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GUILTY PLEAS THROUGH SPECIAL CHANNELS AS AN EFFORT TO REFORM CRIMINAL PROCEDURE LAW IN INDONESIA

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Abstract
This research discusses the concept of setting up a guilty plea through special channels as an effort to reform criminal procedure law in Indonesia in relation to the principles of simple, fast and low cost justice. Focusing on efforts to reform criminal procedure law in Indonesia and associated with the principles of simple, fast and low cost justice, namely with the concept of Guilty Plea Arrangements through Special Paths that exist in the renewal of the Indonesian criminal procedure code. The method used in this research is normative research. The result of this research is that the special route is an effort in the renewal of criminal procedure law. By eliminating some of the evidentiary processes, the special track is considered to accelerate case handling, thus reflecting the principles of simple, fast, and low cost justice. The special path contained in article 199 of the draft criminal procedure code does not need to be included in the Indonesian Criminal Procedure Code because there is ambiguity that makes the special path require reassessment before being applied to Indonesian criminal justice.

Keywords: Plea Bargaining, Guilty Plea, Special Track

1. Introduction

Economic, financial and trade globalisation is increasingly widespread, so that a country cannot close itself off from external influences, including in the field of law. The Criminal Procedure Code (KUHAP) over a period of 40 years has certainly seen many developments in the social life of the community. This will be closely related to the need for law so that it is no longer considered in accordance with legal developments in society. The need for a new Criminal Procedure Code is expected to cover the needs of a modern criminal justice system (Listiyanto, 2017).

Indonesia as a democratic country based on law (rechtstaat), it is appropriate to update the provisions stipulated in the Criminal Procedure Code because they are no longer relevant by continuing to use the outdated Criminal Procedure Code. In the general elucidation of the Draft Criminal Procedure Code, there are a number of indicators that show the Criminal Procedure Code is outdated. Firstly, the Criminal Procedure Code is still unable to fulfil the legal needs in the community, especially in the practice of handling criminal offence cases which are the duty of law enforcers to resolve the case properly and fairly. Secondly, legal developments and changes in the political map coupled with global economic, transportation and technological developments also affect the meaning and existence of the substance of the Criminal Procedure Code so that it needs to be updated with a more accommodating, responsive and aspirational criminal procedure law.

Article 14 paragraph 3 (c) of the International Covenant on Civil and Political Rights, which has been ratified by Indonesia with Law No. 12/2005 on the Ratification of the International Covenant On Civil And Political Rights. The article states that in the

determination of a criminal offence, everyone is entitled to full guarantees of trial without delay. The Covenant also provides that one of the objectives of the principle of speedy trial is to protect the rights of the accused (not to be detained for too long and to ensure legal certainty for him/her).

The postponement of the trial prevents the Defendant from being immediately tried and provides legal uncertainty for the Defendant who is undergoing trial, especially for Defendants who are not accompanied by Legal Counsel. There are still delays due to various reasons, such as the absence of the complainant/plaintiff, witnesses who do not appear in the evidentiary hearing agenda, indictments that have not been prepared by the Public Prosecutor and other reasons such as unprepared evidence, and various other obstacles that may slow down the trial process resulting in delays between one stage of the trial agenda to the next.

The settlement of cases through the judicial system which leads to a court verdict is a law enforcement towards the slow lane. This is because law enforcement goes through a long distance, through various levels starting from the Police, Prosecutor's Office, District Court, High Court and even to the Supreme Court. In the end, it has an impact on the accumulation of cases that are not small in number in the court (Kristian and Tanuwijaya, 2015)

The roles and functions of the judiciary are currently considered to be overloaded, slow and wasteful of time, very expensive and less responsive to the public interest or considered to be formalistic and technically overloaded. For example, the author takes two cases as a consideration for a reform of the Criminal Procedure Code because such cases are considered formalistic and technically overloaded, slow and waste of time, very expensive and result in a backlog of cases (Sutiyoso, 2006).

