Jurnal IUS Kajian Hukum dan Keadilan
Volume 11, Issue 2, August 2023, E-ISSN 2477-815X, P-ISSN 2303-3827
Nationally Accredited Journal, Decree No. 158/E/KPT/2021
open access at : http://jurnalius.ac.id/

THE PLEA BARGAIN CONCEPT RELATED TO MEDICAL MALPRACTICE CRIMES TO REALIZE SUBSTANTIVE JUSTICE: AN IDEA FOR THE FUTURE

I Made Wirya Darma[1], Mahamadaree Waeno[2]
Universitas Pendidikan Nasional, Indonesia, email: wiryadarma@undiknas.ac.id
Fatoni University, Thailand, Email : m.waeno@ftu.ac.th

Received: 2023-06-06; Reviewed: 2023-06-12; Accepted: 2023-07-27; Published: 2023-07-28

Abstract

Malpractice in medical practice is a common thing that occurs because the unprofessionalism and negligence of medical personnel and . In practice, medical malpractice is resolved through a convoluted criminal justice system that does not reflect a substantive justice orientation. This study aims to formulate the idea of applying plea bargaining in the settlement of criminal acts related to medical malpractice in order to realize substantive justice. The results of the study confirm that the settlement of criminal acts related to medical malpractice does not reflect substantive justice and is not oriented toward efforts to provide compensation for victims. Therefore, in the future, efforts are needed to apply the concept of a plea bargain in the settlement of criminal acts related to medical malpractice in order to ensure substantive justice for victims of medical malpractice.

Keywords: Medical Malpractice; Plea Bargain; Substantive Justice

1. INTRODUCTION

The health sector is part of the welfare that must be realized in the State of Indonesia. As the ideals of the Indonesian nation are stated in the preamble of the 1945 Constitution of the Republic of Indonesia states "*to enhance public welfare, educate the population, and take part in enforcing a global order based on freedom, unending peace, and social justice. To defend the whole Indonesian country and all of Indonesia's bloodshed*".[1] It must still cite Pancasila as the original underpinning of legal politics to realise this social welfare. by being receptive to numerous positive outcomes that arise from modifications made to many spheres of social, political, and economic life in both national and international contexts. To realize prosperity in the health sector, it is necessary to have parties who have the ability and expertise in the health sector to be able to provide health care with both in the form of prevention and treatment in the Law of the Republic of Indonesia Number 24 of 2004 concerning Medical Practice.

Doctors or health workers in carrying out medical actions or services for patients should use their skills and knowledge properly and carefully so as

[1] I D.G. Palguna, *Welfare State vs Globalisasi: Gagasan Negara Kesejahteraan Indonesia*, 1st ed. (Jakarta: RajaGrafindo Persada, 2019).

DOI: http://dx.doi.org/10.29303/ius.v11i2.1245

not to make mistakes that can harm the doctor himself or the patient.[2] Until now, medical law in Indonesia has not been able to formulate clearly and in detail regarding malpractice. According to *Wetboek van Strafrecht* (W.v.S), It does not govern the criminal sanctions for unlawful conduct committed in the area of medicine or malpractice, or what is currently known as the Criminal Code.[3] The use of law in the medical area is seen as a legal intervention. They argue that the *Kode Etik Kedokteran Indonesia* or commonly abbreviated as There is no need for such legislative action since KODEKI (*Indonesian Code of Medical Ethics*) is adequate to control and oversee doctors in their job.[4] Until now what they have been questioning is legal protection and not the issue of legal responsibility and legal awareness of doctors in carrying out their profession. This demonstrates doctors' lack of grasp of ethics and the law. Similarly, misunderstanding the problem of medical malpractice is still frequently regarded as a violation of professional ethical norms that should not be subject to criminal punishment.

Medical disputes in law are also known as malpractice. From the origin of the word malpractice, it is not only aimed at the health profession but also the profession in general.[5] However, after it was generally used abroad, the term is now associated with or aimed at the health profession. Malpractice is defined as any professional wrongdoing, a disproportionate lack of competence or faithfulness in the performance of professional or fiduciary obligations, unethical behavior, or unlawful or immoral behavior.[6] The concept of malpractice is still not well understood. With no malpractice regulated in the existing laws and regulations (no legal certainty), the handling and settlement of malpractice problems also become uncertain. This difficulty is exacerbated by the lack (and near-impossibility) of standardization of health professional service standards. This is because health problems are very complex, starting from the different impacts of implementing health services on each human being to the various technologies in each health service facility and the capabilities of each community of doctors or other health workers.

Medical malpractice is a doctor or medical staff under his orders who deliberately or negligently commits an act (active or passive) in practicing medicine on his patient at all

[2] Enny Agustina, "Juridical Analysis of the Legal Relationship Between Doctors and Patients in Health Services," *Unifikasi : Jurnal Ilmu Hukum: Jurnal Ilmu Hukum* 7, no. 1 (2020): 79, https://doi.org/10.25134/unifikasi.v7i1.2349.

[3] Achmad Hariri Zola Agustina, "Pertanggungjawaban Pidana Atas Kelalaian Diagnosa Oleh Dokter Hingga Mengakibatkan Kematian Anak Dalam Kandungan," *Iblam Law Review* 2, no. 2 (2022): 1–23.

[4] Fandi Muhammad Nugroho, Hari Wujoso, and Wahyu Dwi Atmoko, "Hubungan Pengetahuan Kode Etik Kedokteran Tentang Aborsi Terhadap Sikap Mahasiswa Kedokteran Terhadap Aborsi," *Smart Society Empowerment Journal* 1, no. 1 (2021): 1, https://doi.org/10.20961/ssej.v1i1.48648.

