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Plea Bargaining as A Reform of Criminal Procedural Law to Realize the Principle af Swift, Simple, and Low-Cost Justice

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Abstract

The Indonesian judicial system faces persistent challenges, including chronic case backlogs and severe prison overcrowding, which undermine the constitutional principle of swift, simple, and low-cost justice. This study explores the necessity of integrating Plea Bargaining into Indonesian criminal procedural law through the "Special Track" (Jalur Khusus) mechanism proposed in the Draft Criminal Procedure Code (RUU KUHAP). Employing normative legal research and a comparative approach – examining legal frameworks in the United States, England, and the Netherlands – the research identifies that Indonesia's proposed model adopts a "pleas without bargains" framework. This model is intentionally designed to bypass corruptive negotiations while maintaining judicial control. The findings demonstrate that the Special Track streamlines the trial process by shifting ordinary examinations into abbreviated procedures for offenses carrying a maximum seven-year penalty, offering a mandatory sentence reduction of up to one-third. Furthermore, this study critically analyzes potential implementation hurdles, such as the risk of coerced confessions, the need for standardized judicial discretion, and the prevailing retributive legal culture in Indonesia. The research concludes that while the Special Track is a vital administrative tool for judicial efficiency, its success depends on rigorous judicial oversight to ensure that procedural speed does not compromise material justice or the defendant's fundamental rights

Keywords: Plea Bargaining; Special Track; Judicial Efficiency; Criminal Procedure Reform.

INTRODUCTION

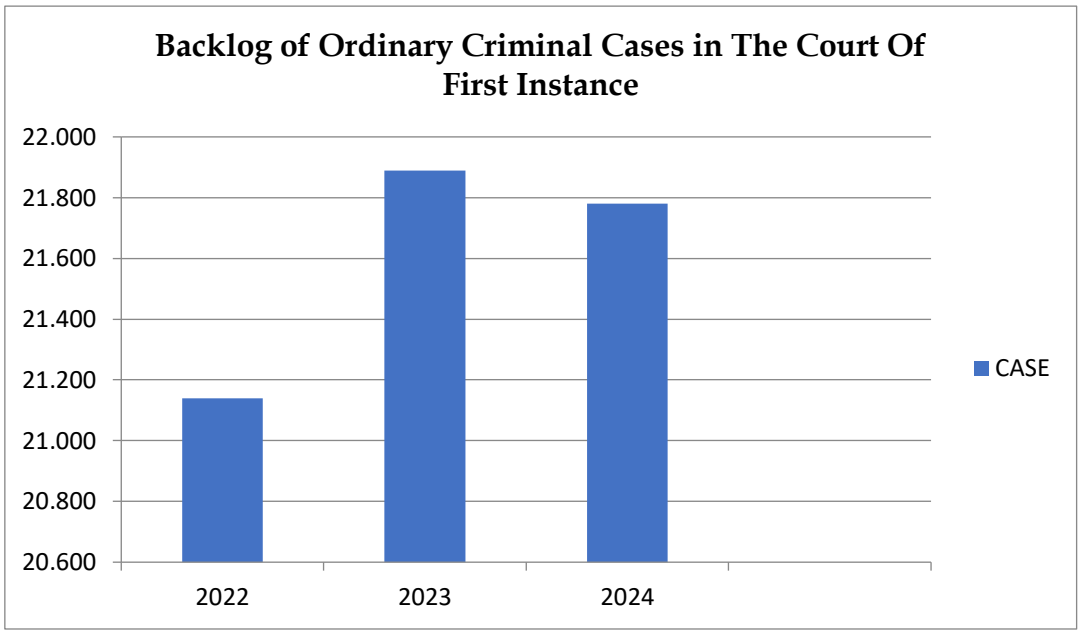
The court, as a primary avenue for citizens to resolve legal disputes, is expected to be an institution capable of fulfilling the needs and expectations of justice seekers. However, in practice, court proceedings are often hindered by ineffective and inefficient systems. Case resolutions often span several years due to protracted processes, including extensive legal remedies ranging from appeals (*banding*) to cassation (*kasasi*) and judicial review (*peninjauan kembali*). In addition to being time-consuming and costly, litigation-based dispute resolution leads to a significant backlog of cases (*penumpukan perkara*) in courts.[1]