In the case of Saulina Boru Sitorus, commonly called Ompung Linda, a 92 year old grandmother was sentenced to imprisonment on charges of cutting down a 5 inch diameter durian tree belonging to her relative to build her ancestor's grave on the customary land (waqf) of the Sitorus clan. The panel of judges sentenced Mr Linda to 1 month and 14 days imprisonment in the case of tree damage, which was heard by the Balige District Court under case file number 246/Pid.B/2017/PN Blg. In addition, this case took 89 days to be heard.

When viewed from a humanitarian perspective, questions arise. How can an elderly person become a criminal defendant just because of a trivial matter? How can law enforcement officials process this case, where the reported party is still related to the complainant, but still process this case even though peace efforts have been made and then rejected on the grounds that the compensation money is too small. Indonesia itself has provisions on restorative justice that can be taken as a solution for cases like this.

Restorative justice according to the Decree of the Director General of the General Justice Agency of the Supreme Court of the Republic of Indonesia Number 1691/DJU/SK/PS.00/12/2020 concerning the implementation of guidelines for the application of restorative justice is a criminal case settlement that emphasises restoring the original situation rather than demanding punishment from the court. The drafting team of the Criminal Code has also discussed the elimination of imprisonment for elderly offenders. Article 70 paragraph (1) of the Draft Criminal Code states that imprisonment should not be imposed if the Defendant is over 75 (seventy five) years old (Hikmawati, 2020)

The case of Ratna Sarumpaet, in the case of the circulation of false news (hoax) which is suspected of deliberately causing chaos. Ratna Sarumpaet herself admitted that she was

guilty of lying, but she did it not to cause trouble, but because she felt embarrassed when her family found out that she had liposuction plastic surgery. Photos of her swollen and bruised post-surgery face circulated in October 2018 quickly stirred national politics amid the heated presidential race between Joko Widodo-Ma'ruf Amin and Prabowo Subianto-Sandiaga Uno.

It all started when Ratna lied to her son because she was ashamed of having liposuction plastic surgery. Then when her face was bruised after the surgery, Ratna had an appointment (guest). Ratna also lied to one of her colleagues who is a politician. Ratna sarumpaet claimed that she was assaulted by a group of people in Bandung and her confession no doubt became a hot issue with various theories about the arbitrariness of presidential candidate Joko Widodo.

For his actions, Ratna sarumpaet was charged with multiple articles, namely Article 14 of Law Number 1 of 1946 concerning Criminal Law Regulations for allegedly deliberately causing chaos and Article 28 paragraph 2 of the Electronic Information and Transactions Law, sentenced to imprisonment for 2 (two) years by the South Jakarta District Court case Number: 203/Pid.Sus/2019/PN JKT.SEL. In addition, the process of this case took a long time, namely 140 days of trial.

From these two cases, it can be said that the current Criminal Procedure Code is too conservative and rigid because law enforcement officials prioritise formal procedures of equality before the law. There is a need for an effective and efficient regulation related to criminal procedure law that is more in line with the development and advancement of technology that exists and lives in Indonesian society, considering that the excessive burden of cases in the courts will take a long time in the trial process.

In the provisions of the articles in the Criminal Procedure Code there are two important processes, namely the existence of a judiciary that is free from any influence (independent judiciary), and the criminal justice process must be carried out quickly, simply, and at low cost, which is one of the firm principles for the perpetrators of judicial power in all courts in Indonesia. In reality, the handling of cases applied in Indonesia currently consumes a lot of time and energy. The stages of handling criminal cases are carried out in a series of processes that are not easy, this system is referred to as the Criminal Justice System, which consists of the process of Investigation (Opsporing), Prosecution (Vervolging), Court (Rechtspraak), Implementation of Judges' Decisions (Executie), and Supervision and Observation of Court Decisions (Effendi 2015).

Various problems in the implementation of criminal justice in Indonesia, such as the length of the case settlement process, the high cost of case settlement, and the accumulation of criminal cases in the courts that never end. This is in line with the urgency of reforming the criminal justice system to realise effective and efficient criminal justice in order to achieve the principles of simple, fast and low cost justice.