[5] Ricky Darmawan, "Penegakan Hukum Terhadap Malpraktek Dokter Yang Melakukan Aborsi (Studi Putusan No.288/Pid.Sus/2018/Pn. Njk)," *El-Iqthisadi : Jurnal Hukum Ekonomi Syariah Fakultas Syariah Dan Hukum* 2, no. 2 (2020): 15, https://doi.org/10.24252/el-iqthisadi.v2i2.13999.the problem of malpractice in health services began to be discussed by various groups in the community. This can be seen from the many indictments of malpractice cases submitted by the public about the profession of doctors who in carrying out their duties have committed wrong actions that result in losses resulting in death or disability. Medical malpractice, this is related to the task of the doctor or medical personnel under his command intentionally or negligence to do something (active or passive

[6] Y. Razy, F. & Saputera, "Tinjauan Yuridis Malpraktek Medis Dalam Sistem Hukum Indonesia," *Jurnal Cakrawala Ilmiah* 1, no. 3 (2022): 1–10, https://bajangjournal.com/index.php/JCI/article/view/3175/2260.

levels that violate professional standards, standard procedures, professional principles of medicine or by violating the law (without authority) because without informed consent, without a Practice License or a Registration Certificate, it is not following the patient's medical needs by causing (casual verb and) harm to the body, physical health, mental or life of the patient to form the responsibility of the doctor. Malpractice can be divided into juridical malpractice and ethical malpractice. Juridical malpractice is divided into 3 (three) groups, namely criminal malpractice (criminal), civil malpractice (civil), and administrative malpractice (administration).[7] Criminal malpractice is divided into 3 (three) groups, namely; (1) on purpose (intentional), (2) because of carelessness (recklessness), and (3) because of negligence.

The handling of cases applied in Indonesia currently consumes a lot of time and energy. The stages of handling criminal cases are carried out in a series of processes that are not easy, this system is referred to as the Criminal Justice System, which consists of Investigation (*Opsporing*), Prosecution (*Vervolging*), Court (*Rechtspraak*), Implementation of Judge's Decisions (Executive), and Supervision and Observation of Court Decisions.[8] The public is aware that the most common method of resolving medical malpractice offences in Indonesia is through litigation and non-litigation. One system that is well known in America in the settlement of criminal acts, one of which is medical malpractice, is the concept of Plea Bargaining. The concept of plea bargaining is known as one of the concepts that developed in the process of settling criminal cases.[9] Black's Law Dictionary describes plea bargaining as bargaining for the defendant's guilty plea so that the public prosecutor will demand light sentences for other crimes.[10] The emergence of the concept of plea bargaining developed from the settlement of criminal cases in the Anglo-Saxon legal system or the common law system. The United States, as an Anglo-Saxon country, has long implemented the concept of plea bargaining as a solution option used in settling criminal cases.[11]

In general, Anglo-Saxon nations or nations that adhere to the Common Law legal system accept the plea-bargaining institutions that were formed in the criminal justice systems of countries that are members of the Anglo-Saxon legal family, notably in the United States. Making a statement of guilt or "plea guilty" is how the plea negotiation process is carried out, and it earns the defendant who enters a guilty plea compensation

[7] Erwin Asmadi Ismail Koto, "Pertanggungjawaban Hukum Terhadap Tindakan Malpraktik Tenaga Medis Di Rumah Sakit," *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 4, no. 2 (2021): 153–65, https://doi.org/10.24090/volksgeist.v4i2.5738.

[8] Muhammad Andriady Saidi Nasution, Beni Satria, and Irwan Jasa Tarigan, "Mediasi Sebagai Komunikasi Hukum Dalam Penyelesaian Sengketa Medik Antara Dokter Dan Pasien," *Jurnal Hukum Kesehatan Indonesia* 1, no. 02 (2022): 86–96, https://doi.org/10.53337/jhki.v1i02.14.

[9] Norjihan Ab Aziz, Noorshuhadawati Mohamad Amin, and Zuraini Ab Hamid, "Enhancing Plea Bargaining Process Through Mediation," *IJASOS- International E-Journal of Advances in Social Sciences* III, no. 7 (2017): 306–306, https://doi.org/10.18769/ijasos.320064.

[10] Bryan A.dan Henry Campbell Black Garner, *Black's Law Dictionary* (Minnesota: West Group, n.d.).

[11] Esmaeil Rahiminejad, "Iranian Criminal Justice System from the Perspective of Restorative Justice Models," *Scholars International Journal of Law, Crime and Justice* 5, no. 10 (2022): 468–76, https://doi.org/10.36348/sijlcj.2022.v05i10.010.

in the form of a shorter sentence.[12] Plea Negotiation is a procedure in which the state prosecutor and the defendant in a criminal case engage in discussions that are advantageous to both parties and then request court authorization.[13] Typically, it involves the accused confessing to the crime to receive a reduction in charges or to secure some other benefit that results in a lesser sentence.

