

PLEA BERGAINING IMPLEMENTATION OF ILLICIT ENRICHMENT'S ASSET CONFIRMATION IN THE DOMINUS LITIS PERSPECTIVE

JUNAI DI ABDILLAH SIREGAR¹, DEWI KANIA SUGIHARTI², MUHAMMAD YUSUF³

¹Fakultas Hukum Universitas Padjadjaran

Email:abdillahsiregarjunaidi@yahoo.co.id

²Fakultas Hukum Universitas Padjadjaran

Email:dewi@unpad.ac.id

³Jaksa yang dikaryakan pada Kementerian Kelauatan dan Perikanan RI (Inspektur Jenderal)

Email:myusufali185@gmail.com

ABSTRACT

Indonesia's Corruption Perception Index (CPI) was recorded at 34 points from a scale of 0-100 in 2022 in 96th position globally out of 180 countries, this is inseparable from the high losses of state finances due to criminal acts of corruption and most of the perpetrators of corruption are public officials and politician. The tendency of public officials to become perpetrators of corruption due to their easy access to state finances, both from the state revenue sector and the state expenditure sector. The act of a public official who deliberately enriches himself so that he has an unreasonable amount of wealth when it is related to his legitimate income is clearly seen in the LHKPN or LHKASN and the lifestyle that the public official exhibits. Arrangements for expropriating assets that are not fair from public officials in Indonesian positive law can be started from Article 37 A and Article 38 B paragraphs (1) and (2) of RI Law No. 31 of 1999 as amended by RI Law No. 20 of 2011 regarding the Eradication of Criminal Acts of Corruption, but the prerequisites of the provisions of this norm must begin with the existence of a predicate crime. Therefore, a breakthrough in the field of law in dealing with corruption and appropriation as the perpetrators of illicit enrichment is urgently needed, new methods or concepts for handling corruption problems should be put forward with more emphasis on efforts to recover state losses. Returning state losses in a maximum, fast, simple and accountable manner and can target perpetrators of acts of corruption related to defendants and or defendants who are being processed can pay attention to the concept of plea negotiations and confiscation of illicit enrichment assets which are commonly used in criminal justice practices in various countries, especially in the United States, Hong Kong, India and Australia which has been adopted in the Law of the Republic of Indonesia Number 31 of 2014 concerning Amendments to Law Number 13 of 2006 concerning the Protection of Witnesses and Victims and the Draft Law concerning Criminal Procedure Code with the name of the concept of pathway special.

Keywords: Plea negotiations, confiscation of illicit enrichment assets, corruption.

INTRODUCTION

Transparency International Report show, index perception corruption (GPA) Indonesia recorded of 34 points from on a scale of 0-100 in 2022. This number decreased by 4 points from year previously put Indonesia in 110th place, where in previously ranked 96th globally out of 180 countries. Identify this GPA No regardless from height corruption by officials the public and politicians are increasingly bad.¹ Potency loss state finances as a result case corruption experience an increase in the first half of 2022 is estimated reach around IDR 33.665 trillion involving 252 cases with 612 suspects, but apparatus enforcer law only capable realize return loss state finances about 18 percent from whole amount case corruption.² Consequent state losses follow criminal corruption at the time Now This more dominant seen in the sector shopping public, even in principle No close possibility sector corruption state revenue is also not lost big potency the state losses it causes and the perpetrators follow criminal corruption the dominated by officials public.

¹ <https://databoks.katadata.co.id/datapublish/2023/02/01/indeks-persepsi-korupsi-indonesia-membaik-pada-2022>, accessed on 8 July 2023.

² <https://www.kompas.com/cekJadifact/read/2022/12/10/114740182/data-icw-potential-kerugian-negara-akibat-korupsi-reach-rp-336-triliun?page=all>, accessed on July 8, 2023.



Table. 1

follow Criminal Corruption Based on Source Budget 2020 year

No.	Information	Amount	State Loss Value	Bribe Value
1.	Shopping	212	Rp. 2.1 trillion	IDR 154.5 billion
2.	Reception	11	Rp. 42.5 billion	Rp. 42.5 billion
3.	Etc	48	Rp. 6.2 trillion	Rp. 40.9 billion

Source: www.antikorupsi.org , accessed September 30, 2020

Trend official public as perpetrator follow criminal corruption caused Because easy access to state finances and policies related management State finances are in the hands of officials public the. this can seen height mark bribe good in the sector state spending and more from sector state acceptance, of course follow criminal bribe the No regardless from position official public as shaper policy in management state finances.

