

NORMATIVE CONSTRUCTION OF THE GUILT RECOGNITION MECHANISM IN THE NEW CRIMINAL CODE AND ITS RELEVANCE TO THE ERADICATION OF CORRUPTION IN INDONESIA

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Abstract. *Plea bargain* is a new mechanism regulated in Law Number 20 of 2025 concerning the Criminal Procedure Code (KUHP) as part of the reform of the criminal justice system in Indonesia. This mechanism allows the defendant to voluntarily admit his guilt in exchange for criminal relief. This study aims to analyze the regulation of the guilt mechanism in the new Criminal Code as a form of adaptation of *plea bargaining* and its relevance in corruption cases without weakening the principle of corruption eradication. The research method used is normative juridical with a legislative approach, a case approach, and a conceptual approach through literature studies on primary, secondary, and tertiary legal materials. The results of the study show that the admission of guilt in the new Criminal Code is a limited form of *plea bargaining* because it still places the judge as the party who tests the voluntariness of the confession and the adequacy of the *ukti* tool. A confession of guilt cannot be used as the only basis for criminal prosecution because it requires at least two valid evidence. In corruption cases, this mechanism is relevant when used to speed up evidence, uncover the network of perpetrators, and support the recovery of state losses through *asset recovery*. However, its application must be strictly limited so as not to weaken the deterrent effect and principles of corruption eradication.

Keywords: Guilty Plea, *Plea Bargaining*, Corruption

I. INTRODUCTION

The criminal justice system in Indonesia has undergone various developments, this is shown as an effort to increase effectiveness and efficiency in handling criminal cases. The Criminal Procedure Code (KUHP) No. 20 of 2025 introduces a new procedure in handling cases known as a guilty plea which in legal literature is often associated with the concept *Plea Bargaining*. Criminal Code Article 1 Number 16 contains the definition of a guilty plea (*Plea Bargain*). A confession of guilt itself is generally defined as a defendant's voluntary confession of guilt with the intention of mitigating the sentence. [1]

Initial concept *Plea Bargain* began in England in the 18th century and then in the 19th century began to develop in the United States with the initial form, namely *Guilty pleas*. In the United States itself the concept *Plea Bargaining*. In the settlement of almost all criminal cases, including serious cases, except for cases such as sexual crimes and physical violence, besides that it is also used in resolving corruption cases. [1] In the last 3 decades, *Plea Bargaining* Implemented in many jurisdictions around the world, the implementation of this system aims to minimize the number of disputed criminal trials. [2]

In practice, the mechanism of confession of guilt contains two sides, the first is that the mechanism of confession can speed up the case process, reduce the burden of prosecution,

and provide space for the defendant to admit guilt in exchange for getting leniency, but on the other hand, this mechanism can be a risk of pressuring the defendant, especially when the defendant is in a weak position and does not know the legal consequences of his confession. And a confession of guilt can give rise to a false confession, so that before a confession of guilt, an obligation to fully disclose all evidence is required so that the potential for misverance will be reduced. [3] Thus, the main issue is not only the acceleration of the settlement of the case, but also the assurance that the confession is not a false confession and is made voluntarily, and is still tested based on valid evidence.

The public prosecutor has a crucial position in this mechanism. The public prosecutor plays a key role in the process *Plea Bargaining*. [4] Thus the setting *Plea Bargaining* in Indonesia must be based on clear Authority limits so that *Plea bargaining* It is not a closed criminal bargaining system that is not transparent. In the Criminal Code, judges have an important role in running this mechanism. The judge is required to explore the real truth through evidence in court. So that the defendant's guilty plea cannot be directly used as a basis for the imposition of a verdict without other supporting legal evidence. This raises the question of how the mechanism of guilt is (*Plea bargain*) In the new Criminal Code, it can be integrated into the criminal procedure law system without ignoring this principle.

