

# Challenges in the Implementation of the “Jalur Khusus” Concept in the Draft Indonesian Criminal Procedure Code

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**Abstract.** Efforts to reform the criminal procedural law continue to be carried out, by introducing many new concepts such as preliminary examination, expansion of the opportunity principle to the concept of a “jalur khusus” which is similar but not the same as the plea-bargaining concept applied in common law countries, especially the United States. The concept of this “jalur khusus” is understood to encourage the creation of an effective and efficient criminal justice system so that the principles of simple, fast, and low-cost justice can be realized. Of course, this new concept still needs to be studied its advantages and disadvantages. By using normative juridical research methods, this study aims to examine the challenges in applying the concept of “jalur khusus” as stipulated in the RKUHAP. From this research, it can be seen that in addition to the ambiguity of the proceedings and the provisions on the maximum limit of punishment, what needs to be criticized is the parameters of the judge's belief in determining the truth of the defendant's confession and also the unregulated role of the victim in the “jalur khusus” mechanism.

**Keyword:** *Jalur Khusus, RKUHAP, Justice*

## 1 Introduction

Efforts to reform the procedural law in force in Indonesia continue to be carried out, including by discussing the draft law on criminal procedural law (RKUHAP). Although the Criminal Procedure Code (KUHAP) has provided a glimmer of hope in the process of resolving and handling a crime in an integrated justice system (criminal justice system). However, it is acknowledged that after running, it turns out that the Criminal Procedure Code still has shortcomings and weaknesses that are found in practice. The Criminal Procedure Code is deemed no longer compatible with changes in the constitutional system and legal developments in society, so it is necessary to reform it with a more responsive criminal procedural law. [1].

The breakthroughs regulated in the RKUHAP are quite significant because many bring new substances that are completely different from the previous criminal procedural law arrangements. The new substances include the preliminary examiner judge which is the revitalization of the pre-trial function, in addition to the revitalization of legal evidence, arrangements regarding crown witnesses, and also regarding “jalur khusus” where there are arrangements regarding recognition that provide benefits. [2].

These breakthroughs are of course in the hope of creating a judicial process that is more effective, efficient, able to meet the legal needs of society. In

addition, in the context of legal developments and changes in the political map coupled with global economic, transportation, and technological developments, this also affects the meaning and existence of the substance of the Criminal Procedure Code. Robert Strang, a member of the United States Office of Prosecutorial Development (OPDAT) team that helped formulate the RKUHAP wrote in 2008 that Indonesia had at least moved towards a "more adversarial" legal system. [3].

An effective and efficient judiciary is needed apart from the mandate of the law as well as the fact that there is a buildup of cases in criminal justice and also the state budget is not sufficient to finance all prosecutions of prosecutors. [4].

The principle of a simple, fast, and low cost trial is one of the principles in criminal procedural law, the inclusion of fast justice in the Criminal Procedure Code is pretty much realized by the term "immediately" [5]. The principle of a simple, fast and low cost trial adopted by the Criminal Procedure Code is the elaboration of Article 2 paragraph 94) of Law Number 48 of 2009 concerning Judicial Power [6].

To realize an effective and efficient judiciary, the RKUHAP regulates several articles aimed at shortening and accelerating procedural procedures, namely in article 42 paragraph (2) RKUHAP regulates the termination of prosecution for public interest and/or certain reasons, which is further regulated in article 42

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paragraph (3) RKUHAP that the prosecutor can stop the prosecution of light cases and prioritize the prosecution of cases that are difficult to prove [7]. In addition to the termination of prosecution, the concept of an effective and efficient criminal justice is stated in article 199 of the RKUHAP which is called a special line. In this special line, it is regulated regarding the advantages for the defendant if he gives a confession to the act he is accused of and admits he is guilty of committing a criminal offense which the punishment is not more than 7 (seven) years, namely the public prosecutor can delegate the case to a trial for a brief examination and a lighter decision if compared to the judicial process in general.

According to Choky R. Ramadhan, the weakness of this “jalur khusus” mechanism is first, the ambiguity in the procedural law, namely the process of delegating from the normal examination procedure which is heard by three judges to a brief examination with a single judge which can result in inefficient proceedings. Second, the provisions regarding punishment, a “jalur khusus” is used for criminal acts with a criminal penalty of not more than 7 (seven) years and has a maximum penalty of 2/3 (two thirds). Meanwhile, defendants who are tried with a brief examination procedure may not be sentenced to more than 3 (three) years in prison. Third, the brief examination in a “jalur khusus” does not apply the provisions on evidence [4].

