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Application of Plea Bargaining in Settlement of TPPU Cases with Criminals Originating from TIPIKOR in Efforts to Achieve Justice

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Abstract**:** *At present, money laundering offenses burden the criminal perspective of the institution rather than the return of state finances. This study uses a normative juridical approach to review how the application of plea bargaining in Indonesia, which is a civil law country. The application of plea bargaining is something that needs to be considered immediately in combating corruption through state loss restitution, because with the recovery. The use of the plea bargaining concept is a breakthrough in resolving money laundering offenses to uncover cases that are difficult to solve, as it is carried out in an organized manner. Plea Bargaining is in line with the Draft Law on Criminal Procedure known as the special route.*

Keywords: *Plea Bargaining, TPPU Cases, Justice*

INTRODUCTION

The agenda that the Indonesian government has been vigorously pursuing from the reform era to the present is to eradicate corruption. Combating corruption has become an urgent social issue that must be addressed immediately because it can have a negative impact on the nation's life. KPK data release in 2024 shows that corruption has caused significant losses to the country, with the latest loss amounting to 48.79 trillion in 2022. Based on the end-of-year 2022 survey report conducted by ICW (Indonesian Corruption Watch), the corruption perception index (CPI) in Indonesia has decreased from a score of 38 to a score of 34, placing Indonesia at 110 out of 180 countries.[12]

Corruption in Indonesia is on the rise and difficult to investigate due to being accompanied by Money Laundering Offenses (TPPU). As stated in the press release by the National Law Development Agency (2023), TPPU has become a primary concern in preventing corruption as it is often used to conceal the money trail from corruption and other criminal activities. Referring to records released by TI Indonesia, Indonesia currently ranks 1 (one) or 3 (three) as the most corrupt country in the world and far behind Singapore, Malaysia, Timor Leste, Vietnam, and Thailand in Southeast Asia.[34]

Corruption and money laundering in law enforcement practice are closely related, as they always occur simultaneously. In reality, the connection

[1] Djoko Sumaryanto, A. *Ius Constituendum Pembalikan Beban Pembuktian dan Pengembalian Kerugian Keuangan Negara dalam Tipikor*. Surabaya: CV. Jakad Media Publishing, 2020. p. 5.

[2] KPK. (29 Feb, 2024). *Korupsi dan Kerugian Keuangan Negara yang ditimbulkannya*. diakses pada tanggal 31 Maret 2024. https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20240229

[3] HUMAS BPHN. (16 Mei, 2023). *Tindak Pidana Pencucian Uang Jadi Tantangan Penegakan Hukum Tindak Pidana Korupsi di Indonesia*. Diakses pada tanggal 31 Maret 2023 https://bphn.go.id/publikasi/berita/2023051601591781/

[4] (29 Juni 2023). *Laporan Akhir Tahun ICW 2022*. https://antikorupsi.org/id/laporan-akhir-tahun-icw-2022 diakses 20 Oktober 2023

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between corruption and money laundering offenses is not accompanied by legal reforms contained in the PTPK Law or Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering Crimes (State Gazette of the Republic of Indonesia Year 2010 Number 122, Supplement to the State Gazette of the Republic of Indonesia Number 5164 hereinafter referred to as the TPPU Law). This weakens law enforcement in preventing corruption accompanied by money laundering offenses.

Currently, the common and effective method used in handling corruption and TPPU offenses is to combine these cases at the investigation or trial level. This can be justified as it is in accordance with Article 2 paragraph (1) of the TPPU Law which states that the original offense of money laundering is corruption. Based on this, the examination of money laundering and corruption cases as stipulated in Article 75 of the TPPU Law. The combination of these cases is under the authority of the public prosecutor. Combining corruption cases is considered an efficient step to recover state losses and as a form of impoverishment against corrupt offenders.[5]

However, combining case resolutions can provide opportunities for the defendants because in this combination, the original corruption offense must be proven first. This means that the public prosecutor must be able to prove the relationship between money laundering and corruption offenses. If the corruption offense is not proven, then the money laundering offense is also not proven. This, of course, results in increased losses for the state due to futile investigation and judicial processes.