Corruption sector state revenue is one of them can seen from case follow criminal corruption Director Inspection and Billing at the Directorate General (Directorate General) of Taxes Year 2016-2019 Wind Prayitno Aji , where are the Court judges Corruption Crime Jakarta dropped verdict to Wind during nine-year prison and fines IDR 500 million subsidiary three-month confinement and punished pay replacement money amounting to Rp.3,375,000,000 and Sin\$1,095,000. furthermore, in the tax mafia case, for example, one perpetrator Gaius Tambunan, in 2010 got made as sector corruption state revenue. An official civil servant class III/a Directorate General Tax, Ministry of Finance known own riches more of 100 billion rupiah has open eye We How sector corruption state revenue has gnaw whole joints life public especially among bureaucracy government. Gaius snared related his deeds reduce object PT tax Surya Alam Tunggal with a total loss state finances of IDR 570,952. 000,- (five hundred and seven twenty million nine hundred and fifty two thousand rupiah). Gaius proven guilty accept gratification moment served officer reviewer object tax at the Directorate General tax. Gaius proven accept gratification US \$659,800 and Sin\$9.6 million. Gaius was also snared with the Act Criminal Where is money laundering during trial, Gaius fail prove his wealth in the form of notes of IDR 925 million, US\$ 3.5 million, US\$ 659,800, Sin\$ 9.6 million and 31 coins metal start with 100 grams each No originate from results follow criminal.³

Hasi follow criminal corruption by officials public the Then will hidden or camouflaged related origin suggestion treasure acquired wealth from follow criminal corruption that, p This can depicted from table under this.

Table 2.

Table Report Transaction Finance Suspicious (LKTM) Based on PPA TK Indication follow Criminal

No.	Indication	Report Transaction Finance Suspicious (LKTM)	period	Total Reported Value	Information
1.	Corruption	14,000	2018 to 2020	IDR 54 T	
2.	Bribery	2,800	2018 to 2020	IDR 4,130 T	
3.	Taxation	4,000	2018 to 2020	IDR 33 T	
4.	Online Gambling	68	Jan to Nov 2022	Rp. 81 T	

Source data: processed from a number of Bulletin PPA TK Statistics

Report Transaction Finance Suspicious (LKTM) received by the Reporting and Analysis Center Transaction Finance (PPATK) indicated follow criminal bribery and acts criminal corruption 16,800 transactions finance with the total value reported of IDR 58,130 trillion show effort disguise and concealment results follow criminal Corruption is very massive and systematic. Follow up results criminal corruption nor bribe it by the perpetrator direct placed in system finance, change into the

³ Eben king Lumbanrau, *Sequence case ensnared corruption _ employee tax*, < <https://www.cnnindonesia.com> >, (5/10/2019).



other forms whose purpose is to produce results follow the difficult For investigated by the authorities enforcer law.

At least there are five impacts bad corruption to the country's economy as described by experts,⁴ including corruption slowing growth economy, decreasing level investment, decreasing quality facilities and infrastructure, creating inequality income, and creating poverty. According to Yunus Husein in a webinar conducted by the Commission Eradication follow Criminal Corruption (KPK) which was held on August 6 2020 delivered source main money laundering is follow criminal corruption besides from follow criminal narcotics, from statistics seen enforcer very few laws apply chapter follow criminal money laundering, since 2010 to with year 2021, Commission eradication New corruption (KPK). handled 41 cases follow Criminal Money Laundering (TPPU) that has strength law still or when percentage about 4.7 % of cases handled by the KPK.⁵

Approach application chapter follow criminal money laundering committed with method *placement, layering, integration* until to perpetrator enjoy results the crime, as it should be can done with a combination approach with method *follow the mane* ie pursuit of money or asset results his crime or often called with *bottom-up* / from lower to over and with method *follow the suspect* chase perpetrator follow criminal, find tool proof and search results follow criminal or often called with *top down*. Paradigm like This can done to remove motivation perpetrator crime follow criminal corruption is the goal is to chase wealth, as is known that results crime in the form of money or assets point weakest from chain crime.⁶

kindly norm *Illicit Enrichment* already arranged in law positive for Indonesia, namely on 20 laws Number 7 of 2006 concerning UNCAC ratification, however For formula offense The same very Not yet set, so enforcement law to official public who own assets riches outside fairness No can done. Likewise with definition from official public and gratification Alone expected exists expansion meaning and order in law Indonesian positive. *Illicit* concept implementation *E nrichment* in Indonesia can be linked to the obligation to report Reports State Administration Assets (LHKPN), Report Treasure Riches Apparatus State Civil Service (LHKASN) and Notification Letter Annual (SPT) taxation as well as reports owned by the Reporting Analysis Center Transaction Finance (PPATK), then can also be connected with style life official the public concerned.

