RETURN OF STATE FINANCIAL LOSSES THROUGH PLEA BARGAINING AS A REASON FOR STOPPING CORRUPTION INVESTIGATIONS

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Abstract

The retributive approach in eradicating corruption focuses on prison sentences, but in reality the rate of corruption is increasing while the recovery of state financial losses is very low. This research aims to find an ideal model of recovering state financial losses through plea bargaining to become a reason for stopping investigations into criminal acts of corruption. The method used is normative juridical research with statutory, conceptual and comparative approaches related to Plea Bargaining. This research discusses how recovering state financial losses can stop investigations into criminal acts of corruption. Furthermore, the design of the ideal plea bargaining model in recovering state financial losses is also discussed so that it can be used as a reason to stop investigations into criminal acts of corruption in Indonesia. By comparing the implementation of plea bargaining in Pakistan and synchronizing it with national laws and regulations in the field of taxes and customs, it is hoped that a new design for the plea bargaining model can be conceptualized. The conclusion of this article is to revise Article 4 of the Corruption Eradication Law so that the return of state financial losses can be a reason for stopping investigations, and to recommend the ideal form of plea bargaining in returning state financial losses as a reason for stopping investigations in order to speed up and optimize the return of state financial losses. Concretely, plea bargaining must be one of the procedures that needs to be accommodated in the future Draft Criminal Procedure Code.

Keywords: *State financial losses, corruption, termination of investigations, plea bargaining;*

A. INTRODUCTION

The law enforcement approach to criminal acts of corruption should not only be to provide the maximum possible punishment for those who are found guilty, but also so that all state losses caused by perpetrators of criminal acts of corruption can be returned within a short time.[1] That is why the law enforcement paradigm has changed from being oriented or prioritizing the perpetrator (follow the suspect) to being oriented towards money or losses (follow the money). This means that pursuing and punishing perpetrators of corruption with the threat of prison sentences is not enough if the state as a financially disadvantaged subject does not receive back the state money lost due to acts of corruption through effective and efficient measures.

In 2022, there will be 579 corruption cases with 1,396 suspects and state losses reaching IDR. 42.747 trillion. The total budget ceiling managed by all law enforcement officers in 2022 at the inquiry/investigation stage based on the Budget Implementation List (DIPA) for Fiscal Year 2022 is IDR. 449,006,937,000,- (four hundred forty-nine billion six million nine hundred and thirty-seven thousand rupiah) with details of the cost of one corruption case handled by the Prosecutor's Office amounting to Rp. 129,800,000/case (one hundred twenty-nine million eight hundred thousand rupiah per case) up to Rp. 198,000,000/case (one hundred and ninety eight million rupiah per case). For handling corruption cases by the Police, it is Rp. 4,100,000,- (four million one hundred thousand rupiah) to Rp. 1,300,000,000/case (one billion rupiah per case) while the KPK is IDR. 138,300,000/case (one hundred thirty eight million three hundred thousand rupiah).[2] With state money saved in 2022 by the KPK amounting to Rp. 517,740,000,000,- (five hundred seventeen million rupiah seven hundred and forty million rupiah) and the police amounting to Rp. 1,500,000,000,000,- (one trillion five hundred billion rupiah). These data show that criminal acts of corruption have caused enormous state financial losses with very high costs incurred in law enforcement. Meanwhile, recovering state financial losses due to corruption through law enforcement does not show significant value.

One of the causes of difficulties in recovering state financial losses is the implementation of Article 4 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Corruption Crimes. emphasized that returning state losses does not erase the crime but only becomes a mitigating factor. This provision extinguishes the good intentions of corruption perpetrators to recover state financial losses, on the other hand, corruptors prefer to be imprisoned rather than compensate for state financial losses. While the provisions regarding fines are still alternative, confiscation of assets and payment of compensation based on these laws and regulations is still an additional crime which can only be implemented if the perpetrator of the crime has been declared legally and convincingly guilty by a court of law based on a decision with permanent legal force.[3]

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[1] Abdul Fattah, *et.al.*, "Kajian Yuridis Penerapan Unsur Merugikan Keuangan Negara Dalam Penegakan Hukum Tindak Pidana Korupsi", *Diponegoro Law Journal, Volume 6, Nomor 1*, (2017), 3.