In the elucidation of the draft KUHAP, numerous signs suggest that the Criminal Procedure Code is obsolete. *First*, the Criminal Procedure Code is still inadequate to satisfy the legal requirements of the community, particularly in the administration of criminal cases, which is the responsibility of law enforcement officials to handle justly and equitably. *Second*, changes in the law, politics, technology, and the global transportation sector all influence the existence and substance of the Criminal Procedure Code. The idea of an effective and efficient criminal justice system is known as the Special Track, which is frequently confused with the Plea-Bargaining system because the accused's confession can expedite the judicial process. The Public Prosecutor, Legal Counsel, and/or Defendant are involved in this Special Track process (Plea Bargaining), and it can be said that the Judge is infrequently involved. Since Indonesia has a civil law system, the Code of Criminal Procedure does not allow for a plea-bargaining system. But, according to Garoopa and Steven, "*except in common-law countries where criminal proceedings are hostile, plea bargaining is rarely done*".[14] Inquisitorial criminal procedures are more commonly employed in European Civil Law nations, where plea bargaining is not commonly utilized".

Using the Plea-Bargaining technique, which was attempted to be developed in the draft of Criminal Code Procedures in Indonesia is known as "Rancangan Kitab Undang-Undang Hukum Acara Pidana" (abbreviated as RKUHAP) became the concept of admitting guilt through a special channel. Practically, they have almost the same goal to resolve cases in court efficiently, which substantially provides an opportunity for the accused to get a trial process that is faster, lighter and costs less, and is given the possibility of criminal relief if the person concerned wants to admit guilt before a judge. Based on the literature review, it is an interesting matter to study because no research has been found that specifically examines the concept of plea bargaining in the settlement of medical malpractice crimes that have reached the prosecution stage in court.[15] The formulation of the problem in this study is, "How the discourse and

[12] Choky Ramadhan, "Konvergensi Civil Law Dan Common Law Di Indonesia Dalam Penemuan Dan Pembentukan Hukum," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 30, no. 2 (2018): 213, https://doi.org/10.22146/jmh.31169.

[13] Norjihan Ab Aziz et al., "Restorative Justice in The Child Justice System: Implementation in Other Jurisdictions," *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 7, no. 6 (2022): e001561, https://doi.org/10.47405/mjssh.v7i6.1561.

[14] Aswar Ardi, M. Said Karim, and Haeranah Haeranah, "Law Enforcement Against Online Fraud Crimes: A Case Study at Police District Area of Wajo," *Jurnal Hukum Volkgeist* 6, no. 1 (2021): 51–57, https://doi.org/10.35326/volkgeist.v6i1.1390.

[15] Dyah Trihandini, "Konsep Perlindungan Hukum Bagi Tenaga Medis Dalam Penanganan COVID-19," *Jurnal Hukum Dan Pembangunan Ekonomi* 8, no. 2 (2020): 52–64.

consequences of the plea-bargaining concept as a new concept in the criminal justice system for the settlement of medical malpractice crimes in the prosecution process in court?". This writing was made based on the author's curiosity in terms of studying the concept of plea bargaining and its consequences from the perspective of solving medical malpractice crimes and examining the extent to which the discourse on the concept of plea bargaining can become a criminal law reform in the settlement of cases in criminal procedural law in the Indonesian criminal justice system.

The analysis of legal data from secondary sources is part of this study's normative legal research. The classification of this work is analytical prescriptive, which implies that it seeks to offer suggestions and alternative solutions to a problem. A study of the paperwork is a step in the procedure used to gather legal records for this enquiry. This will entail gathering documents that pertain to the notion of plea bargaining and its effects as they relate to resolving medical malpractice offences. These archives are within the frame of books, logical diaries, laws and controls, and other archives. The information collection strategy utilized in this think about is the report audit demonstration. The Constitution of the Republic of Indonesia from 1945, the Penal Code, Law No. 24 of the Republic of Indonesia from 2004 on Medical Practice of the Republic of Indonesia, and Law No. 36 of 2009 on health are among the primary legal documents studied in this study.

Legal auxiliary materials are legal resources that provide further details regarding primary legal resources in the shape of books, legal investigation papers, and scholarly periodicals. Tertiary legal resources are clarifications of primary and secondary legal resources, such as reference books and law lexicons. The methodology employed in this research is qualitative analysis, which presents information in the shape of narratives. The researcher himself verifies the accuracy of the data or the ultimate conclusion of the study.

2. ANALYSIS AND DISCUSSION

2.1. The Concept of Plea Bargaining: A New Concept in the Criminal Justice System for the Settlement of Medical Malpractice Crimes

The term plea bargaining is still not common to judiciary activists or the Indonesian legal community. This concept allows for negotiations on the types of crimes to be charged and the threats of punishment to be given before the court. Thus, the defendant's willing confession of wrongdoing serves as a standard for the prosecutor to assess the level of criminal charges to be presented in court.[16] A plea agreement is:

"*a negotiated agreement between a prosecutor and a criminal defendant whereby the de-*

[16] A N Fata, "The Prosecutor's Authority In Criminal Law Enforcement With A Restorative Justice Approach," *Jurnal Hukum Khaira Ummah* 2, no. 4 (2022): 1–14, http://jurnal.unissula.ac.id/index.php/jhku/article/view/19364%0Ahttp://jurnal.unissula.ac.id/index.php/jhku/article/download/19364/6698.

fendant is guilty to a lesser offence or one of the multiple charges in exchange for some concession by the prosecutors, more lenient sentence, or dismissal of the other charges,"

Then, according to Black's Law Dictionary, plea agreement is[17]:

"a negotiating agreement between the public prosecutor and the accused in which the defendant pleads guilty to a certain crime or more than one charge in return from the public prosecutor, to demand a light sentenceor to be acquitted of charges for other crimes"

