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Asset Confiscation in Corruption Cases through Plea Bargaining System: Should Indonesia Learn From Nigeria?

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Abstract. Plea bargaining system is a procedure of bargaining for punishment between the prosecutor and the suspect or defendant on the basis of an admission of guilt from the latter party. This system leads to recovering the assets due to the lengthy period for asset confiscation process. This study aims to investigate the urgency of the plea bargaining system to be applied in confiscating the assets of perpetrators of corruption and the idea of its application in criminal procedural law in Indonesia. This is a doctrinal legal research focusing on the use of the statutory, conceptual, and comparative approaches. The findings indicate that plea bargaining system serves the values of justice and increase the effectiveness of the performance of judges and courts. The goal is to prevent more expenses and to be much less time consuming. Confiscation of assets in plea bargain can be carried out by using the bargaining of facts with confiscation of assets of the criminal confiscation (conviction) with an admission of guilt from the perpetrator to be able to negotiate the said assets. The said type is meant to reduce the facts regarding the assets that will be confiscated, thus the facts that have been presented by the prosecutor do not need to be presented at trial. In the future, the reform of the criminal case settlement process needs to be paid more attention to so that it focuses on recovering the assets from perpetrators of criminal acts of corruption.

Keywords: Asset confiscation, Plea bargaining system, Corruption.

Abstrak. *Sistem plea bargaining adalah prosedur tawar-menawar untuk hukuman antara jaksa dan tersangka atau terdakwa atas dasar pengakuan bersalah dari pihak yang terakhir. Sistem ini mengarah pada pemulihan aset karena jangka waktu yang panjang untuk proses penyitaan aset. Penelitian ini bertujuan untuk menyelidiki urgensi penerapan plea bargaining system dalam penyitaan aset pelaku korupsi dan gagasan penerapannya dalam hukum acara pidana di Indonesia. Ini adalah penelitian hukum doktrinal yang berfokus pada penggunaan pendekatan hukum, konseptual, dan komparatif. Temuan menunjukkan bahwa sistem plea bargaining melayani nilai-nilai keadilan dan meningkatkan efektivitas kinerja hakim dan pengadilan. Tujuannya adalah untuk mencegah lebih banyak biaya dan menjadi jauh lebih sedikit memakan waktu. Penyitaan aset dalam plea bargain dapat dilakukan dengan menggunakan tawar-menawar fakta dengan penyitaan aset pelaku pidana penyitaan (vonis) dengan pengakuan bersalah dari pelaku untuk dapat menegosiasikan aset tersebut. Jenis tersebut dimaksudkan untuk mengurangi fakta bahwa ada harta yang nantinya akan disita, sehingga fakta yang telah disampaikan oleh jaksa tidak perlu disampaikan di persidangan. Ke depan, reformasi proses penyelesaian perkara pidana perlu lebih diperhatikan sehingga berfokus pada pengembalian aset dari pelaku tindak pidana korupsi.*

Kata kunci: *Penyitaan aset, sistem plea bargaining, Korupsi.*

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INTRODUCTION

This study examines the confiscation of assets belonging to the perpetrators of corruption through the utilisation of a plea bargaining system. The issue of confiscation of assets resulting from criminal acts within the Indonesian legal system is nothing new. Several criminal provisions regulate the possibility of confiscating and forfeiting the spoils and tools used in a criminal act, such as the provisions regarding additional penalties in Article 10 of the Indonesian Criminal Code.[1] Confiscation of the spoils resulting from criminal act of corruption in Article 18 paragraph (1) of the Corruption Law; as well as confiscation of assets as regulated in Article 67 of the Money Laundering Law. However, the orientation of asset confiscation in these regulations remains aimed at objects (*in rem* confiscation), as opposed to the subject.[2]

The present study becomes crucial since factually, the recovery of assets resulting from criminal acts of corruption in Indonesia is yet to be effective due to the lengthy verification process.[3] Apart from that, there is not a single regulation that explains in great detail the mechanism or method for confiscating assets resulting from criminal acts of corruption, let alone being linked to a plea bargaining system which contains a statement of guilt or what is known as pleading guilty which provides rewards in the form of a reduced sentence for the defendant who admits their guilt.[4] In fact, this latter concept is intended to accelerate the handling of criminal cases and is considered to be more efficient. Its existence is also inseparable from the overall law enforcement system (criminal justice procedure).[5] Although the plea bargaining system has attracted various arguments and debates as it is considered to violate the principle of

[1] Marfuatul Latifah, "The Urgency Of Assets Recovery Act In Indonesia," Negara Hukum, Vol. 6, no. 1, 2015, http://www.ppatk.go.id/. p. 18.

