

**COMPARISON OF PLEA BARGAINING IN THE UNITED STATES WITH  
“SPECIAL LINE” IN THE DRAFT BOOK OF CRIMINAL PROCEDURE CODE  
(KUHAP) IN INDONESIA**

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**ABSTRACT**

Plea Bargaining is a faster and more efficient way of resolving criminal cases, where if the Defendant has admitted guilt, the Defendant or his attorney can make an agreement with the public prosecutor regarding the form of indictment and a lighter sentence. Plea Bargaining is widely embraced by Common Law countries. However, in its development, the success of the United States in reducing the pile of cases by using Plea Bargaining has been followed by Civil Law countries such as Germany, France, Russia, Georgia, the Netherlands, Italy, Taiwan. Even in an effort to reform the criminal justice procedural law, Indonesia has also adopted the basic concept of Plea Bargaining into the Draft Criminal Procedure Code with a concept called "Special Line". However, the concept of the Special Line has many differences so that it cannot be fully equated with the Plea Bargaining adopted by the United States. This is because Indonesia adheres to an inquisitorial system, not an adversary system. For this reason, Indonesia needs to study the successes and failures of Plea Bargaining in the United States, so that the Special Line concept that is to be implemented in Indonesia is a concept that has been adapted to the conditions of the criminal justice system in Indonesia.

**Keywords:** Plea Bargaining, Special Line, Guilty Confession

## INTRODUCTION

### 1. Research Background

The judicial principle that simple, fast and low-cost trial is one of the principles in the Indonesian justice system regulated in Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power. However, this principle is still difficult to implement, where the polemic over the accumulation of cases is still an ongoing problem faced by the world of justice. The long process, excessively long, and even the overflow of cases resulted in a classic problem which until now has been difficult to avoid, namely massive overcapacity in prison and penitentiary institutions.

It is time for the Indonesian criminal justice system to improve. The reform of the Criminal Procedure Code (*KUHAP*) is one of the efforts to realize a simple, fast and low-cost trial. One of the fundamental changes is contained in Article 199 of the Draft Criminal Procedure Code (hereinafter referred to

as the *RKUHP*), the latest version of which was 2012.<sup>1</sup> The article regulates the "Special Line" as an effort to shorten and speed up the procedural procedures in criminal cases in court if there is a confession by the Defendant. The Special Line mechanism in the *RKUHP* is similar to Plea Bargaining which has long been implemented in several Common Law countries such as the United States since the 19th century. But actually the Special Line has several differences so that it cannot be completely equated with Plea Bargaining.

Because Indonesia has adopted the Plea Bargaining concept into the "Special Line", Indonesia needs to learn some of the Plea Bargaining concepts from its home country, namely the United States before ratifying the Special Line

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<sup>1</sup> The draft of Criminal Procedure Code (*RKUHP*) was submitted by the government to the Parliament (*DPR*) on December 1<sup>st</sup> 2012. The final discussion on the *RKUHP* was still around Chapter I, but the ban was stopped because Commission III and the Government discussed the *RKUHP* first (based on information from <https://www.dpr.go.id/uu/detail/id/62>, accessed on November 13<sup>th</sup> 2022 at 13.00 WIB)

provisions in the *RKUHAP*. Do not let in order to avoid a high sentence and a long trial, the Defendant was finally forced to accept the Prosecutor's offer so that some of the Defendant's guilt confessions were false confessions. The Plea Bargaining concept that is to be implemented in Indonesia is a concept that has been adapted to the conditions of the criminal justice system in Indonesia. Legislators can then determine whether the provisions of Article 199 *RKUHAP* regarding Special Line are perfect, need to be perfected, or even deleted.

From the description in this background, the author is interested in raising this issue in a scientific paper entitled "Comparison of Plea Bargaining in the United States with "Special Lines" in the Draft Criminal Procedure Code (*RKUHAP*) in Indonesia."