[2] Diky Anandya dan Lola Easter, *Laporan Hasil Pemantauan Tren Penindakan Kasus Korupsi Tahun 2022,* Indonesia Corruption Watch, (2023), 8.

[3] Febby Mutiara Nelson, 2020, *Plea Bargaining & Deffered Prosecution Agreement,* (Jakarta: Sinar Grafika, 2020), 8 – 9.

Another problem is that regulations related to asset confiscation have not yet been discussed at the legislative level.

According to Febby Mutiara Nelson, the plea bargaining approach can speed up the process, as well as cooperation with the defendant to admit his actions and return state financial losses, or if not he will face a long judicial process and heavier sentences. This dissertation also emphasizes how to apply plea bargaining in corruption cases by revising Article 4 of the PTPK Law so as not to hinder the implementation of new models such as plea bargaining. Plea Bargaining in criminal acts of corruption in Indonesia can be carried out from the adjudication process, namely the prosecution stage.

The stages of Plea Bargaining in a foreign country are carried out in the trial process at the beginning after the reading of the indictment. However, plea bargaining carried out at the trial stage will not actually be a reason for expunging the crime, but merely provides a basis to relieve the Defendant. Meanwhile, the case has been advanced from the investigation stage to the investigation, prosecution and even the trial process, so that the time, energy and even the involvement of the Prosecutor have been present. That is why, a breakthrough is needed to cut bureaucracy and even streamline time and costs through Plea Bargaining with the condition of returning state financial losses as a reason for terminating investigations or eliminating criminal charges. Kukuh Suddarmanto, et al have the idea to open up opportunities for the abolition of criminal penalties under Article 2 and Article 3 of the PTPK Law for perpetrators who return state losses by changing the word "no" in Article 4 of the PTPK Law to "can", so that it becomes "Return of state financial losses or the country's economy "can" eliminate the criminal acts of criminals as intended in Article 2 and Article 3."[4] That is why this article will discuss how the return of state losses can be used as a basis for stopping investigations into criminal acts of corruption. Next, we discuss how to design an ideal plea bargaining model in recovering state financial losses to become a reason for stopping investigations into criminal acts of corruption in Indonesia by comparing the implementation of plea bargaining in Pakistan.

B. RESEARCH METHOD

This article is a normative legal research using qualitative methods and conceptual, case and comparative approaches through a literature review to examine the issues discussed.[5] (Yunus, 2021) The data collection technique applied uses available data, such as statutory regulations, literature books, articles and available online media news. The data collection method applied in this research is document study which aims to search for legal materials, namely primary legal documents which include statutory regulations, secondary legal materials in the form of literature books, articles in online journals, and tertiary legal materials through dictionaries.

[4] Kukuh Sudarmanto, Muhammad Alvin Cyzentio Chairilian, dan Kadi Sukarna, 2023, *Rekonstruksi Pengembalian Kerugian Negara Sebagai Alternatif Pengganti Pidana Penjara,* Jurnal USM Law Review Vol 6, No 2, (2023), 836-837.

[5] Irwansyah dan Ahsan Yunus, 2021, *Penelitian Hukum (Pilihan Metode & Praktik Penulisan Artikel),* (Yogyakarta: Mirra Buana Media, 2021), 134, 139, 147.

C. RESULTS AND DISCUSSION

1. Return of State Losses as a Reason for Terminating Investigations into Corruption Crimes

Article 1 point (5) of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) states that the meaning of investigation is as follows: "Investigation is a series of investigatory actions to search for and discover an incident that is suspected of being a criminal act in order to determine whether or not it can be carried out." investigation according to the method regulated in this law." Meanwhile, Article 1 point (2) states the definition of investigation as follows: "A series of investigative actions in terms and according to the methods regulated in this law to search for and collect evidence of what happened and to find the suspect."

