The Concept of Plea Bargaining in The Settlement of Narcotic Crime

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Abstract. Narcotics crimes have increased every year and the Indonesian government has declared a drug emergency. The increase in the number of narcotics crimes has resulted in an explosion of cases going to court, resulting in a buildup of cases at various levels of the courts and causing overcapacity of correctional institutions which in turn has added to the burden on the state. This study aims to analyze the concept of Plea Bargaining which is in accordance with the concept of special pathways in the RKUHAP and the application and placement of Plea Bargaining in narcotics crime cases. The concept of Plea Bargaining can be used as a legal problem solving in accordance with the RKUHP Article 199 concerning Special Tracks as an effort to shorten and accelerate procedural procedures in criminal cases in court. In narcotics crimes, Plea Bargaining can be applied as a way of settling cases for certain categories of defendants. The category in question is for those who become victims of narcotics abuse for the first time but are not included in the category of victims who can be rehabilitated.

Keywords: Plea Bargaining, Special Line, Narcotics Crime.

1 Introduction

The concept of a safe, comfortable and peaceful state which is the dream of every country is in accordance with the ideals of the Republic of Indonesia which are contained in the 1945 Constitution as the basis of the constitution, namely "to protect the entire Indonesian nation and all of Indonesia's bloodshed. This concept is then embodied in Article 1 paragraph (3) of the 1945 Constitution which states that the State of Indonesia is a State of Law.

In the next stage, along with the times, the life of the nation and state underwent significant changes due to changes in human social life. At this stage, change is not only positive but can also have a negative impact which can lead to crime. One of the extraordinary crimes that has stood out lately is the crime of narcotics.

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Narcotics crime increases significantly every year and the government even says that Indonesia is a drug emergency and makes narcotics crimes one of the extraordinary crimes. The 2018 World Drugs Reports published by the United Nations Office on Drugs and Crime (UNODC), stated that as many as 275 million people in the world or 5.6% of the world's population (age 15-64 years) have used drugs. Meanwhile in Indonesia, the BNN as the focal point in the field of Prevention and Eradication of Drug Abuse and Illicit Trafficking (P4GN) pocketed drug abuse rates in 2017 of 3,376,115 people in the age range 10-59 years. [1]

Many factors have led to an increase in Narcotics crimes and one of them is the economy, as it is known that lucrative profits and wages are one of the reasons. The Research and Criminal Agency (Bareskrim) of the Indonesian National Police stated that there were 76 cases of drug abuse in Indonesia every day. [2] The special agency set up to deal with Narcotics crimes, namely the National Narcotics Agency (BNN), also stated that during the 2009-2021 period it handled 6,894 narcotics cases with 10,715 suspects and for the 2021 period the BNN handled 766 cases with 1,184 suspects. [3]

This fact has an impact on the booming of cases that go to court. This automatically results in the accumulation of cases at various levels of courts which are under the Supreme Court. In its annual report, the Supreme Court stated that in 2021 the number of cases that were submitted was 2,752,200 plus the remaining 2020 cases of 85,807 so that the total caseload was 2,838,007, and those that had been resolved were 2,708,701 cases, the remaining unfinished cases in 2021 there are 76,130 cases. This certainly has an impact on the burden of settlement of cases in the following year. [4]

The Supreme Court report show that process settlement case in the criminal justice system in Indonesia is not running as it should in accordance with the principles implementation Justice which simple, fast, and cost light as listed in Article 4 paragraph (2) Constitution Number 48 Year 2009 about Judicial Power. [5] This also has an impact no exists certainty law and justice which obtained defendant in every process the trial.

The backlog of cases that occurred at various levels of courts under the Supreme Court also had an impact on other problems, namely the overcapacity of various prisons throughout Indonesia. The Directorate General of Corrections (Ditjenpas) stated that there had been an over capacity of 111% which should have had a capacity of 132,107 inmates but was filled with 278,114 inmates. The Directorate General of Pasture reported that there were 138,684 prisoners related to narcotics cases while the remaining 133,580 prisoners were related to general criminal cases. [6]

Various efforts have been made to create an effective and efficient justice system to reduce the accumulation of cases at various court levels. This effort is in accordance with the principle of contante justitie which is the principle of a quick, simple and low-cost trial. This principle requires that the examination process is not complicated and to protect the suspect's right to be examined quickly so that legal certainty is immediately obtained.