[2] Febby Mutiara Nelson, Plea Bargaining & Deferred Prosecution Agreement Dalam Tindak Pidana Korupsi, 1st ed. (Jakarta: Sinar Grafika, 2019). p. 90.

[3] Muhammad Fadli Nasution, "Return of Assets of the Criminal Action of Corruption and Some Problems in the Implementation," in Proceedings of the 3rd International Conference on Business Law and Local Wisdom in Tourism (ICBLT 2022) (Atlantis Press SARL, 2023), p. 766, https://doi.org/10.2991/978-2-494069-93-0_88.

[4] Ichsan Zikry, "Gagasan Plea Bargaining System Dalam RKUHAP Dan Penerapan Di Berbagai Negara," Jurnal Hukum, p. 2.

[5] Rifi Hermawati, "Studi Perbandingan Hukum 'Plea Bargaining System' Di Amerika Serikat Dengan 'Jalur Khusus' Di Indonesia Law Comparative Study Of 'Plea Bargaining System' In The United States With 'Special Lane' In Indonesia," Jurnal Hukum Lex Generalis, vol. 4, 2023, p. 203, https://jhlg.rewangrencang.com/.

presumption of innocence and the right to be tried justly and fairly,[6] its existence however, has been recognised even at the international level as stipulated in Article 37 paragraph (2) of the United National Convention Against Corruption of 2003.[7] Countries such as Nigeria have also implemented asset confiscation through a plea bargaining system.

This study aims to address two primary legal issues, namely the urgency of the plea bargaining system to be applied in confiscating the assets of perpetrators of corruption and the idea of its application in criminal procedural law in Indonesia. The output of this study relates to a shift in the administration of the criminal justice system, which is not only directed at the principle of fairness,[8] but also to effectiveness and efficiency.[9] The principle of swift, simple, and low-cost justice system needs to be complemented by procedures that enable this to be realized.

METHODOLOGY

This study is a doctrinal legal research that mainly focuses on the application of plea bargaining system in the asset confiscation of corruption cases. To obtain the data, this study used regulations on the anti-corruption and asset confiscation as the primary sources. To asses which plea bargaining system that can be best applied in Indonesia, this study used Nigeria as comparison in its comparative approach since the country has similar socio-political condition to Indonesia regarding the typology of the corruption cases. The review of the criminal justice system regarding the current conditions and social conditions of society, especially regarding the confiscation of assets of the perpetrators of corruption was taken to grasp a comprehensive understanding on the issue. Hence, the authors establish a conceptual formulation in

[6] Wahyu Nandang Herawan and Natalia Sihotang, "Adoption of the Plea Bargaining Concept to Improve Judicial Efficiency during the Covid-19 Outbreak," Research Review Quarterly 7, no. 2, p. 137, https://doi.org/10.15294/lrrq.v7i2.46174.

[7] Febby Mutiara Nelson, Plea Bargaining & Deferred Prosecution Agreement Dalam Tindak Pidana Korupsi. p. 172.

[8] Richard Berk et al., "Fairness in Criminal Justice Risk Assessments: The State of the Art," 2017, p. 3. http://crim.upenn.edu.

[9] Intan Khoirun Nisa et al., "Relation Between Plea of Guilty and Defendants Right in RUU KUHAP (An Overview Through 'Jalur Khusus' System)," p. 828, https://doi.org/10.24843/JMHU.2023.v12.i0.

reforming the criminal justice system that is deemed to be more effective and efficient to be applied in Indonesia to confiscate the assets of the perpetrators of corruption. Subsequently, the legal material is selected and processed, then expressed descriptively, to draw the conclusions and achieve the objectives of this research.

RESULT AND DISCUSSION

Urgency of Plea Bargaining System to be Applied in Confiscation of Assets of the Perpetrators of Corruption

Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia states that "everyone has the right to recognition, guarantees, protection and certainty of the fair and just law and equal treatment before the law." In regard to the plea bargaining system, suspects or defendants as Indonesian citizens have the right to fair legal certainty in every criminal procedure so that it can be resolved properly pursuant to the effectiveness and efficiency of justice system in the asset confiscation process.[10] The article substantially provides constitutional direction and guidance, in which if plea bargaining system is adopted and formulated within the Indonesian criminal justice system, then what needs to be considered is for all "admissions of guilt" to be made voluntarily by suspects/defendants that are truly derived out of honesty and awareness, and not the result of arbitrary treatment from the law enforcement officials.