Another obstacle can also be found in the implementation practices of Article 2 and Article 3 of the PTPK Law which are classified as material offenses. This is stated in Article 4 which reads "The return of state financial losses or national economy does not eliminate the criminal prosecution of the perpetrators of the offenses referred to in Article 2 and Article 3". This implicitly states that even if the perpetrator has returned or not returned, they will still be prosecuted. This causes the defendants to not cooperate, resulting in ineffective return of state finances and the failure to achieve simple, fast, and low-cost justice.

Departing from these problems, it is necessary to renew the criminal law through Plea Bargaining to achieve justice. Plea bargaining can be a solution for the exemption of law for corruptors who are willing to cooperate in restoring state finances by returning all the proceeds of their corruption. This can only be done if there is an agreement between the Public Prosecutor and the Legal Counsel or the Defendant. In countries that adhere to the common law system such as the United States, this practice can successfully achieve efficient and effective justice. This concept is very suitable with the principles of justice applied in Indonesia, namely simple, fast, and low-cost justice.[6]

METHOD

The type of research used in this study is normative juridical research with a statue approach, conceptual approach, and comparative approach. This type of research is used to determine the

[5] Muhaimin Al Hafiz, Alvi, S., Sunarmi., & Mahmud, M. Analisa Ratio Decidendi Putusan Pengadilan Pada Penggabungan Perkara Tindak Pidana Korupsi dan Tindak Pidana Pencucian Uang. Locus : Journal of Academic Literature Review. Vol. 2 No. 7. 2023. p. 610

[6] Megayani, N. K. N. M., & Darmadi, A. A. N. O. Y. Gagasan Model Plea Bargaining Di Indonesia Dalam Upaya Pengembalian Kerugian Keuangan Negara. Jurnal Kertha Desa. Vol. 9 No. 12. 2001. p. 66

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possibility of applying plea bargaining used by common law system countries into civil law system countries such as Indonesia. This research focuses on literature studies and secondary data.

DISCUSSION

A. *PLEA BARGAINING IN THE INDONESIAN JUDICIAL SYSTEM*

The concept of plea bargaining has existed since the 18th century in England and the 19th century in the United States, known as guilty pleas. Each country has its own plea bargaining procedure adapted to the country's legal system and legal history. In some countries that adhere to the common law system, plea bargaining is a common method used in all criminal cases. One corruption case settled through plea bargaining is the case of Rufus Seth William, a prosecutor in the City of Philadelphia, Pennsylvania.[7]

Rufus admitted to receiving tens of thousands of dollars in bribes and abusing his position for personal gain. Rufus was sentenced by the court to 5 (five) years in prison and a fine of $250,000. Rufus received leniency compared to other cases that rejected plea bargaining, such as the case of former Democrat deputy Chaka Fattah, who was eventually sentenced to 10 years in prison and found guilty in a corruption case involving illegal campaign loans.[89]

Historically, plea bargaining has been conceptually applied in court proceedings in Indonesia. Although Indonesia is a country that adheres to the civil law system. This is as stated by Rudolf Jhering who said "the adoption of foreign law into a country is not a matter of nationality, but more about the usefulness of the legal system to be imitated and the needs of the receiving country."[10]

The concept of plea bargaining is included in the Draft Law on the Criminal Procedure Code (RUU KUHAP) in Article 199, termed as "Special Track". The Special Track can be applied to money laundering crimes with the original crime of corruption with additional strict requirements, so that the perpetrators of money laundering cannot take advantage of leniency to avoid punishment. In detail, the Special Track is stated in Section Six of Article 199 as follows:

(1) When the public prosecutor reads the indictment, the defendant admits to all the actions charged and pleads guilty to committing a crime with a maximum penalty of 7 (seven) years, the public prosecutor may refer the case to a brief examination hearing.
(2) The defendant's confession is recorded in a minutes signed by the defendant and the public prosecutor.
(3) The judge must:
   a. inform the defendant about the rights they are waiving by making the confession as referred to in paragraph (2).
   b. inform the defendant about the possible length of the sentence that may be imposed; and

[7] Albert W. Alschuler. "Plea Bargaining and Its History" dan Wayne R. LaFavea. "Criminal Procedure". Sebagaimana dikutip Choky R. Ramadhan, dkk. "Plea Bargain di Beberapa Negara". Jurnal Peradilan Indonesia Vol. 3. Juli – Desember 2015: 77-122. p.79.