Law Number 30 of 2002 concerning the KPK, explains the KPK's authority to register and examine the LHKPN as one of the efforts to prevent corruption.⁷

Table. 3

Report Treasure Riches suspected State Officials / LHKPN outside fairness from income Period 2021

No.	Institution	Position / Rank	Total Assets Riches	Information
1.	Executive	District Secretary _	Rp. 17.5 billion	Service Period 27 Years
2.	Executive	Echelon VI.b Regency	IDR 2.5 Billion	Service Period 16 Years
3.	Executive	Head of Regency / City Region	IDR 52 Billion	period Second
4.	Judicial	Rank IV.a	IDR 13 Billion	Service Period 21 Years
5.	Legislative	Provincial Government 2019-2024 _	Rp. 15.4 billion	Previously Legislative Regency

Source: www.elhkpn.kpk.go.id/portal/eser/login#, accessed February 10, 2022.

Deeds official the public with on purpose enrich self, so own amount wealth that is not reasonable If connected with legitimate income, and not Can explained or proven otherwise (that riches the

⁴ <https://aclc.kpk.go.id/aksi-formasi/Eksplorasi/20230113-kupas-tuntas-5-dampak-bad-korupsi-terhadap-pereconomic-negara> , accessed July 9, 2023.

⁵ Cindy Mutia Annur, <https://databoks.katadata.co.id/datapublish/2022/01/10/kpk- already-tangani-1194-case-korupsi-mayoritas-penyuapan>, accessed 29 July 2022.

⁶ Webinar, [AJLK 2020] Discussion Series #2: Money Laundering, Crime Corporation, & Handling Transnational Corruption, (5/10/2020).

⁷ Article 13 letter a Law Republic of Indonesia Number 30 of 2002 concerning Eradication follow Criminal Corruption

obtained in a manner valid) or *illicit enrichment* at the moment Now This Not yet become offense criminal in the system Indonesian law, however in a manner norm has arranged through Constitution Republic of Indonesia Number 7 of 2006 concerning endorsement *United Nations Convention Against Corruption*, so enforcement law to official public who own assets riches outside fairness No can done. Arrangement expropriation assets that are not reasonable from official public (*Illicit E nrichment*) in law positive Indonesia can started from Article 37 A and Article 38 B paragraphs (1) and (2) of Republic of Indonesia Law No. 31 of 1999 as changed with Republic of Indonesia Law No. 20 of 2011 concerning Eradication follow Criminal Corruption, however precondition from provision norm This must started with exists *predicate crime* or follow criminal independent to start with prosecution deprivation assets that are not reasonable from official public the. Forfeiture of the assets can done with implement *plea bargaining* (confession guilty from suspect or the accused).

Plea Bargaining in *Black's Law Dictionary* interpreted as agreement results negotiations between prosecutors with defendant so that the accused confessed the mistake will get punishment more light or indicted with follow more punishment light. In practice, prosecutors and defendants⁸ do negotiation or bargaining at least in three form, including: ⁹1) charge bargaining (negotiation the indictment), that is prosecutor offer For lower type follow the crime charged; 2) fact bargaining (negotiation fact law), that is prosecutor only will convey mitigating facts defendant; and 3) sentencing bargaining (negotiation penalty), ie negotiations between prosecutors with defendant about punishment to be accepted, defendant.

one known principle in stage prosecution namely *dominus litis*, which means ' prosecutor ' or ruler case so that in the judicial process crime, the prosecutor is in charge is something case can done prosecution to court or no.¹⁰ According to Surachman, in some countries like Japanese, Dutch and French, authority prosecution is attorney monopoly. In Indonesia, principle This become base authority prosecutor general for do prosecution.¹¹ Principle *Dominus Litis* has acknowledged universally and reflected within Article 2 of the Law Number 16 of 2004 concerning attorney The Republic of Indonesia which mentions that attorney is institution implementing government state power in the field of prosecution as well as other authority-based law, which is implemented in a manner independent.¹²

Handling something case corruption committed official public often found exists asset or treasure riches official public the outside reasonable and not related from case moderate corruption done investigation that, the confiscation of that asset of course with apply principle system proof upside down, which means suspect or the defendant has obligation prove that the assets the from legitimate source in a manner law. In the handling process case the investigator nor Prosecutor General has get related data amount treasure riches from official public the Where on the other hand the suspect and or defendant has confess the error, and for simplify system Justice follow criminal corruption said, Prosecutor General expected can use principle *please bargain*. Besides For simplify system Justice such, use system principle *Bargaining* is also possible become door enter For can confiscate assets or treasure riches official affiliated public from moderate matter handled the.

on the basis matter as disclosed above, author try for formulate implementation *please bargain* to deprivation asset Precise, accurate and felt *illicit* enrichment will effective later in rescue state finances as a result from behavior corruptor. because it, based on description as writer express above, problem in writing This is How Prosecutor's role as *dominus lithis* deep effort rescue state finances carried out with confiscation of assets/property wealth to be object *illicit* enrichment in a manner effective and efficient based on principle Justice simple, fast and cost light, as well as No, violate right basic human.

