

## Law Enforcement for Mild Crimes Through Plea Bargaining to Achieve Efficiency in Resolution of Criminal Cases

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### Abstract

The lengthy criminal justice process in Indonesia has led to a backlog of cases, hindering the realization of the principles of simple, expeditious, and low-cost justice delivery. Legal reform is urgently needed to create a more effective and efficient legal process, one approach being the Plea Bargaining System. Negotiations through Plea Bargaining can avoid lengthy trials, save time, and expedite case resolution, thereby reducing the burden on the justice system. However, the existence of a Legal Norm Vacuum regarding the regulation of Plea Bargaining in Legislation has the potential to cause Legal Uncertainty, because there are no clear rules governing the conditions, procedures and limitations. The government can increase the efficiency of law enforcement for Minor offences (TIPIRING) through Plea Bargaining by accommodating the combined concept of Plea Bargaining and Restorative Justice into legislation, establishing clear and transparent procedures, and ensuring justice, benefit and legal certainty in the case resolution process through Plea Bargaining.

Keywords : Law Enforcement, Minor Offences, Plea Bargaining

## Introduction

Laws are formed due to considerations of justice (gerechtigkeit) as well as legal certainty (rechtssicherheit) and utility (zweckmassigkeit). One of the most substantial components in legal development lies in the law enforcement process. Law enforcement is a series of processes to explain the abstract values, ideas, and ideals that constitute the objectives of the law.

According to Satjipto Raharjo, resolving cases through the judicial system, which ultimately results in a court verdict, is a form of law enforcement that is taking a slow turn. This is because law enforcement involves a long process, traversing various levels, from the police, the prosecutor's office, the district court, the high court, and even the Supreme Court. This ultimately results in a significant backlog of cases in the courts.

The lengthy criminal justice process in Indonesia has resulted in the principle of simple, expeditious, and low-cost justice, as mandated by Article 4 paragraph (2) of Law of the Republic of Indonesia Number 48 of 2009 concerning the Judicial Power, not being realized.

This has implications for the lack of legal certainty and justice for defendants in every judicial process. Law enforcement officials prioritize reactive rather than proactive performance. Prioritizing procedural and crude laws makes justice difficult to achieve. Legal reform is needed to create a more

effective and efficient process, one way of doing this is through the implementation of systems that can expedite case resolution, such as the Plea Bargaining System or the application of Retroactive Justice in criminal cases.

As a country that adheres to a civil law system, the Plea Bargaining system is essentially unknown in Indonesia's criminal procedural system. Indonesia lacks explicit legal provisions for Plea Bargaining in general, creating a legal vacuum. Despite this, there have been attempts to adopt it, as proposed in the Draft Criminal Procedure Code (RUU KUHAP) and several provisions similar to Plea Bargaining stipulated in legislation related to specific cases or regulations related to Restorative Justice.

Theoretically, Plea Bargaining is already regulated through the "Special Path" provision in the Draft Criminal Procedure Code (RUU KUHAP). The special pathway in the Draft Criminal Procedure Code aims to expedite the trial process for criminal cases in which the defendant admits guilt. This mechanism allows for a quicker resolution of cases through an agreement between the defendant and the public prosecutor, in order to obtain a reduced sentence.

However, despite the passage of the Draft Criminal Procedure Code (RUU KUHAP), significant legal gaps remain regarding the regulation of Plea Bargaining. This concept has not been explicitly integrated into the Indonesian criminal law system, resulting in a lack of a clear legal basis for its practical implementation. To address the practical legal vacuum regarding Plea Bargaining, efforts can be made to develop more detailed legislation, such as a revision of the Criminal Procedure Code Bill and its implementing regulations, by explicitly adopting the Plea Bargaining system as exists in other legal systems, and conducting outreach and training for law enforcement officers.

Through this research, the author intends to identify all issues related to "Law Enforcement for Minor Crimes (TIPIRING) through Plea Bargaining," examined using the Juridical-Normative Research method. When examined from a legal substance perspective, there is a Legal Norm of Law (Blanco Norm of Law) regarding the regulation of Plea Bargaining in the enforcement of Minor Crimes, both in the New Criminal Code and the Draft Criminal Procedure Code.

Based on the background of the problem outlined above, the following problem formulations can be drawn:

1. Is plea bargaining an effective method for enforcing the law on minor crimes?
2. How can plea bargaining be applied to address court workloads and expedite the resolution of criminal cases?

## Methods

The research method used in this study is a Juridical-Normative method, with a qualitative approach. This approach was chosen because the author's primary objective is to describe and analyze

positive legal norms relevant to law enforcement through the Plea Bargaining mechanism. Through this qualitative approach, the researcher hopes to provide a comprehensive overview of the enforcement of Minor Crimes based on Plea Bargaining as an effort to reform the criminal law enforcement system.