## **2. Problem Identification**

Based on the background above, the problems in this research proposal are as

follows:

1. How is Plea Bargaining regulated in the United States and its comparison to the "Special Line" in the Draft Criminal Procedure Code (*RKUHAP*)?
2. What are the advantages and disadvantages of resolving criminal cases through Plea Bargaining/Special Line?
3. What are the legal arrangements for the Special Line concept in the future in accordance with the conditions of the Criminal Justice System in Indonesia?

## **RESEARCH METHOD**

### **3. Type of Research**

The type of research used in this research is normative legal research. This study uses normative legal research because it wants to find answers to legal issues regarding Plea Bargaining

arrangements in the United States and its comparison with the "Special Line" in the Draft Criminal Procedure Code (*RKUHP*), by examining the rules related to Plea Bargaining and Special Line.

#### **4. Research Approach**

In this study, the approach used is the statute approach by examining related laws and regulations, the conceptual approach by examining concepts related to Plea Bargaining, the case approach by examining criminal decisions, a comparative approach by comparing Plea Bargaining arrangements in other countries to find out their strengths and weaknesses so that Plea Bargaining arrangements are found that match the criminal justice system in Indonesia, and a historical approach by studying related history the birth of the concept of Plea Bargaining.

#### **5. Legal Entity**

Because this research is normative legal research, the data sources studied are secondary

data sources, which consist of:

- a. Primary legal entity in this legal research are the 1945 Constitution of the Republic of Indonesia, Law Number 8 of 1981 concerning the Criminal Procedure Code (*KUHAP*), the Criminal Code (*KUHPP*), the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, Federal Rules of Criminal Procedure, as well as related laws and regulations,
- b. Secondary legal entity in this study used secondary legal entity, namely the latest version of the Draft Criminal Procedure Code (*RKUHP*) in 2012, scholarly opinions, literature, journals, magazines, newspapers, articles.
- c. Tertiary Legal Entity in this study tertiary legal materials used are the Big Indonesian Dictionary (*KBBI*), Black Law, encyclopedias, cumulative indexes.

## 6. Procedure of Collecting Legal Entity

The collection of legal entity used in this research is to use library research, namely to obtain legal materials that are used to search for concepts, theories, opinions and findings that are closely related to the subject matter of this research, namely regarding the comparison of Plea Bargaining with "Special Line".

## 7. Processing of Legal Entity

Processing of legal entity is carried out by grouping legal materials according to the items discussed in this study. Namely primary legal materials, secondary legal materials and tertiary legal materials which are then classified by adjusting the substance related to the subject matter under study.

## 8. Analysis of Legal Entity

In this normative research, legal interpretation and construction is carried out by drawing conclusions using a deductive method to answer the problems and research objectives under study.

## B. RESULTS AND DISCUSSION

### 1. PLEA BARGAINING ARRANGEMENTS IN THE UNITED STATES OF AMERICA AND ITS COMPARISON WITH THE "SPECIAL LINE" IN INDONESIA'S *RKUHP*

#### a) Plea Bargaining Arrangements In The United States

Plea Bargaining arrangements in the United States are contained in the Federal Rules of Criminal Procedure, Rule 11. In the Rule 11 (c) (1) several restrictions on Plea Bargaining are regulated as follows:<sup>2</sup> a. Plea Bargaining is essentially a negotiation between the public prosecutor and the accused or their defense;

b. The main motivation for these negotiations is to speed up the process of handling criminal cases;

c. The nature of the negotiations must be based on the "voluntary" of the accused to admit his guilt and the public prosecutor's willingness to threaten the punishment desired

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<sup>2 2</sup> Romli Atmasasmita, S.H., LL.M., *Sistem Peradilan Pidana*, Bandung: Binacipta, Cetakan Kedua, 1996 hlm. 127.

- by the accused or his defender;
- d. The participation of judges as impartial referees in the negotiations referred to is not permitted.