⁸ Black's Law Dictionary (9th ed. 2009), accessed via www.westlaw.com on March 2, 2014, trans free writer

⁹ Regina Rauxloh, *Plea Bargaining in National and International Law*, (London: Routledge, 2012), p. 25-26.

¹⁰ RM. Surachman, *Legal Mozaik I: 30 Selected Languages*, Source Jaya Science, Jakarta, 1996, p. 83

¹¹ Kejaribone, *Problematics Application The Dominus Litis Principle in Perspective Prosecutor*, quoted from the website:

<https://www.kejari-bone.go.id/artikel/detail/3/problematika-penerapan-principle-dominus-litis-dalam-perspektifkejaksaan.html>

¹² Ibid

depart from background back that has writer describe such, then writer moved to do something research title “IMPLEMENTATION OF PLEA BERGAINING TOWARDS *ILLICIT ENRICHMENT ASSET CONFIRMATION* IN A *DOMINUS LITIS PERSPECTIVE*”.

RESEARCH METHODS

Study law is carried out in study This with method study material References or known secondary data with study law normative or study law library (library research).¹³ Study This done with gather material law either primary, secondary and or tertiary.¹⁴ In framework get answer or settlement on problems in study This is the approach used is approach regulation legislation (statute approach), approach comparative (comparative approach), approach conceptual (conceptual approach).¹⁵ Nature of research is descriptive-prescriptive with content analysis.¹⁶

RESULTS AND DISCUSSION

A. Appreciation Concep *Plea Bargaining* di Different countries a

The beginning of the draft *pea bargaining* have Historical roots since centuries 18th in England and century 19th in the United States, at that's it that's like a open an *pea bargain* rather *guiltypleas* atau pengakuanlah.¹⁷

Plea bargain in effect in the United States can be applied to whole follow criminal including case weight (felony) and only in California and Mississippi, which are not allow *plea bargain* For case violence sexual and violent physical (beating, torture and killing), as well as against case corruption. Completion case corruption in the United States was resolved with using *plea bargaining*, p This Because how strong proof the prosecutor public and the accused / defendant confess in a manner volunteer guilty. one case new corruption This through *plea bargaining* ie the case of Rufus Seth Williams, an Attorney who served in the Philadelphia area of the city of Pennsylvania¹⁸, Rufus Seth Williams finally confess has to accept bribes as big dozens thousand dollars and have abuse position For interest personal. Rufus Seth William will get punishment from Court can form prison for 5 (five) years, or fine of \$250,000.-.¹⁹ The advantage that Rufus Seth William got in undergoing *plea bargaining* in the form of relief punishment, compared with other cases that refuse *plea bargain*, as in the case former Democratic Representative Chaka Fattah,²⁰ He reject *plea bargain* agreement up to He Finally sentenced 10 year sentence prison on the month December after stated guilty on 23 charges in case dealing with corruption loan campaign illegal.²¹

The Indian state begins known *Plea Bargain* in the Criminal Laws (Amendment) Act 2005) contained in chapter XXIA of section 265 A to 265 L which starts entered into force on 5 July 2006. *Plea bargain* in India is limited only For case certain only, namely : a) *Plea Bargain* only For violations committed to follow criminal with threat punishment prison below seven year ; b) *Plea bargaining* is not applied for Perpetrator or The previous accused has do violation or follow criminal similar (recidivist); c) *Plea Bargain* is not available For violation / act possible crime influence condition social State economy ; d) *Plea Bargain* no available For violations committed to woman or child below four mercy year.

¹³ Soerjono Soekanto & Sri Mamudji. Normative Legal Research Something Overview short. (Jakarta: Raja Grafindo Persada. 2001). p. 13-14.

¹⁴ Ibid

¹⁵ Peter Mahmud Marzuki. Legal Research. (Jakarta: Kencana Prenada Media. 2005). p. 102.

¹⁶ Soerjono Soekanto. Introduction Legal Research. 3rd print. (Jakarta: University of Indonesia Press. 1984). p. 1.

¹⁷ Albert W. Alschuler. " *Plea Bargaining and Its History* " and Wayne R. LaFavea. " *Criminal Procedure* ". as quoted by Choky R. Ramadhan, et al. " *Plea Bargain in Several Countries* ". Journal Indonesian Judiciary Vol. 3. July – December 2015: 77-122. p.79.

¹⁸ United States of Department of Justice. <https://www.justice.gov/usao-nj/pr/philadelphiadistrict-attorney-rufus-seth-williams-pleads-guiltyfederal-bribery-charge>. diakses tanggal 8 Juli 2017.

¹⁹ Guilty Plea Agreement. United States v. Rufus Seth Williams. 29 Juni 2017. United States District Court for The Eastern District of Pennsylvania. Hlm.2.

²⁰ Philadelphia Magazine. <http://www.phillymag.com/news/2014/08/07/chakafattah-jr-turned-plea-deal-likes-16-rock-shrimp-pod/>. Diakses tanggal 10 Juli 2017.

