

Plea Bargaining and Indonesia's Special Track Under the New KUHAP: A Comparative Study with United States

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Abstract

The increase in criminal cases, the length of the judicial process, and the overcrowding of correctional institutions have prompted the need for reform of criminal procedure law in Indonesia. One of the breakthroughs adopted in the New Criminal Procedure Code (KUHAP) is the mechanism of guilty pleas through the Special Track, which is conceptually similar to plea bargaining as applied in the United States criminal justice system. This study aims to analyze the comparison between the plea bargaining mechanism in the United States and the Special Track in Indonesia's New KUHAP, as well as to examine the implications of adopting elements of plea bargaining on the protection of the principle of due process of law and the application of the principles of swift, simple, and inexpensive justice. The research method used is normative juridical with a legislative, comparative, and conceptual approach, supported by a literature study of primary, secondary, and tertiary legal materials. The results of the study show that although both mechanisms have the same objective, namely the efficient resolution of criminal cases, there are fundamental differences in their structure, scope of negotiation, and the role of judges. The Special Track in the New Criminal Procedure Code places judges as the main controllers of the guilty plea process, thereby potentially strengthening the protection of due process of law. However, without clear technical regulations and strict judicial oversight, this mechanism risks putting pressure on defendants and reducing their right to a fair trial.

INTRODUCTION

The success of these jurisdictions in implementing plea bargaining mechanisms is considered relevant in encouraging Indonesia to adopt a similar concept as part of the efforts to reform the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana* – KUHP),¹ which has long been perceived as not yet fully capable of realizing a judicial process that is simple, speedy, and low-cost. The adoption of this concept commenced with comparative studies conducted by the drafting committee across several countries, including Italy, Russia, the Netherlands, France, and the United States, within the framework of national legal reform.²

In Indonesia, several mechanisms have been implemented in recent years as efforts to establish a more effective and efficient criminal justice system, including legal mechanisms that share a similar spirit with plea bargaining, despite originating from different conceptual foundations. One such mechanism is the justice collaborator, as stipulated in the Supreme Court Circular Letter (*Surat Edaran Mahkamah Agung* – SEMA) No. 4 of 2011, which refers to a perpetrator who is willing to cooperate with law enforcement authorities to uncover larger-scale crimes, such as corruption and narcotics cases, in exchange for leniency in charges or sentencing. This mechanism reflects the principle of exchange between a confession and the legal benefits received.³

Furthermore, Indonesia has also developed restorative justice through several regulations, including Prosecutor's Office Regulation No. 15 of 2020 and Police Regulation No. 8 of 2021, which permit the termination of minor criminal cases upon reaching a settlement between the perpetrator and the victim. This approach emphasizes the restoration of social relations post-crime, although its application remains limited to minor offenses and is contingent upon a peace agreement.

However, in practice, these various implemented systems have not yet operated optimally. This is attributed to the absence of clear regulations regarding their implementation mechanisms. Consequently, these systems have been unable to address the issue of case backlogs and have not succeeded in creating an effective and efficient criminal justice process.⁴ Therefore, a legal problem-solving approach is required,

¹ Cut Nangrie Sari Abuthalib and Dian Ekawaty Ismail, "Plea Bargaining dalam Bayang-Bayang Keadilan: Antara Efisiensi Penegakan Hukum dan Degradasi Nilai Kepastian Hukum." *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 1130-1146.

² Calvin A Sitohang and Frans Simangunsong, "Plea Bargaining Dalam Penyelesaian Tindak Pidana Korupsi Pada Sistem Peradilan Pidana," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 3, no. 5 (2025): 303-11.

³ "Mahkamah Agung Memutus 30.763 Perkara Sepanjang 2024," n.d., <https://www.mahkamahagung.go.id/id/berita/6599/ma-memutus-30763-perkara-sepanjang-2024>.

⁴ Undang-Undang No, "Tahun 2009 Tentang Kekuasaan Kehakiman," 48AD.

manifested through the reform of the Indonesian criminal justice system based on an evaluation of the current prevailing system. Such reform can be achieved by adopting a new system expected to realize a more effective and efficient judicial process.⁵

The impetus to enhance efficiency in the criminal justice process gave rise to the notion of the "Special Track" (Jalur Khusus). The Special Track is formulated as a procedural mechanism that is simple and efficient, aiming to expedite the resolution of certain criminal cases through a voluntary confession provided by the defendant. This confession subsequently serves as the basis for the judge to render a verdict without having to proceed through the entire sequence of the evidentiary phase.⁶ As regulated under Article 199 of the Draft Criminal Procedure Code (Rancangan Undang-Undang Kitab Undang-Undang Hukum Acara Pidana—RUU KUHAP), which was enacted on November 18, 2025, and entered into force on January 2, 2026, the Special Track constitutes an adaptation of the plea bargaining concept tailored to the characteristics of the civil law system in Indonesia. In contrast to the restorative justice approach, which focuses on restoring the relationship between the perpetrator and the victim, the Special Track is more oriented toward procedural efficiency to accelerate case resolution and reduce docket congestion in courts.⁷

Nonetheless, the adoption of plea bargaining elements into the Indonesian legal system is inextricably linked to various normative issues.⁸ On one hand, this mechanism has the potential to strengthen the application of the principle of a speedy, simple, and low-cost trial, as mandated by Article 2 paragraph (4) of Law No. 48 of 2009 concerning Judicial Power. On the other hand, concerns persist that the implementation of such a mechanism could undermine the principle of due process of law and exert pressure on defendants to confess to their actions solely to obtain sentencing leniency.⁹ As supporting material for this research, the researcher conducts a review of several prior studies that possess relevance to the issues under examination. This review is intended to

⁵ Arif Havas Oegroseno, "Undang-Undang Republik Indonesia Nomor 12 Tahun 2005 Tentang Pengesahan International Covenant on Civil and Political Rights/ICCPR (Kovenan Internasional Tentang Hak-Hak Sipil Dan Politik)," *Indonesian J. Int'l L.* 4 (2006): 169.