The mechanical confession of guilt in the new Criminal Code is seen as one of the efforts to overcome problems that occur in criminal justice practice such as the accumulation of cases, the slow case settlement process, and the high costs. According to Law Number 48 of 2009 Article 2 Paragraph 4 concerning Judicial Power, the criminal justice process in Indonesia must reflect the principles of a simple, fast, and low-cost judiciary. According to data (Supreme Court Clerkship 2020 quoted by Kurniawan 2021) in 2018 there were 17,156 cases which increased by 12.09% in 2019 to 19,369 cases and there are still cases that have not been examined in 2018 which causes the number of cases in 2019 to accumulate with the burden of unresolved cases in 2018. [5]

Corruption has a very wide impact on the state's finances, violates the social and economic rights of the community which causes the need for extraordinary efforts or actions. [6] so that to overcome corruption crimes, many rules, institutions, and commissions are needed to eradicate corruption. [7] In practice, the process of proving corruption cases can take a long and complex time because of the many parties involved, as well as complicated documents and fund flows. *Plea bargaining* It is widely used by countries to handle corruption cases. In Nigeria, for example, the concept of *Plea bargaining* in the application of the financial case has experienced a lot of public criticism but the concept of *Plea bargaining* It itself is also considered a useful tool in resolving minor criminal cases. [8] Criminal acts involving finance, especially corruption, are one of the sensitive problems in social life, so all forms of mitigation, such as a confession of guilt, must be based on clear normative rules.

In addition to the prison sentence of the perpetrator, the state must also have the ability to recover state financial losses through tracking, confiscation, and asset return. Criminal proceedings as a mechanism oriented to the defendant and *Civil Forfeiture* as the recovery of corrupt assets, so that the strengthening of *Asset Recovery* is an important path in mitigating public sector corruption. [9] Then perpetrators in corruption cases often do not work alone so that a confession of guilt can open up the structure of layered perpetrators. Protection against *Justice Collaborators* Or cooperative sanctions are an important element in criminal proceedings, because proving a criminal act often depends on the courage of individual perpetrators to reveal the involvement of other parties in criminal networks. [10] Although *Justice collaborator* Unlike a guilty plea, but both have similarities in the defendant's right to cooperate in the law enforcement process.

Based on this description, research on the mechanism of confession in the new Criminal Code is important because it touches on two main issues. First, how is the construction of the law of confession of guilt as a form of adaptation of *Plea Bargaining* in the Indonesian criminal justice system, second, whether the mechanism is relevant to be applied to corruption cases without weakening the principle of corruption eradication. These two issues need to be dictated normatively because the confession of guilt should not only be positioned as an instrument of efficiency, but must be tested through the principles of the rule of law, protection of the rights of the defendant, supervision of judges, effectiveness of evidence, deterrent effect, and recovery of state losses.

II. RESEARCH METHOD

This study uses a normative juridical research approach method. Examination through secondary data or literature materials as legal material to be studied is known as normative juridical research. To provide new arguments, theories, or ideas as recommendations to solve existing problems, this research is carried out by tracing regulations and literature related to the problem being researched. [11] The approach in normative juridical research is through a legal approach, a case approach, and a conceptual approach. The source of data for this research is secondary data collected through Literature materials. [12] Literature Materials are data collected from books, literature, and opinions of legal experts related to this legal research, along with other sources that can increase the effectiveness and success of the research. Secondary data is classified into 3 characteristics, which are seen from the binding force covering primary legal materials, secondary legal materials, and tertiary legal materials. [12]

III. RESULT AND DISCUSSION

A. Regulation of the Confession Mechanism in the New Criminal Code as a Form of *Plea Bargaining* in the Criminal Justice System in Indonesia

Confession of guilt is a new concept in the criminal justice system in Indonesia contained in Law Number 20 Tahun 2025 concerning the Criminal Procedure Code, which applies in Indonesia. The definition of *plea bargain* in the new criminal code is contained in Article 1 Number 16 which reads: "*Plea bargain* is a legal mechanism for the defendant to admit his guilt in a criminal act and cooperate in the investigation by submitting evidence that supports his confession in exchange for leniency" It is possible for the defendant to get leniency if he admits his guilt in committing a criminal act.

The mechanism of confession of guilt in the Criminal Code is conceptually a form of adaptation of the concept *Plea bargaining* which has developed in the developing countries *common law* like in the United States. However, in its implementation there is a main difference between *Plea Bargaining* in tradition in the United States and Confession of Guilt in the new Criminal Code. The difference lies in the degree of negotiation. According to (Regina Rauxloh 2012 as quoted in Rifi Hermawati 2023). In the United States, the public prosecutor, the defendant, and his defense practice negotiation which consists of several forms, namely *Charge bargaining* or bargain of articles to be prosecuted by the public prosecutor, *Fact Bargaining* or bargaining for legal facts, and *Sentencing Bargaining* or bargaining by the public prosecutor to be given to the defendant. This bargaining can be done by the defendant and his defenders without involving the judge. [13]

In Indonesia, the system of confession of guilt in the new Criminal Code of Criminal Procedure does not provide special space, on the contrary, this path prioritizes the confession of guilt that the defendant submits before the judge where the judge has an active role in examining the voluntariness of the confession and the validity of the confession. [14] so that the system of confession in Indonesia cannot be completely equated with the system *Plea bargaining* in the United States

because the guilt recognition system in Indonesia still places the judge as the main examiner of the voluntariness of the confession and the sufficiency of the basis of the evidence.