²¹ The Daily Center. <http://dailycaller.com/2017/06/29/philadelphia-dasent-to-jail-after-admitting-to-accepting-bribes/>. Accessed July 10, 2017

First time using case draft *plea bargaining* in India occurred in 2007, in case corruption with defendant Sakhrum Bandekar,²² and cases the is the first case was rejected plea bargaining application.²³ Of the two countries that apply concept of plea bargaining in follow criminal corruption above, then it turns out that implementation of plea bargaining in system Justice criminal law in each country is possible for case follow criminal corruption.

B. The concept of Plea Bargaining in Draft Criminal Procedure Code _

Renewal system Justice crime in Indonesia, has develop toward more justice effective, efficient and more prioritize recovery the interests of the victim criminal the is one of them with adopt principle *Plea Bargaining* who has poured More draft Criminal Procedure Code known with the term Special Track sounded in the Sixth Part Article 199 in full as following²⁴:

- (1) at the moment prosecutor general read letter indictment, defendant confess all accused and confessed guilty do follow threatening punishment the crime charged No more than 7 (seven) years, plaintiff general can bestow case to inspection hearing short.
- (2) Confession defendant poured in minutes signed by the defendant and the prosecution general.
- (3) The judge must : a. tell to defendant about relinquished rights with give confession as referred to in paragraph (2); b. tell to defendant about ever possible crime worn ; and c. ask is confession as referred to in paragraph (2) is given in a manner voluntary.
- (4) Judge gets reject confession as referred to in paragraph (2) if the judge is in doubt about truth confession defendant.
- (5) Excluded from Article 198 paragraph (5), imposition criminal to defendant as meant in paragraph (1) no can more than 2/3 of maximum criminal follow the crime charged.

Return loss state finances in Constitution Number 31 of 1999 as changed with Constitution Number 20 of 2001 concerning Eradication follow Criminal Corruption is done through procedure law crime and procedure law civil.²⁵

Suspect or the accused and the State mutually benefited in a similar plea *bargaining* process with track special in the Criminal Procedure Code so can said that law has give expediency in accordance with thinking Utilitarianism or *Theory Utilitarianism* put forward by Jeremy Bentham: "the right aim of legislation is the carrying out of the principle of utility, or in other words, the proper end of every law is the promotion of the "greatest happiness of the greatest number".²⁶

If see back to settings track special in the Draft Criminal Procedure Code, the granting process confession guilty done after indictment read by the Prosecutor Public in front of Magistrates and Magistrates given role active in court especially about truth from confession Defendant is given in a manner volunteer or in circumstances forced.

Article 199 of the Criminal Procedure Code which introduces plea bargaining by means of special in give obligation for the Judge to tell to defendant about relinquished rights with give confession; Mandatory judge tell to defendant about ever possible crime worn; and inquire is confession as referred to in paragraph (2) is given in a manner voluntary. Besides that, the judge got reject confession Defendant if the judge is in doubt about truth confession defendant.

Application deep *plea bargaining* the term RUU KUHAP is called with track special to follow criminal corruption specifically in deprivation treasure riches or official assets public then obligation the on must expanded or not just about validity confession Defendant but the Judge must inspect tool proof at trial For connected with confession defendant the. Formula track special in the Draft Criminal Procedure Code, mentioned that after Defendant confess all accused and confessed guilty so Prosecutor General bestow case to inspection hearing short. Tried by a single judge No The Panel of

²² Aby Maulana. Draft Confession guilty Defendant on the " Special Track " according to the Draft Criminal Procedure Code and its Comparison With Bargaining Practices in Several Countries. Journal of Cita Hukum. Vol.II No.1. June 2015 Faculty of Sharia and Law UIN Syarif Hidayatullah. Jakarta. p.55.

²³ The Times of India. <http://timesofindia.indiatimes.com/city/mumbai/Firstplea-bargaining-case-incity/articleshow/2458523.cms>. accessed July 12, 2017.

²⁴ Harahap, R. S. (2020). Relationship between the effectiveness of Good Corporate Governance (GCG) policies with the occurrence of corruption cases in the State-Owned Enterprises environment. Journal of Social Science, 1(3), 78-82.

²⁵ Lilik Mulyadi. Return Actor 's Asset Recovery follow Criminal Corruption According to Constitution Post Indonesian Corruption UN Convention Against Corruption 2003. <http://malam.blogspot.co.id/2009/08/assetrecovery.html>. accessed March 30, 2017.

²⁶ Avtar Singh & Harpreet Kaur. "Introduction to Jurisprudence". fourth edition. Lexis Nexis. p.17.

Judges (consisting of a minimum of three Judges). For inspect tool proof and connect it with confession defendant then it's very difficult for a single judge in inspect so that special for a similar plea bargaining with track special in follow criminal corruption absolute appointed Panel of Judges use inspect tool evidence and confession Defendant in court for more thorough and steady guard right basic and not contrary principle *non-self-incrimination*.