With the increasing complexity of legal issues and the human desire for justice, an increase in the volume of cases entering the court system is inevitable.[2] Criminal cases adjudicated under ordinary examination procedures (*acara pemeriksaan biasa*) across all first-instance courts in Indonesia consistently leave an annual backlog. For comparison, the author examines data from 2022 to 2024. In 2022, first-instance courts across Indonesia failed to resolve 21,139 ordinary criminal cases out of a total workload of 139,186. In 2023, the

[1] Cavin George Ngilawane et al., "Pembatasan Nilai Perkara Yang Dapat Diajukan Banding Dan Kasasi Untuk Mewujudkan Asas Peradilan Cepat Sederhana Biaya Ringan," *Jurnal Restorative Justice* 7, no. 1 (2023): 178-87
[2] Buletin Komisi Yudisial, "Menyongsong Sistem Kamar di Mahkamah Agung," 5, no. 5 (2011): 15.

unresolved cases amounted to 21,889 out of a 138,912 workload. Furthermore, in 2024, the backlog remained high at 21,781 cases from a total workload of 137,356.[3]

Tabel 1. Backlog of Ordinary Criminal Cases in the Court of First Instance



METHODS OF THE RESEARCH

This research utilizes normative legal research, focusing on statutory regulations. The approach employed is comparative law. According to Winterton, comparative law is a method of comparing legal systems to generate data on the systems being compared.[4] In this study, the author uses secondary data as the primary source, obtained from literary materials. Secondary data consists of primary and secondary legal materials. Primary legal materials include positive law in the form of prevailing statutes, namely the Indonesian Criminal Code (KUHP) and Law Number 8 of 1981 on Criminal Procedural Law (KUHAP). Secondary legal materials consist of expert opinions, books, journals, the Draft Criminal Procedure Code (RUU KUHAP), research results, and internet sources. Data collection was conducted through a literature study of these materials regarding plea bargaining as a reform of criminal procedural law.

RESULTS AND DISCUSSION

A. The History of Plea Bargaining

1. Roots of Conventional Traditions and Ancient Legal Phenomena

The concept of plea bargaining has strong historical roots and is an integral part of the criminal justice system, particularly in countries adhering to the adversarial tradition or the Common Law system. Its development has become increasingly relevant as a primary instrument for realizing swift, simple, and low-cost justice. Historical exploration of plea bargaining often positions this mechanism as a product of American legal modernity; however, its sociological roots extend far into the past. The practice of confession-bargaining

[3] Mahkamah Agung RI, *Laporan Tahunan Mahkamah Agung RI Tahun 2024* (Jakarta: Mahkamah Agung, 2024).
[4] Barda Nawawi Arief, *Perbandingan Hukum Pidana* (Jakarta: Raja Grafindo, 1990), p.4.

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is essentially rooted in the adversarial tradition that evolved organically alongside judicial administration needs. Albert Alschuler, a prominent legal historian, notes that the precise history of this practice remains uncertain due to its often informal nature during its early development. Nevertheless, there is academic consensus that the seeds of legal negotiation existed in tribal societies. In such structures, plea bargaining functioned as a protective mechanism for wrongdoers to avoid extreme physical retribution through negotiated compensation with the victim or the aggrieved family.[5] By the 18th century in England, specifically at the Old Bailey (the Central Criminal Court of England and Wales), a formal practice resembling plea bargaining had not yet been identified. On the contrary, historical records indicate judicial distaste for transactional guilty pleas. Judges at the Old Bailey reportedly often urged defendants who pleaded guilty to withdraw their confessions[6] and instead opt for a jury trial so that the truth could be fully tested.

In colonial America, early precedents can be traced back to the Salem Witch Trials (1692), where authorities offered a "choice for life" to defendants willing to confess and testify against others. The Salem trials are often used to illustrate one of the strongest arguments against plea bargaining. In those tragic events, although the practice is viewed as an extreme form of coercion, it technically represented an early form of bargaining between the state and the individual for administrative and evidentiary interests.[7]

2. Transformation and Constitutional Legitimacy of Plea Bargaining in the United States

Following the American Civil War (1861–1865), there was a surge in crime rates and judicial workloads triggered by urbanization. The complexity of trial procedures forced prosecutors to seek out-of-court resolutions through negotiations with defendants without judicial involvement. By the 1920s, guilty pleas dominated the justice systems in major cities such as New York (88%) and Chicago (85%). By 1930, the U.S. justice system had become *de facto* entirely dependent on this mechanism to prevent collapse.[8]