The legal certainty factor in criminal justice system is inseparable from the objectives of justice and legal certainty, along with their expediency aspect. This view is in line with Gustav Radbruch, who stated that: "there are 3 (three) main elements in law enforcement, namely justice (*Gerechtigkeit*), legal certainty (*Rechtssicherheit*) and expediency (*Zweckmaβigkeit*)."[11] The principle of legal certainty thus provides a firm legal basis for the law enforcement officers when carrying out their duties in an effort

[10] Monisti Sri Widianto, Indriati Amarini, and Ika Ariani Kartini, "Plea Bargaining In Realizing Effective And Efficient Criminal Justice Systems," UMPurwokerto Law Review 1, no. 1 (August 5, 2020), p. 17, https://doi.org/10.30595/umplr.v1i1.8051.

[11] Shidarta, "Putusan Hakim: Antara Keadilan, Kepastian Hukum, Dan Kemanfaatan," in Reformasi Peradilan Dan Tanggung Jawab Negara, (Jakarta: Komisi Yudisial, 2010), p. 38.

to provide legal protection to victims of the crimes.[12] In this context, the plea bargaining system may be deemed effective in its implementation from several underlying reasons. First, the number of cases (case loads) is very large, making it difficult for the position of public prosecutors to be able to work effectively considering the time and the cost factors. Second, the public prosecutor believes that the possibility of successful prosecution is very small. In general, what is included in this second cause is a lack of evidentiary material, a lack of reliable witnesses, or the defendant is considered "respectable" among the judges.[13]

The effectiveness of asset confiscation through the plea bargaining system can be seen from the economic justice aspect.[14] In regard to achieving the optimum criminal law enforcement, the main concept of economic analysis is the maximization of social welfare.[15] Social welfare can be achieved by paying attention to the amount of profit obtained by the perpetrator from committing a prohibited act, minus the losses caused by such act, and the expenses incurred in the context of law enforcement. If it turns out that the losses resulting from the perpetrator's actions and the costs that must be incurred in law enforcement are smaller than the profits obtained by the perpetrator, then criminal law enforcement is said to be optimal.[16] The view regarding optimizing law enforcement through an economic approach above provides a clear picture, that law enforcement is basically highly influenced by the availability of facilities, infrastructure and costs that support it, not to forget that the public also pays attention

[12] Mansur, Dikdik M. Arief, and Elisatris Gultom, Urgensi Perlindungan Korban Kejahatan: Antara Norma Dan Realita (Jakarta: Raja Grafindo Persada, 2008), p. 164.

[13] Aby Maulana, "Tinjauan Konsep Pengakuan Bersalah Terdakwa Pada 'Jalur Khusus' Dalam Pembaruan Peradilan Pidana Di Indonesia (Analisis Terhadap Konsep 'Jalur Khusus' Pada Pasal 199 Rancangan Kitab Undang-Undang Hukum Acara Pidana)" (Universitas Muhammadiyah Jakarta, 2014), p. 137.

[14] Yehonatan Givati et al., "The Comparative Law And Economics Of Plea Bargaining: Theory And Evidence," 2011, p.5, http://www.law.harvard.edu/programs/olin_center/.

[15] Fitriah Faisal, Amir Faisal, and Endah Widyastuti, "Pengaruh Metode Economic Analysis of Law Dalam Perkembangan Kebijakan Pencegahan Tindak Pidana Pencucian Uang Economic Analysis of Law Method and Its Effect on the Development of Prevention Policy of Money Laundering" 6 (2022): 82–92, http://ojs.uho.ac.id/index.php/holrev/.