From the two definitions above, an investigation is to 'search for and find an incident that is suspected of being a criminal act', while an investigation is a process of 'searching for and collecting evidence, making clear a criminal incident and finding a suspect', in this case a criminal act of corruption. However, what happens if it turns out that after the evidence has been collected and the crime incident has become clear, it turns out that the investigation into the incident which is suspected to be a criminal act is stopped midway? The law gives investigators the authority to terminate an investigation, namely that investigators have the authority to act to stop an investigation that they have started.[6] Terminating the investigation of a criminal case is the authority that investigators have when dealing with a case that is deemed no longer necessary to continue at the next stage of law enforcement. In this case, stopping an investigation is also called sepoonering. Yahya Harahap said that the authority to terminate an ongoing investigation was given to investigators for the following reasons or reasons:[7]

a. To uphold the principles of justice that is fast, precise and low cost, and at the same time to uphold legal certainty in people's lives. If the investigator concludes that based on the results of the inquiry and inquiry there is not enough evidence or reason to charge the suspect before trial, why drag on handling and examining the suspect? It is better for the investigator to officially declare the termination of the investigation, so that legal certainty can immediately be created for both the investigator himself, especially the suspect and the public.
b. So that the investigation avoids the possibility of demands for compensation, because if the case continues, but it turns out there is not enough evidence or reasons to prosecute or punish, this automatically gives the suspect/defendant the right to demand compensation based on Article 95 of the Criminal Procedure Code.

The law has limitedly stated the reasons that investigators can use as a basis for terminating an investigation. Mentioning or outlining these reasons is important, in order to avoid negative tendencies in the investigating officer. With this outline, the law expects that in using the authority to terminate an investigation, investigators will test it based on predetermined reasons. Not at will without reasons that cannot be accounted for according to law, and at the same time it will also provide a basis for referral for parties who object to the

[6] Meiske T. Sondakh dan Roy R. Lembong. *"Alasan Penghentian Penyidikan Tindak Pidana Korupsi Berdasarkan Undang-Undang Nomor 31 Tahun 1999". Lex Crimen Vol. IX, No. 4*, (Okt-Des 2020), 6.

[7] Yahya Harahap, *Pembahasan Permasalahan dan Penerapan KUHAP; Penyidikan dan Penuntutan Edisi Kedua,* (Jakarta: Sinar Grafika, 2012), 150.

legality of terminating an investigation according to law. The Criminal Procedure Code (KUHAP) states in a limited way the reasons investigators use to terminate an investigation, which are regulated in Article 109 paragraph (2) of the Criminal Procedure Code which in full reads as follows: "In the case of an investigator stopping an investigation because there is insufficient evidence or the incident does not constitute a criminal act or the investigation has been stopped by law, then the investigator shall notify the public prosecutor, the suspect or his family."

The legal space for terminating an investigation in Indonesia apart from the reasons as intended in Article 109 paragraph (2) of the Criminal Code, there are several legal bases for resolving criminal cases outside the Indonesian courts, including those contained in the provisions of Article 82 of the Criminal Code, Article 29 of the Customs Ordinance, the Emergency Law No. 7 of 1955, Customs Law, Capital Markets Law, Taxation Law, Article of Law Number 2 of 2002 concerning the Republic of Indonesia Police. Indonesia, and others. Settlement of criminal acts outside of court can only be carried out for violations with criminal sanctions of fines in accordance with Article 82 of the Criminal Code.

The provisions of Article 82 of the Indonesian Criminal Code originate from the Dutch Criminal Code, which is known as afdoening buiten process. In the Netherlands itself, a settlement model has developed that goes further than the provisions of Article 82 of the Indonesian Criminal Code. The model is known in the Netherlands as Transactie. The implementation of the 'transactie' system in the Netherlands in 1996 resulted in striking changes in material criminal law and formal criminal law in the Netherlands. Apart from the settlement model through afdoening buiten proces which is regulated in Article 82 of the Criminal Code) and Transactie in the Netherlands which is regulated in Article 74 of the 1996 Dutch Criminal Code, we also look at statutory arrangements outside the Criminal Code (both the Indonesian Criminal Code and the Dutch Criminal Code) which are known as voorwaardelijke vervolging. This model is generally used in fiscal delicts (tax crimes). Voorwaardelijke vervolging is a method of resolving criminal cases outside of court, where a person who commits a punishable act will not be prosecuted as long as the suspect is willing to fulfill the conditions determined by the public prosecutor.