⁶ Joko Sriwido and Dwi Andayani Bs, "Upaya Percepatan Penyelesaian Perkara Di Pengadilan Menurut Peraturan Mahkamah Agung Nomor 4 Tahun 2020 Tentang Administrasi Dan Persidangan Perkara Pidana Di Pengadilan Secara Elektronik," *Palar: Pakuan Law Review* 16 (2021): 1-23.

⁷ Syaiful Bakhri, "Pembaharuan Hukum Pidana" (Tangerang Selatan, 2019).

⁸ Louis Freedyana Anggryani et al., "Penerapan Peraturan Kejaksaan Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan Berdasarkan Keadilan Restoratif Dalam Penanganan Perkara Tindak Pidana Penganiayaan Pada Kejaksaan Negeri Nias Selatan," *DIKTUM* 2, no. 1 (2023): 134-40.

⁹ Choky Risda Ramadhan et al., "Peluang Penerapan Plea Bargain Dalam Hukum Acara Pidana Indonesia" (Inara Publisher, 2024).

comprehensively preclude any form of plagiarism of the scientific works of other parties. Through a search of previous research, the researcher is able to identify similarities and differences between the issues examined in this study and prior inquiries. Regarding the research related to Plea Bargaining, they include. *First*, the study authored by Alimuddin, Muh. Zuhud A. Zahir, et al., published in the Jurnal Ilmu Hukum (2024) titled "*Plea Bargaining dalam Rancangan Kitab Undang-Undang Hukum Acara Pidana Negara Indonesia*". The results of the research indicate that plea bargaining can expedite the judicial process, reduce costs, and alleviate case backlogs. However, its implementation has the potential to result in human rights violations if it is not strictly and transparently regulated. The conclusion emphasizes that a clear legal basis and judicial oversight are required so that the application of plea bargaining in Indonesia can operate in accordance with the principles of justice and legal certainty. This research presents novelty by conducting a more specific normative comparative analysis against Rule 11 of the United States Federal Rules of Criminal Procedure (FRCP) and the Special Track (Jalur Khusus) of the Indonesian RUU KUHP, encompassing the structure of guilty pleas, the roles of prosecutors and judges, as well as the guarantees of the defendant's rights within both legal systems.¹⁰

Second, the research authored by Herdino Fajar Gemilang & Rosalia Dika Agustanti, published in the journal Interpretasi Hukum (2023) titled "*Penggunaan Plea Bargaining dalam Sistem Peradilan Pidana: Menyeimbangkan Efisiensi dan Keadilan*". The study found that plea bargaining is capable of increasing efficiency and reducing the burden of criminal cases in court. However, this practice carries the risk of misuse in the absence of robust legal controls.¹¹ The authors emphasize the importance of the principle of equality of standing between the prosecutor and the defendant during the negotiation process. In conclusion, plea bargaining may be adopted in Indonesia provided that there is strict judicial oversight and protection of the defendant's rights, ensuring that efficiency does not negate justice. The novelty of this research lies in its position as a study conducted following the enactment of the RUU KUHP (November 18, 2025), which provides an actual analysis of the implications of implementing the Special Track as a form of plea bargaining adaptation within the Indonesian civil law system. Previous research emphasized the balance between efficiency and justice but had not normatively elaborated on the relationship between plea bargaining and the principle of due process

¹⁰ Lester B Orfield, "The Federal Rules of Criminal Procedure," . . *Louis ULJ* 10 (1965): 445.

¹¹ Haeranah Haeranah et al., "The Concept of Plea Bargain in the Criminal Process System in Indonesia," *Law Reform* 21, no. 1 (2025): 1-16.

of law.¹² This research expands that perspective by evaluating the potential conflict between procedural efficiency (the special track) and the protection of the defendant's constitutional rights, while simultaneously affirming the necessity of legal limitations to ensure that the guilty plea mechanism remains consistent with the principle of a speedy, simple, and low-cost trial (Article 2 paragraph (4) of Law No. 48 of 2009).¹³

Third, the research authored by Ara Annisa Almi, published in the Andalas Law Journal (2023) titled "Plea Bargaining System as a Non-Litigation Settlement in the Framework of Repositioning Criminal Justice in Indonesia" The research results state that plea bargaining can expedite the legal process, provide certainty, and save litigation costs.¹⁴ The author evaluates this system as having objectives similar to restorative justice—namely, creating a more efficient and humane resolution—though it differs in philosophical orientation. In conclusion, plea bargaining can be integrated into the reform of Indonesian criminal procedure, with the caveat that it must still take into account the values of social justice that form the basis of restorative justice. The novelty of this research is distinguished from prior studies that highlighted the similarities between plea bargaining and restorative justice but discussed them only conceptually without an integrative approach. This research provides conceptual novelty by constructing a normative relationship between formal efficiency (plea bargaining) and social restoration values (restorative justice), as an effort to harmonize the speed of the judicial process and the principle of substantive justice through a Normative Analysis of Human Rights Implications and Judicial Oversight.¹⁵

Accordingly, the author intends to examine in greater depth the comparison between the plea bargaining mechanism in the United States and the Special Track in the New Indonesian KUHP. This study is essential to identify similarities and differences while simultaneously analyzing the implications of adopting plea bargaining elements on the

¹² Megawati Iskandar Putri, Lalu Saipudin, and others, "Pengaturan Konsep Lembaga Plea Bargaining Dalam Pembaharuan Kitab Undang-Undang Hukum Acara Pidana (KUHP)," *Parhesia* 2, no. 1 (2024): 23–34.

¹³ Mahkamah Agung Republik Indonesia, "Surat Edaran Mahkamah Agung Nomor 4 Tahun 2011 Tentang Perlakuan Bagi Pelapor Tindak Pidana (Whistleblower) Dan Saksi Pelaku Yang Bekerjasama (Justice Collaborators) Di Dalam Perkara Tindak Pidana Tertentu," *Jaringan Dokumentasi Dan Informasi Hukum Mahkamah Agung RI*, 2011.

