsibility, without necessarily making criminal law the ultimate goal. According to Article 199 of the Draft Criminal Procedure Code, the implementation of plea bargaining seeks to incorporate legal moderation into the criminal justice process. Once enacted, the revised code will provide concrete guidelines for the criminal justice process.[27]

The provisions contained in Article 199 of the Draft Criminal [28]Procedure Bill regarding the "Special Route" clause are as follows:

"(1) When the public prosecutor reads the indictment, the defendant admits all the acts charged and pleads guilty to committing a crime which carries a sentence of no more than 7 (seven) years, the public prosecutor can delegate the case to a short trial.
(2) The defendant's confession is stated in an official report signed by the defendant and the public prosecutor.
(3) The judge is obliged to:
1. inform the defendant of the rights he or she is giving up by giving a confession as intended in paragraph (2);
2. inform the defendant regarding the length of the sentence that may be imposed; And
3. ask whether the recognition as intended in paragraph (2) was given voluntarily
(4) The judge may reject the confession as intended in paragraph (2) if the judge has doubts about the truth of the defendant's confession.
(5) Except for Article 198 paragraph (5), the sentence imposed on the defendant as intended in paragraph (1) may not exceed 2/3 of the maximum penalty for the criminal offense charged."

The stage-by-stage examination in court is crucial, as each decision made by the judge significantly impacts the defendant's life. The introduction of plea bargaining in the Criminal Procedure Bill reflects an important consideration: it allows the defendant the opportunity to plead guilty with the potential for reduced charges or even a transfer to a shorter trial process, provided that the maximum imprisonment threat does not exceed seven years.

According to Article 199, paragraph (5) of the Draft Criminal Procedure Code, which supersedes Article 198, paragraph (5), there is a specific provision for criminal offenses punishable by a maximum of three years, which can be adjudicated using a short examination

[25] Lalu M. Alwin Ahadi, "Efektivitas Hukum dalam Perspektif Filsafat Hukum: Relasi Urgensi Sosialisasi terhadap Eksistensi Produk Hukum," *Jurnal USM Law Review* 5, no. 1 (14 April 2022): 110, https://doi.org/10.26623/julr.v5i1.4965.

[26] P. A. (Paul) Aidonojie, A. O. (Anne) Odojor, dan P. O. (Patience) Agbale, "The Legal Impact of Plea Bargain in Settlement of High Profile Financial Criminal Cases in Nigeria," *Sriwijaya Law Review*, 28 Juli 2021, https://www.neliti.com/publications/538919/the-legal-impact-of-plea-bargain-in-settlement-of-high-profile-financial-crimina.

[27] Noveria Devy Irmawanti dan Barda Nawawi Arief, "Urgensi Tujuan Dan Pedoman Pemidanaan Dalam Rangka Pembaharuan Sistem Pemidanaan Hukum Pidana," *Jurnal Pembangunan Hukum Indonesia* 3, no. 2 (28 Mei 2021): 217–27, https://doi.org/10.14710/jphi.v3i2.217-227.

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procedure. In these cases, the criminal penalty cannot exceed three years. For defendants who meet the criteria specified in Article 199, paragraph (1), the maximum sentence can be reduced to two-thirds of the original term. For example, if a defendant is charged with an offense carrying a potential sentence of seven years, the judge could impose a maximum sentence of four years and eight months.[29]

A fundamental difference between the "Special Route" in the Draft Criminal Procedure Bill and the original plea bargaining process lies in the authority and timing of the guilty plea. Under the Draft Criminal Procedure Bill, as outlined in Article 199, the guilty plea is determined by the judge only after the indictment has been read. The court then decides whether to proceed with a brief trial. In contrast, the original plea bargaining process grants greater authority to the prosecutor, who conducts the bargaining process prior to the trial. This negotiation involves discussions between the prosecutor, the defendant's legal advisor, and the defendant regarding the charges, legal facts, and the potential sentence.[30]

The "Special Route" in the Criminal Procedure Bill appears to prioritize the defendant, potentially at the expense of the victim's rights. Under this approach, if a defendant admits to their actions and the judge accepts the confession, the defendant benefits from reduced criminal sanctions. This focus raises concerns about the adequacy of protections for victims, as their rights may be undermined in the process.[31]

The current tension regarding the victim's rights, particularly in relation to human rights considerations during plea bargaining and the urgency of a swift trial, highlights the need for a balanced approach. Ensuring that the rights of victims are adequately addressed requires a collaborative effort to uphold justice and legal certainty in line with Pancasila's principles.

Therefore, the formulation within the Draft Criminal Procedure Code necessitates further examination to ensure compatibility with the Indonesian legal system, which operates on a non-adversarial model. In this system, judges play an active role in direct examinations, contrasting with the adversarial model used in the United States, where judges primarily oversee the judicial process without direct involvement in the examination of evidence. Adapting the Draft Criminal Procedure Code to fit the unique characteristics of the Indonesian legal context is crucial for achieving a fair and equitable justice system.

C. Conclusion

Plea bargaining, as outlined in the Draft Criminal Procedure Code, is conducted voluntarily. It allows a suspect who admits to their actions and expresses a willingness to cooperate with the public prosecutor to potentially receive a reduced sentence, provided that the original threat of imprisonment does not exceed seven years. This procedural adjustment, referred to as "briefing," represents a reform aimed at reducing the prison population and expediting the criminal process in the courts. Article 199 of the Draft Criminal Procedure Code introduces this mechanism with the expectation that it will address critical issues within the criminal justice process. By facilitating quicker resolutions and mitigating case backlogs, the implementation of plea bargaining is anticipated to be a priority for lawmakers and ratifiers seeking to improve the efficiency and effectiveness of the criminal justice system in Indonesia.

[29] Lukman Hakim dkk., *Penerapan Konsep "Plea Bargaining" (Dalam Rancangan Kitab Undang-Undang Hukum Acara Pidana (RKUHAP) Dan Manfaatnya Bagi Sistem Peradilan Pidana Di Indonesia* (Yogyakarta: Deepublish, 2020), http://repository.ubharajaya.ac.id/3424/1/Monograf%20Plea%20Bargaining.pdf.

[30] Adi Syahputra Sirait, "Kedudukan Dan Efektivitas Justice Collaborator Di Dalam Hukum Acara Pidana," *Jurnal El-Qanuniy: Jurnal Ilmu-Ilmu Kesyariahan Dan Pranata Sosial* 5, no. 2 (2019): 241–56, https://doi.org/10.24952/el-qonuniy.v5i2.2148.

[31] Maroni, Sopian Sitepu, dan Nenny Dwi Ariani, "HUMANISTIC LAW ENFORCEMENT AS THE APPLICATION OF THE VALUE OF JUSTICE, EXPEDIENCY AND LEGAL CERTAINTY BASED ON PANCASILA."

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