Apart from Article 82 of the Criminal Code, there are a number of laws which also contain aspects of resolving criminal cases outside of court, for example in Emergency Law No. 7 of 1955 concerning the Investigation, Prosecution and Trial of Economic Crimes. The Economic Crimes Law is a provision that threatens criminal penalties for various administrative violations regulated in various regulations in the economic sector aimed at strengthening the implementation of administrative sanctions. According to Andi Hamzah, this practice is basically based on the principle of opportunity owned by the attorney general.[8] The authority to set aside cases based on the principle of opportunity from the attorney general is obtained based on statutory regulations, especially in the Attorney General's Law.

In Article 113 of Law no. 10 of 1995 concerning Kepae states that in the interests of state revenue, at the request of the Minister (Minister of Finance), the Attorney General can stop investigations into criminal acts in the Customs Sector. Termination of investigations into criminal acts in the Customs Sector can only be carried out after the person concerned has

[8] Andi Hamzah, *Hukum Pidana Ekonom, (Edisi Revisi)*, (Jakarta: Erlangga, 1991), 40.

paid the unpaid or underpaid Import Duties, plus administrative sanctions in the form of a fine four times the amount of unpaid or underpaid Import Duties. Even though it was settled outside of court, we can actually see the nature of the punishment, namely that apart from having to pay import duties that were not or underpaid, you also have to pay four times the fine that was not or underpaid.[9]

Settlement aspects in Law no. 6 of 1983 concerning Taxation and Law no. 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983. The Tax Law as part of fiscal law clearly aims to generate income for State finances. In the Taxation Law with its various amendments, the authority for settlement without having to go to trial is regulated. Article 44B states that for the purposes of state revenue, at the request of the Minister of Finance, the Attorney General can stop investigations into criminal acts in the field of taxation within a maximum period of 6 (six) months from the date of the request letter. Termination of investigations into criminal acts in the field of taxation as referred to in paragraph (1) is only carried out after the Taxpayer has paid off the tax debt which was not or was underpaid or which should not have been returned and added with an administrative sanction in the form of a fine of 4 (four) times the amount of tax which was not or underpaid, or which should not be returned. In the explanation of Article 44B paragraph (1) it is stated that: "In the interests of state revenue, at the request of the Minister of Finance, the Attorney General may stop investigations into tax crimes as long as the criminal case has not been submitted to court."

Regarding the termination of investigations into criminal acts of corruption through the Circular Letter of the Deputy Attorney General for Special Crimes Number: B113/F/Fd.1/05/2010 dated 18 May 2010 containing orders to heads of prosecutors throughout Indonesia to prioritize big fish (scale) corruption cases. large, seen from the perpetrator and/or the value of the loss) and corruption cases that are carried out continuously (still going on). This circular emphasizes that for people who have committed criminal acts of corruption with small losses (under IDR 100 million) and have recovered their losses, the concept of restorative justice can be used.[10]

Corruption criminal case in 2017 with a loss value of less than Rp. 100 million which was resolved through restorative justice, namely the case of the Penghulu Kampung Empang Pandan who misappropriated the Village Fund Allocation (ADD) amounting to Rp. 15,000,000. The case is in the investigation stage, but the suspect has already returned all state losses, so the prosecutor's office issued an Order to Stop Investigation (SP3) in the case. Allegations of corruption in fictitious Official Travel Orders (SPPD) occurred at the Aceh Truth and Reconciliation Commission (KKR) for the 2022 fiscal year. Based on the results of an investigative audit by the Aceh Inspectorate, it was found that state losses amounted to IDR. 258,000,000,- (two hundred and fifty eight million rupiah). The losses in question resulted from the existence of fictitious Official Travel Orders carried out by 58 (fifty eight) staff members or commissions or working groups, including the Chair of the Aceh Truth and Reconciliation Commission. After going through a series of examinations on Thursday 7

[9] Febby Mutiara Nelson. "Due Process Model dan Restorative Justice di Indonesia: Suatu Telaah Konseptual". *Jurnal Hukum Pidana & Kriminologi, Volume 1, No 1*, (Oktober 2020), 101.

[10] Sandi Ersya Arrasid, *Implementasi Surat Edaran Jaksa Agung Nomor: B-113/F/FD.1/05/2010 Dalam Penyelesaian Tindak Pidana Korupsi Dengan Kerugian Negara yang Kecil Oleh Kejaksaan Tinggi Riau,* JOM Fakultas Hukum Universitas Riau Volume VII, Nomor 2 (Juli 2020), 2.