¹⁴ Dewa Putu Hendra Widiatmika, "Penerapan Perpol Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif Di Direktorat Reserse Kriminal Umum Polda Bali," *IJOLARES: Indonesian Journal of Law Research* 1, no. 1 (2023): 1–5.

¹⁵ Muh Al Khaer Zahir and others, "Politik Hukum Plea Bargaining System Dalam Rancangan Undang-Undang Hukum Acara Pidana" (Universitas Hasanuddin, 2023).

protection of due process of law for defendants and the implementation of the principle of a speedy, simple, and low-cost trial in Indonesia.¹⁶

METHODS

This type of research employs a normative legal research method, specifically an approach that examines legal aspects based on statutory regulations, legal rules, and relevant doctrines to address the legal issues under investigation. This research perceives the law as a set of norms and principles prevailing within society that serve as guidelines for social conduct, in accordance with the perspectives of Soerjono Soekanto and Sri Mamudji.¹⁷ The problem-solving approaches utilized in this research include: Statute Approach The author examines the statutory regulations governing plea bargaining in the United States as contained in Rule 11 of the Federal Rules of Criminal Procedure (FRCP), and the Amendments to the Indonesian Criminal Procedure Code (KUHP), specifically Article 1 point 16 regarding the definition of a guilty plea/plea bargaining, Article 1 point 16 letter m regarding the acceptance of a guilty plea, and Article 78 of the New KUHP, which discusses the mechanisms and limitations of criminal sanctions that may be imposed. Conceptual approach is employed to scrutinize the theories, legal principles, and underlying philosophies of both mechanisms by evaluating the procedural efficiency inherent in plea bargaining. Data collection technique to track legal materials and obtain research data is library research. Data analysis technique utilized is normative juridical analysis, which involves critically and systematically analyzing the content, provisions, and legal principles derived from primary and secondary sources in accordance with legal norms and methodology.¹⁸

RESULT AND DISCUSSIONS

1. Similarities and Differences Between the Plea Bargaining Mechanism in the United States and the Special Track of the New Indonesian Criminal Procedure Code

Conceptually, plea bargaining is a negotiation mechanism between the Public Prosecutor and the defendant, typically assisted by defense counsel within the criminal justice process. Through this mechanism, the defendant declares their willingness to

¹⁶ "RKUHP Disahkan, Berlaku Mulai Awal 2026 Bersama KUHP Baru," n.d., <https://www.kompas.id/artikel/rkuhp-disahkan-berlaku-sejak-awal-2026-bersama-kuhp-baru>.

¹⁷ Bahder Johan Nasution, "Metode Penelitian Ilmu Hukum" (Bandung: Mandar Maju, 2008).

¹⁸ "Objek Penelitian Hukum Normatif Untuk Tugas Akhir," n.d., <https://www.hukumonline.com/berita/a/objek-penelitian-hukum-normatif-untuk-tugas-akhir-lt63a46376c6f72/>.

plead guilty to one or several charges brought against them. In exchange for this admission, the Public Prosecutor offers a more lenient sentence or reduced criminal charges.¹⁹

The primary objective of the plea bargaining mechanism is to realize efficiency in law enforcement.²⁰ Through a guilty plea, the state can avoid the allocation of significant time, costs, and resources required for lengthy and complex evidentiary proceedings in court. Meanwhile, the defendant obtains legal certainty and the opportunity to receive a mitigated sentence, as well as a reduction in the psychological burden arising from protracted trial processes.²¹

The practice of plea bargaining actually has historical roots dating back to 18th-century English trials. However, the significant development of this mechanism occurred in the United States during the 19th century. In its early stages, plea bargaining faced considerable resistance from judicial institutions. A guilty plea predicated on promises or agreements was viewed as potentially undermining the principle of voluntariness and the purity of the defendant's intent in admitting their actions.²²

Over time, particularly following the American Civil War, the increasing complexity of legal regulations and the surge in criminal case volumes caused the United States judicial system to face an overwhelming burden. In this context, plea bargaining evolved as a pragmatic necessity to maintain the continuity and effectiveness of the criminal justice system. In its current development, plea bargaining has become the dominant mechanism for resolving criminal cases in the United States.²³

According to statistics from the United States Department of Justice in the year 2000, as many as 37,188 defendants utilized the plea bargaining mechanism, reaching a percentage of 87.1%, whereas only 5.2% of cases proceeded to trial.²⁴ The United States

¹⁹ "Plea Bargain Dan Wajah Baru Peradilan Pidana," n.d., <https://marinews.mahkamahagung.go.id/artikel/plea-bargain-dan-wajah-baru-peradilan-pidana-0JE#:~:text=Plea Bargain dan Wa.>

²⁰ Dheny Wahyudhi et al., "Prinsip Plea Bargaining Dalam Penyelesaian Perkara Pidana Secara Cepat Sederhana Dan Biaya Ringan Dalam Pembaharuan Hukum Acara Pidana," *Jurnal Sains Sosio Humaniora* 6, no. 2 (2022): 46–58.

²¹ Jay Gormley, "The Inefficiency of Plea Bargaining," *Journal of Law and Society* 49, no. 2 (2022): 277–93.

²² Ruchoyah Ruchoyah, "Urgensi Plea Bargaining System Dalam Pembaruan Sistem Peradilan Pidana Di Indonesia: Studi Perbandingan Plea Bargaining System Di Amerika Serikat," *Jurnal Hukum Ius Quia Iustum* 27, no. 2 (2020): 388–409.

²³ Seraphinus Mariano Agung Serman and Umi Rozah, "Regulation of Plea Bargaining Policy as a Novelty in Criminal Justice System to Create Effective and Efficient Criminal Law Enforcement: A Study of Ruu Kuhap," *Journal of Law, Politic and Humanities* 5, no. 4 (2025): 2304–15.