Plea Negotiation involves a settlement (official or unofficial) between the accused and the district attorney. The public prosecutor usually agrees with a reduced prison sentence, which in this case waives the constitutional right of non-self-incrimination and the right to be tried by the accused).[18] Arshuler argues that plea bargaining was originally born in the mid-19th century and then came to be known in its present form. In the late 19th century and into the early 20th century, this system helped overcome difficulties in handling criminal cases. In the 1930s, US courts relied heavily on this system.[19]

The concept of plea bargaining began to develop in countries with various legal systems, including countries with civil law systems.[20] This phenomenon is then understood as "a global process of administration of criminal convictions". Comments regarding the implementation of plea bargaining in civil law system countries, the author refers to the article belonging to Wahyu Nandang Heawan and Natalia Sitohang, with the title "*Using Plea Bargaining to Increase Judicial Efficiency During the Covid-19 Outbreak*". Wahyu and Natalia explained that the application of plea bargaining in France and Italy is not always the same as the application in the United States. The implementation of plea bargaining in the two civil law countries is still experiencing pro-contra dynamics because it raises concerns that plea bargaining will be used to avoid more severe penalties.

Another concern relates to the existence of more power on the part of the public prosecutor, to encourage guilty pleas simply to avoid the risk of imposing a bigger sentence in court, even for those who do not deserve such punishment. The concept of plea bargaining is closely related to the acceleration and efficiency of the settlement of criminal cases, this then becomes the hope for the issue of accumulation of cases in the Indonesian Judicial Institutions. These advantages cannot immediately become the basis for directly adopting a quo concept, because the placement of plea bargaining is still a problem for law enforcement officials. Particularly by the Prosecutor's Office in terms of its position or location of application and to which crimes a quo concept

[17] Garner, *Black's Law Dictionary*.

[18] Bambang Sugiri Apriyanto Nusa, I Nyoman Nurjaya, Abdul Madjid, "The Urgence Of The Control Mechanism Of Authority The Prosecutor General In Waiting The Case For Public Interest (Seponeering)," *Baltic Journal of Law and Politics* 3, no. 2 (2022): 464–71, https://doi.org/10.38142/ijesss.v3i2.294.

[19] Fachrizal Afandi, "Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia" (Leiden: Universiteit Leiden, 2021).

[20] Suyanto, *Hukum Acara Pidana* (Sidoarjo: Zifatama Jawara, 2018).

can be applied. Issues related to the types of crimes that can apply the concept of plea bargaining, the author is interested in examining the settlement of medical malpractice crimes in Indonesia. The idea of plea bargaining is commonly followed through Anglo-Saxon nations or nations that adhere to the Common Law criminal machine and followed by plea bargaining establishments advanced withinside the crook justice machine of nations that belong to the Anglo-Saxon criminal family, specially withinside the United States.[21]

Plea bargaining is ideally a form of negotiation between the Public Prosecutor and the Defendant who admits his crime so that the sentence is lighter and the process is fast. The concept of plea bargaining that has developed has the main idea of negotiation or bargaining regarding the defendant's guilt by granting reduction or relief from the public prosecutor's demands for punishment. As in the previous sub-chapter, the existence of plea bargaining in the Criminal Procedure Code of a country leads to streamlining the criminal justice process to achieve efficiency in the judicial process, although some things are regulated differently in each country.[22] The Prosecutor's Office is a law enforcement agency whose function is related to judicial power. The Attorney General's Office has a central and strategic position in handling cases in the Indonesian Criminal Justice System because the Attorney General's office is the filter between the investigative process and the examination process. The Attorney General's Office has an important role in whether or not the number of cases that must be handled by judges affects cases that have been decided or not yet in court.

There are several types of plea bargaining, among others[23]:

1. Charge Bargaining is a form of negotiation for criminal acts charged against the defendant during trial
2. *Sentence Bargaining* is in the form of negotiations in which the defendant makes a guilty plea with reciprocal leniency for his sentence.
3. *Fact Bargaining* is the public prosecutor's offer not to reveal certain facts during a trial that could threaten an increased sentence for the defendant.

The parties involved in the implementation of the Special Line (Plea Bargaining) in the judicial process in Indonesia, among others[24]:

1. Public Prosecutor: The role of the Public Prosecutor in implementing the Plea Bargaining mechanism is very important because the only actors who have legal standing in

[21] Michael Beenstock, Josh Guetzkow, and Shir Kamenetsky-Yadan, *Plea Bargaining and the Miscarriage of Justice*, *Journal of Quantitative Criminology*, vol. 37 (Springer US, 2021), https://doi.org/10.1007/s10940-019-09441-w.on average, plea bargaining encourages guilty pleas among defendants who are factually innocent. Methods: We develop a formal theory of plea bargaining in which defendants take into account the possibility of false convictions or acquittals when making plea-bargain decisions. We use an incidentally truncated bivariate probit model to test the theory, which predicts that if innocent defendants plead guilty, the correlation.

[22] Jeffrey Bellin, "The Changing Role of the American Prosecutor," *Ohio State Journal of Criminal Law* 18, no. 1 (2020): 333.

[23] Krismiyarsi, "Proven Criminal Action Of Spreading Hoax News Through Social Media Regarding Covid-19," *Untag Law Review* 5, no. 2 (2021): 58, https://doi.org/10.5812/iji.102184.2.