[16] Mahrus Ali, "Penegakan Hukum Pidana Yang Optimal (Perspektif Analisis Ekonomi Atas Hukum)," Jurnal Hukum IUS QUIA IUSTUM 15, no. 2 (2007), p. 224, https://doi.org/10.20885/iustum.vol15.iss2.art6.

to the availability of law enforcement officers who work on it, and even paying attention to the welfare factors.[17]

Article 28 section D paragraph (1) of the 1945 Constitution states that "every Indonesian citizen has the right to fair legal certainty and equal treatment before the law." This provision includes the meaning that the suspect or defendant of a criminal act shall likewise enjoy the fair legal certainty throughout the entirety of the criminal justice system.[18] This is in line with the swift, simple, and low-cost judicial process as regulated in Article 4 paragraph (2) of Law no. 48 of 2009 on Judicial Power. In the light of plea bargaining system in Indonesia by means of the payment of fines are poured in the provision as stated in Article 82 paragraph (1) of the Criminal Code. Hence, idea of implementing plea bargaining system in Indonesia has already taken place, albeit only limited to fines. With this provision, it is possible to impose criminal sanctions without administering the entire criminal justice system. However, this is only possible for minor crimes that are punishable by fines. In relation to the closure of a case, it can be done for the interests of the law, including if there has been a settlement outside of court or what is known as *afdoening buiten* process.[19]

The testimony of the perpetrator's witness is identical to the defendant's statement to be served as evidence as regulated in Article 184 of the Criminal Procedural Code, albeit sitting on the last position of the list of evidence in criminal procedural law. This means that evidence seems less important as opposed to the virtue of honesty, as the philosophy of Pancasila that is closely related to the first and second principles. If during the evidentiary the defendant admits guilt, certain provision applies. In the formation of statutory regulations, Article 6 paragraph (1) of Law No. 12 of 2011 on the Formation of Statutory Regulations reflects the principle of respect, as seen from

[17] Aby Maulana, "Tinjauan Konsep Pengakuan Bersalah Terdakwa Pada 'Jalur Khusus' Dalam Pembaruan Peradilan Pidana Di Indonesia (Analisis Terhadap Konsep 'Jalur Khusus' Pada Pasal 199 Rancangan Kitab Undang-Undang Hukum Acara Pidana)", p. 75-77.

[18] Sitti Thrde Halawa, Ahmad Fauzi, and Alpi Sahari, "Perlindungan Hukum Terhadap Hak Terdakwa Dalam Proses Persidangan Perkara Kekerasan Fisik Yang Dilakukan Suami Dalam Rumah Tangga (Studi Putusan Nomor 2293/Pid.Sus/2021/Pn Mdn)," Legalitas: Jurnal Hukum 14, no. 2 (January 14, 2023), p. 241, https://doi.org/10.33087/legalitas.v14i2.345.

[19] Muhammad Yasin, "Penghentian Penuntutan Demi Restorative Justice Perlu Masuk RUU Kejaksaan," https://www.hukumonline.com/berita/a/penghentian-penuntutan-demi-irestorative-justice-i-perlu-masuk-ruu-kejaksaan-lt5f90e1d9d0e8f/, 2020.

the legal regulations and their principles, it is crucial that the admission of guilt in criminal proceedings to be studied in depth in the implementation of law enforcement in Indonesia.

Article 37 section 2 of UNCAC 2003 also asserts that "every participating country is obliged to consider providing the possibility in certain cases to reduce the sentence of a defendant who offers essential cooperation in the investigation or prosecution of corruption crimes". This article is closely linked to the role of justice collaborator. However, the essence of this article is to provide leniency to defendants who cooperate with law enforcement to admit their actions. In addition to gaining benefits for the parties, there is the application of reduced sentences, which has already occurred in Indonesia. The phrase "reducing the sentence of a perpetrator who provides substantial cooperation in the investigation or prosecution of a crime", can be interpreted that, the state must provide legal guarantees in the form of commuting or reducing the criminal sentence for a "perpetrator" who can offer assistance in the investigation and prosecution, which by and large can also be considered as a reward.[20]

In the contest of sociological reasoning, there are various issues in the process of implementing criminal justice in Indonesia, such as the length of time it takes to resolve the cases, the high costs of resolving the cases, and the never-ending pile of the criminal cases before the court.[21] The problem of accumulation of cases within the scope of the criminal justice system in Indonesia can be seen in the data that the authors obtained from the official website of the Supreme Court. As of the 29th of December 2022, the Supreme Court has succeeded in deciding 28,371 cases or 99.47% of the total case loads in 2022 which was as many as 28,522 cases.[22] Hence, reforms are direly needed to be developed in the criminal justice system in Indonesia. Reforms in

[20] Aby Maulana, "Tinjauan Konsep Pengakuan Bersalah Terdakwa Pada 'Jalur Khusus' Dalam Pembaruan Peradilan Pidana Di Indonesia (Analisis Terhadap Konsep 'Jalur Khusus' Pada Pasal 199 Rancangan Kitab Undang-Undang Hukum Acara Pidana), p. 200."