September 2023, the Chair of the Aceh KKR returned state losses of Rp. 258,000,000 (two hundred and fifty eight million rupiah), to investigators to be deposited into the regional treasury. Furthermore, on the basis of recovering losses, the Banda Aceh City Police took the decision to stop the investigation into the case in question. Another case is the procurement of 60,000 m2 of land for the construction of the South Nias Regency Government Regional General Hospital Building by inflating the price from Rp. 40,000,-/meter (forty thousand rupiah per meter) to Rp. 250,000,-/ meters (two hundred and fifty thousand rupiah per meter), thereby causing state losses which were allegedly carried out by the South Nias Regency Land Acquisition Committee for the TA 2012.[11]

Based on the BPK-RI Audit Results Report on the 2012 South Nias Regency Regional Government Financial Report Number: 106.C/LHP/XVIII.MDN/07/2013 dated 4 July 2013, it was stated that the criminal acts committed by the suspects caused state losses in the form of high prices. amounting to Rp. 5,127,386,500,- (five billion one hundred twenty million three hundred eighty six thousand five hundred rupiah). Furthermore, the Third Party in the name of Firman Adil Dachi amounted to Rp. 7,212,386,500,- (seven billion two hundred twelve million three hundred eighty six five hundred rupiah). Referring to efforts to recover state losses which are not only equivalent to state losses, but with a value greater than state losses, the North Sumatra High Prosecutor's Investigation Team issued an Order to Stop the Investigation (SP3) on August 11 2015 on the grounds that there was insufficient evidence due to financial losses. the country has been returned. This opinion of the North Sumatra High Prosecutor's Office is also based on experts who were examined after the return of state losses, so that the element of state loss is no longer fulfilled.

Based on these two data, it shows the fact that the practice of stopping investigations due to the recovery of state losses due to corruption has become a mechanism that is commonly applied at both the investigation and investigation levels by the National Police and Prosecutor's Office. The legal consideration regarding the non-fulfillment of the state loss element because it has been returned at the investigation stage is a logical consequence after the Constitutional Court decision no. 25/PUU-XIV/2016 stated the word "may" in Article 2 paragraph (1) and Article 3 of the Law. number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption as amended by Law no. 20 of 2001 concerning Amendments to Law number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption (State Gazette of the Republic of Indonesia of 2001 number 134, Supplement to the State Gazette of the Republic of Indonesia number 4150) is contrary to the 1945 State Constitution and has no binding legal force. With this decision of the Constitutional Court, the corruption offense was originally a formal offense, now the word "can" is stated to be contrary to the 1945 Constitution of the Republic of Indonesia and has no legal force to bind the corruption offense to a material offense.[12]

[11] M. Agung Prabowo. "Kajian Yuridis Pengembalian Kerugian Keuangan Negara Oleh Tersangka Tindak Pidana Korupsi (Studi Kasus Korupsi Pembangunan RSUD Nias Selatan)". *Jurnal Ilmiah Mahasiswa Hukum (JIMHUM),* Vol. 4, No. 1, (Januari, 2024), 95–109.

[12] Ester Sheren Monintja, "Tinjauan Yuridis Pasal 2 dan 3 Undang-Undang Tindak Pidana Korupsi Sebagai Delik Materil Menurut Putusan Mahkamah Konstitusi No. 25/PUU-XIV/2016", *Lex Crimen, Vol. IX, No. 2,* (Apr – Jun 2020), 103.

According to the Constitutional Court, the element of harm to state finances is no longer understood as an estimate (potential loss) but must be understood to have actually occurred or be real (actual loss) in order to be applied in criminal acts of corruption. This is a consequence when a material offense requires that the act can only be punished because of the consequences of the act, so that the proof of the element of state loss in Articles 2 and 3 of the Corruption Crime Law must be clear and certain. That is why, it should be possible to return state financial losses as a condition for stopping investigations into criminal acts of corruption in accordance with Article 109 paragraph (2) of the Criminal Procedure Code. In particular, there is not enough evidence because state losses no longer exist with the return.