[24] A Woolley and L Soubise, *Prosecutors and Justice : Insights from Comparative Analysis*, *Fordham International Law Journal*, vol. 42, 2020.

implementing this system are the public prosecutor and the accused or their legal advisers. It is hoped that when the Special Line (Plea Bargaining) is implemented, training will be held and more understanding will be given to public prosecutors so that later the Special Line (Plea Bargaining) can run according to the objectives to be achieved, namely to realize a simple, fast and low-cost trial, so that an effective and efficient judicial process will be created. The application of Plea Bargaining in Indonesia will be at the stage before the trial examination process. Before entering the plea guilty stage, three things need to be considered, namely incompetence, the mental capacity of the defendant in plea guilty, and whether the defendant was in a disturbed mental state at the time of confession. Incompetence refers to whether the defendant is mature and sane enough to understand the trial process, mental capacity refers to whether the defendant has a reasonable knowledge or educational capacity, and a disturbed mental state refers to whether the defendant is conscious and sane at the time of entering a guilty plea. The public prosecutor will also notify the defendant regarding the waiver of his rights in the form of:

- Waiver of the right to appeal;
- Waiver of the right to non-self-incrimination, by admitting guilt for a crime that he admits he committed, but he cannot be forced to provide other information that might involve him as a defendant.

2. Legal Counsel: Legal advisers must explain to the client the stages of Plea Bargaining, the maximum consequences of such recognition, and the obligation to discuss all offers from the public prosecutor. The legal adviser must estimate whether a plea guilty under the plea agreement mechanism is more profitable for the accused than being tried before a court. The legal adviser will also consider the negotiations offered by the public prosecutor to the defendant by comparing negotiations that have been offered by the public prosecutor in the same case.
3. Judge: The judge has the most important role in the stage after Plea Bargaining, namely to test whether the defendant confessed voluntarily or not. The judge can also make an offer to the defendant whether he will cancel the agreements he has made in the Plea Bargaining stage or not. The judge must also warn the defendant of the implications of committing a plea guilty.

Negotiations in plea bargaining contain three main points consisting of the number of charges against the defendant (horizontal plea bargaining), the seriousness of the crime committed (vertical plea bargaining), and the severity of the threat of criminal sanctions being charged (a sentence bargain).[25] In connection with the Indonesian legal system which is known to adhere to the civil law system, carrying out adoptions to legal transplants requires an in-depth study, especially of the components of the Indonesian

[25] Yuris Oktaviyani Citizen, "Termination of Prosecutions Based On Restorative Justice in The Settlement of Criminal Cases In The Area of The High Prosecutors Of Lampung," *Pancasila And Law Review* 3, no. 2 (2022): 117–26.

legal system. The notion of admitting guilt in the RKUHAP is one of the components of the national legal system that needs to be studied in depth because the admission of guilt through a special route was initiated as a result of the adoption of the concept of plea bargaining. The main idea of admitting guilt through a special channel in the RKUHAP refers more to the idea of a "plea without bargains". The clause contained regarding the admission of guilt through a special channel in Article 204 of the RKUHAP, pursues or only focuses on the "admission of guilt" from the defendant.

There was no time for talks because this confession was given concurrently with the public prosecutor reading the accusations that were detailed in the minutes. On this matter, the special line in the RKUHAP cannot be seen as an implementation of the concept of plea bargaining, even though it leads to a similar goal, namely for the efficiency of the criminal justice process. Plea bargaining is ideally a form of negotiation between the Public Prosecutor and the accused so that they admit their crime and the sentence is lighter, in this case, there is still a role for the court after negotiations between the parties have been reached. Later there will still be a decision of the panel of judges on the conviction of the defendant. Parties involved in plea bargaining include the Public Prosecutor, the accused and/or Legal Counsel, and Judges. As a note, for cases involving the economy or money, an auditor or audit agency can also be present in it. On the other hand, restorative justice is an effort to restore justice from criminal acts against perpetrators and victims.

That is also done to prevent (pressing) criminal cases from rolling to court. Both must be understood the difference so that it is not mixed up between plea bargain and restorative justice.

According to Carolyn E. Demarest, some things are beneficial for the Public Prosecutor and the Defendant in the Plea Bargaining mechanism:[26]

> *"Mekanisme Plea Bargain diyakini membawa keuntungan, baik untuk terdakwa maupun untuk masyarakat. Keuntungan bagi terdakwa dalah dirinya bersama penuntut umum bisa menegosiasikan hukuman yang pantas baginya. Masyarakat diuntungkan karena mekanisme ini akan menghemat biaya pemeriksaan di pengadilan, dimana terdakwa mengakui perbuatannya dan tetap akan mendapatkan hukuman. Meskipun hukuman yang diberikan rata-rata lebih sedikit dari apa yang akan diputus hakim jika melalui proses pengadilan konvensional, namun disisi lain mekanisme ini dapat memberikan efek terhadap proses peradilan pidana karena penuntut umum mempunyai waktu lebih banyak dan bisa menangani lebih banyak perkara."*

The Plea Bargain mechanism is believed to bring benefits, both for the accused and society. The benefit for the defendant is that he may negotiate fair sentencing with the public prosecutor. Society gains since this system will save expenses for court

[26] Triantono, "Prospek Adopsi Mekanisme Plea Bargaining Pada Sistem Hukum Common Law Dalam Pembaharuan Sistem Peradilan Pidana Di Indonesia," *Literasi Hukum* 6, no. 1 (2022): 45.

appearances in which the offender recognises his wrongdoing but still faces punishment. On the other hand, this technique can have an impact on the criminal justice system since public prosecutors have more time and can handle more cases, even though the penalties handed are typically shorter than what a judge would determine through a traditional court process.