[21] M. Yahya Harahap, *Beberapa Tinjauan Mengenai Sistem Peradilan Dan Penyelesaian Sengketa* (Bandung: Citra Aditya Bakti, 1997).

[22] Azizah, "Sebanyak 28.522 Perkara Masuk Ke Mahkamah Agung Di Tahun 2022," https://www.mahkamahagung.go.id/id/berita/5594/sebanyak-28522-perkara-masuk-ke-mahkamah-agung-di-tahun-2022, 2022.

material criminal law and formal criminal law have become the higher demands that must be realized immediately to achieve justice within the society. However, every case that is submitted must go through a process as stated in the law, meaning it must go through trial.

Plea Bargaining System for Confiscating Assets of the Perpetrators of Corruption in Nigeria

Plea Bargaining in Nigeria is a new procedure regulated in part 28, section 270-277 of the country's Administration of Criminal Justice (ACJA).[23] It is defined that plea bargain means the process in criminal proceedings where the defendant and the prosecution work out a mutually acceptable agreement as to a lesser offence than what was actually charged in the complaint or information and in conformity with other conditions imposed by the prosecution, in return for a lighter sentence than for a higher charge subject to the courts approval.[24] The parties involved in plea bargaining system in Nigeria are the public prosecutor, the defendant with their attorney, and the victim in a particular case. The initiation of the implementation of plea bargaining in Nigeria departs from the offer of the public prosecutor and the defendant to submit a plea.[25] This relates to when the plea bargain can be submitted: The defendant can submit plea bargain if the public prosecutor considers plea bargain is appropriate to be submitted for the sake of justice, public interests, public policy and the need to avoid abuse of legal procedures by consulting with the police investigating the case.[26] Considering the nature and circumstances related to the criminal act that occurred and considering the following factors:[27]

1. The defendant's willingness to cooperate in the investigation and prosecution;
2. The defendant's criminal history;

[23] Paul Atagamen Aidonojie, Anne Oyenmwosa Odojor, and Patience Omohoste Agbale, "The Legal Impact of Plea Bargain in Settlement of High Profile Financial Criminal Cases in Nigeria," Sriwijaya Law Review 5, no. 2 (July 28, 2021), p. 161, https://doi.org/10.28946/slrev.Vol5.Iss2.852.pp161-174.

[24] Matthew Ezeh, "Plea Bargaining in Nigeria: Legal Safeguards Against Abuse," SSRN Electronic Journal, 2018, p.1, https://doi.org/10.2139/ssrn.3469724.

[25] Nicholson A. Okwori, , "Plea Bargaining: A Trial Procedure That Negates Fundamental Rights of the Accused Person. Plea Bargaining: A Trial Procedure That Negates Fundamental Rights of the Accused Person," 2010, p. 1, https://ssrn.com/abstract=1629255.

[26] Agaba James Atta, *Practical Approach to Criminal Litigation in Nigeria* (Nigeria: Bloom Legal Temple, 2015).

[27] Section 270 (3), (5) The Administration of Criminal Justice (ACJA), 2015.

3. The defendant's remorse and willingness to take responsibility for his actions;
4. The desire to resolve the case quickly and definitely;
5. Conviction tendencies in the trial and the effect of his testimony in the trial;
6. Threat of punishment or other consequences resulting from a guilty verdict;
7. The need to avoid delays in resolving a pending case;
8. Trial and appeal costs; and
9. The defendant's willingness to recover or to pay compensation to the victim if necessary.

Plea bargain can also be carried out at or after the presentation of evidence from the public prosecutor but before the presentation of evidence from the defendant or the victim's consent if the following conditions are met:[28]

1. The evidence is sufficient to prove the violation;
2. The defendant has agreed to restore the situation as it was before the crime occurred or compensate the victim or his representative for losses; or
3. The defendant in the collaborative criminal action has fully cooperated in the investigation and prosecution by providing relevant information for the prosecution of other defendants.