The approaches used are the Statute Approach, the Comparative Approach, and the Conceptual Approach. The author used primary, secondary, and tertiary legal sources. The legal material collection technique was carried out by studying and exploring legal materials through a literature review and statutory analysis. The legal material analysis technique used descriptive techniques

## **Results and Discussion**

### **Law Enforcement for Minor Crimes (TIPIRING) with Plea Bargaining**

In reforming Indonesia's criminal justice system, the Draft Criminal Procedure Code (RUU KUHAP) introduces a new model for case resolution that adopts a procedure similar to plea bargaining. In relation to efforts to achieve dignified justice, the use of the plea bargaining system is expected to incorporate dimensions of punishment control and law enforcement. Punishment control is closely related to the realization of spiritual justice, namely, emphasizing humanitarian principles in the legal process. In other words, the legal process must prioritize humanitarian principles. Meanwhile, law enforcement is the embodiment of material justice, which encompasses legal certainty.

The plea bargaining system is a negotiation between the public prosecutor and the accused or their defense attorney. Its primary motivation is to expedite the resolution of criminal cases so that they are effective and efficient. Negotiations must be based on the defendant's voluntary admission of their actions and the prosecutor's willingness to impose a lighter sentence.

The results of the study show that Plea Bargaining can be an effective method for handling Minor Crimes (TIPIRING), because the application of Plea Bargaining can speed up the resolution of cases compared to regular trials, in accordance with the principles of justice stated in Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power, namely the principles of simplicity, speed and low cost.

### **The Application of Plea Bargaining to Address Court Workload and Accelerate Criminal Case Resolution**

Indonesian criminal justice often experiences a backlog (overcapacity) due to the large number of criminal cases entering the courts. The number of cases continues to increase due to the large

number of cases that judges cannot resolve each year.

The increase in criminal activity demonstrates weaknesses in law enforcement, indicating ineffective criminal sanctions, as well as problems in law enforcement, such as a lack of professionalism among officials, legal loopholes, and slow legal processes.

Efforts to reform criminal law continue to be undertaken, not only in substantive criminal law but also in formal criminal law. These reforms are intended to resolve criminal cases effectively and efficiently. Specifically, reforms to formal criminal law aim to reduce lengthy and protracted court proceedings, leading to a backlog of cases in court. A solution is needed to address this issue.

In the Draft Criminal Procedure Code (RUU KUHAP), one of the reforms in the criminal justice process is the introduction of the concept of Plea Bargaining, with a "Special Path" examination. Simply put, the principle of Plea Bargaining involves negotiations between the public prosecutor and the defendant/their legal counsel to admit guilt and to negotiate the form and length of punishment.

The application of Plea Bargaining in Minor Crimes (TIPIRING) is not explicitly regulated in the Indonesian legal system. However, the concept could be adopted through the Draft Criminal Procedure Code (RUU KUHAP) or through out-of-court settlement negotiations such as mediation, as TIPIRING is characterized by its simplicity and speed, which aligns with the objectives of Plea Bargaining.

The lack of legal norms regarding the regulation of Plea Bargaining in legislation has the potential to create legal uncertainty due to the lack of clear rules governing its requirements, procedures, and limitations. This can lead to differences in implementation at the law enforcement level, potentially leading to unequal treatment of suspects and the risk of abuse of authority by the Public Prosecutor.

The risks of legal uncertainty resulting from the lack of regulation of Plea Bargaining in legislation, particularly regarding the application of Plea Bargaining in Minor Crimes, can be summarized as follows :

1. Lack of certainty regarding terms and procedures:

Because there are no clear rules, the determination of who has the rights and how the negotiation process is conducted can vary. This creates room for unfair treatment.

2. Room for abuse of authority:

Without binding rules, prosecutors or judges can create their own rules, which can potentially be used to abuse their power for personal gain.

3. Differences in implementation in the field:

The implementation of plea bargaining can vary from case to case, and even from region to region. This will create injustice for the parties involved in the legal process.

4. Potential reduction in the protection of suspects' rights:

Agreements that are not clearly regulated can be detrimental to suspects because there is no

guarantee of protection for their rights, such as the right to a fair defense or the right to reject the agreement.

The application of Plea Bargaining to Minor Crimes (TIPIRING), when examined according to Gustav Redbuch's Theory of Legal Certainty, demonstrates that it can alleviate court workloads and expedite the resolution of Minor Crime cases. This is based on the following reasons:

1. Plea Bargaining can establish justice based on the principles of simplicity, speed, and low cost by offering faster case resolution compared to formal trials, thereby reducing the backlog of cases in court.
2. Plea Bargaining binds the Public Prosecutor and the Defendant to the agreement reached. The Defendant admits guilt and receives a lighter sentence, while the Public Prosecutor receives certainty regarding the resolution of the case.
3. Although Plea Bargaining does not involve the Judge in the negotiation process, the Judge plays a crucial role in ensuring that the agreement is voluntary, fair, and not contrary to the law, ensuring that the resulting decision has legal certainty. In the context of Minor Crimes (TIPIRING), the application of Plea Bargaining can also be seen as a model that theoretically can realize justice as proposed by Aristotle, especially if the Plea Bargaining leads to an agreement that is proportionate to the perpetrator's fault (distributive) and effectively restores the victim's losses (corrective).