Plea Bargaining which applies in the United States can be applied to all criminal offenses including serious cases (felony) and only in California and Mississippi, which do not allow Plea Bargaining for cases of sexual violence and physical violence (beatings, torture and murder), as well as cases corruption.<sup>3</sup>

There are 4 (four) forms of plea (confession) that can be submitted by the Defendant after the arraignment (reading of the indictment), namely:<sup>4</sup>

- a. Plea of Not Guilt, is plea (confession) in which the Defendant does not admit or rejects all the charges brought against him. Here the Judge then advances to the next stage, namely Trial (trial/proof).
- b. Guilty Plea, is plea (confession) where the Defendant admits his guilt knowing (knows about) and intelligent (aware).

- c. Nolo Contendere, is a statement not to oppose (no contest plea) the indictment but it is not required that the accused must admit his guilt.
- d. Standing Mute, is a silent attitude taken by the Defendant when reading the indictment.

Based on the provisions of the Federal Rules of Criminal Procedure letter c (4) (5), the court is not obliged to accept the plea agreement. There are 2 (two) positions that can be taken by the court, namely:

1. Accept the Plea Agreement.

If the court accepts the plea agreement, the court must notify the Defendant that the terms of the plea agreement are as set out in Rule 11(c)(1)(A) or (C), the matters agreed upon will be included in the decision.

2. Rejecting the Plea Agreement.

If the court rejects the plea agreement which contains the terms as stipulated in Rule 11(c)(1)(A) or (C), then in a recorded manner and in a court

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<sup>3</sup>Kurniawan Tri Wibowo, *Plea Bargaining Sebagai Pembaharuan Hukum Dalam Sistem Peradilan Pidana Indonesia*, Surabaya, Pustaka Aksara, 2012, Hlm. 141

<sup>4</sup>Febby Mutiara Nelson, *Plea Bargaining & Deferred Prosecution Agreement Dalam Tindak Pidana Korupsi*, Jakarta: Sinar Grafika, 2019, hlm. 193

session which is open to the public the court must do the following:

- a. Informing the parties that the court rejected the plea agreement;
- b. Informing the Defendant that the court is not obliged to accept the plea agreement and giving the Defendant the opportunity to withdraw the plea;
- c. Inform the Defendant that if the plea is not withdrawn / canceled, the court may render a decision that is unfavorable to the Defendant, which is different from the agreement in the plea agreement.

In practice in the United States, usually the Judge will accept the results of the agreement between the Defendant/Legal Counsel and the

Public Prosecutor. This is to avoid that in the future the Defendant will no longer want to bargain if in the end the Judge rejects the agreed sentence recommendation.<sup>5</sup>

The types of rewards obtained by the Defendant in Plea Bargaining consist of several types, namely:

- a. Charge Bargaining. These negotiations can be used in multiple charges (cumulative charges) or joint charges. In multiple prosecution, some charges can be dropped if the accused pleads guilty to one of the charges against him.
- b. Fact Bargaining (Negotiation of

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<sup>5</sup> Ichsan Zikry, *Prinsip-Prinsip Relevan Dalam Mekanisme Plea Bargaining: Perbandingan Dengan Amerika Serikat* (Relevant Principles in the Plea Bargaining Mechanism: Comparison with the United States), presented in the webinar: *Peluang Penerapan Prinsip-Prinsip Plea Bargain dalam Rancangan KUHAP* (Opportunities for the Application of Plea Bargain Principles in the Draft Criminal Procedure Code), held by ICJR in collaboration with the STHI Jentera Criminal Law Study Unit, December 20, 2021, accessed via <https://www.youtube.com/watch?v=VqVZBu5QfiM&t=3092s>, April 21<sup>st</sup>, 2023, 10 pm

Trial Facts). In this mechanism the public prosecutor negotiates which facts are agreed to be disclosed or not in the trial. The result was an agreement to selectively present the facts in return for the defendant's guilty plea.