Based on observation Writer that similar plea bargaining principles with track special in the draft Criminal Procedure Code when will applied to follow criminal harmful corruption especially state finances seize the perpetrator's assets *illicit enrichment* at the moment in court, especially formerly must give great role active for prosecutor general For chase confession guilty from defendant corruption that also has treasure riches outside legitimate income as official public. Naturally the validity (truth) of the confession Defendant has do follow criminal corruption and possession treasure outside fairness / *illicit enrichment* should be built by the Claimant General with full responsibility, so the inspection process at trial can more simple and can open perpetrator other possible *illicit enrichments* affiliated with the case at trial and in the end return loss state finances and the state economy can recovered with fast and the maximum amount.

C. The concept of Plea Bargaining in Law Protection Witnesses and Victims

In system Indonesian legislation in principle has know system enforcement law specifically by the offender follow crime that has confess or pledge himself has guilty do something follow criminal. Naturally confession This has in a manner aware be delivered perpetrator follow criminal the to Investigator, Prosecutor General and Panel of Judges who handle follow criminal the. Article 10 A paragraph (3) of the Law Republic of Indonesia Number 31 of 2014 concerning Changes to the Law Number 13 of 2006 concerning the Protection Witnesses and Victims and can made base in implementing plea bargaining against forfeiture of the perpetrator's assets *illicit enrichment*.

D. Formulation design norm implementation *plea bargain* to forfeiture of the perpetrator's assets *illicit enrichment*

Arrangement expropriation assets that are not reasonable from official public (*Illicit E nrichment*) in law positive Indonesia can started from Article 37 A and Article 38 B paragraphs (1) and (2) of the Republic of Indonesia Law No. 31 of 1999 as changed with Republic of Indonesia Law No. 20 of 2011 concerning Eradication follow Criminal Corruption, however precondition from provision norm This must started with exists *predicate crime* or follow criminal independent to start with prosecution deprivation assets that are not reasonable from official public the. Deprivation asset perpetrator *illicit enrichment* Already in a manner clear arranged in law positive Indonesia, then leading concept to principle *plea bargaining* has also been arranged in a manner clear in Article 10 A paragraph (3) of the Law Republic of Indonesia Number 31 of 2014 concerning Changes to the Law Number 13 of 2006 concerning Protection Witnesses and Victims, only just courage from prosecutor general For carry out principle the need supported with acceptable norm made reference or base from enforcer law. Deprivation asset perpetrator *illicit enrichment* must start from ability from Investigators and Prosecutors General in do search asset from official the public does n't in accordance with legitimate income from official public the. At stage investigation and or prosecution, investigators and or Prosecutor General naturally will use system Theory Reversal of the Burden of Proof Balance Likelihood (*Balanced Probability Principles*), where Investigators and or pentut General will prove in a manner thorough that treasure from official public the got from sources that don't legitimate in a manner law, and then to suspect or defendant will given balanced opportunity For can prove that treasure the No can explained from legitimate source in a manner law.

At stage of investigation and or prosecution suspect and or defendant No able explain treasure the from legitimate source in a manner law, then role from Prosecutor General on stage prosecution offer to defendant related implementation principle *plea bargain* accordingly with Article 10 A paragraph (3) of the Law Republic of Indonesia Number 31 of 2014 concerning Changes to the Law Number 13 of 2006 concerning Protection Witnesses And Victims.

The principle of dominus litis is meaningful that Prosecutor inside matter This Prosecutor General is owner case or party that has real interests in something matter, so authorized For determine can or nope something case is examined and tried in court. In context system Justice criminal, dominus litis

is the owning party interest real so that something case prosecuted, examined and tried in court, ie prosecutor general. Consequence exists real interests the oblige prosecutor general as owner interest must active in maintain interests.²⁷

Principle *dominus litis* is principles that apply universally and exist in Article 11 of the Guidelines on the Role of Prosecutors which states "Prosecutors shall perform an active role in criminal proceedings," (Translation author: Prosecutor must do role active in the process of handling case criminal). liveliness prosecutor general the is consequence prosecutor general as owner thing that has obligation or burden to prove the indictment. In Indonesia, principle This arranged in various regulation legislation, including in Article 139 of the Criminal Procedure Code which in essence mentions " prosecutor general determine is something case criminal can / can't filed to court based on tool valid proof as criminal procedural law ". In Article 1 number 6 letters a and b of the Criminal Procedure Code also confirms only attorney can Act as prosecutor common and do prosecution in case criminal so that at a time as the owning party real interests in something case criminal. Based on formula various chapter that, can is known in a manner Honest that the Criminal Procedure Code also as base operational system justice.