Juridically, the first recognition of charge bargaining was recorded in the case of *Swang v. State* (1865). However, the path to universal legality faced obstacles,[9] including a 1958 instance where the U.S. Supreme Court briefly declared the practice illegal.[10] Full legitimacy was finally achieved through the monumental ruling in *Brady v. United States* (1970), reinforced in *Santobello v. New York* (1971), where the court acknowledged the pragmatic reality that without such a mechanism, the justice system would collapse under its own weight.[11]

3. Historical Development in England: The Turner Rules and Legislative Changes

In England and Wales, the history of plea bargaining developed differently but still showed a trend of increasing judicial reliance on guilty pleas. Legal certainty regarding the boundaries of negotiation in England began to take shape in 1970 through the case of Frank

[5] Choky Risa Ramadhan et al., *Peluang Penerapan Plea Bargain Dalam Hukum Acara Pidana Indonesia* (Malang: Inara Publisher, 2024), p. 8.

[6] Choky Risa Ramadhan et al. *Ibid*.

[7] Choky Risa Ramadhan et al, *Ibid*.

[8] Choky Risa Ramadhan et al, *Ibid*.

[9] Mardian Putra Frans et al., "*Plea Bargaining System, Deferred Prosecution Agreement, Dan Judicial Scrutiny Sebagai Upaya Mengatasi Overkapasitas Lembaga Pemasyarakatan*," *Perspektif Hukum* 24, no. 2 (2024): p. 156.

[10] Ronny Putra Dirgantara Paklioy, Juanrico Alfaromona Sumarez Titahelu, and Denny Latumaerissa, "*Penerapan Konsep Plea Bargaining Dalam Sistem Peradilan Pidana Terpadu Di Indonesia*," *TATOHI: Jurnal Ilmu Hukum* 4, no. 8 (2024): p. 661.

[11] Choky Risa Ramadhan et al, *Op.Cit*.

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Turner, which gave birth to the Turner Rules. These rules established that legal counsel may only provide recommendations, but the final decision must absolutely originate from the defendant's own free will. This was eventually formalized in the *Criminal Justice and Public Order Act 1994* and later the *Criminal Justice Act 2003*, which explicitly instructed judges to consider a defendant's guilty plea for sentence reductions. [12]

4. Globalization of Plea Bargaining and the 1995 UN Resolution

The proliferation of plea bargaining became a global phenomenon in the late 20th century, catalyzed by the 1995 UN Resolution in Cairo. This resolution mandated member states to evaluate judicial management by considering Alternative Dispute Resolution (ADR) in criminal cases.[13] Consequently, civil law countries such as Germany, France, Italy, and Taiwan began adopting similar mechanisms.[14]

5. History of Plea Bargaining in Indonesia: From the Colonial Era to the RUU KUHAP

The existence of plea bargaining is not explicitly found in the 1981 KUHAP. However, the failure to anticipate case backlogs and prison overcrowding has created an urgent need for alternative solutions. This discourse evolved when the drafting team for the RUU KUHAP conducted comparative studies in various countries, including the United States.[15] According to Robert Strang, the provisions for plea bargaining in the RUU KUHAP were added following the drafting team's study visit to the United States with the support of the Department of Justice's Office for Overseas Prosecutorial Development, Assistance and Training (DOJ/OPDAT). Although formal terminology had not yet been utilized, Indonesia possesses mechanisms with similar characteristics, such as *Afdoening Buiten Proces* (Article 82 of the Criminal Code).[16] Diversion in the Juvenile Criminal Justice System, and the Justice Collaborator concept under SEMA Nomor 4 of 2011.[17] The formalization of this concept was eventually accommodated in Article 234 of the RUU KUHAP through the "Special Track" (*Jalur Khusus*).