- c. Sentence Bargaining. The offer of leniency refers to the Sentencing Guidelines, a set of non-binding rules set by the United States federal courts. In this negotiation the judge will usually choose to decide according to what is recommended by the public prosecutor or not to exceed other matters which may result in the Defendant withdrawing his guilty plea.<sup>6</sup>

#### **b) The concept of "Special Line" in the Indonesian RKUHAP**

The Special Line is contained in Chapter XII Part Six Article 199

RKUHAP. Based on the provisions of this Article, there are several provisions in the Special Line mechanism, namely:

- The Special Line only applies to certain crimes, namely crimes with a penalty of not more than 7 (seven) years;
- The Special Line does not provide space for the Prosecutor and Legal Counsel and/or the Defendant to negotiate and agree on the charges and the severity of the sentence. This is the fundamental difference between Special Line and Plea Bargaining. The judge has the most important stages after the defendant's admission of guilt, namely: informing the defendant about the rights he has relinquished by giving an admission of guilt, notifying the defendant about the duration of the sentence that may be imposed, asking whether the guilty plea was given voluntarily or not;

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<sup>6</sup> *Ibid*



- When the public prosecutor reads out the indictment, and the Defendant admits all the actions he was accused of and admits guilty of committing a crime that carries a criminal penalty for which he is being charged, the public prosecutor can transfer the case to a brief examination procedure instead of the usual examination procedure which takes a longer time;
- If the Defendant has admitted guilt, the Defendant will get a reduced sentence, which cannot exceed  $\frac{2}{3}$  of the maximum criminal offense for which he was charged.

c) **Comparison of Plea Bargaining in the United States with special channels in Indonesia**

Table  
Comparison of Plea Bargaining in the United States with Special Lines

No	Qualification	<i>Plea Bargaining</i>	<b>Special Line</b>
1	Type of Plea Bargaining	Plea Bargaining in a narrow sense	Plea Bargaining in a broad sense
2	Negotiation	The Prosecutor and the Defendant/Legal Counsel may negotiate: - Charge Bargaining - Fact Bargaining (Negotiation of Trial Facts) - Specific Fact Bargaining - Sentence Bargaining (Penalty Negotiation) -	Do not giving space to the Prosecutor and Legal Counsel and/or the Defendant to negotiate to agree on charges and criminal threats. .
3	Judge's Position	The participation of the Judge in the negotiation process is not permitted	There is an active role of the judge in determining the sentence to be imposed
4	Type of Crime	Against all criminal acts including serious cases with the threat of death penalty	Only against criminal offenses with a penalty of not more than 7 (seven) years
5	Defendant's Rights	- Waiver of the Defendant's right to be tried in court (Trial) - Setting aside the Defendant's rights to appeal, and the right to non-self-incrimination (not self-incriminating) -	- Does not rule out the Defendant's right to be tried in court - Does not rule out the Defendant's right to take legal action including an appeal -
6	Legal Assistance	The state is obliged to provide legal advisers to accompany the accused	The accused does not have to be accompanied. The state's obligation to provide legal counsel refers to the criminal threat of the article charged (Article 56 of the Criminal Procedure Code)
7	Rewards for Defendants	The commutation of sentences is more varied, referring to the Sentence Guidelines, not only in the form of reducing	Only leniency that does not exceed 2/3 of the maximum criminal offense charged

No	Qualification	<i>Plea Bargaining</i>	Special Line
		sentences, it can be in the form of choosing a prison location, the case being dismissed, certain special handling, etc.	

## 2. ADVANTAGES AND WEAKNESS OF SETTLEMENT OF CRIMINAL CASES THROUGH PLEA BARGAINING/SPECIAL ROUTES

- a) Advantages of Settlement of Criminal Cases Through Plea Bargaining/Special Channels
- Accelerate the completion of case handling;
  - The accused can avoid the time and expense of defending himself at trial, the risk of a heavier sentence, and the publicity that may result from a trial;
  - More time will be spent on serving sentences because the time for the case examination process

has been shortened;

- Meet the needs of both parties, namely the public prosecutor and the Defendant;

### b) Disadvantages of Settlement of Criminal Cases Through Plea Bargaining/Special Channels:

- The possibility of punishing innocent people;
- Contrary to human rights because it weakens the Defendant's constitutional rights to be tried and to defend himself in court;
- Plea Bargaining becomes a lazy form of prosecution
- The court is considered to be too in favor of the Defendant