2.2. The Implications of Completion of Medical Malpractice Crimes Through the Plea Bargaining Concept

In America, Plea Bargaining is carried out by the prosecutor and the defendant or lawyer. Negotiations between the two are carried out by telephone, in the prosecutor's office, or the courtroom. However, both negotiations were carried out without the involvement of judges. The agreement between the two can be[27]:

1. The prosecutor did not indict or indict the defendant for a lighter crime.
2. The prosecutor recommends the judge the sentence to be imposed.
3. The prosecutor agrees with the defendant for the imposition of a certain sentence. The judge is not bound to decide following the agreement between the prosecutor and the defendant or his attorney.

Plea bargaining in force in the United States can be applied to all criminal offences including serious cases (felony) and only in California and Mississippi, which do not allow plea bargaining for cases of sexual violence and physical violence (beatings, torture and murder), as well as cases corruption. The settlement of corruption cases in the United States is resolved using plea bargaining, this is due to the strong evidence of the public prosecutor and the accused/defendant voluntarily admitting guilt. One of the new corruption cases through plea bargaining is the case of Rufus Seth Williams, an Attorney serving in the Philadelphia area of Pennsylvania, Rufus Seth Williams eventually admitted accepting tens of thousands of dollars in bribes and abusing his position for personal gain. Rufus Seth William will receive a sentence from the Court in the form of imprisonment for 5 (five) years, or a fine of $ 250,000,-. Rufus Seth William's advantage in undergoing plea bargaining was in the form of leniency, compared to other cases that refused a plea bargain, such as in the case of former Democrat Deputy Chaka Fattah who resisted the plea bargain deal until he was eventually sentenced to 10 years in prison in December after being found guilty of 23 counts in a corruption case dealing with illegal campaign loans.[28]

To reform the criminal justice procedural law in Indonesia, a concept similar to the Plea Bargaining concept has been created which is contained in the Draft Criminal Procedure Code (RUU KUHAP) in Article 199 which is named "Special Line". This

[27] Paul Atagamen Aidonojie, "The Legal Impact and Relevance of Using Plea Bargains to Resolve Tax Disputes in Nigeria," *Brawijaya Law Journal* 9, no. 2 (2022): 201.

[28] Bellin, "The Changing Role of the American Prosecutor."

shows that the concept of Plea Bargaining has begun to be adopted in the criminal justice system in Indonesia. Part Six Article 199 is as follows:

1) If the defendant acknowledges all of the crimes described in the indictment and is found guilty of committing a felony carrying a sentence of no more than seven (seven) years in prison, the public prosecutor may move the matter to a hearing under the short examination method.
2) The defendant and the public prosecutor both signed the minutes that include the defendant's confession.
3) The judge is obligated to:
   a. By making the confession mentioned in paragraph (2), inform the defendant of the rights he has given up;
   b. The length of the potential punishment should be disclosed to the defendant;
   c. To what extent is the recognition mentioned in paragraph (2) granted voluntarily?
4) If the court has concerns about the defendant's confession's sincerity, he or she may reject the one referred to in paragraph (2).
5) The punishment imposed on the accused as mentioned in paragraph (1), which is exempt from Article 198 paragraph (5), may not be greater than 2/3 of the maximum term allowed for the offence charged.

The active role of the Panel of Judges in the plea bargaining process which is similar to the special pathway in medical malpractice crimes is as a substitute for examining the evidence as in examining witnesses and/or experts at trial in general, but because the purpose of plea bargaining itself is to speed up the trial process then the process of examining the evidence is changed to examining the evidence (witness and/or expert statements contained in the Minutes of Examination at the investigative level) then linking it to the contents of the confession of the Defendant who pleaded guilty. The Panel of Judges must seek the truth of the Defendant's confession. In addition, the Panel of Judges will also examine the opinion of the Public Prosecutor regarding the criminal act of medical malpractice committed by the Defendant, whether it can or has affected the living conditions of patients or victims of malpractice.

If the Panel of Judges has carried out these two procedures, the next step is the imposition of a sentence on the Defendant. The sentencing of the Defendant in the special pathway process in the Criminal Procedure Code Bill stipulates that the criminal imposition of the defendant may not exceed 2/3 of the maximum criminal offence charged. The goal of settling criminal cases can be achieved through the criminal justice process, as well as the settlement of medical malpractice cases in Indonesia. On this matter, examining the results of the current medical malpractice case settlement process, it appears that there are deficiencies in the criminal case settlement system to realize a quo goal. These conditions encourage the reform of national criminal justice, one of which is by compiling the concept of plea bargaining as an alternative process

for settling criminal cases. The adoption of a new concept certainly has consequences or impacts on the running of processes in a system. The implications or impacts of the plea-bargaining concept include positive and negative impacts.

1) The positive impact leads to opportunities to implement an effective and efficient criminal case settlement process, reduce the burden of cases borne by law enforcement officials and reduce the number of accumulations of criminal cases.
2) The negative impact leads to several defendant's rights being released as a result of an admission of guilt, one of which is related to legal remedies, and if not properly regulated and controlled plea bargaining can become a new mode or field for acts of corruption.

Based on these implications, several interests and reasons underlying the adoption of the quo concept, especially related to the settlement of medical malpractice cases. These reasons include:

1) Philosophical reasons regarding the value of expediency and legal certainty, are that with the shortening of the criminal justice process due to the application of plea bargaining, medical malpractice defendants can immediately obtain legal certainty regarding the criminal sanctions imposed on them. The value of benefits will be realized through negotiating a guilty plea followed by leniency from criminal threats. This will provide benefits for the public prosecutor to obtain convenience in carrying out his duties, while for medical malpractice defendants, he can negotiate so that criminal threats against him refer to criminal compensation for the victim, in this case, the patient who was harmed as a result of the malpractice he committed.
2) The juridical reason refers to Article 4 paragraph 2 of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power, to implement a criminal justice process that is fast, simple and low cost. This is in line with the main idea of plea bargaining, especially regarding the process of resolving medical malpractice cases which should be a priority for immediate resolution.
3) Sociological reasons are very important in the adoption and implementation of plea bargaining. The efforts and efforts made by the government were not able to overcome problems related to the length of time the criminal case settlement process took the high costs and the accumulation of criminal cases.