Indonesia has previously used the confession of the accused as the basis for the judge in deciding a case as outlined in the form of the Het Herziene inlandsch Reglement (HIR) which is referred to as evidence of the confession of the accused. Het Herziene inlandsch Reglement which at that time adhered to the incisitoir system and was influenced by the crime control model with the aim of obtaining confessions from the accused.

2. Theoretical Background

2.1 Plea Bargaining

The concept of effective and efficient criminal justice in the Draft Criminal Procedure Code is referred to as the Special Track which is often equated with the Plea Bargaining

system used in the United States which is very helpful in resolving criminal trials because the confession of the defendant can shorten the judicial process. The parties involved in the Plea Bargaining process are the Public Prosecutor, Legal Counsel and/or the Defendant and there is rarely any involvement of the Judge. On the contrary, the Judge plays a significant role in the specialised track. The active role of the judge in presiding over the trial, especially in the process of evidence and sentencing, is that the judge can accept or reject the plea if the judge has doubts about the veracity of the defendant's guilty plea.

The Plea Bargaining mechanism in the United States in exploring the confession of the defendant is carried out in front of the Public Prosecutor not in front of the Judge, while in the Special Track mechanism the confession by the defendant in the trial is carried out in front of the Judge. The special track is regulated in article 199 of the Draft Criminal Procedure Code. The Public Prosecutor may refer the case to a summary examination after the Public Prosecutor reads out the indictment and the Defendant pleads guilty to all of the acts charged.

2.2 Guilty Plea

The re-enactment of the defendant's guilty plea through the special route as a basis for judges in deciding a case voluntarily by the Defendant and in return, the Defendant gets an incentive in the form of a reduction in sentence by regarding incentives in the form of giving a lighter sentence with a maximum limit of reduction in criminal sentence of 2/3 (two-thirds) of the maximum that can be imposed on the submission of a guilty plea through the special route, namely 7 years.

The words 'confession of the accused' contain coercion that tends to intimidate as if the accused is considered guilty from the start. By making the confession of the Accused as evidence in the trial, the result is that the evidence only pursues an admission of guilt from an Accused. If the accused does not admit his/her actions or guilt voluntarily, then the investigating officer will prolong the suffering of the accused by torture until the accused admits his/her actions or guilt.

3. Methods

The type of research in this study uses the type of Normative legal research. Normative legal research is carried out by examining library material as the basic material to be researched by conducting a search for regulations and literature related to the problem under study or often referred to as secondary data research.

4. Results and Discussion

4.1 Efforts to Reform the Criminal Procedure Law in Indonesia in Relation to the Principles of Simple, Fast, and Low Cost Courts

Over a period of 40 years, Law Number 8 Year 1981 on Criminal Procedure is no longer considered appropriate with the development of law in society. Indonesia as a democratic country based on law (rechtstaat), it is appropriate to update the Criminal Procedure Code which is expected to cover the need to present a criminal justice system that is more advanced, responsive, modern, and relevant to the sense of justice that develops in society.

Indonesia adopted a special pathway to reform its criminal procedure code. By eliminating some of the evidentiary processes, it can shorten a case process by switching the ordinary examination session to a brief examination session as a result of the

defendant's guilty plea. Cases that use the Special Track mechanism are considered to be faster when compared to ordinary hearings as a reflection of the principle of simple, fast and low cost justice.

The special track was created for sociological reasons, namely the problem of accumulation of case files, especially at the Court of First Instance in the General Court Environment from 2017 to 2021. This is due to the postponement of hearings for various reasons, such as the absence of the complainant/plaintiff, witnesses who did not appear on the agenda of the evidentiary hearing, the prosecution letter that had not been prepared by the Public Prosecutor and other reasons such as the unpreparedness of evidence, and various other obstacles that might slow down the trial process resulting in delays between one stage of the trial agenda to the next stage of the trial agenda. Such delays prevent the Defendant from being immediately tried and provide legal uncertainty for the Defendant undergoing trial. Speedy judicial resolution is necessary. In addition to avoiding the accumulation of cases in court, the speedy completion of the case also serves to avoid the long detention of the Defendant before the Judge's decision, because this cannot be separated from the realization of human rights.