The practice of terminating investigations on the basis of returning state financial losses appears to be in conflict with Article 4 of the Corruption Eradication Law, which requires the return of state financial losses to only have the effect of mitigating and not eliminating the crime. Thus, to resolve normative conflicts while speeding up the process of recovering state losses, it should be possible for potential suspects who have good intentions to have their cases dismissed at the investigation stage. By returning the state's financial losses, the corrective justice intended by Aristotle as an effort to correct or correct something wrong by providing compensation for the injured party or providing appropriate punishment for the perpetrator of the crime can be translated optimally.

Reconstruction of regulations with a progressive legal approach in order to create social justice for all Indonesian people must be pursued by law enforcement officials so that corruption does not become a further burden on the state and people. Meanwhile, the current conception of asset recovery carried out by the state is repressive and coercive, through the criminal justice system, and the results have been found to be ineffective. From another perspective, the recovery of state financial losses can be resolved through the concept of restorative justice, by placing the state as the victim.[13] That is why, to open up space to accelerate the recovery of state losses, reconstruction of the rule of law is necessary, the reconstruction is by revising Article 4 of Law Number 31 of 1991 concerning the Eradication of Corruption Crimes as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1991 concerning the Eradication of Corruption Crimes.

In this article there is a clause on the return of losses to state finances or the state economy. In its implementation, even though the perpetrator has consciously returned losses to state finances, legally the perpetrator or in this case the defendant is still subject to criminal penalties as stipulated in Article 10 of the Criminal Code. The existence of a burden after the defendant's repentance does not change the conception of the punishment that the defendant will experience, this is believed to be the reason for the defendant not to make efforts to recover state financial losses. In practice, it is offered that returning state financial losses can provide leniency in punishment, but this is apparently not a sufficient offer for perpetrators of criminal acts of corruption to choose to return state losses. Therefore, a recovery-oriented enforcement space is needed by changing the construction of Article 4 to be as follows: "Recovery of losses to state finances or the state economy can eliminate the criminal acts of

[13] Kukuh Sudarmanto, Muhammad Alvin Cyzentio Chairilian, dan Kadi Sukarna, 2023, *Rekonstruksi Pengembalian Kerugian Negara Sebagai Alternatif Pengganti Pidana Penjara,* Jurnal USM Law Review Vol 6, No 2, (2023), 836-837.

perpetrators of criminal acts as intended in Article 2 and Article 3." The construction of the article referred to in the next discussion will be synchronized with plea bargaining. Termination of investigations on the basis of recovering state financial losses through plea bargaining becomes increasingly possible when the phrase "no" in Article 4 of the Corruption Eradication Law is changed to "can" with more efficient bureaucratic procedures.

2. Recovering State Losses Through Plea Bargaining as a Reason for Terminating Corruption Crime Investigations

The plea bargaining system in the United States legal system only received judicial recognition in the Supreme Court of Justice decision in the case of Brady V. United States, 397 U.S. 742 (1970) which states "plea bargaining is inherent in the criminal law and its administration".[14] The lexical meaning of plea bargaining according to Henry Campbell Black is "a negotiated agreement between a prosecutor and a criminal defendant whereby the defendant pleads guilty to less offense or to one of multiple charges in exchange for some concession by the prosecutor more lenient sentence or dismissal of the other charges (a negotiated agreement between a prosecutor and a criminal defendant in which the defendant pleads guilty to a reduced offense or to one of several charges in exchange for some leniency by the prosecutor for a lighter sentence or the dismissal of other charges).

In principle, in the trial process in common law system countries, when the public prosecutor has finished reading out the indictment (arraignment), the defendant can act not to admit the charges (plea of not guilty), admit the charges and guilt (guilty plea), not act on the charges (no contention plea). , nolo contendere), and being silent (standing more). In the aspect of the plea bargaining process, it is an agreement resulting from negotiations between the public prosecutor and the defendant or legal advisor to admit guilt so that he will receive a lighter sentence or the defendant will be charged with a lighter crime. Then F. Zimring and R. Frase stated that "Plea bargaining consists of arrangement between the prosecutor the defendant or his lawyer whereby in return for a plea of guilty by the defendant, the prosecutor agrees to press the change less serious than that warranted by the facts which the could be proven at trial"[15] Plea bargaining consists of an arrangement between a prosecutor and a defendant or his attorney where in exchange for an admission of guilt by the defendant, the prosecutor agrees to treat the change as less serious than would be justified by the facts that can be proven at trial).