Plea bargaining can be applied to all criminal acts including corruption. The most important thing is how to formulate plea bargaining on the state of legal developments in a country. The formulation of plea bargaining contained in the Draft Criminal Procedure Code is a criminal law formulation policy. Policy formulation according to Barda Nawawi Arief is a plan or program from legislators regarding what will be done in dealing with certain problems and how to do or carry out something that has been planned or programmed, in terms of overcoming a crime or crime.[29]

[29] Barda Nawai Arief Muladi, *Teori-Teori Dan Kebijakan Pidana*, 2nd ed. (Bandung: Alumni, 1998).

The right to the "non-self-incrimination" concept, which has so far been upheld by Indonesia in its Criminal Procedure Code, will be waived by the defendant in the Plea Bargaining mechanism if an agreement has been made between the public prosecutor and the defendant. In the concept of Plea Bargaining through a special channel, the judge can only decide during the hearing after reading the indictment.[30] The concept of admitting guilt through a special channel does not provide space for the public prosecutor and legal advisers or the accused to negotiate and agree on the charges and criminal threats contained in the indictment, then only in court will it be determined whether a brief examination procedure will be carried out or not. Thus, Plea Bargaining thru a unique channel withinside the draft of Criminal Code Procedures or RKUHAP, the choice at trial is a unilateral assertion each written and verbal that is organised and said with the aid of using one of the events in an ordeal case which justifies both totally or a part of an event, a proper or criminal dating that filed with the aid of using his opponent, which ends up withinside the exam with the aid of using the choose is now not necessary.

Confession before the judge at trial provides perfect proof against those who did it both personally and especially represented. The implementation of the system of admitting guilt through special channels is carried out in a closed system. Where in a closed system it can be seen when the defendant admits his actions cannot agree with the public prosecutor regarding the length of sentence received. This closed system is intended to prevent it from happening or to close opportunities for potential corruption in the public prosecutor who handles cases. Preferably the concept of Plea Bargaining can be strictly regulated in laws and regulations so that it can be applied to the handling of criminal acts, especially those that require compensation from the accused, because apart from that plea bargaining comes with the hope of reducing the burden of cases going to court (appeal, cassation) to accelerating the judicial process, rewarding the Defendant who admits his guilt; meet the needs of the accused and the public prosecutor; as well as saving time and costs without eliminating the purpose of punishment. Thus, plea bargaining is an innovation for the effectiveness of governance and legal compliance in the judicial process

3. CONCLUSION

To reform the criminal justice procedural law in Indonesia, a concept similar to the Plea-Bargaining concept has been created which is contained in the Draft Criminal Procedure Code (RUU KUHAP) in Article 199 which is named "Jalur Khusus" or a special line. The implications or impacts of the plea-bargaining concept include positive and negative impacts. The active role of the Panel of Judges in the plea bargaining process

[30] Nandang Sambas, "Renewal of the National Criminal Law with the Soul of the Nation's Cultural Values," *Utopia y Praxis Latinoamericana* 24, no. Extra5 (2019): 391–98.

which is similar to the special pathway in medical malpractice crimes is as a substitute for examining the evidence as in examining witnesses and/or experts at trial in general, but because the purpose of plea bargaining itself is to speed up the trial process then the process of examining the evidence is changed to examining the evidence (witness and/or expert statements contained in the Minutes of Examination at the investigative level) then linking it to the contents of the confession of the Defendant who pleaded guilty.

REFERENCES

Ab Aziz, Norjihan, Noorshuhadawati Mohamad Amin, and Zuraini Ab Hamid. "Enhancing Plea Bargaining Process Through Mediation." *IJASOS-International E-Journal of Advances in Social Sciences* III, no. 7 (2017): https://doi.org/10.18769/ijasos.320064.

Ab Aziz, Norjihan, Nurah Sabahiah Mohamed, Nasimah Hussin, and Najaa Syahirah Samsudin. "Restorative Justice in The Child Justice System: Implementation in Other Jurisdictions." *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 7, no. 6 (2022): e001561. https://doi.org/10.47405/mjssh.v7i6.1561.

Afandi, Fachrizal. "Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia." Leiden: Universiteit Leiden, 2021.

Agustina, Enny. "Juridical Analysis of the Legal Relationship Between Doctors and Patients in Health Services." *Unifikasi : Jurnal Ilmu Hukum: Jurnal Ilmu Hukum* 7, no. 1 (2020). https://doi.org/10.25134/unifikasi.v7i1.2349.

Aidonojie, Paul Atagamen. "The Legal Impact and Relevance of Using Plea Bargains to Resolve Tax Disputes in Nigeria." *Brawijaya Law Journal* 9, no. 2 (2022).

Apriyanto Nusa, I Nyoman Nurjaya, Abdul Madjid, Bambang Sugiri. "The Urgence Of The Control Mechanism Of Authority The Prosecutor General In Waiting The Case For Public Interest (Seponeering)." *Baltic Journal of Law and Politics* 3, no. 2 (2022). https://doi.org/10.38142/ijesss.v3i2.294.