To make this happen, the Indonesian government has tried several formulas to implement, one of which stipulates Law Number 13 of 2006 concerning Witness and Victim Protection Institutions. The provisions of Article 10 of the Law contain whistleblowers and justice collaborators, both of which are also contained in the Supreme Court Circular Letter (SEMA) Number 4 of 2010 concerning Treatment for Whistleblowers and Witnesses Collaborating (justice collaborators) in certain criminal cases. However, in practice this system cannot be implemented optimally because there are no detailed rules regarding the implementation mechanism, especially regarding the protection and rewards given. As a result, the goal of realizing an effective and efficient criminal justice system has not been fulfilled and has had an impact on the accumulation of cases at various levels of the Court which are under the Supreme Court.

One of the latest efforts being tried by the government as a legal problem solving is the Draft Criminal Procedure Code (RKUHAP). In this draft, there are several new provisions that have been prepared to accommodate the dynamics and legal needs of the community. Article 199 of the RKUHAP mentions special pathways as an effort to shorten and speed up the procedural procedures in criminal cases in court.

In handling narcotics crime cases, investigators base the alleged crime on Law Number 35 of 2009. Article 54 of the Law mentions the word rehabilitation, which in its implementation is adjusted to the provisions of SEMA Number 4 of 2010. This rehabilitation stage refers to the term victims of drug abuse. However, in practice not all suspects of narcotics crimes, especially those who abuse narcotics for the first time, fall into this category. There were several cases of suspects in narcotics crimes who were sentenced to high sentences, which became a burden for settling cases and led to overcapacity of correctional institutions, which in turn added to the burden on the state.

2 Formulation of The Problem

Based on the description above, the author is interested in conducting a discussion regarding the relationship between Plea Bargaining and the RKUHAP in narcotics crimes so the questions are formulated as follows:

1. Does the Plea Bargaining concept match the special pathway concept in the RKUHAP?
2. Can the Plea Bargaining concept be applied in narcotics crime cases?
3. How is the application and placement of Plea Bargaining in narcotics crime cases?

3 Discussion

Draft Plea Bargaining of course not set in law positive in Indonesia, but Plea Bargaining this is law which aspired to in Century future (Ius Constituendum) and as discourse in RKUHAP, by because of that need done discussion regarding with plea bargaining in Indonesia.

Plea Bargaining System can be interpreted as a statement guilty from a suspects and defendants. Plea Bargaining has been widely embraced in countries with legal systems common law. Plea Bargaining which developed in system law “common law” this has inspire appearance "mediation" in practice Justice based on law criminal in Dutch and France, which known with “transactie”. Plea Bargaining categorized as as effort settlement in outside hearing and the users too based on certain reasons.

The Plea Bargaining System is a negotiation between the public prosecutor and the accused or their defender, the purpose of this system is to speed up the process of resolving criminal cases so that the goal of an effective and efficient judicial process can be realized. Such negotiations must be based on the willingness of the accused to confess his actions and the willingness of the public prosecutor to threaten a lighter sentence than the actual demand.

Black's law Dictionary state that " Plea bargaining is the process where by the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to the court approach. it usually involves the defendant's pleading guilty to lesser offense or to only one or some of the counts of multi counts indictment in return for a lighter sentence than that possible for the graver charge”. [7]

In criminal justice practices that adhere to the common law legal system, for example in America it is known as Plea Bargaining, which is used for handling criminal cases, where between parties the public prosecutor (prosecutor) and the accused or their legal advisors conduct negotiations/negotiations regarding the type of crime that will be charged and the threat of punishment that will be prosecuted in court. Benchmark for the public prosecutor to determine the criminal threat that will be charged before the trial is the voluntary admission of guilt from the defendant. Therefore, with this concept, a judiciary criminal proceedings which usually require quite a long process and require a lot of money, become more efficient and fast. The results of negotiations that have been agreed by prosecutor public and the accused will be decided by the Judge.