The regulation of confession of guilt in the new Criminal Code reflects that there are efforts to adjust to the character of the legal system in Indonesia, where there are restrictions as stated in Article 78 Paragraph 1 of the Criminal Code. This is different from the practice in some countries that do not set limits on what types of criminal acts can be resolved by the mechanism of regulating the settlement of cases through *Plea bargaining*. As in the United States the mechanism *Plea bargaining* It can be applied to all criminal offenses, including serious crimes, but some states such as California and Mississippi exclude sexual crimes and physical violence.[1]

The confession of guilt in the Criminal Code was only passed as a solution to the relatively long problem of case settlement in Indonesia due to the accumulation of cases. So that it causes a high burden on the court of the criminal justice system. Presence of *Plea Bargaining* It is hoped that it will be able to reduce the accumulation of cases in court while at the same time optimizing time and cost efficiency, so that it is in accordance with the principles of simple, fast, and low-cost justice without reducing the essence of the purpose of the crime itself. [15] Thus, a confession of guilt has a practical function to speed up the process of reconciliation but still be subject to the principle of legality.

The system of confession of guilt in the framework of criminal procedure law in Indonesia cannot be used as the only basis for criminal prosecution in Indonesia, requiring the existence of at least 2 pieces of evidence and the judge's conviction in sentencing the defendant.[5] Therefore, it can be interpreted that the defendant not only confesses guilt before the judge but must provide other legal tools so that the judge can find the material truth. The mechanism of confession also requires voluntary and non-coercive voluntariness. A confession of guilt cannot be accepted directly but there must be a guarantee of a procedure where the defendant has the right to exercise his rights, an explanation of potential criminal sanctions and an examination by the judge of the voluntariness. [16]

Judges in the confession mechanism do not only play a role in receiving confessions, but also have a role as a keeper of the balance between the efficiency of case settlement and substantive justice. *Judicial scrutiny* play a role in providing supervision of the legal process in the use of coercive efforts so that more caution is needed for mechanisms such as *plea bargaining*. [17] so that in the new Criminal Code, the supervision of judges is crucial so that the confession of guilt does not violate the rights of the victim and the community.

Confessions of guilt have a positive impact on case settlement if applied, such as reducing the burden on the court due to the accumulation of cases so that the principle of fast, simple, and low-cost is created, but confessions can pose risks if they are only understood as a tool to accelerate cases. *Plea bargaining* does not always provide fair efficiency because it can put pressure on the defendant. People who don't have a lot of experience will be easy to be tricked and coerced so it's easy for them to be intimidated by the courts.[18] This is a relevant criticism of Indonesia because the new Criminal Code must

avoid a guilt-confessing model that is oriented towards case settlement rates without ensuring the material truth.

Article 78 Paragraph 7 Letter F of the Criminal Procedure Code which reads "evidence of the commission of a criminal act by the defendant to ensure that the defendant committed a criminal act". So that the evidentiary aspect must still be emphasized, not only the admission of guilt. The evidence provided in the guilty plea is at least 2 (two) pieces of evidence. This is important in order to maintain a balance between the efficiency of case settlement and the achievement of material truth in the criminal justice process. In addition, the judge also has a very important role in assessing the confession of guilt by the defendant. The judge has the obligation to assess whether the confession was made voluntarily, as well as the complete understanding by the defendant. If the judge accepts a guilty plea, the trial process will continue with a brief examination and if the judge rejects the guilty plea, the case will continue with the examination of ordinary events. This provision is stated in Article 28 Paragraph 8, Paragraph 9, and Paragraph 10 of the Criminal Code.