The Plea Bargaining Agreement contains a recommendation for a sentence within the appropriate range or a lesser crime than the defendant admitted.[29] In plea bargaining system which involves victims, the Prosecutor's Office must provide the victim or their representative with the opportunity to submit a defense to the prosecutor regarding: (a) the contents of the agreement; and (b) inclusion in the agreement of an order of compensation or restitution.[30] The features of plea bargaining system in Nigeria do not only regulates the involvement of the defendant and public prosecutor but additionally the victim. The presiding judge then has the responsibility to ascertain whether the defendant admits to the charges in the indictment and whether his guilty plea was made voluntarily and without undue pressure.[31] Furthermore, the Judge believes that he will impose a lighter sentence than the agreed sentence, imposing a lighter sentence; or (c) of the view that the offense warrants a heavier punishment than the agreed sentence, he must inform the accused of the heavier punishment he considers to be appropriate.[32] Afterwards, the presiding judge or

[28] Section 270 (2) The Administration of Criminal Justice (ACJA), 2015.
[29] Section 270 (4) The Administration of Criminal Justice (ACJA), 2015.
[30] Section 270 (6) The Administration of Criminal Justice (ACJA), 2015.
[31] Section 270 (10) The Administration of Criminal Justice (ACJA), 2015.
[32] Section 270 (11) The Administration of Criminal Justice (ACJA), 2015.

magistrate must make an order that any money, assets or property agreed to be confiscated under the plea bargain must be transferred and given to the victim or their representative or such other person that is deemed as the appropriate recipient.[33] Furthermore, the prosecutor will take reasonable steps to ensure that any money, assets or property agreed to be confiscated or returned by the perpetrator under the plea bargain is transferred to or given to the victim, their agent or any other person legally entitled thereto.[34]

The plea bargaining agreement is put in writing which states that the defendant has been informed of their right to remain silent, the consequences if they omit such right to remain silent, the feature in which they are not required to offer a confession that can be used against them (non self-incriminatory), the entire contents of the agreement, the terms of the agreement and signatory upon each confession to be made by the prosecutor, the defendant, their legal representative and (if any) the translator, depending on the case; and a copy of the agreement is to be forwarded to the Attorney General.[35] Additionally, the judge's decision to accept the plea bargaining agreement is final and is not subjected to appeal unless reasonable grounds for fraud is established.[36] Plea Bargaining in Nigeria in the authors' opinion leads to a certain type of plea bargain commonly known as "fact bargaining", due to the fact that the regulations in Nigeria tend to include leniency in sentences.

The authors take the example of Nigeria considering the return of assets by Plea Bargaining system is regulated in great detail within the applicable procedural law in Nigeria. The parties who implement the idea of plea bargaining to confiscate the assets of perpetrators of criminal acts of corruption in Indonesia are prosecutors, defendants or their legal advisors, victims, the Corruption Eradication Committee which has the authority as a prosecutor in corruption cases in Indonesia and the Supreme Audit Agency which determines the value of state financial losses. This means that the things that need to be taken into account are as per the plea bargaining regulations in Nigeria

[33] Section 270 (12) The Administration of Criminal Justice (ACJA), 2015.
[34] Section 270 (13) The Administration of Criminal Justice (ACJA), 2015.
[35] Section 270 (12) The Administration of Criminal Justice (ACJA), 2015.
[36] Section 270 (18) The Administration of Criminal Justice (ACJA), 2015.

in Section 270 (12) of the administration of criminal justice (ACJA) of 2015 that "the prosecutor will take reasonable steps to ensure that any money, assets or property agreed to be confiscated or returned by the perpetrator under the bargaining, transferred to or given to the victim, their representative or other person who is legally entitled to it".

Criminal Assets Confiscation as Punishment against the Perpetrators of Corruption through Plea Bargaining System

This study argues that the principle of bureaucratic by the King's model is the most relevant aspect to effectiveness of plea bargain. This model contains three characters; minimisation of conflict; minimisation of expense; and economical division of labour.[37] It was stated by King that the concepts can be applied to the criminal justice system because they influence guilty pleas before the court. One hopes to find encouragement and respect given to procedures, strategies and decisions that save time and money in the case process. Instead, one would expect to see disappointment and sanctions applied to wasting time and prolonging a case.[38] In this context, the authors highlight the criminal confiscation of assets based on Article 18 paragraph (1) of Law Number 31 of 1999 on the Eradication of Corruption by using the plea bargaining process. This is in line with the opinion of an expert that in confiscation of assets, plea bargaining system can be carried out using the criminal forfeiture route, with the first method being an admission of guilt from the defendant. If the defendant admits, then a bargaining process or negotiation of punishment will take place.[39] This means that the confiscation of assets used in plea bargaining is criminal, if the non-conviction-based forfeiture or NCB asset confiscation process is used then it cannot be applied with Plea Bargaining System since the confiscation process uses the civil system.