With an optimistic view, the application of the Special Track can cut the long criminal justice process and accelerate the handling of criminal cases so as to create court efficiency and effectiveness, without the many formalities that must be passed. In accordance with Law No. 48 of 2009 Article 2 paragraph (4) concerning Judicial Power, that the judiciary is carried out simply, quickly and at low cost.

Article 199 of the Draft Criminal Procedure Code states that when the Public Prosecutor reads out the indictment, the Defendant pleads guilty to committing a criminal offence for which the imprisonment charged is not more than 7 (seven) years, then the Public Prosecutor can submit the case to a brief examination session as an effort to realise a national criminal procedure law that provides more assurance of legal certainty, fair law enforcement, and protection of human rights. In addition, the regulation of the idea of this special route is carried out as an effort to respect the guilty plea of the defendant in the trial.

The consequences of the confession issued by the Defendant did not necessarily eliminate the trial process, so that the settlement of the case was still carried out through the mechanism of a summary examination trial and was decided by a single Judge. The summary examination procedure according to the provisions of Article 203 paragraph (3) a. 1 and 2 of the Criminal Procedure Code clearly states that the Public Prosecutor does not use an indictment, but is replaced by the minutes of the trial and for the legality of the decision the Judge only needs to issue a letter containing the ruling which has the same legal force as a court decision in an ordinary examination session. Thus, the Judge's time and energy can be allocated to the resolution of large cases that are difficult to prove or to resolve the arrears of other cases (Ramadhan, 2014).

The Defendant's confession is set out in a report signed by the Defendant and the Public Prosecutor. Then, the Judge is required to inform the Defendant of the rights that are waived when the Defendant makes a guilty plea, inform the Defendant of the length of sentence that may be imposed and ask whether the confession as outlined in the minutes is given voluntarily or not. Although not absolute, this is sufficient to speed up the trial and reward the honesty (in the form of a confession) of the accused by providing leniency.

Another controlling mechanism in the implementation of the Special Track is that not all cases that use a guilty plea can be submitted to a brief examination session by the Public Prosecutor, the Judge can reject the defendant's guilty plea if the Judge has doubts

about the truth of the defendant's confession. However, further examination and proof can be stopped if the Judge has gained confidence in deciding the case (Latifah, 2014).

4.2 The Concept of Specialized Guilty Plea Arrangement in the Renewal of Indonesian Criminal Justice System

Indonesia has previously used the defendant's guilty plea as a basis for the judge to decide a case in the form of the Het Herziene inlandsch Reglement (HIR), which is similar to a special plea. However, the difference is in the investigation process. A guilty plea in Het Herziene inlandsch Reglement aims to obtain a confession from the Defendant by means of torture until the Defendant admits his actions or guilt, while a guilty plea through the Special Line is made voluntarily by the Defendant and in return, the Defendant gets an incentive in the form of a reduction in sentence with the incentive in the form of a lighter sentence with a maximum limit of reduction in criminal sentence of 2/3 (two-thirds) of the maximum that can be imposed by the submission of a guilty plea through a special line, namely 7 years.

The Special Path arrangement in article 199 of the Draft Criminal Procedure Code in Indonesia still needs to be reviewed before it is ratified and implemented into the criminal procedure law system. Because criminal procedure law is a system so that every rigid stage in criminal procedure law must be outlined in the law. If this is not regulated clearly and in detail, it can become a gap that confuses the enforcement of criminal procedural law against the Special Line and concerns about the potential for new corruption to be committed.

In the special route, there are several provisions that are unclear or ambiguous so that it is feared that they could become multi-interpretive. This is because the drafting team did not create a separate procedure or examination for Defendants who admit their guilt and only refer to the delegation of the examination into a brief examination. The word "limpah" in Article 199 paragraph (1) of the Draft Criminal Procedure Code indicates that the case is tried under the ordinary examination procedure before the case is tried under the summary examination procedure.

Article 198(6) of the Draft Criminal Procedure Code stipulates that ordinary proceedings heard by three Judges will be transferred to summary proceedings heard by a single Judge. This may complicate the administration of the Court, which has assigned three Judges, but is then heard and decided by a single Judge in a brief examination. The time, energy and thought of the other two Judges to read, study and hear the case until the first hearing results in an inefficient procedural process as the hearing is changed to a summary examination.