B. Definition of Plea Bargaining

1. Construction of Doctrinal Essence and Categorization of Plea Bargaining Definitions

Lexically, *Black's Law Dictionary* defines plea bargaining as a negotiation between the prosecutor and the defendant, where the defendant pleads guilty in exchange for a more lenient charge or the dismissal of other charges.[18] The essence of this practice is a *quid pro quo* exchange: the state gains efficiency and certainty of conviction, while the defendant receives a reduced sentence.[19] Legal scholars categorize the definition of plea bargaining into two types based on the legal system:[20] a) Narrow Definition: Emphasizes pure negotiation between the prosecutor and the defendant outside of court with broad prosecutorial

[12] Ronny Putra Dirgantara Paklioy et al, *Op. Cit.*

[13] Ronny Putra Dirgantara Paklioy et al, *Ibif.*

[14] Choky Risa Ramadhan et al., "Peningkatan Efisiensi Peradilan Melalui Mekanisme Jalur Khusus Dalam RUU KUHAP," *Masyarakat Pemantau Peradilan Indonesia (MaPPi) FH UI* 1 (2014): p. 142.

[15] Rifi Hermawati, "Studi Perbandingan Hukum Plea Bargaining System di Amerika Serikat Dengan Jalur Khusus Di Indonesia," *Rewang Rencang: Jurnal Hukum Lex Generalis* 4, no. 1 (2023): p. 104.

[16] Choky Risa Ramadhan et al, *Op.Cit.*

[17] Mora Nur Fitrah Nasution, "Adaptasi Sistem Plea-Bargaining dalam Kerangka Hukum Pidana Indonesia: Tinjauan Komparatif dari Amerika Serikat, India, dan Prancis," *Yustisia Tirtayasa* 5, no. 3 (2025): p. 284.

[18] Choky Risa Ramadhan et al, *Op.Cit.*

[19] Mora Nur Fitrah Nasution, Adaptasi Sistem Plea-Bargaining dalam Kerangka Hukum Pidana Indonesia: Tinjauan Komparatif dari Amerika Serikat, India, dan Prancis.

[20] Choky Risa Ramadhan et al, *Op. Cit.*

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discretion, as practiced in the United States; b) Broad Definition (Pleas Without Bargains): Refers to a system where the confession is made formally before the court, and the judge maintains dominant control over determining material justice. This is implemented in Germany (*Verständigung*) and is proposed as the "Special Track" in Indonesia.

2. Definition of Plea Bargaining in the Context of Indonesian Legal Reform

In Indonesian legal reform, plea bargaining is manifested through the "Special Track" concept in Article 234 of the RUU KUHAP. Its operational definition includes the following elements: a) Confession Before the Court: The defendant admits to all charged acts at the time the public prosecutor reads the indictment; b) Jurisdictional Limits: It can only be applied to criminal acts where the indictment carries a maximum penalty of no more than 7 (seven) years of imprisonment; c) Abbreviated Examination Mechanism: If the confession is accepted by the judge, the case is immediately transferred to an abbreviated trial procedure; d) Measurable Sentence Reduction: The sentencing is legally restricted; the sentence may not exceed two-thirds (2/3) of the maximum penalty of the offense charged; e) Judicial Verification Authority: The judge is obligated to ensure the confession is given voluntarily and has the right to reject it if there is doubt. The implementation of this mechanism is expected to serve as a strategy to balance the principle of swift justice (*contante justitie*) with the protection of defendants' rights, while preventing case backlogs so that courts can devote more time to resolving other complex cases in Indonesia.

C. Plea Bargaining in Various Countries

1. Plea Bargaining in the United States

Plea bargaining in the U.S. grants immense discretion to the Prosecutor. Negotiations occur between the Prosecutor and the Defendant/Defense Attorney without the involvement of a Judge, covering agreements on lesser charges or sentencing recommendations. Although Judges are not strictly bound by these agreements, they are obligated to ensure the defendant understands their rights. In practice, Judges even accept the Alford Plea, where a defendant agrees to a sentence while maintaining a claim of innocence. Victims are generally not involved, though some states have begun allowing them to provide statements before the Judge confirms the agreement.[21]

2. Plea Bargaining in England

As another common law jurisdiction, England implements plea bargaining with a more dominant role for the Judge. The influence of Prosecutors (barristers) is not as strong as in the U.S. because prosecutors can also function as defense counsel. The Turner Rules mandate that counsel may only offer recommendations, while the final decision must rest solely with the Defendant. Judges play a major role in controlling the prosecution and determining the sentence, which includes examining evidence before validating the agreement. While there are provisions for private access between counsel and the judge (without the defendant) to discuss sentencing, this is intended to increase predictability.[22]

3. *Transactie* in the Netherlands

The Netherlands, which adheres to an inquisitorial system, possesses similar mechanisms: *Transactie* and *Strafbeschikking*. Transactie (settlement) applies to serious crimes. Prosecutors

[21] Choky Risa Ramadhan et al, *Peluang Penerapan Plea Bargain Dalam Hukum Acara Pidana Indonesia*.
[22] Choky Risa Ramadhan et al, *Peluang Penerapan Plea Bargain Dalam Hukum Acara Pidana Indonesia*.