²⁴ Andi Alif Kumullah DP and others, "Konstruksi Restorative Justice Terhadap Penyelesaian Tindak Pidana Dalam Sistem Peradilan Pidana Indonesia= Restorative Justice Construction Of Criminal Offense Settlement In Indonesia Criminal Justice" (Universitas Hasanuddin, 2023).

Supreme Court has stated that the plea bargaining mechanism is an essential and desirable element of the country's criminal justice system.²⁵ Furthermore, approximately 95% of charges in the United States are resolved through a defendant's guilty plea.

The forms of plea bargaining recognized in common law systems include:

- a. Charge Bargaining: Negotiations regarding which articles will be charged. The prosecutor offers the defendant a reduction in the type of criminal offense charged.
- b. Fact Bargaining: Negotiations concerning legal facts, wherein the prosecutor offers the defendant an agreement regarding which facts will be presented or admitted into evidence.
- c. Sentence Bargaining: Negotiations regarding the sentence that will mitigate the defendant's punishment, typically resulting in a more lenient sentence imposed by the court upon the prosecutor's recommendation.

The negotiation process can be conducted through various means, such as telephone communication, meetings at the prosecutor's office, or within the courtroom; notably, the negotiation stage does not involve a judge. In the United States criminal justice system, the handling of criminal cases generally proceeds through several stages, including investigation upon arrest or detention, prosecution, determination of guilt, sentencing, and the execution of the sentence.

The regulations concerning the plea bargaining mechanism in the United States are governed by the "Federal Rules of Criminal Procedure" (Rule 11). For the author, a critical point to underscore regarding plea bargaining is: "Before accepting a plea of guilty or nolo contendere, the court must address the defendant personally in open court and determine that the plea is voluntary and did not result from force, threats or promises (other than promises in a plea agreement)."

Furthermore, Romli Atmasasmita concludes the limitations of plea bargaining under Rule 11 of the Federal Rules of Criminal Procedure as follows:

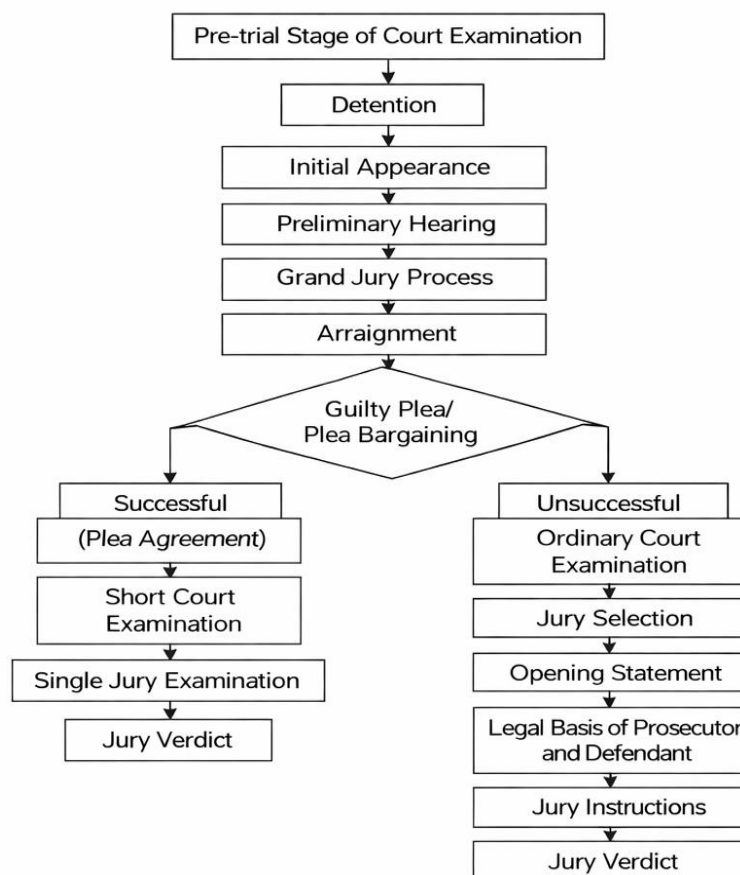
- 1) Plea bargaining constitutes a negotiation between the public prosecutor and the defendant or their defense counsel.
- 2) The motive for conducting such negotiations is to expedite the criminal case handling process.
- 3) The negotiations must be based on the defendant's "voluntariness" in providing a guilty plea, as well as the prosecutor's willingness to determine the type of crime

²⁵ Mora Nur Fitrah Nasution, *Adapi Sistem Plea Bargaining Dalam Kerangka Hukum Pidana Indonesia: Tinjauan Komparatif Dari Amerika Serikat, India Dan Prancis* (Yustisia Tirtayasa Jurnal Untirta, 2025).

charged and the sentencing threat to be imposed, in accordance with the will of the defendant or their defense counsel.

- 4) The participation of the judge as a neutral arbiter is prohibited during the negotiation process, as their involvement could create a negative perception of judicial independence.

Figure 1
Plea Bargaining Mechanism in the United States



Source: The Federal Rules of Criminal Procedure rule 11, processed by the Author (2017)

Figure 3.1: Mechanism in the United States

Source: Syaiful Bakhri (April 2019) Criminal Law Reform. South Tangerang: UM Jakarta Press, p. 155.