The concept of Plea Bargaining has also been widely applied in countries that adhere to a civil law legal system, for example Germany, Russia, Georgia, France and the Netherlands. In an effort to reform the criminal justice system in Indonesia, the government has also prepared a similar concept adopted from the concept base plea bargaining with designation "path Special". With the existence of the concept of "Special Track", it is interesting to see how it is enforced because of recognition guilty accused as base judge drop decision. [8]

A number of limitation about plea bargaining that is: [9]

1. That “plea bargain” this on in fact is something negotiation Among party prosecutor common with the accused or his defense;
2. Motivation negotiation the which Very main is for speed up process handling case criminal;

3. Character negotiation must grounded on "voluntary" accused for confess the mistake and willingness prosecutor general give threat punishment which desired accused or his defenders;
4. Opt-in judge as referee which no take sides in negotiation meant no allowed.

Meanwhile, the Special Track regulated in Article 199 of the RKUHAP reads:

(1) When the public prosecutor reads out the indictment, the defendant admits all the acts he was charged with and admits he is guilty of committing a crime with a criminal penalty of not more than 7 (seven) years, the public prosecutor can transfer the case to a brief examination procedure hearing.
(2) The defendant's confession was stated in the minutes signed by the defendant and the public prosecutor.
(3) The judge must:
   a. notify the defendant regarding the rights he has relinquished by giving the confession as referred to in paragraph (2);
   b. notify the defendant regarding the duration of the sentence that may be imposed; and
   c. ask whether the recognition as referred to in paragraph (2) is given voluntarily
(4) The judge can refuse the confession as referred to in paragraph (2) if the judge has doubts about the veracity of the defendant's confession
(5) Excluded from Article 198 paragraph (5), the sentence imposed on the accused as referred to in paragraph (1) may not exceed 2/3 of the maximum sentence for the crime charged.

To realize the implementation of this system, the government must immediately make regulations regarding the procedures for implementing it, starting from the implementation procedure, guaranteeing the fulfillment of the rights that can be obtained by the defendant when the defendant admits his wrongdoing and the time limits for carrying out the special line as a form of embodiment of justice that is simple, fast and low cost. It is hoped that the application of Plea Bargaining can manifest as a manifestation of the legal objectives of justice, benefit and legal certainty to be effective and efficient.

In implementing the Plea Bargaining system, there are several parties who will directly carry out the implementation process, the related parties who will be involved in the Plea Bargaining implementation process are:

Public Prosecutor

The Public Prosecutor plays a very vital role in the implementation of Plea Bargaining because those who have legal standing in implementing this system are the public prosecutor and the accused or their legal advisers. To implement Plea Bargaining, it is expected that public prosecutors will be provided with training and understanding of the Special Line system so that the aims and objectives of this system can be realized, namely to create a simple, fast and low-cost trial so that the criminal justice process in Indonesia can run effectively and efficiently.

The application of the Plea Bargaining system in Indonesia occurs at the time before the examination process at trial, before entering the guilt recognition stage there are several things that must be considered, including the mental state of the defendant when admitting the guilt of his actions whether the defendant is in a disturbed mental state or not, whether the defendant understands the trial process and the consequences of the actions he has committed and when he admits his guilt whether the defendant is mentally depressed or forced to admit it.

The public prosecutor must also notify the defendant regarding the waiver of his rights, such as: waiver of appeals, waiver of the right to non-self-incrimination, by admitting mistakes he has made but cannot be forced to provide other information that could implicate him as a person. defendant.

Legal advisor

Legal advisers have an obligation to explain or provide understanding and understanding to the defendant regarding Plea Bargaining, the things that are obtained from the admission of guilt and the obligation to discuss all offers from the public prosecutor. Legal advisers must have comparisons and must be able to predict whether admitting guilt will be more profitable than following trial before the court. The legal adviser must also consider the negotiations offered by the public prosecutor to other defendants in similar cases.