Then there are differences in the provisions between cases that are heard using a short examination process without a special route and trials using a short examination process that uses a special route. The special line in article 199 paragraph (5) of the Draft Criminal Procedure Code also states that the penalty is 2/3 of the maximum criminal threat given for less than 7 (seven) years. This is a problem in itself, considering that if a defendant is threatened with a sentence of 7 (seven) years, and applies for a special route, the judge will impose a sentence of 4 (four) years and 6 (six) months (which is 2/3 of 7 years). Meanwhile, a brief examination can only be imposed if the maximum penalty is 3 (three) years.

The short examination procedure in Article 203 paragraph (1) of the Criminal Procedure Code only examines cases of crimes or violations which do not fall under the provisions of Article 205 and which according to the Public Prosecutor, the proof and

application of the law is easy and simple in nature. In Article 205 paragraph (1) of the Criminal Procedure Code itself, it regulates procedures for examining minor crimes, namely cases which are threatened with imprisonment or imprisonment for a maximum of 3 (three) months and/or a fine of up to 750,000 (seven thousand five hundred rupiah and light insults).

The benchmark that must be taken by the Public Prosecutor in determining summary cases in terms of the threat of punishment, is not the type of crime, but cases where the threat of punishment is more than 3 (three) months in prison or imprisonment and a fine of more than IDR 7,500. Meanwhile, the maximum penalty threat is not determined by law. However, based on experience and custom, the standard that is always used is that the sentence to be imposed is around a maximum of 3 (three) years.

Likewise, in article 198 paragraph (5) of the Draft Criminal Procedure Code, it is stated that summary examination proceedings may not be subject to a sentence of more than 3 (three) years. In this case, clearer provisions need to be provided whether the criminal sentence imposed will be equalized to a maximum of 3 (three) years or whether there is an exception for short case trials that use the Special Route mechanism, namely 4.6 months a year (four years and six months).

The author believes that there should be a prior process in finalizing case files before a case goes before the court which discusses the mechanism for the defendant's admission of guilt to be given directly at the indictment hearing or whether there is an agreement prior to the indictment reading trial between the Public Prosecutor and the Defendant or their Legal Advisor. regarding the confession of the charges.

The guilty plea expressed at trial is stated in the minutes and signed by the Prosecutor and the Defendant. As is known, in a trial absolute power rests with the Judge, but in this case the Judge is not asked to sign the minutes. The role of the Judge in the special channel is to notify the rights being waived, the length of the sentence that may be imposed, ask whether the confession was given voluntarily, and the authority to reject the confession if there is doubt about the truth of the Defendant's confession. If the Judge rejects the Defendant's guilty plea, then the guilty plea in this special route will be invalidated, and the Public Prosecutor is still burdened with proving the Defendant's guilt to convince the Judge, because it will continue with the normal examination process.

Based on the problems described above, the Special Route arrangement does offer a shorter trial because it can cut down the lengthy criminal justice process and speed up the handling of criminal cases. This means that with a simple and fast trial that uses the Special Route mechanism, of course the costs incurred by the litigants will be much cheaper, because the trial process is not complicated and is carried out in a short time so that the Defendant will not incur high costs, such as which will be issued when the case at hand uses the normal procedural hearing mechanism.

If the special route is later ratified, it is necessary to reformulate the special route provisions in the Draft Criminal Procedure Code which are in accordance with the context of the criminal justice system in Indonesia and in accordance with the principle of simple, fast and low-cost justice, namely by establishing a separate procedure for the accused. those who plead guilty, include the following steps:

1) Adding regulations and stages in the special route. The author is interested in the stages in special route negotiations in Indonesia, adopting the concept of Plea Bargaining in the United States, which is carried out equally by the Prosecutor and the Defendant or their Legal Counsel at the prosecution stage or when handed over from the police to the Public Prosecutor.