In contrast to the United States, Indonesia has only recently recognized and adopted plea bargaining. The concept of plea bargaining has been adopted under Law Number 20 of 2025 concerning the Criminal Procedure Code (New KUHP). The reform of criminal procedural law in Indonesia reflects a strong commitment to institutionalizing the concept of plea bargaining within the national criminal justice system. This

commitment is explicitly reflected in the New KUHP, which regulates the mechanism of the guilty plea (*pengakuan bersalah*) as an integral part of the reform of criminal judicial procedures.²⁶

This concept is understood as a legal mechanism that provides space for the defendant to voluntarily and cooperatively admit their guilt regarding the criminal offense charged during the examination process, including by submitting evidence that supports such an admission. As a consequence of this guilty plea, the defendant obtains the right to a simpler and shorter examination procedure and the opportunity for sentencing leniency. However, this mechanism is strictly not intended as a form of "horse-trading" regarding the articles charged or the criminal threats, as known in the common law tradition.²⁷

Unlike the practice of plea bargaining in common law jurisdictions, the model adopted in the New KUHP places the judge as the central actor controlling the process. In this mechanism, the defendant does not negotiate the charges or sentencing threats with the public prosecutor but instead delivers a guilty plea directly before the judge at the first hearing.

If the judge accepts the admission and determines that it was provided legally and voluntarily, the lengthy evidentiary stage may be waived, and the case proceeds to the sentencing phase with certain penal limitations. The New KUHP even explicitly utilizes the terminology of guilty plea (*plea bargain*) in its provisions.²⁸

Article 1 point 6 of the New KUHP defines: "Guilty Plea (*Plea Bargain*) is a legal mechanism for a defendant to admit their guilt in a criminal offense and be cooperative in the examination by submitting evidence that supports their admission in exchange for sentencing leniency."

There are 3 (three) types of guilty pleas regulated in the New KUHP, namely under Article 78, Article 205, and Article 234. Although all three are forms of case resolution involving the defendant's admission of guilt, only Article 78 officially introduces the concept of a guilty plea (*plea bargaining*) as a distinct legal mechanism. Meanwhile, Article 205 and Article 234 govern the defendant's admission during trial, which can divert the examination process into a Summary Procedure (*acara pemeriksaan singkat*).

²⁶ Undang-Undang Nomor, "Tahun 2025 Tentang Kitab Undang-Undang Hukum Acara Pidana," 20AD.

²⁷ Dedi Putra, "Plea Bargain Dalam KuHP Baru: Inovasi Prosedural Dan Tantangan Fair Trial," n.d., <https://suarabsdk.com/plea-bargain-dalam-kuhp-baru-inovasi-prosedural-dan-tantangan-fair-trial/#:~:text=Plea bargain resmi diadopsi dalam KUHP Baru,205%2C dan 234 KUHP Baru%2C serta tantangan.>

²⁸ Indonesia, Christine S T Kansil, and Christine S T Kansil, *Kitab Undang-Undang Hukum Acara Pidana (KUHP)* (Pradnya Paramita, 2003).

1) Guilty Plea (Plea Bargaining) under Article 78 of the New KUHP

Article 78 regulates a formal guilty plea mechanism conducted at the pre-trial stage before a single judge. Its objective is to reach a written agreement between the Public Prosecutor and the Defendant. This guilty plea can be applied to first-time criminal offenses, offenses carrying a maximum imprisonment of 5 (five) years or a Category V maximum fine, and/or where the defendant is willing to pay compensation or restitution. In providing a guilty plea, the Defendant must be assisted by an Advocate, and the admission is documented in an official record (berita acara).²⁹

The substantive content of the agreement includes: (a) the defendant's awareness of the consequences of their guilty plea, including the waiver of the right to remain silent and the right to be tried via ordinary procedure; (b) the voluntariness of the admission; (c) the articles charged and the sentencing threat to be prosecuted before the guilty plea; (d) the results of negotiations between the prosecutor, defendant, and advocate, including the reasons for reducing the defendant's sentence; (e) a statement that the plea agreement is binding upon the consenting parties and holds the force of law; and (f) evidence of the criminal act committed by the defendant to ensure the defendant indeed committed the crime.

The hearing to examine this guilty plea is conducted separately from the main trial of the case, as its submission occurs before the main trial commences. The current issue is that the Court Case Tracking Information System (SIPP) at the first-instance courts has not yet accommodated this mechanism; thus, as a temporary solution, these examinations are recorded manually until the SIPP is prepared.

Furthermore, regarding Article 78 paragraph (9) of the New KUHP, which stipulates that if the judge accepts the guilty plea, the trial proceeds via summary procedure, it appears as though the examination of the guilty plea is conducted alongside the main case file. In reality, the examination of the guilty plea should constitute a distinct procedural law, not part of the case examination. The provisions of paragraphs (9) and (10) of Article 78 are the starting points: when the judge accepts the guilty plea, the judge returns the file to the prosecutor with an order to submit the case file via summary procedure. Conversely, if rejected, the case file is submitted via ordinary procedure. The judge's decision, whether to accept or reject, should ideally be manifested in the form of a Judicial Order (Penetapan).

²⁹ R Soesilo and others, "Kitab Undang-Undang Hukum Acara Pidana (KUHP) Dengan Penjelasan Resmi Dan Komentar," 2022.

The judge's obligation during the examination is to evaluate whether the guilty plea was made voluntarily, without coercion, and with the defendant's full understanding. The execution of the guilty plea is recorded in the official minutes and becomes part of the case file. Subsequently, once the file is returned and the prosecutor submits it via summary procedure, the verdict of the main case may follow the guilty plea agreement documented in the official minutes, provided the judge reaches a conviction supported by 2 (dua) valid pieces of evidence.

2) Guilty Plea at the Trial Stage

The guilty plea is made at the beginning of the trial, specifically after a settlement between the Defendant and the Victim fails to reach an agreement, as regulated in Article 205 and Article 234. The differences between the guilty pleas in these two articles are seen in the length of the sentencing threat, the judge's obligations, and the sentencing imposed. Regarding the sentencing threat, Article 205 governs charges with a maximum penalty of 5 (five) years, while Article 234 governs charges with a maximum penalty of 7 (seven) years.³⁰

Regarding the judge's obligations under Article 205, these include examining the defendant's admission by considering: (a) whether the defendant was examined during the investigation stage; (b) whether the defendant was assisted by an advocate during the investigation; (c) whether the investigation was conducted in an appropriate manner and time; (d) whether the defendant was informed of and able to exercise their rights during investigation and prosecution; (e) that the admission was not caused by pressure, coercion, and/or torture, either physical or psychological; and (f) other matters deemed necessary by the judge.