[37] Michael King, *The Framework of criminal justice*, dikutip dari Febby Mutiara, Plea Bargaining & Deferred Prosecution Agreement dalam Tindak Pidana Korupsi, Sinar grafika, 2020, p. 381.

[38] *Ibid*. p. 382.

[39] Interview with Febby Mutiara Nelson, academic at Faculty of Law University of Indonesia via Zoom Meeting, on Friday, 4 August 2023.

Confiscation through criminal decisions has not been implemented properly according to the principles of swift, simple, and low-cost justice. Therefore, the implementation is through the plea bargaining system mechanism. In practice, there are three types of plea bargains, namely charge bargaining, sentence bargaining, and fact bargaining. Charge bargaining is negotiation of the charges that the defendant will face during trial involving multiple charges or combined charges. In multiple charge situations, some charges may be dismissed if the defendant admits guilt regarding one of the charges filed. Sentence bargaining is an agreement for the defendant to enter a guilty plea in exchange for a lighter sentence. Meanwhile, fact bargaining is an agreement for the public prosecutor not to reveal certain facts before the trial that could increase the threat of punishment for the defendant, such as a certain minimum sentence period, or the threat of a heavier sentence.[40]

However, if implemented, not all cases that result in asset confiscation may evoke plea bargain, as it must be measured by state financial losses. Take a look at the plea bargaining system in the US, wherein almost 90% of defendants plead guilty in order to speed up the handling of the criminal process on the grounds of reducing the sentence imposed. If found guilty, however, they may be subject to high penalties.[41]The litigation process using the plea bargaining system regarding asset confiscation certainly holds the prosecutor's discretion in the process. Discretion here is the authority regarding punishment or demands that will later be included in the criminal justice process.[42] To obtain the punishment in question, one must utilise the proper type of Plea Bargain that can be used. The type that can be applied lies on the public prosecutor, whether it is fact bargaining, sentence bargaining, or charge bargaining, the prosecutor must assess the defendant's potential in regard to their assets. It is also argued that the confiscation of assets was carried out with the defendant's cooperation in an effort to return the assets resulting from the criminal act that were to be confiscated. Indeed, when the bargaining process is carried out, it does

[40] Aby Maulana, Tinjauan Konsep Pengakuan Bersalah Terdakwa Pada "Jalur Khusus" Dalam Pembaruan Peradilan Pidana Di Indonesia (Analisis Terhadap Konsep "Jalur Khusus" pada Pasal 199 Rancangan Kitab Undang-Undang Hukum Acara Pidana), Universitas Muhammadiyah Jakarta, 2014, p. 75-77.

[41] Ram Subramanian et al., "In the Shadows: A Review of the Research on Plea Bargaining," 2020, p. 1-2.

[42] Interview, *Loc.Cit*

not release the perpetrator from a free sentence but only reduces the sentence. Apart from being cooperative, the authors are of the opinion that, in efforts to confiscate assets in person as a result of criminal acts of corruption, the right thing to do when related to the three types of plea bargaining above is fact bargaining.

Another expert[43] likewise affirms that in the process of handling asset confiscation, it is necessary to note that if it is linked to plea bargaining, the three mechanisms can be utilized alternatively, but it is more appropriate to use the fact bargaining one as the initial stage in terms of finding evidence which is the basis of the investigation process is by disclosing the facts that there are assets to recover. The proceedings of corruption are then negotiated to reduce the facts which will later be omitted due to an admission of guilt by revealing the facts regarding the assets of the perpetrator. Fact bargaining plays a major role in sentencing by referring to the agreement between the prosecutor and the defendant on what version of the facts to be presented in court.[44] The supervisory function here refers to their role to supervise and assess the matters that are negotiated by the public prosecutor with the defendant or their legal advisor.[45] Furthermore, in the plea bargaining process in asset confiscation, negotiations may take the form which the defendant must admit that their actions violated the law voluntarily without any coercion from any party.[46] The consequence of their confession is that the defendant will lose their constitutional rights, such as the right to be confronted with witnesses. Apart from that, the defendant was also willing to accept threats for the actions they carried out as applied by statutory regulations.

The form of agreement made by the Public Prosecutor with the defendant, or their legal advisor is set out in written form, apart from containing the agreed matters, it also contains a statement by the defendant stating that he made it voluntarily and

[43] Interview with Aby Maulana, academic at the Faculty of Law, Muhammadiyah University of Jakarta via Zoom Meeting, on Friday, 14 August 2023.