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have the authority to offer up to a 50% sentence reduction, but the agreement must be examined and validated by an Examining Magistrate (*Rechter-commissaris*) to prevent unlawful deals and the use of inadmissible evidence. Conversely, Strafbeschikking is a penal order (fines, community service, etc.) issued directly by the Prosecutor without court intervention, though the Defendant retains the right to oppose it. A key element of the Dutch system is relative uncertainty; the Prosecution cannot absolutely guarantee that the promised reduction will materialize in the Judge's final verdict.[23]

4. The Concept of Implementing Plea Bargaining in Indonesia to Realize the Principle of Swift, Simple, and Low-Cost Justice

The high case load in courts forces law enforcement agencies to work excessively. Limited state budgets often fail to support the full needs of law enforcement personnel. Typically, the chosen solution is to increase personnel, which adds to the long-term budgetary burden. High workloads make efficient procedural law difficult to maintain, hindering the principles of swift, simple, and low-cost justice. The RUU KUHAP drafting team has proposed a procedure aimed at shortening and accelerating proceedings: the Special Track (*Jalur Khusus*), a mechanism for defendants who admit guilt. While the concept of Plea Bargaining originated in the U.S. and is not explicitly regulated in current Indonesian law, it closely resembles the Special Track in Article 234 of the RUU KUHAP, which provides: 1) At the time the Public Prosecutor reads the indictment, the Defendant admits to all charged acts and pleads guilty to a criminal offense carrying a maximum penalty of no more than 7 (seven) years; the Prosecutor may then transfer the case to an abbreviated examination trial; 2) The defendant's confession is recorded in a transcript signed by both the defendant and the Prosecutor; 3) The Judge is obligated to: a. Inform the defendant of the rights waived by providing such a confession; b. Inform the defendant of the potential sentence length; and c. Enquire whether the confession was given voluntarily; 4) The Judge may reject the confession if they doubt its truthfulness; 5) The sentence imposed may not exceed 2/3 (two-thirds) of the maximum penalty of the offense charged; 6) The Judge, on their own initiative or at the request of the defendant or advocate, may provide explanations regarding statutory provisions.

However, the Special Track in the RUU KUHAP is not entirely synonymous with a "plea bargain." U.S.-style plea bargaining differs from the Special Track primarily because Indonesia's model lacks negotiation over charges and sentences between the prosecutor and the defendant/counsel, due to concerns over potential prosecutorial corruption.[24] Thus, the Special Track is more accurately described as "pleas without bargains."

Under this track, the case is processed through an abbreviated examination procedure (*sidang acara pemeriksaan singkat*), presided over by a single judge. This shift from an ordinary to an abbreviated trial is expected to realize the principle of swift, simple, and low-cost justice. Unlike the U.S. system where confessions often happen out of court, in Indonesia, the confession must be made before the Judge. Furthermore, while the U.S. allows plea bargaining for all crimes—including those carrying the death penalty—the Indonesian Special Track is restricted to offenses with a maximum penalty of 7 years. Despite these

[23] Choky Risa Ramadhan et al, *Peluang Penerapan Plea Bargain Dalam Hukum Acara Pidana Indonesia*.
[24] Choky Risa Ramadhan et al., "Peningkatan Efisiensi Peradilan Melalui Mekanisme Jalur Khusus Dalam RUU KUHAP

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restrictions, the 2/3 sentence reduction aligns with the global objective of plea bargaining: providing leniency for those who admit guilt.