B. The Relevance of the Application of the Guilt Confession Mechanism in the New Criminal Code in Corruption Cases without Weakening the Principles of Corruption Eradication

Corruption crimes that are overcome by the mechanism of applying confession of guilt need to be analyzed more carefully than the application of confession of guilt to general criminal acts. Corruption is a violation of criminal norms and also a crime that harms state finances, damages governance and can reduce public trust in the law. Corruption is an act of abuse of power, government authority with a purpose that is contrary to the public interest, corruption policies in Indonesia are still based on legal certainty by emphasizing repressive legal recognition. [19]

The relevance of corruption cases and confessions lies in their ability to speed up evidence, reveal information about the flow of funds, and help recover state losses. The recovery of state financial losses is one of the goals in law enforcement in corruption cases which is in line with the retributive principle where the perpetrator is responsible for his actions. [20] So that confession can be useful when it is not only admitted to its actions but also helps the state in finding assets, revealing people who enjoy, and dismantling the network of perpetrators. However, guilty pleas must not turn the nature of corruption into a serious crime. The challenge faced when using the guilty plea system or other systems that are oriented towards recovery is not just imprisonment in cases of corruption crimes. It can reduce the essence of the law because prison sentences are one of the reasons for society to obey and respect the criminal law. [21]

In the application of corruption crimes, the purpose of the punishment must be considered. The purpose of punishment itself is to prevent criminal acts by enforcing legal norms to protect the people and resolve conflicts due to criminal acts, restore balance and instill a sense of security and peace in society. [22] The alternative approach used in resolving corruption cases must be linked to the purpose of punishment, therefore the punishment of corruption perpetrators must still

maintain a proportional aspect of retribution, and recover state losses.

The mechanism for admitting guilt in corruption crimes can be carried out if the mechanism strengthens the eradication of corruption and does not replace the agenda of law enforcement of non-penal policies in corruption cases. The harmonization of criminal corruption policies in the Indonesian criminal justice system must maintain consistency between enforcement, prevention and asset recovery. [23] So that a guilty plea will only be relevant to eradicate corruption crimes when it produces concrete benefits such as the return of state losses, the disclosure of a wider network of perpetrators.

The use of the guilt mechanism as a condition *Plea bargaining* to deal with corruption cases, problems can arise when using *Plea bargaining* only to provide criminal relief without clear standards. In the process of resolving cases that cost costs and procedural complexity, several cases of defendants take the least difficult path by admitting guilt regardless of guilt or not. [18] This shows that the mechanism of confession can cause justice problems if the defendant pleads guilty because of the push of the system and not because of factual truth. This risk is applied to corruption cases considering that corrupt perpetrators often have access to power, economic resources, and strong legal aid, then if the standard of application *Plea bargaining* does not have a clear standard that can be exploited to obtain criminal leniency without proportional criminal liability.

The application of a confession of guilt in a corruption case must be accompanied by normative limitations, where with a confession of guilt the public prosecutor still has to prove the elements of a corruption crime then the confession made by the defendant is intended to measure the return of losses to the state, the judge has an important role in measuring the voluntariness of the defendant with the support of other evidence. The reduction in crime must remain proportional in order to have a deterrent effect on the perpetrator. Confession of guilt must also be distinguished from the concept of forgiveness of the perpetrator. Asset recovery is a means that can choose public trust, an efficient asset recovery process in Indonesia not only supports financial recovery but strengthens public trust in the government. [24] Thus, a confession of guilt cannot be used as a peaceful avenue but as a tool to strengthen the effectiveness of proving and recovering assets. The use of the guilty plea system in the relevance of criminal cases can be done as long as the state still determines corruption cases as serious crimes. So that the concept of confession of guilt as a condition of *plea bargaining*.

IV. CONCLUSIONS

The regulation of the confession mechanism in the new Criminal Procedure Code is understood as a form of "*Plea bargaining*" that is limited and controlled, and does not fully follow the criminal negotiation model in the *common law* legal system. This mechanism is relevant as a reform of the criminal procedure law, insofar as the confession is given voluntarily, accompanied by legal counsel, examined by a judge, supported by sufficient evidence, and does not eliminate the state's obligation to prove elements of a criminal act. In this form, a

confession of guilt can be a tool to increase the efficiency of the judiciary without sacrificing the principles of the rule of law. Thus, the application of the confession mechanism in the new Criminal Procedure Code is indeed relevant for cases of corruption, but this relevance is limited and bound by certain conditions. This mechanism should not be used to undermine efforts to eradicate corruption through excessive reduction of sentences, neglect of evidence collection, or termination of legal proceedings against the main perpetrators. Confessions must be aimed at speeding up the evidentiary process, strengthening asset transfers, uncovering the perpetrators' networks, and maintaining a deterrent effect. In this context, a confession of guilt is not a form of leniency for corruption suspects, but a procedural legal instrument that can support the eradication of corruption more effectively and measurably.

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