If all points are met, the judge determines the case will be examined via summary procedure. However, if they are not met or the defendant does not admit to the charged acts, the judge continues with the ordinary procedure. Meanwhile, the judge's obligations under Article 234 include: (a) informing the defendant of the rights waived by providing an admission; (b) informing the defendant of the potential sentence duration; and (c) inquiring whether the admission is provided voluntarily.

Regarding the sentence imposed, Article 205 does not regulate it; however, paragraph (5) stipulates that further provisions regarding the defendant's admission shall be governed by government regulation, making it possible that sentencing will refer to such

³⁰ "No Title," n.d., [https://dandapala.com/article/detail/revisi-kuhap-memperkuat-due-proces-of-law#:~:text=Due proces of law merupakan,dan perlindungan hak asasi manusia.](https://dandapala.com/article/detail/revisi-kuhap-memperkuat-due-proces-of-law#:~:text=Due+proces+of+law+merupakan,dan+perlindungan+hak+asasi+manusia.)

regulation. This differs from Article 234, where the judge, in rendering a verdict, may not exceed 2/3 (two-thirds) of the maximum penalty of the charged offense.

Article 234 does not mandate further provisions via government regulation. However, for both Articles 205 and 234, if the admission is accepted by the judge, the case proceeds via expedited procedure (*acara pemeriksaan cepat*). Both provisions have also not yet regulated whether the acceptance of the admission is done through a judicial order or merely as a statement recorded in the official minutes.

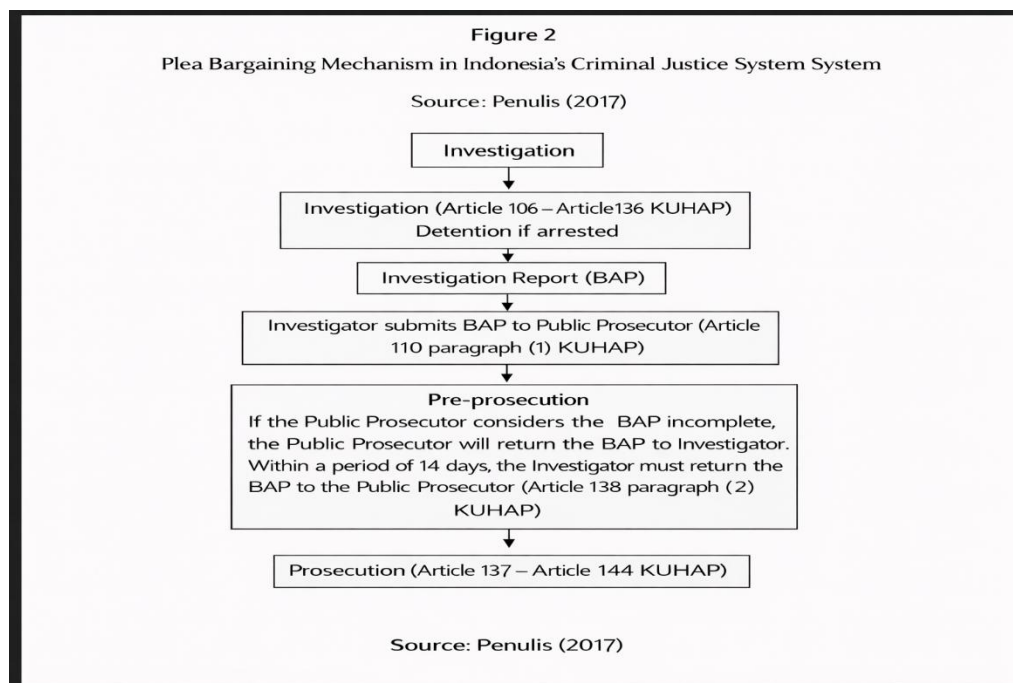


Figure 3.2: Mechanism in Indonesia

Source: Syaiful Bakhri (April 2019) *Criminal Law Reform*. South Tangerang: UM Jakarta Press, p. 167.

Table 3.1: Comparison of Philosophical Foundations and Objectives of Plea Bargaining in the United States and the Special Track in the New Indonesian KUHP

Elements of Equality	Analysis Description
Principles of Judicial Efficiency	Both are designed to realize the principles of swift, simple, and inexpensive justice in order to overcome the backlog of cases in court.
Prerequisites for Recognition	The essence of both is the voluntary admission of guilt by the defendant to the charges brought against them.

Pragmatic Needs	Both are alternative solutions for resolving cases without having to go through the entire lengthy and costly court proceedings.
Incentive Provision	The second defendant will receive compensation in the form of a reduced sentence or lesser criminal charges as compensation for his cooperation.
Principle of Voluntariness	Both emphasize that confessions must arise from self-awareness, free from coercion, intimidation, or physical/psychological pressure.
Judicial Control (Judge)	Judges in both countries continue to play a supervisory role in verifying whether defendants understand the legal consequences and the rights they are waiving.
Resource Optimization	Both aim to conserve state resources, including the operational budget for law enforcement and the capacity of correctional institutions.