Achievement agreement between Prosecutor General with suspect on stage prosecution related exists confession guilty from suspect, then will pour in minutes of events and also will entered in the Indictment Prosecutor general.

Indictment from Prosecutor General will decipher deed defendant related follow criminal corruption that has he did then the indictment it will too decipher treasure riches or asset from the accused obtained from sources that don't valid (*illicit enrichment*) and of course will unravel confession guilty from defendant on deed follow criminal corruption that has do and confess guilty has do deed enrichment illicit enrichment.

In confession guilty defendant it will too describe parties and or treasure riches or assets controlled by other related persons with follow the crime he committed and the proceeds treasure riches or assets that are not legitimate the. So that with condition such, the State can with fast and easy and of course still based rule legislation can deprive treasure riches or asset official the public does n't in accordance with legitimate income (*illicit enrichment*). With guided by Article 11 Guidelines on the Role of Prosecutors which states "Prosecutors shall perform an active role in criminal proceedings," (Translation author: Prosecutor must do role active in the process of handling case criminal). liveliness prosecutor general the is consequence prosecutor general as owner thing that has obligation or burden For prove the indictment. In Indonesia, principle This arranged in various regulation legislation, including in Article 139 of the Criminal Procedure Code and Article 1 point 6 letters a and b of the Criminal Procedure Code.

CONCLUSION

- 1) *Plea bargain* that applies in the United States and India can applied to almost everything follow criminal especially corruption, except follow serious and affecting crime country economy.
- 2) Principle *Plea Bargaining* who has poured More draft Criminal Procedure Code known with the term Special Track sounded in the Sixth Part Article 199.
- 3) Article 10 A paragraph (3) of the Law Republic of Indonesia Number 31 of 2014 concerning Changes to the Law Number 13 of 2006 concerning the Protection of Witnesses and Victims can made base in implementing plea bargaining against forfeiture of the perpetrator's assets *illicit enrichment*.
- 4) Arrangement expropriation assets that are not reasonable from official public (*Illicit Enrichment*) in law positive Indonesia can started from Article 37 A and Article 38 B paragraphs (1) and (2) of the Republic of Indonesia Law No. 31 of 1999 as changed with Republic of Indonesia Law No. 20 of 2011 concerning Eradication follow Criminal Corruption, however precondition from provision norm This must started with exists *predicated crime*. Leading concept to principle *plea bargaining* has also been arranged in a manner clear in Article 10 A paragraph (3) of the Law Republic of

²⁷ Gita Santika Ramadhani, "The Role of the Prosecutor's Office Realize Justice restorative As a Countermeasure Crime ", Progressive : Journal of Law, Vol. 15 No. 1 (2021): 77-91, <https://doi.org/10.33019/progresif.v16i1.1898>



Indonesia Number 31 of 2014 concerning Changes to Law Number 13 of 2006 concerning Protection Witnesses and Victims, Article 139 of the Criminal Procedure Code and Article 1 point 6 letters a and b of the Criminal Procedure Code.

SUGGESTION

Indonesian government has should enter draft ballot *Plea* and Design Constitution Deprivation Asset, which is more must first formulate norm *illicit enrichment* as follow criminal corruption. this is stated by the author Because Lots official public own immense wealth and no comparable with legal income in a manner law. Prosecutor as owner case as principle *dominus litis* must try maximum Possible chase confession guilty from suspect and or defendant to follow crime he committed with apply principle, so will creating a fast, simple and cost-effective judicial process cheap and of course the State with easy deprive treasure perpetrator *illicit enrichment* via implementation principle *please bargain*. Prosecutor inside matter This as investigator especially as Prosecutor General in chase confession guilty suspect or defendant can use Theory Reversal of the Burden of Proof Balance Likelihood (*Balanced Probability Principles*).

BIBLIOGRAPHY

Books:

- [1] Peter Mahmud Marzuki. Penelitian Hukum. (Jakarta: Kencana Prenada Media. 2005).
- [2] RM. Surachman, Mozaik Hukum I: 30 Bahasa Terpilih, Sumber Ilmu Jaya, Jakarta, 1996, hlm. 83
- [3] Soerjono Soekanto & Sri Mamudji. Penelitian Hukum Normatif Suatu Tinjauan Singkat. (Jakarta: Raja Grafindo Persada. 2001).
- [4] Soerjono Soekanto. Pengantar Penelitian Hukum. Cet ke-3. (Jakarta: Universitas Indonesia Press. 1984).