Setting the new concept of a “jalur khusus” is certainly an interesting thing to study, therefore the author formulates the problem in this study, what are the challenges of applying the concept of a “jalur khusus” in the RKUHAP?

## 2 Result and Discussion

“Plea bargaining is the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to the court approach. It usually involves the defendant’s pleading guilty to lesser offense or to only one or some of the counts of multi counts indictment in return for a lighter sentence than that possible for the graver charge” [8].

Plea bargaining is the practice of handling criminal cases, where between the public prosecutor and the defendant or his legal adviser there has been negotiations/negotiations about the type of crime to be indicted and the threat of punishment to be prosecuted at trial. The voluntary admission of guilt from the defendant becomes the benchmark for the public prosecutor to determine the criminal threat to be submitted before the trial. So with this concept, a criminal justice system, which should require a fairly long process, becomes more efficient and faster. Judges in this system only impose punishments according to the results of negotiations that have been agreed upon by the public prosecutor and the defendant.

One of the countries that implements plea bargaining is the United States (US). 95 (ninety five) percent of criminal cases in the US can be resolved through the plea bargaining mechanism so that the criminal justice

system in the US is able to realize an effective and efficient criminal justice [9]. Plea bargaining with all its conceptions and mechanisms, continues to have a positive influence on criminal justice in the US and other countries, so that until now it is still maintained, and continues to be developed. [10].

If in the US there is the concept of plea bargaining, in Indonesia through the RKUHAP which is the *ius constituendum* or the law that is aspired to, the concept of a “jalur khusus” is regulated which is the adoption of the concept of plea bargaining, this is illustrated in CHAPTER XII Sixth Part Article 199 of the RKUHAP it is stated that:

- (1) When the public prosecutor reads the indictment, the defendant admits all the acts that have been charged and admits that he is guilty of committing a criminal offense that carries a criminal penalty of no more than 7 (seven) years, the public prosecutor may delegate the case to a brief hearing.
- (2) The defendant's confession is stated in the official report signed by the defendant and the public prosecutor.
- (3) Mandatory judge:
  - a. Notify the defendant of the rights he has relinquished by giving the confession as referred to in paragraph (2)
  - b. Notify the defendant of the length of the sentence that may be imposed.
  - c. Ask whether the recognition as referred to in paragraph (2) is given voluntarily.
- (4) The judge may reject the confession as referred to in paragraph (2) if the judge is in doubt about the veracity of the defendant's confession.
- (5) Except for Article 198 paragraph (5), the sentence of the defendant as referred to in paragraph (1) may not exceed 2/3 of the maximum criminal offense charged.

If we look at article 199 of the RKUHAP, we will see that the concept of a “jalur khusus” is different from the concept of plea bargaining applied in the US. The difference is that there is no negotiation/bargaining between the public prosecutor, the defendant or a lawyer/legal advisor. The special line in the RKUHAP stipulates that the defendant's confession is carried out in front of the judge in the trial after the public prosecutor has read the indictment, the judge then determines whether the confession is true or not. If the judge doubts the truth of the defendant's confession, the judge can reject the confession. This is very different from the concept of plea bargaining in the US where the defendant's confession is not made in front of a judge. It can be said that the adoption of plea bargaining in the RKUHAP does not necessarily change the entire structure of the current criminal justice system, but will provide a separate space in criminal justice, particularly in resolving criminal cases that are punishable by no more than 7 (seven) years in prison supported by an admission of guilt. the defendant as the basis for the judge to gain confidence in deciding the case.

The judge's belief in the truth of the defendant's confession is something that deserves to be discussed, how the judge believes that the defendant admits his guilt by not lying, because in giving a decision, it has

not yet reached the stage of proof that can be used as a parameter for the judge's conviction. If we discuss the judge's conviction, of course it cannot be separated from the purpose of criminal procedural law, which is to seek and obtain or at least approach the material truth, namely the complete truth of a criminal case by applying the provisions of the criminal procedure law honestly and precisely. The material truth has a legal basis in Article 183 of the Criminal Procedure Code which stipulates that in order to be able to impose a criminal sentence, it is necessary to fulfill two cumulative conditions, namely: there are two valid pieces of evidence and the judge's conviction.