Table. 3.2. The Difference of Plea Bargaining between United States and the new Indonesian's KUHP

Aspect	Plea Bargaining System (United States)	Special Procedure (New Indonesian Criminal Procedure Code)
Legal Basis	Federal Rules of Criminal Rule (11)	Article 1 point 16 of Law Number 20 of 2025 concerning Criminal Procedure Code, Article 7 point 16 letter m of Law Number 20 of 2025 concerning Criminal Procedure Code, Article 78 of Law Number 20 of 2025 concerning Criminal Procedure Code. Article 205 of Law No. 20 of 2025 concerning the Criminal Procedure Code. Article 234

		of Law No. 20 of 2025 concerning the Criminal Procedure Code.
Legal System	Common law (Anglo-Saxon) sources of law prioritize jurisprudence (previous court rulings) and precedent.	Civil law (European Continental law) is the main source of codified written law.
Main Mechanism	Negotiations between the public prosecutor and the defendant or his/her defense counsel.	A brief examination based on the defendant's guilty plea before the judge.
Time of Implementation	Conducted before the trial begins (arraignment and preliminary hearing stages)	Conducted in court when the prosecutor reads the indictment.
Negotiation Room	Open to negotiation on charges, legal facts, and sentencing	There is no room for negotiation; the defendant can only accept or admit to the charges brought by the prosecutor.
The Role of Judges	Not involved in the negotiation process; judges are prohibited from taking sides in negotiations.	The judge plays a crucial role in determining whether the defendant's confession is accepted or rejected if there is doubt, and in determining the sentence.
Limits of Criminal Acts	Applies to all types of criminal offenses, including those punishable by severe penalties.	First-time offenders, only for crimes punishable by 5 (five) years.
Penalty Amount	The confession was made voluntarily without coercion, threats, or promises	The judge must assess whether the confession was given voluntarily, with the full understanding of the defendant.

outside of the
agreement.

2. Implications of Incorporating Plea Bargaining Elements for the Defendant's Due Process of Law and the Principle of a Speedy, Simple, and Low-Cost Trial in Indonesia

Due process of law constitutes a paradigm within the criminal justice system that emphasizes the administration of the judicial process as an instrument to ensure the realization of a fair, human-oriented, and accountable judiciary. This concept aims to prevent the abuse or arrogance of power by law enforcement authorities while simultaneously ensuring the protection of and respect for human rights at every stage of the criminal justice process.³¹

The principle of due process of law, as guaranteed under Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia and various international legal instruments, affirms the defendant's right to obtain a fair trial. Such rights encompass the right to be heard, the right to defense, and the right to adequate examination and evidence. Within the context of adopting the plea bargaining mechanism into the Indonesian criminal procedure system, several implications warrant careful scrutiny.³²

From a positive perspective, this mechanism has the potential to strengthen the protection of due process of law if the admission of guilt is conducted voluntarily, transparently, and delivered directly before a judge, as regulated in Article 78 of the New KUHP. Under this framework, the judge is obligated to examine and ensure that the admission is provided without coercion and is based on the defendant's full awareness. Placing the judge as the primary controller of the guilty plea process provides a guarantee that the defendant retains control over the course of the judicial proceedings. Furthermore, this model can prevent "closed-door" negotiations between the defendant and the public prosecutor, which have the potential to undermine judicial integrity – a common criticism of plea bargaining practices in common law systems.

Conversely, from a negative perspective, there is a potential violation of due process of law if the admission of guilt is obtained through external pressure, whether in the form of threats from law enforcement, an imbalance in bargaining positions, or the defendant's

³¹ Wari Martha Kambu, "Tinjauan Yuridis Tentang Hak Asasi Manusia Berdasarkan Pasal 28d Ayat 3 Undang-Undang Dasar 1945," *Lex Et Societatis* 9, no. 1 (2021).

³² Ikama Dewi Setia Triana, Muhammad Yusril Irza, and Arif Awaludin, "Reformasi KUHP Dalam Membangun Sistem Peradilan Pidana Yang Berkeadilan Dan Perlindungan Hak Asasi Manusia," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 6 (2025): 8293–8304.

limited access to competent legal counsel. Under such conditions, a defendant may be driven to admit guilt solely to avoid the risk of a maximum criminal sentence, thereby reducing the right to an optimal defense and an independent examination of evidence.³³

In the practice of several countries implementing plea bargaining mechanisms, cases have been well-documented where defendants were compelled to plead guilty despite being innocent or where their level of culpability was not as severe as charged. Such admissions are often provided not on the basis of awareness and free will, but due to the fear of a maximum sentencing threat if the case proceeds through a full trial. This phenomenon is known as coercive plea bargaining, a mandatory practice of plea bargaining that fundamentally contradicts the principle of voluntary admission and the defendant's right to a fair trial.

The Constitutional Court, in several of its decisions, including Decision Number 21/PUU-XII/2014, affirms that Indonesia is a *negara hukum* (Rule of Law), where the idea of the Rule of Law as a principle of due process is constitutionally guaranteed.³⁴ In line with this, one of the principles of the Rule of Law is the recognition, guarantee, protection, and certainty of fair law and equal treatment before the law. The principle of due process of law as an embodiment of the recognition of human rights in the criminal justice process is a principle that must be upheld by all parties, particularly by law enforcement institutions.³⁵

The realization of respect for human rights is achieved by providing an equal position, including within the criminal justice process, specifically for suspects, defendants, or convicts in defending their rights in a balanced manner. The principles described above give rise to another principle: that the judicial process in criminal cases must reach the material truth (*kebenaran materiil*)—a truth in which no further doubt exists. This underscores the importance of guaranteeing the voluntariness of admissions to prevent the use of invalid confessions that contradict the principles of procedural justice. Thus, the impact of this mechanism on due process of law is heavily determined by the firmness of the judge's role in supervising and testing the validity of the defendant's admission.³⁶

³³ Herdino Fajar Gemilang and Rosalia Dika Agustanti, "Penggunaan Plea Bargaining Dalam Sistem Peradilan Pidana: Menyeimbangkan Efisiensi Dan Keadilan," *Jurnal Interpretasi Hukum* 4, no. 3 (2023): 422–31.

³⁴ Ruchayah, "Urgensi Plea Bargaining System Dalam Pembaruan Sistem Peradilan Pidana Di Indonesia: Studi Perbandingan Plea Bargaining System Di Amerika Serikat."