Journal:

- [1] Aby Maulana. Konsep Pengakuan Bersalah Terdakwa pada “Jalur Khusus” menurut RUU KUHAP dan Perbandingannya Dengan Praktek Pela Bargaining di Beberapa Negara. Jurnal Cita Hukum. Vol.II No.1. Juni 2015 Fakultas Syariah dan Hukum UIN Syarif Hidayatullah. Jakarta.
- [2] Regina Rauxloh, Plea Bargaining in National and International Law, (London: Routledge, 2012), hlm. 25-26.
- [3] 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.
- [4] Guilty Plea Agreement. United States v. Rufus Seth Williams. 29 Juni 2017. United States District Court for The Eastern District of Pennsylvania.
- [5] Avtar Singh & Harpreet Kaur. “Introduction to Jurisprudence”. fourth edition. Lexis Nexis.
- [6] Gita Santika Ramadhani, “Peran Kejaksaan Mewujudkan Keadilan Restoratif Sebagai Upaya Penanggulangan Kejahatan”, Progresif: Jurnal Hukum, Vol. 15 No. 1 (2021): 77-91, <https://doi.org/10.33019/progresif.v16i1.1898>
- [7] Harahap, R. S. (2020). Relationship between the effectiveness of Good Corporate Governance (GCG) policies with the occurrence of corruption cases in the State-Owned Enterprises environment. Journal of Social Science, 1(3), 78-82.
- [8] Reference electronic:
- [9] <https://databoks.katadata.co.id/datapublish/2023/02/01/indeks-persepsi-korupsi-indonesia-memburuk-pada-2022>, diakses pada tanggal 8 Juli 2023.
- [10] <https://www.kompas.com/cekfakta/read/2022/12/10/114740182/data-icw-potensi-kerugian-negara-akibat-korupsi-capai-rp-336-triliun?page=all>, diakses pada tanggal 8 Juli 2023.
- [11] Raja Eben Lumbanrau, Rentetan kasus korupsi yang menjerat pegawai pajak, <<https://www.cnnindonesia.com> >, (5/10/2019).
- [12] <https://aclc.kpk.go.id/aksi-informasi/Eksplorasi/20230113-kupas-tuntas-5-dampak-buruk-korupsi-terhadap-perekonomian-negara>, diakses tanggal 9 Juli 2023.

- 
- [13] Cindy Mutia Annur, <https://databoks.katadata.co.id/datapublish/2022/01/10/kpk-sudah-tangani-1194-kasus-korupsi-mayoritas-penyuapan>, diakses 29 Juli 2022.
- [14] Webinar, [AJLK 2020] Serial Diskusi #2: Pencucian Uang, Pidana Korporasi, & Penanganan Korupsi Lintas Negara, (5/10/2020).
- [15] Ardito Ramadhan, Mantan dirut Garuda Emirsyah Satar dituntut 12 tahun penjara <https://nasional.kompas.com>, (5/10/2020).
- [16] Black's Law Dictionary (9th ed. 2009), diakses melalui www.westlaw.com pada 2 Maret 2014, terjemahan bebas penulis
- [17] United States of Department of Justice. <https://www.justice.gov/usao-nj/pr/philadelphiadistrict-attorney-rufus-seth-williams-pleads-guilty-federal-bribery-charge>.
- [18] Kejaksaan, Problematika Penerapan Prinsip Dominus Litis dalam Perspektif Kejaksaan, dikutip dari website: <https://www.kejari-bone.go.id/artikel/detail/3/problematika-penerapan-prinsip-dominus-litis-dalam-perspektif-kejaksaan.html>
- [19] Philadelphia Magazine. <http://www.phillymag.com/news/2014/08/07/chakafattah-jr-turned-plea-deal-likes-16-rock-shrimp-pod/>. Diakses tanggal 10 Juli 2017.
- [20] The Daily Center. <http://dailycenter.com/2017/06/29/philadelphia-dasent-to-jail-after-admitting-to-accepting-bribes/>. Diakses tanggal 10 Juli 2017
- [21] The Times of India. <http://timesofindia.indiatimes.com/city/mumbai/First-plea-bargaining-case-incity/articleshow/2458523.cms>. diakses tanggal 12 Juli 2017.
- [22] Lilik Mulyadi. Pengembalian Aset (Asset Recovery) Pelaku Tindak Pidana Korupsi Menurut Undang-Undang Korupsi Indonesia Pasca Konvensi PBB Anti Korupsi 2003. <http://halamanhukum.blogspot.co.id/2009/08/assetrecovery.html>. diakses tanggal 30 Maret 2017.

Regulation Legislation

- [1] Undang-Undang RI No 31 Tahun 1999 sebagaimana diubah dengan Undang-Undang RI No 20 tahun 2011 tentang Pemberantasan Tindak Pidana Korupsi
- [2] Undang-Undang Republik Indonesia Nomor 31 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 13 Tahun 2006 Tentang Perlindungan Saksi Dan Korban
- [3] Undang-Undang Republik Indonesia Nomor 7 Tahun 2006 Tentang Pengesahan United Nations Convention Against Corruption
- [4] Undang-Undang Nomor 30 Tahun 2002 tentang Komisi Pemberantasan Tindakan Pidana Korupsi