However, this application also requires special attention to ensure that Plea Bargaining is not abused. Agreements must always be based on the principle of justice, not simply efficiency or convenience for law enforcement. For Plea Bargaining to align with Aristotle's principle of justice, a monitoring mechanism is needed to ensure that the agreement truly reflects the proportion of fault and restitution of losses, and does not disadvantage either party.

Meanwhile, the application of Plea Bargaining in Minor Crimes (TIPIRING) when studied according to Lawrence M. Friedman's Legal System Theory, shows that Plea Bargaining is a "reality" of a pragmatic legal system, where efficiency is the main priority and material truth is often sacrificed for the sake of fast and efficient case resolution. Plea Bargaining in Minor Crimes (Tipiring) can be analyzed through the concept of a law enforcement system which is divided into 3 (three) components, namely :

1. Legal Substance, which focuses on the laws and regulations governing minor crimes (Tipiring) and the plea bargaining mechanism. In Indonesia, plea bargaining has not been fully accommodated in the Criminal Procedure Code for general criminal cases.

2. Legal Structure, This focuses on how the Misdemeanor Criminal Justice (Tipiring) justice system works. The implementation of Plea Bargaining requires a structure that allows for negotiation between the Public Prosecutor and the Defendant. The judge plays a central role, still determining the process from start to finish, leading to a verdict. Existing structures may not be ready to manage Plea Bargaining because the Misdemeanor Criminal Justice (Tipiring) court process is typically very simple and quick.

3. Legal Culture, namely focusing on the acceptance of Plea Bargaining by the parties involved (Public Prosecutor, Defendant, and Judge). The existing legal culture often emphasizes a thorough examination, so the possibility of implementing Plea Bargaining remains a challenge.

According to Lawrence M. Friedman's theory, the application of plea bargaining to minor crimes (Tipiring) requires adjustments to three components of the legal system: supporting regulatory substance, a flexible judicial structure, and a legal culture that accepts its application. If any of these components is lacking, law enforcement based on plea bargaining will be ineffective and difficult to implement.

The application of plea bargaining to minor crimes (Tipiring) is an effort to harmonize the structure (system requirements), substance (accommodating rules), and culture (attitudes of legal officials) to efficiently achieve legal goals (certainty, justice, and expediency), particularly in handling minor cases that often burden the judicial system

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## Conclusion

The application of Plea Bargaining for Minor Crimes (TIPIRING) can create efficiency in resolving criminal cases because :

1. *Plea Bargaining* It can speed up the judicial process. Negotiations through plea bargaining can avoid lengthy trials and save time, thus speeding up the settlement process.
2. *Plea Bargaining* can reduce costs. By reaching an agreement, costs associated with the trial such as attorney fees and court operational costs can be reduced.
3. *Plea Bargaining* can reduce the burden on the judicial system. A crowded judicial system can be made lighter because many cases can be resolved outside the lengthy formal trial process.
4. *Plea Bargaining* can provide benefits to victims. Even if the case is settled out of court, plea bargaining can still provide satisfaction to victims because the perpetrator admits their guilt and the legal process can be completed more quickly.

5. *Plea Bargaining* can provide benefits to the perpetrator. The perpetrator can avoid the risk of a heavier sentence by admitting his guilt and accepting a lighter sentence in accordance with the agreed sentence.

6. Realization of Justice, Benefit and Legal Certainty for all parties involved in the case.

The concept of Plea Bargaining in Indonesia is still in the development stage and is different from the concept in Common Law countries, because in Indonesia, the concept emphasizes more on how Plea Bargaining can reduce demands rather than free bargaining, so there is concern that there is a potential risk, namely violation of the Defendant's rights and the risk of manipulation, so that clear regulations and strict monitoring mechanisms are needed to prevent potential misuse of this system and to avoid gaps in its implementation.

For Plea Bargaining for Minor Crimes (TIPIRING) to be effective, clear and measurable implementation is necessary, such as an agreement based on an admission of guilt and a willingness to pay compensation, as well as transparent and accountable law enforcement. Effectiveness can also be enhanced by providing the public with a comprehensive understanding, including the rights and obligations of the parties, and ensuring a balance between the interests of the defendant, the victim, and law enforcement.

The government can improve the efficiency of law enforcement for Minor Crimes (TIPIRING) through Plea Bargaining by :

- a. Develop clear regulations. Regulate plea bargaining in legislation tailored to the Indonesian justice system, particularly for minor crimes, such as the Draft Criminal Procedure Code.
- b. Integrate the combined concept of plea bargaining and restorative justice into legislation and harmonize existing legislation.
- c. Provide training for law enforcement officials to understand and apply plea bargaining correctly and fairly, while avoiding potential abuse.
- d. Establish clear and transparent procedures and ensure fairness, benefit, and certainty in the case resolution process through plea bargaining.
- e. Ensure strict oversight to prevent manipulation and ensure fairness during the negotiation process.

Integrate plea bargaining with restorative justice to achieve more comprehensive justice, especially in minor cases.

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