[8] Ziyad. Konsep Plea Bargaining Terhadap Pelaku Tindak Pidana Korupsi yang Merugikan Keuangan Negara. Badamai Law Journal. Vo. 3 No. 1. 2018. p. 6

[9] *Ibid.*,

[10] Ruchoyah, Legal Problem Solving Penumpukan Perkara Pidana di Indonesia Melalui Pengadopsian Konsep Plea Bargaining Guna Mewujudkan Peradilan Pidana yang Efektif dan Efisien, Jurnal Legal Spirit, volume 2, nomor 2, (2018)., p.10

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c. ask whether the confession as referred to in paragraph (2) is given voluntarily.

(4) The judge may reject the confession as referred to in paragraph (2) if the judge doubts the truth of the defendant's confession.

(5) Excluded from Article 198 paragraph (5), the imposition of a sentence on the defendant as referred to in paragraph (1) may not exceed 2/3 of the maximum penalty for the criminal offense charged.

In the formulation of the "Special Track" Bill on Criminal Procedure Law and its original plea bargaining, there is a very fundamental difference, namely, in the guilty plea regulated in Article 199 of the Bill on Criminal Procedure Law, it can only be decided by the judge in the trial after the indictment is read, then the trial will determine whether a brief trial will be conducted or not, while in its original plea bargaining, it gives more authority to the prosecutor to conduct bargaining processes, which are done before the trial takes place. Where there is a negotiation process between the prosecutor and legal counsel as well as the defendant regarding the charges to be brought, negotiation of legal facts, and negotiation of the punishment to be given.

The implementation of plea bargaining in the Indonesian judicial system is an effort to realize the principle of justice, which is simple, fast, and cost-effective. As stipulated in Article 2 paragraph (4) of Law Number 48 Regarding Judicial Power. This principle aims to achieve; First, the principle of simplicity, which is defined as the examination and settlement of cases must be carried out efficiently and effectively; Second, the principle of speed is related to the timely resolution of cases. This principle is also known as the adage "justice delayed justice denied," which means that a slow judicial process will not provide justice to all parties; Third, the principle of cost-effectiveness is defined as the case costs will incur minimal expenses.[11]

The implementation of plea bargaining in the Indonesian judicial system is also based on considerations of the increasing number and variety of cases. The logical consequence of the many criminal provisions in each law that are then enacted by the Government and the DPR will also have an impact on the increase in budget for law enforcement and criminal prosecution. This will certainly result in disparities because in essence, this budget can be used for equalization and economic development of the community.[12]

According to Mardjono Reksodiputro, another consideration that can be taken by the public prosecutor in implementing plea bargaining is: 1) the evidence from the public prosecutor is not strong; 2) witnesses perceived by the public prosecutor as less convincing; 3) the possibility of diversion (priterial diversion).[13]

B. APPLICATION OF PLEA BARGAINING TO PERPETRATORS OF MONEY LAUNDERING CRIMES WITH THE ORIGINAL CRIMINAL OFFENSE OF CORRUPTION

[11] Muhammad Yasin, Peradilan Sederhana, Cepat dan Biaya Ringan, diakses dari laman https://www.hukumonline.com/berita/a/peradilanyang-sederhana--cepat--dan biaya, Pada tanggal 31 Maret 2024.