This is different from plea bargaining which in determining the truth of the defendant's confession is based on a preliminary examination based on sufficient investigation that there is a factual basis in pleading guilty. Practically, the "jalur khusus" is carried out before a court session, without being based on negotiations carried out outside the court, while plea bargaining is carried out by negotiating by the prosecutor and the defendant or his legal advisor to determine the severity of the crime outside the court, which is then an agreement to admit guilt. Those obtained outside the court are the basis for the judge to decide the case. The drafters of the RKUHAP are of the opinion that the concept of a "jalur khusus" whose mechanism before a court hearing will not be a gap for the public prosecutor to commit acts that are against the law, such as accepting bribes from the defendant to make his indictment lighter. But instead of breaking the chain of bribery of the defendant to the public prosecutor, this becomes a separate problem for the judge in deciding whether the criminal case is granted by a "jalur khusus" mechanism so that the examination is delegated to a brief examination or rejects the defendant's confession so that the examination continues as a normal examination session. This is because there is no parameter for the judge's belief in believing the truth of the defendant's confession.

Parameters of judges' beliefs can be divided into formal and material parameters where the understanding, knowledge, freedom, and integrity of judges are very influential [11]. Formal convictions are based on evidence at trial. In addition, it is also related to the jurisprudential knowledge of previous judges' decisions. Meanwhile, the parameter of the judge's belief that is material is that the judge does not only see the facts at trial but the judge will take the initiative and actively explore and reveal what really happened. However, how does the judge determine the conviction when the evidence stage has not yet been carried out? So there must be a special instrument or arrangement that can help judges build that belief.

Like Romli Atmassamita's opinion which states that the "jalur khusus" (in his book he still uses the term plea bargaining) actually has the opposite effect, where someone who is clearly innocent can be punished, while guilty perpetrators can avoid severe punishment. [9]. There are three taxonomies of lies, namely, first, lies about facts, secondly lies about law, and thirdly lies about process [12]. Don't let confessions of guilt based

on lies serve as a means to settle a case involving an innocent defendant.

In addition to the issue of the judge's conviction, another thing that needs to be criticized in setting up this "jalur khusus" is that it does not provide space or accommodates the interests of the victim. As we discussed earlier, it appears that this "jalur khusus" mechanism is more to the benefit of the defendant, because if the defendant admits his guilt in front of the trial and the judge accepts the confession, the defendant gets criminal leniency, regardless of the rights of the victim. By looking at the formulation of article 199 paragraph (1) of the RKUHAP which states that "when the public prosecutor reads the indictment, the defendant admits all the acts that have been charged and admits he is guilty of committing a criminal offense which the punishment for which the indictment is not more than 7 (seven) years, the public prosecutor can delegate the case to a trial for a brief examination", meaning that the defendant's confession is made shortly after the reading of the indictment, if the judge believes the truth of the defendant's confession, the judge will grant the examination with a brief procedure without the consent mechanism being regulated by the victim. Although the public prosecutor in carrying out his duties and functions is required to pay attention to the interests of the victim, but this aims to recover the losses that have been suffered by the victim as a result of the actions of the perpetrators of the crime..

If you examine the classic writings of Herbert Packer quoted by Aristo Marisi about the crime control and due process models, where the emphasis is on state power, it is labeled as crime control model, while if the approach is humanist, it is labeled due process [13]. If it is related to the concept of plea bargaining, it is not only because the interests of the state in this case are public prosecutors and judges who are oriented towards resolving cases quickly will prioritize crime control which in the end the purpose of due process law is neglected.

### 3 Conclusion

In order to realize an effective and efficient judiciary in accordance with the principles of a simple, fast, and low-cost trial, the concept of plea bargaining provides a positive side because the defendant admits all the acts that have been charged and pleads guilty to committing a crime provided that the criminal threat charged is not more than 7 (seven) years, then it can be delegated to a brief examination, namely with one judge and eliminating several evidentiary processes.

The concept of a "jalur khusus" that places the judge as a central position is given the freedom to determine the truth of the defendant's confession. The trial mechanism with a "jalur khusus" is a challenge for judges in determining the truth of the defendant's confession, because the defendant's confession is made after reading the indictment, which means that it has not yet entered the proof stage. The absence of the parameters of the judge's confidence in deciding the case risks the subjectivity of the judge. Therefore, there is a

need for additional provisions in Article 199 paragraph (2) of the RKUHAP to make the confession of the defendant stated in the official report signed by the defendant, the public prosecutor, and the victim. Thus, it is hoped that the agreement can accommodate the interests of the victim and become the basis for the judge in determining his decision so that certainty, justice and legal benefit can be realized even without any stages of reviewing evidence.

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