Plea bargaining is a negotiation process in which the public prosecutor offers the defendant to admit his guilt (guilty plea) with his own conviction and awareness. According to Albert Alschuler, plea bargaining consists of an exchange of concessions offered by law enforcement in exchange for the defendant's admission of guilt. These concessions may relate to the sentence imposed by the court or recommended by the public prosecutor, the criminal offense charged, or various other circumstances. The concession can be stated explicitly or implicitly. In corruption cases, the simplest definition of plea bargaining is an admission of

[14] Albert W. Alschuler. "Plea Bargaining and Its History". *Columbia Law Review, Vol 79, No. 1*, (January 1979), 6; dan Jenia Iontcheva Turner. "Plea Baergaining and International Criminal Jutice". *The University of The Pasific Law Review, Vol. 48*, (2016), 233.

[15] F. Zimring & R.Frase, *The Criminal Justice System*, Little-Brown and Company, 1970, hlm. 498.

guilt accompanied by the return of state financial losses in order to speed up recovery for the consequences of criminal acts of corruption.

a. Application of Plea Bargaining in Corruption Crimes in Pakistan

Plea bargaining for corruption cases in Pakistan is known in the National Accountability Ordinance 1999. In Pakistan itself, plea bargaining only applies to corruption cases. The aim of applying plea bargaining in Pakistan is to offer defendants in corruption cases to return all assets obtained unlawfully in exchange for freedom but with a reduction in political rights. The concrete forms of sanctions for defendants who engage in plea bargaining are not being allowed to participate in general elections for 10 years, holding public office for 10 years, receiving loans from banks for 10 years, and being dismissed from their positions as government officials. Plea bargaining is a special procedure in handling criminal acts of corruption in Pakistan. This is because Pakistan is the most corrupt country in the world and handling corruption is now directed at returning state assets or finances for development, as stated in the preamble to the National Accountability Bureau (NAB) law.

The NAB Law regulates voluntary return and plea bargaining in Article or Section 25. The plea bargaining procedure in the NAB Law can be submitted by a suspect or defendant at any time after the investigation begins, before or after the trial begins, or within the period for filing an appeal. Plea Bargaining is submitted by the defendant voluntarily by surrendering and offering to return assets or proceeds of criminal acts of corruption in writing to the NAB chairman. The NAB Chairman can accept the offer with terms and conditions after considering the facts and circumstances of the case, and determining the amount of assets that must be returned. Then the NAB chairman must refer the case for approval by the court or appellate/high court before acquitting the accused.

b. Plea Bargaining Model in Corruption Crimes in Indonesia as a Reason for Terminating Investigations

The Plea Bargaining procedure in Indonesia is accommodated in the Draft Criminal Procedure Code for a faster and shorter process because of the recognition of merit through the concept of "Special Route". According to the provisions of the special route, after the public prosecutor has read out the indictment, the defendant is then given space to admit all the acts charged and plead guilty to committing a criminal offense which carries a sentence of no more than 7 (seven) years, then the public prosecutor can hand over the case to the trial court. short. The defendant's confession is stated in an official report signed by the defendant and the public prosecutor. This mechanism is similar to plea bargaining in the United States, which according to the author still involves quite lengthy procedures.

This is different from the application of plea bargaining in Pakistan which begins when the investigation begins.[16] According to the author, the procedure for admitting guilt with a willingness to return state losses should be possible in the investigation process. In connection with the provisions of Article 8 paragraph (3) of Law Number 28 of 2007 concerning the Third Amendment to Law Number 6 of 1983 concerning General Provisions and Tax Procedures, changes have been made to the Job Creation Law, namely as follows: Even though audit action has been carried out preliminary evidence, the Taxpayer of his own

[16] Febby Mutiara Nelson, 2020, *Plea Bargaining & Deffered Prosecution Agreement,* (Jakarta: Sinar Grafika, 2020), 8 – 9.

accord can reveal with a written statement the untruthfulness of his actions, namely: first, not submitting a Tax Return; or secondly, submitting a Notification Letter whose contents are incorrect or incomplete, or attaching information whose contents are incorrect, as intended in Article 38 or Article 39 paragraph (1) letters c and d, as long as the start of the Investigation has not been notified to the Public Prosecutor through the investigator officials of the State Police of the Republic of Indonesia". Furthermore, the provisions in Article 44B of the KUP Law, emphasize that in the interests of the state, at the request of the Minister of Finance, the Attorney General, through an appointed official, can stop the investigation on condition that the Taxpayer pays off tax debts that are not or are underpaid or that should not be returned and adds administrative sanctions. in the form of a fine of 4 (four) times the amount of tax that was not or was underpaid, or that should not have been returned."