[12] Choky Ramadhan, Pengantar Analisis Ekonomi Dalam Kebijkan Pidana di Indonesia, (Jakarta, Institute for Criminal Justice Reform (ICJR)., p. 33

[13] Joko Sriwidodo, Perkembangan Sistem Peradilan Pidana Di Indonesia. Yogyakarta: Kepel Press, 2020. p. 87

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The application of plea bargaining benefits both the defendant and the state, similar to the special track in the Bill on Criminal Procedure Law. It can be stated that the law has provided legal benefits in accordance with utilitarian thinking. Law can be recognized as law if it provides the greatest benefit to the greatest number of people. When viewed in terms of the special track rules contained in the Bill on Criminal Procedure Law, the process of giving a guilty plea is carried out after the indictment is read by the Prosecutor in front of the Judge. The Judge has the authority in the trial to examine the truth of the suspect's confession whether it is done voluntarily or there is intimidation from other parties.

In the implementation of plea bargaining similar to the special route for money laundering offenses with the original offense of corruption, its obligations must be expanded and not only concerning the validity of the defendant's confession. The judge must examine the evidence in court in relation to the defendant's confession. The formulation of the special route in the Criminal Procedure Code Bill states that after the Defendant admits to all the alleged acts and pleads guilty, the Public Prosecutor transfers the case to a brief examination session. From this formulation, it can be ensured that the judge who will examine the case is a single judge, not a panel of judges (consisting of at least three judges). It is very difficult for a single judge to examine the evidence and relate it to the defendant's confession, so for plea bargaining similar to the special route in money laundering offenses with the original offense of corruption, a Panel of Judges must be appointed to examine the evidence and the defendant's confession in court for a more thorough examination.

The implementation of Plea Bargaining in India has limitations on criminal offenses that can be resolved through Plea Bargain. One of them is Plea Bargain for criminal offenses that may have an impact on the country's socio-economic conditions. In Indonesia, the country's socio-economic conditions need to be considered to limit the settlement of cases through plea bargaining, especially if they have harmed the state's finances. In addition, the application of limitations on plea bargaining aims to avoid the perception that plea bargaining is a form of corruption in the criminal justice system. If the special route in the Criminal Procedure Code Bill is to be used in corruption offenses, it is necessary to consider whether the defendant's actions have a significant impact on the country's socio-economic conditions.[14]

A plea bargaining similar to the special route in the Criminal Procedure Code Bill will be applied to money laundering offenses, so the Panel of Judges must play an active role in examining the validity (truth) of the defendant's confession, accompanied by evidence collected by the Public Prosecutor related to the defendant's confession in court, and the Panel of Judges must seek the opinion of the Public Prosecutor regarding money laundering offenses with the original offense of corruption committed by the Defendant, whether it can affect the country's socio-economic conditions.

The active role of the panel of judges in the plea bargaining process, similar to the special route in corruption offenses, is to replace the examination of evidence such as examining witnesses and/or experts in court. Plea Bargain aims to expedite the process of examining evidence to become evidence examination

[14] Ziyad. Konsep Plea Bargaining Terhadap Pelaku Tindak Pidana Korupsi yang Merugikan Keuangan Negara. Badamai Law Journal, Vol. 3 No. 1. 2018. p. 94

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(testimony of witnesses and/or experts in the examination report at the investigation level) then related to the confession of the Defendant who pleads guilty and seeks its truth. After completing this procedure, the next step is to impose a sentence on the Defendant.

The problem in combating money laundering offenses with the original offense of money laundering is the difficulty in uncovering cases because many parties are involved and often each case is well organized. Money laundering offenses have an organized or networked character, so in their investigation, cooperation with the Defendant and the Investigator or Public Prosecutor is needed. Based on this, there is a need for collaborative and structured steps so that case disclosure can be done easily. Plea bargaining is one effective way that can be an option in efforts to optimize the return of state losses.

CONCLUSION

Money laundering offenses with the original offense of corruption should be oriented towards the return of state losses through plea bargaining that is in line with the special route in the Criminal Procedure Code Bill. This implementation must have an active role for the Panel of Judges to examine the validity of the evidence collected by the Public Prosecutor related to the defendant's confession in court, and the Panel of Judges must seek the opinion of the Public Prosecutor on whether the offense committed is included in offenses that affect the country's economy. Plea bargaining is an alternative in efforts to uncover cases involving several corporations.

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