In practice, prosecutors and defendants or their legal advisers negotiate or bargain bid at least in three forms, including:

1. Charge Bargaining (negotiations chapter accused), that is prosecutor offer for lower type follow that criminal charged;

2. fact Bargaining (negotiations fact law), that is prosecutor only will convey facts which relieve the accused; and

3. Sentence Bargaining (negotiations punishment), that is negotiation Among prosecutor with the accused about punishment which will accepted defendant. Such punishment generally lighter. [10]

Judge

The judge also has a very crucial role in this Special Track process, because the judge is the one who will decide the case so the judge can test the defendant whether when the defendant admits his mistake was made voluntarily or not, the judge can also offer whether the defendant will cancel the agreement -an agreement made with the public prosecutor during the Plea Bargaining stage or not. The judge must also remind the defendant regarding the implications of making a plea guilty plea.

As stated in the RKUHAP Article 199 paragraph 4 that the judge can reject the defendant's confession so that negotiations between the public prosecutor and the defendant or his legal adviser are not absolutely the basis for the judge having to approve it or

grant leniency. The judge in deciding a case is not only based on the available evidence, but it is also important to be based on the conviction as a judge in deciding the case.

One of the main characteristics of the application of the special pathway concept in the RKUHAP is "confession" where it is known that a guilty plea is not recognized as evidence. Confession is not contained in the Criminal Procedure Code but the Defendant's Statement, in Article 189 paragraph (1) of the Criminal Procedure Code it states that "The defendant's statement is what the defendant stated in court about the actions he committed or which he himself knew or experienced".

M. Yahya Harahap [11] argued that the statement defendant will adequate as tool proof if:

1. What the accused state Explain in hearing court
2. And what which stated or described it is about good deeds which defendant do or of course which he know or which relate With what which has experienced alone in incident criminal which currently checked.
3. What which experienced alone by defendant. This is also a statement defendant about what which experienced new considered have mark As tool proof if statement experience that about experience alone ie with experience in a manner live incident criminal which concerned.
4. The testimony of the accused is only a tool proof to himself alone. According to Principle this what which explained somebody in the judge in position as defendant only could used as tool proof to himself.

Article 189 paragraph (2) of the Criminal Procedure Code states that: (1) the defendant's statement given outside the court session can be used to "help" find evidence at trial, (2) but on condition that it is supported by valid evidence and valid information. stated out of court insofar as it concerns the matter charged against him.

The substance of the problem in the application of the Special Line pattern is that there must be an "admission of guilt" as the main feature. In the case of a criminal case where the evidentiary examination of the case contains evidence of the defendant's testimony, the placement of the defendant's evidence at the end of Article 184 paragraph (1) of the Criminal Procedure Code is an indicator that the defendant's testimony is not really needed in an examination process at trial because its strength is below that of the statement. witnesses, experts and documentary evidence. Based on this, it is in line with the elucidation of Article 189 paragraph (4) of the Criminal Procedure Code which states that "the defendant's statement alone is not sufficient to prove that he is guilty of committing the act he was charged with, but must be accompanied by other evidence."

In general, the concept of Special Tracks and Plea Bargaining have a lot in common, however, when viewed in more detail, there are differences in their implementation. In the Plea Bargaining concept there is negotiation or bargaining, but the RKUHAP does not apply this method and emphasizes how to relieve demands. When this concept was adopted, according to provisions, the Prosecutor did not use the ordinary procedural law, but used the short examination procedural law, which only used notes and general records to expedite the proceedings at court hearings.

Regarding one of the requirements that the concept of the Special Track is the transfer of the method of ordinary examination sessions to brief examination sessions, we must also understand what is called a brief examination. Examination of brief procedures as stipulated in Article 203 of the Criminal Procedure Code is a criminal case which, according to the public prosecutor, is easy and simple to prove and apply the law. Thus, this will certainly have an impact on processes and costs that will be minimized and an effective and efficient justice system will be realized.