Law Number 10 of 1995 concerning Customs, as amended by Law Number 17 of 2006 concerning Amendments to Law Number 10 of 1995 concerning Customs, confirms that at the Minister's request, the Attorney General can stop investigating criminal acts in the field of customs on condition pay import duties that are not or underpaid, plus administrative sanctions in the form of a fine four times the amount of import duties that are not or underpaid. Further regulations in PP No. 54 of 2023 concerning the Termination of Investigations into Excise Crimes for the Interests of State Revenues, states that one of the documents that needs to be completed to request a termination of investigations for the purposes of State Revenues is a statement of guilt.

The plea bargaining stage, which begins at the investigation level with the return of state financial losses as the reason for stopping the investigation, is actually a form of application of principles that have long been regulated in the judicial legal framework in Indonesia, namely the principles of simplicity, speed and low costs. From the perspective of legal philosophy, the concept of efficiency will provide an overview of justice, because creating just laws must be efficient.[17] By cutting bureaucracy, eradicating corruption which accelerates the recovery of state financial losses is in principle an implementation of the principle of efficiency as an embodiment of just law. That is why, according to the author, it is appropriate for the plea bargaining process to be offered in corruption cases when the case is clearly a criminal incident and there is sufficient evidence, so that before the suspect is named, investigators are given the authority to offer plea bargaining, or potential suspects are given space to submit plea bargaining application.

The concept of plea bargaining can be submitted to investigators, both investigators at the Police, Prosecutor's Office and the Corruption Eradication Commission, by adopting the criteria applied in Pakistan and in Taxation and Customs provisions, namely:

a. A plea bargaining applicant is a potential suspect based on sufficient evidence who is willing to admit guilt at the investigation stage, namely before or after the suspect is identified;
b. The plea bargaining applicant is willing to return the state's financial losses either through assets or money equivalent to the state's financial losses and/or plus an administrative fine equivalent to the costs incurred by the state at the investigation stage;

[17] Yuli Indrawati, *Economy Analysis of Law Atas Ketentuan Pasal 2 huruf g Undang-Undang Nomor 17 Tahun 2013 tentang Keuangan Negara, dikutib dari buku Aktualisasi Hukum Keuangan Publik,* (2014), 256 – 257.

c. The plea bargaining applicant is not a recidivist of criminal acts of corruption and is willing to become a justice collaborator; And
d. The plea bargaining applicant is willing to lose his political rights within 10 (ten) years, namely not being able to vote and be elected in general elections and regional head and deputy regional head elections.

As for the fulfillment of the requirements for the plea bargaining applicant above, it should be added to the Draft Criminal Procedure Code as a refinement of the "Special Route" procedure, where the "Special Route" can be applied at the investigation stage which not only reduces the sentence, but frees potential suspects and/or suspects from legal prosecution. , for reasons of insufficient evidence in accordance with Article 109 paragraph (2) of the Criminal Procedure Code when the return of state losses along with other conditions is met. After the application and the plea bargaining requirements are received by the Investigator and stated in the minutes of acceptance of the plea bargaining application, the plea bargaining Petitioner and the Investigator submit it to the Preliminary Examining Judge who, based on the Draft Criminal Procedure Code Article 111 paragraph (1) letter h, has the authority to decide or determine the termination investigation or termination of prosecution that is not based on the principle of opportunity.

D. CONCLUSION

Whereas there are no explicit regulations that include plea bargaining as a reason for terminating an investigation, however in practice the form of admitting guilt by returning state losses at the investigation stage has become a quick solution for returning state losses, so that the plea bargaining model is usually applied at the trial stage in several The state should be given a legal basis to apply at the investigative level to be used as a reason to stop investigations into criminal acts of corruption due to out-of-court settlements through plea bargaining.

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