[44] Wex Definitions Team, "Plea Bargain," https://www.law.cornell.edu/wex/plea_bargain, January 2024.

[45] Febby Mutiara Nelson, *Plea Bargaining & Deferred Prosecution Agreement Dalam Tindak Pidana Korupsi*.

[46] Andhy H. Bolifaar, "Access To Justice Of Plea Bargaining In Addressing The Challenge Of Tax Crime In Indonesia," Scientium Law Review (SLR) 1, no. 1 (June 8, 2022), p. 9. https://doi.org/10.56282/slr.v1i1.52.

knows the legal consequences if they do not exercise their right to remain silent.[47] The written form of the agreement is a copy of the minutes recorded by the preliminary examining judge in the register registering the results of the plea bargaining agreement, after which a copy of the minutes is submitted along with the case file to the chairman of the district court who will examine the file.[48] Thus, in the process of confiscating assets through punishment or criminal forfeiture using plea bargaining,[49] it can be seen from the condition of the assets of the perpetrator of the criminal act of corruption, since in the confiscation of assets, waiting for the final verdict will reduce the value of the assets belonging to the perpetrator of the criminal act of corruption. Therein lies the discretion of the prosecutor who will use what model or type of plea bargaining. These negotiations take the form of rewards in the form of reduced sentences, presentation of facts at trial, or summarisation of evidence that will be presented at trial to make it easier for the public prosecutor. Furthermore, if the stages of the plea bargaining system in an effort to confiscate assets are not successful, meaning that negotiations are not running as they should, then it can be taken directly through a regular trial instead of shortening the said trial.

CONCLUSION

From a philosophical perspective, plea bargaining system serves the values of benefit and justice. If we look at the juridical reasons for confiscating the assets of perpetrators of criminal acts, efforts to confiscate the assets of perpetrators of criminal acts of corruption as stated in Article 37 number 2 UNCAC to recover the assets, there is a seed for reducing the sentence for perpetrators of criminal acts of corruption, but there is a need for a further review of statutory regulation on plea bargaining system. If seen from sociological reasons, it aims to increase the effectiveness of the performance of judges and courts in dealing with the number of cases coming to court. The goal is to

[47] Jenia I Turner, "Plea Bargaining," n.d., http://www.japantimes.co.jp/news/2016/05/29/national/crime-legal/critics-hit-japans-, p. 87

[48] Turner, "Plea Bargaining."

[49] Yoga Ristamana, Umar Ma'rud, and Sugiharto Sugiharto, "The Forfeiture of the Convict's Assets Obtained from the Corruption Crime" 4 (2022): 298–306, http://jurnal.unissula.ac.id/index.php.

prevent more expenses and to be much less time consuming. The Nigerian judicial legal system as stated in Section 270 (13) of the Administration of Criminal Justice (ACJA) of 2015 as well as in the process of implementing the plea bargaining type has presented updates which shift the focus towards the victims, as opposed to merely the perpetrators of corruption. Confiscation of assets by punishment or criminal forfeiture by means of plea bargain can be seen from the condition of the assets of the perpetrator of corruption, since in confiscation of assets, if one waits for the final decision to result, it will reduce the value of the said assets belonging to the perpetrator of corruption. The type of plea bargaining to be used better is fact bargaining by reducing the facts regarding the assets that will be confiscated, thus the facts that have been presented by the prosecutor do not need to be presented at trial.

This study recommends several points. Firstly, the reform of the procedures in settling criminal cases needs to be highlighted even more in order for it to render more focus on the recovery of the assets from perpetrators of corruption. While toying with the idea of plea bargaining system is actually in accordance with Indonesian legal culture hence it is important to be designed and studied in more depth in order to realise the swift, simple and low-cost justice system. Indeed, if a plea bargaining arrangement is implemented, it must be in the form of a law or regulated in the Criminal Procedural Code so that there is no discretion of prosecutors or investigators from the Corruption Eradication Commission. After obtaining the legal standing, the defendant can then obtain a form of legal certainty. Second, in implementing the plea bargaining system to confiscate assets, care and caution need to be taken so as not to give rise to new wave of corruption, by tightening the negotiations between prosecutors and defendants under a supervising judge who is controlled through a special room that is recorded and stated in the minutes of the negotiation.

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COMPETING INTEREST

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