³⁵ Cut Nangrie Sari Abuthalib, Dian Ekawaty Ismail, and others, "Plea Bargaining Dalam Bayang-Bayang Keadilan: Antara Efisiensi Penegakan Hukum Dan Degradasi Nilai Kepastian Hukum," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 1130–46.

³⁶ Nasution, *Adapi Sistem Plea Bargaining Dalam Kerangka Hukum Pidana Indonesia: Tinjauan Komparatif Dari Amerika Serikat, India Dan Prancis*.

Regarding the implications for the principle of a speedy, simple, and low-cost trial, as stipulated in Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power, the mechanism demonstrates both positive contributions and challenges. This principle encourages law enforcement practices in Indonesia to protect and provide legal certainty, especially for justiciablen or justice seekers. Positively, plea bargaining tangibly supports the realization of this principle by shortening the examination stages through the summary procedure mechanism as regulated in Article 234 of the New KUHP.

An admission of guilt allows for the elimination of lengthy evidentiary processes, enabling cases to be resolved in a shorter duration, reducing court backlogs, and suppressing litigation costs. In cases with a sentencing threat below seven years, for instance, the judge may impose a sentence with a maximum limit of two-thirds of the statutory maximum, thereby contributing to the reduction of case accumulation, which has long been a chronic issue in the Indonesian criminal justice system. The benefits of plea bargaining can be classified into three primary dimensions:

First, Temporal Efficiency: By eliminating the necessity for a full trial – encompassing the reading of the indictment, evidence presentation, witness examination, and legal arguments – plea bargaining allows for case resolution within a significantly shorter timeframe, often within weeks, as opposed to conventional trial processes that can last for months or even years. *Second*, Financial Efficiency: Savings in court operational costs, expert witness fees, transportation costs, and various other administrative expenses can reach a substantial level if cases are resolved through plea bargaining. In addition, *third*, Human Resource Efficiency: With the reduction in the number of cases requiring a comprehensive trial, judges, prosecutors, and clerks can allocate their time and energy to handling cases that necessitate in-depth and complex examinations.³⁷

Beyond operational efficiency, this mechanism offers strategic advantages in terms of legal certainty and risk management. For the defendant, this procedure provides a guarantee regarding the sentence to be imposed, thereby reducing the uncertainty and anxiety arising from trial processes with unpredictable outcomes. For the prosecutor, plea bargaining reduces the risk of evidentiary failure at trial, which could lead to an acquittal or dismissal of all legal charges – outcomes that could ultimately diminish public confidence in the performance of the Prosecutor's Office. For victims and society, swifter case resolution provides certainty regarding the perpetrator's status and the continuation

³⁷ Soesilo and others, "Kitab Undang-Undang Hukum Acara Pidana (KUHP) Dengan Penjelasan Resmi Dan Komentar."

of the sentencing process, while reducing the psychological burden caused by prolonged legal uncertainty.³⁸

Conversely, the efficiency offered by this mechanism has the potential to diminish simplicity and substantive justice if the defendant does not fully comprehend the legal consequences of their guilty plea.³⁹ Such conditions necessitate adequate legal assistance, which in practice may not be accessible to all defendants, particularly those from underprivileged social groups.⁴⁰ Furthermore, if an admission of guilt is not supported by an adequate examination of facts, the judicial process has the potential to become less transparent and open to legal errors, which could ultimately incur implicit costs in the form of subsequent legal remedies. Data and judicial practices indicate that while the plea bargaining mechanism holds great potential to enhance efficiency, its implementation in Indonesia remains limited, and thus its benefits have not yet been fully realized on a national scale.

CONCLUSION

The plea bargaining mechanism in the United States and the Special Track (Jalur Khusus) within the New Indonesian Criminal Procedure Code (New KUHP) share a common philosophical foundation: to realize efficiency within the criminal justice system through the voluntary admission of guilt by the defendant as an alternative to protracted evidentiary proceedings. Both mechanisms aim to alleviate docket congestion, suppress judicial expenditures, and expedite the resolution of criminal cases. However, there exists a fundamental distinction between plea bargaining in the United States and the Special Track in the New Indonesian KUHP. In the American system, plea bargaining is predicated on negotiations between the public prosecutor and the defendant, offering an expansive bargaining space concerning the charges, legal facts, and the nature and severity of the criminal sanction, notably without judicial involvement during the negotiation phase.

Conversely, the Special Track in the New KUHP does not permit a bargaining space for charges or penalties; rather, it prioritizes the defendant's guilty plea delivered before a judge, where the judge assumes an active role in scrutinizing the voluntariness, comprehension, and validity of the admission. The integration of plea bargaining

³⁸ Widiatmika, "Penerapan Perpol Nomor 8 Tahun 2021 Tentang Penanganan Tindak Pidana Berdasarkan Keadilan Restoratif Di Direktorat Reserse Kriminal Umum Polda Bali."

³⁹ Wahyudhi et al., "Prinsip Plea Bargaining Dalam Penyelesaian Perkara Pidana Secara Cepat Sederhana Dan Biaya Ringan Dalam Pembaharuan Hukum Acara Pidana."

⁴⁰ Nomor, "Tahun 2025 Tentang Kitab Undang-Undang Hukum Acara Pidana."

elements into the New KUHP via the Special Track carries dual implications for the principle of due process of law. On one hand, positioning the judge as the primary supervisor has the potential to bolster the protection of the defendant's rights and preclude detrimental "closed-door" negotiation practices. On the other hand, there resides a risk of psychological pressure on the defendant to admit guilt solely for the purpose of obtaining sentencing leniency, particularly in the absence of adequate legal counsel and rigorous standards for the examination of such admissions. From the perspective of the principle of a speedy, simple, and low-cost trial, the Special Track offers a positive contribution by shortening the stages of examination, reducing the judicial burden, and enhancing the efficient allocation of law enforcement resources. Nevertheless, the ultimate effectiveness of this mechanism remains contingent upon the readiness of technical regulations, judicial infrastructure, and the consistency of its application at the practical level.

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