The application of the Special Track concept should be applicable to various criminal cases and narcotics cases are no exception. Where we know that narcotics cases dominate almost 50% of criminal crimes that occur in Indonesia so that it becomes one of the causes of over capacity in prisons. This is due to the fact that the justice system is not yet effective and efficient. With the presence of the Special Line system, it is certainly hoped that this will incarnate as a solution to the problems that are currently occurring.

In fact, the government has tried several alternative methods to deal with the large number of narcotics cases, including changing Law no. 22 of 1997 concerning Narcotics became Law Number 35 of 2009 concerning Narcotics. Apart from that, it can also be seen in the provisions of Article 10 of Law Number 13 of 2006 concerning the Witness and Victim Protection Agency which recognizes the terms whistleblower and justice collaborator, both of which are also contained in the Supreme Court Circular Letter (SEMA) Number 4 of 2011 concerning Treatment for Whistleblowers. Criminals (whistleblowers) and perpetrator witnesses who work together (justice collaborators) in certain criminal cases. In addition to this, there is also a Joint Regulation (PERBER) made by 7 (seven) agencies, namely the Supreme Court, Menkumham, Minister of Health, Minister of Social Affairs, Attorney General, National Police Chief, and Head of the Indonesian National Narcotics Agency.

For example, Article 127 of Law No. 35 of 2009 concerning Narcotics explains that anyone who uses narcotics class I is threatened with imprisonment for 4 (four) years. This is in line with the classification of the Special Track in Article 199 paragraph 1 which reads: When the public prosecutor reads the indictment, the defendant admits all the acts charged and pleads guilty to committing a crime with a criminal penalty of not more than 7 (seven) years, the prosecutor The general public may delegate the case to a brief examination session.

Unlike the case with suspects charged with Articles 111, 112 or Article 114 of Law Number 35 of 2009 concerning Narcotics, these articles carry a minimum sentence of 4 and 5 years in prison. This of course must be taken into consideration by the public prosecutor or judge so that someone who admits his guilt does not automatically get special treatment. In handling narcotics crimes, a special assessment (assessment) is required of the defendant or case regarding the procedure and eligibility of a person to obtain special lane rights by the public prosecutor. In narcotics crimes, Plea Bargaining can be applied as a way of settling cases for certain categories of defendants. The category in question is for those who become victims of narcotics abuse for the first time but are not included in the category of victims who can be rehabilitated.

The various efforts above are to prevent and avoid the rolling of cases to the court level, but these things are in fact not as expected. With the planned implementation of the Special Track in the RKUHAP, of course, it will become a new foundation for creating this hope. Efforts to enforce Plea Bargaining which are specifically applied in narcotics cases are something new, because as it is known that one of the things explained in Article 199, there is a transition from ordinary procedural examinations to brief procedural examinations.

To follow up on this matter, regulations and limitations must be issued immediately because narcotics cases are extraordinary cases with the threat of high penalties. These regulations and limitations are needed to filter which cases are eligible to use the Special Track and which cases cannot use the Special Track, so that misunderstandings do not occur in practice due to the absence of strict regulations governing them.

4 Conclusion

Based on the discussion it can be concluded that:

1. The concept of Plea Bargaining is in line with the special pathway concept in the RKUHAP which aims to shorten and speed up the procedural procedures in criminal cases in court. This concept can be applied to realize the principle implementation Justice crime in Indonesia simple, fast, and cost lightweight that guarantees certainty law and justice which obtained defendant in every process the trial.
2. The concept of Plea Bargaining can be applied to cases of narcotics crimes which dominate nearly 50% of criminal crimes that occur in Indonesia so that it becomes one of the causes of over capacity in prisons. The application of the Plea Bargaining concept in narcotics crime cases is expected to be a legal problem solving solution to create an effective and efficient justice system.
3. The application of the Plea Bargaining concept in narcotics crimes is used as a way of resolving cases for defendants with certain categories. The category in question is for those who become victims of narcotics abuse for the first time but are not included in the category of victims who can be rehabilitated.

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