2) Clarify the parties involved in the special route. The parties involved in the special route concept are the Public Prosecutor, the Defendant or their Legal Advisor and the Judge. In the negotiation process, the Judge here acts as a supervisor who supervises what matters are negotiated by the Public Prosecutor with the Defendant or his Legal Advisor. This aims to ensure that the negotiation process takes place transparently and is recorded in court so that if there is a failure in its implementation, it is clear what will be done to the Defendant by the court, as well as preventing new forms of corruption from occurring by the Public Prosecutor.
3) It is best if the special route given to the Defendant is only given once, so that the Defendant who has taken the special route does not get the opportunity to be tried using the special route mechanism again.
4) Prevent and stop the practice of torture by law enforcement to obtain confessions. This provision can also encourage the implementation of the ideal special route, namely a voluntary admission of guilt by the Defendant without any coercion from any party because the consequence of this confession is that the Defendant will lose his constitutional rights and the right to file legal action. The defendant must also be willing to accept threats for the actions committed as stipulated in the statutory regulations.
5) Emphasize the limits of lighter sentences by removing 2/3 (two thirds) of the maximum penalty threat. By eliminating this provision, a defendant who admits his guilt will not receive a sentence of more than 3 (three) years as regulated in the short examination procedure section.
6) Form of agreement and binding force in special channels. The form of agreement made by the Public Prosecutor with the Defendant or his Legal Advisor must be stated in writing, namely containing the things that have been agreed upon and also making a statement from the Defendant stating that the agreement was made voluntarily. The results of the agreement between the Prosecutor and the Defendant or their Legal Advisor must be written clearly and everything is presented at the court hearing so that the Judge guarantees the truth of the material.
7) Regulates legal remedies. It would be better if the right to file a legal remedy for a case that uses the Special Route mechanism also ceases when a Defendant expresses an admission of guilt in the case indicted against him, so that it does not annul the fast, simple and low-cost nature of justice as intended from the beginning of the preparation of the Special Route.
8) The implementation of the special route in the future needs to consider the sense of justice received by victims and the community, because defendants who plead guilty will receive an incentive in the form of a reduced criminal sentence. If this is ignored, then the Judge is deemed unable to represent the Victim's or Community's sense of justice in punishing the Defendants.

Even though the principles outlined in the Special Route arrangement are said to reflect the principles of fast, simple and low-cost justice, the regulation of the concept of guilty pleas through the special route still needs some improvements. Improving the criminal justice system ultimately cannot only depend on a literal understanding and law enforcement of the principles of simplicity, speed, and low costs, but also requires the

conscience of law enforcers, justice seekers, rulers, legislatures, and the system that frames judicial institutions (Teguh and Saepullah, 2016).

By continuing to create new regulations without optimizing existing regulations, it is the same as creating new problems, so that the Indonesian legal system will never find the word optimal. So, in the author's opinion, the special route does not need to be included in Indonesian criminal justice because the special route still needs improvement. Apart from that, Indonesia itself has several regulations regarding the concept of judicial efficiency as an effort to realize criminal justice that is simple, fast, low cost.

Therefore, by optimizing existing arrangements, the criminal justice system will be much better and create a judiciary that is clean, honest, fair and objective. In this way, the problem of the backlog of cases in the judiciary, the length of the judicial process and other problems in the judiciary can also be resolved, so that the principles of simple, fast and low-cost justice operate as they should.

5. Conclusion

Based on the previous description and explanation, the conclusions of this article are as follows:

1) Indonesia has made efforts to create justice that is simple, fast and low cost, but it has not been implemented well. The efforts made by the government to overcome this problem through special channels are contained in Part Six of Article 199 of the Draft Criminal Procedure Code. By eliminating several evidentiary processes, special channels are considered to speed up case handling, thus reflecting the principles of simple, fast and low-cost justice.
2) According to the author, the special route does not need to be included in the Indonesian Criminal Procedure Code because the special route is still ambiguous and requires re-examination. Apart from that, Indonesia also has a concept of efficiency in its judiciary so it would be good to optimize this existing concept. By continuing to create new regulations without optimizing existing regulations, it is the same as creating new problems, so that the Indonesian legal system will never find the word optimal.

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