Ardi, Aswar, M. Said Karim, and Haeranah Haeranah. "Law Enforcement Against Online Fraud Crimes: A Case Study at Police District Area of Wajo." *Jurnal Hukum Volkgeist* 6, no. 1 (2021). https://doi.org/10.35326/volkgeist.v6i1.1390.

Beenstock, Michael, Josh Guetzkow, and Shir Kamenetsky-Yadan. *Plea Bargaining and the Miscarriage of Justice. Journal of Quantitative Criminology*. Vol. 37. Springer US, 2021. https://doi.org/10.1007/s10940-019-09441-w.

Bellin, Jeffrey. "The Changing Role of the American Prosecutor." *Ohio State Journal of Criminal Law* 18, no. 1 (2020).

Citizen, Yuris Oktaviyani. "Termination of Prosecutions Based On Restorative Justice in The Settlement of Criminal Cases In The Area of The High Prosecutors Of Lampung." *Pancasila And Law Review* 3, no. 2 (2022).

Darmawan, Ricky. "Penegakan Hukum Terhadap Malpraktek Dokter Yang Melakukan Aborsi (Studi Putusan No.288/Pid.Sus/2018/Pn. Njk)." *El-Iqthisadi : Jurnal Hukum Ekonomi Syariah Fakultas Syariah Dan Hukum* 2, no. 2 (2020). https://

doi.org/10.24252/el-iqthisadi.v2i2.13999.

Fata, A N. "The Prosecutor's Authority In Criminal Law Enforcement With A Restorative Justice Approach." *Jurnal Hukum Khaira Ummah* 2, no. 4 (2022). http://jurnal.unissula.ac.id/index.php/jhku/article/view/19364%0Ahttp://jurnal.unissula.ac.id/index.php/jhku/article/download/19364/6698.

Garner, Bryan A.dan Henry Campbell Black. *Black's Law Dictionary*. Minnesota: West Group, n.d.

I D.G. Palguna. *Welfare State vs Globalisasi: Gagasan Negara Kesejahteraan Indonesia*. 1st ed. Jakarta: RajaGrafindo Persada, 2019.

Ismail Koto, Erwin Asmadi. "Pertanggungjawaban Hukum Terhadap Tindakan Malpraktik Tenaga Medis Di Rumah Sakit." *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 4, no. 2 (2021). https://doi.org/10.24090/volksgeist.v4i2.5738.

Krismiyarsi. "Proven Criminal Action Of Spreading Hoax News Through Social Media Regarding Covid-19." *Untag Law Review* 5, no. 2 (2021). https://doi.org/10.5812/iji.102184.2.

Muladi, Barda Nawai Arief. *Teori-Teori Dan Kebijakan Pidana*. 2nd ed. Bandung: Alumni, 1998.

Nasution, Muhammad Andriady Saidi, Beni Satria, and Irwan Jasa Tarigan. "Mediasi Sebagai Komunikasi Hukum Dalam Penyelesaian Sengketa Medik Antara Dokter Dan Pasien." *Jurnal Hukum Kesehatan Indonesia* 1, no. 02 (2022). https://doi.org/10.53337/jhki.v1i02.14.

Nugroho, Fandi Muhammad, Hari Wujoso, and Wahyu Dwi Atmoko. "Hubungan Pengetahuan Kode Etik Kedokteran Tentang Aborsi Terhadap Sikap Mahasiswa Kedokteran Terhadap Aborsi." *Smart Society Empowerment Journal* 1, no. 1 (2021) https://doi.org/10.20961/ssej.v1i1.48648.

Rahiminejad, Esmaeil. "Iranian Criminal Justice System from the Perspective of Restorative Justice Models." *Scholars International Journal of Law, Crime and Justice* 5, no. 10 (2022): 468–76. https://doi.org/10.36348/sijlcj.2022.v05i10.010.

Ramadhan, Choky. "Konvergensi Civil Law Dan Common Law Di Indonesia Dalam Penemuan Dan Pembentukan Hukum." *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 30, no. 2 (2018). https://doi.org/10.22146/jmh.31169.

Razy, F. & Saputera, Y. "Tinjauan Yuridis Malpraktek Medis Dalam Sistem Hukum Indonesia." *Jurnal Cakrawala Ilmiah* 1, no. 3 (2022). https://bajangjournal.com/index.php/JCI/article/view/3175/2260.

Sambas, Nandang. "Renewal of the National Criminal Law with the Soul of the Nation's Cultural Values." *Utopia y Praxis Latinoamericana* 24, no. Extra5 (2019).

Suyanto. *Hukum Acara Pidana*. Sidoarjo: Zifatama Jawara, 2018.

Triantono. "Prospek Adopsi Mekanisme Plea Bargaining Pada Sistem Hukum Common Law Dalam Pembaharuan Sistem Peradilan Pidana Di Indonesia." *Literasi Hukum* 6, no. 1 (2022).

Trihandini, Dyah. "Konsep Perlindungan Hukum Bagi Tenaga Medis Dalam Penanganan

COVID-19." *Jurnal Hukum Dan Pembangunan Ekonomi* 8, no. 2 (2020).

Woolley, A, and L Soubise. *Prosecutors and Justice : Insights from Comparative Analysis. Fordham International Law Journal*. Vol. 42, 2020.

Zola Agustina, Achmad Hariri. "Pertanggungjawaban Pidana Atas Kelalaian Diagnosa Oleh Dokter Hingga Mengakibatkan Kematian Anak Dalam Kandungan." *Iblam Law Review* 2, no. 2 (2022).