### c) Advantages of Special Line compared to Plea Bargaining

- More transparent because it does not open up opportunities for closed negotiations between the Public Prosecutor and the Defendant. Determination of the severity of

the sentence to be imposed remains in the hands of the Judge. Negotiations

conducted between the Public Prosecutor and the Defendant behind closed doors without judicial oversight as in the United States have the potential to open up new opportunities for corruption;

- Does not eliminate the evidentiary process to determine the Defendant's guilt so that the Defendant's constitutional rights are still fulfilled

d) Weaknesses of Special Line compared to Plea Bargaining

- Only a few cases can be resolved using the Special Line because it can only be committed against criminal offenses with a penalty of not more than 7 (seven) years. It is feared that this limitation will make the Special Line system

ineffective because it is not in accordance with the facts regarding criminal acts that often occur in the field, the majority of which are crimes with threats of more than 7 (seven) years;

- The offer of legal relief if the Defendant admits guilt, that is, it may not exceed 2/3 of the maximum criminal offense for which the accused is less "tempting". Because even without admitting guilt, Judges often pass judgments under the maximum threat;
- There is no obligation for the Defendant to be accompanied by a Legal Counsel if he agrees to an examination through the Special Line. In contrast to the United States, where when carrying out plea bargaining, the perpetrator must be accompanied by a legal advisor, regardless of the crime he is

charged with. Even if the appointed Legal Counsel is not qualified, then the results of the agreement in Plea Bargaining can be cancelled.<sup>7</sup>

### **3. FUTURE SPECIAL TRAINING ARRANGEMENTS THAT ACCORDING TO THE CONDITIONS OF THE INDONESIAN CRIMINAL JUSTICE SYSTEM**

Based on all of the above descriptions, the following are recommendations from the Author regarding the arrangement of Special Lines in the future that are in accordance with the conditions of the criminal justice system in Indonesia:

1. There is a need for adjustments to the criminal procedural law and the justice system dramatically;
2. The judge is still involved, acting as a supervisor who will assess

what matters are being negotiated by the Defendant, Legal Counsel, and the Public Prosecutor. This is intended so that the negotiation process takes place transparently and is recorded in court and prevents actions that violate the rights of the Defendant.

3. There must be clear standards to test the truth of a guilty plea;
4. Increasing the qualifications for criminal acts that can use special channels;
5. Indonesia needs to make a standard rule as a standard in sentencing such as Sentencing Guidelines in the United States so that rewards for defendants who have pleaded guilty are more measurable, not just not exceeding 2/3 of the maximum threat.
6. Strengthen the role of legal aid.

### **C. CLOSING**

#### **1. Conclusion**

Even though there are many

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<sup>7 7</sup> Ichsan Zikry, *Op.Cit.*

pros and cons, currently the United States courts are very dependent on Plea Bargaining because they are able to overcome the accumulation of criminal cases. Arrangements for Special Lines in the future that are in accordance with the conditions of the criminal justice system in Indonesia need to pay attention to dramatic adjustments to the criminal procedural law and the justice system, the involvement of judges, there must be clear standards for testing the truth of an admission of guilt, the types of crimes that can use the The Special Line must be expanded, there are guidelines for giving rewards to the Defendant who has admitted guilt, strengthening the role of legal aid, and adding regulations governing the Special Line.

## 2. Suggestion

- To the Legislature: it is necessary to clarify the legal provisions regarding the Special Line, because Article 199 of the *RKUHP* alone is not enough to

regulate a mechanism that is still new and so complicated. The *RKUHP* formulation team needs to conduct further studies regarding criminal acts that can be resolved through the Special Line. The Special Line should not only be limited to criminal offenses with a penalty of less than 7 years, due to the fact that the types of criminal acts that often occur in the field and cause a backlog of cases are mostly criminal offenses with threats of more than 7 (seven) years.

- To law enforcement officials:

The Special Line must be accompanied by high professionalism and integrity from law enforcement officials, so that the Special Line is not misused for corrupt practices and lazy prosecutions that only focus on pursuing

the Defendant's confession without paying attention to actual legal facts.

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