5. Potential Challenges in Implementing the "Special Track" within the Indonesian Legal Culture

While the introduction of the Special Track (*Jalur Khusus*) offers a pragmatic solution to judicial backlogs, its implementation in Indonesia faces several multifaceted challenges that must be addressed to ensure it does not compromise the integrity of the justice system.

a. Ensuring Voluntariness and Preventing Coercion

The primary concern in any plea-related system is the protection of the defendant's "free will." In the Indonesian context, where the power imbalance between law enforcement and defendants can be significant—especially for those with limited access to high-quality legal representation—there is a risk that confessions might be coerced. The "pleas without bargains" model places a heavy burden on the Judge to act as a safeguard.[25] The Judge must be exceptionally vigilant during the verification process to ensure that the confession is not merely a result of procedural pressure or the defendant's exhaustion with the protracted trial process.[26]

b. Standardizing Judicial Discretion

Article 234 of the RUU KUHAP grants Judges the authority to accept or reject a confession based on "doubt." Without clear, standardized guidelines on what constitutes "sufficient evidence" to support a confession in an abbreviated trial, there is a risk of inconsistent rulings between different court jurisdictions.[27] This "judicial subjectivity" could lead to legal uncertainty, where similar cases are handled differently depending on the presiding Judge's interpretation of the defendant's confession.[28]

c. Public Perception and the "Sense of Justice"

Indonesian legal culture still places a high premium on retributive justice, where the public often expects maximum punishment for criminal offenses. The mandatory 2/3 sentence reduction might be perceived by victims or the general public as "selling justice" or providing an "easy way out" for criminals.[29] Therefore, implementing this system requires a shift in public legal awareness—moving from a purely retributive mindset toward a more utilitarian approach that prioritizes system efficiency and certain conviction over maximum retribution.[30]

d. Potential for Corruption and Integrity Risks

Even though the Indonesian model purposefully avoids "charge bargaining" to minimize corrupt negotiations between prosecutors and defendants, the risk is not entirely eliminated. The transition from an ordinary trial to an abbreviated one involves significant procedural shortcuts. Without strict supervision from the Judicial Commission (*Komisi Yudisial*) and

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[25] Choky Risa Ramadhan et al, *Peluang Penerapan Plea Bargain Dalam Hukum Acara Pidana Indonesia*.

[26] Megawati Iskandar Putri, Ufran, and Lalu Saipudin, "Pengaturan Konsep Lembaga Plea Bargaining Dalam Pembaharuan Kitab Undang-Undang Hukum Acara Pidana (Kuhap)," *Jurnal Parheisia* 2, no. 1 (2024): 34.

[27] Rifi Hermawati, "Studi Perbandingan Hukum Plea Bargaining System di Amerika Serikat Dengan Jalur Khusus Di Indonesia

[28] Choky Risa Ramadhan et al., "Peningkatan Efisiensi Peradilan Melalui Mekanisme Jalur Khusus Dalam RUU KUHAP.

[29] Romli Atmasasmita, *Sistem Peradilan Pidana Kontemporer* (Jakarta: Kencana Prenada Media Group, 2010), p. 121.

[30] Mora Nur Fitrah Nasution, Adaptasi Sistem Plea-Bargaining dalam Kerangka Hukum Pidana Indonesia: Tinjauan Komparatif dari Amerika Serikat, India, dan Prancis.

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internal oversight bodies, these shortcuts could be exploited by unscrupulous actors to bypass the rigorous evidence-testing process typically found in ordinary trials.[31]

CONCLUSION

The proposed implementation of the "Special Track" (*Jalur Khusus*) in the RUU KUHAP represents a pivotal strategic shift toward achieving the principle of swift, simple, and low-cost justice in Indonesia. By adapting the global concept of plea bargaining into a "pleas without bargains" framework, the Indonesian model effectively seeks a middle ground: achieving judicial efficiency while significantly mitigating the risks of corruption and transactional justice. This research highlights that the Special Track serves as a vital administrative instrument to alleviate the chronic burden of case backlogs and prison overcrowding by streamlining the transition from ordinary to abbreviated trial procedures for offenses carrying a maximum seven-year penalty. However, the findings suggest that the success of this reform is not solely dependent on legislative enactment but also on addressing critical implementation challenges. Ensuring the voluntariness of confessions to prevent coercion, standardizing judicial discretion to avoid legal uncertainty, and managing the public's retributive expectations remain essential prerequisites. Ultimately, while the Special Track offers a pragmatic "shortcut" through a mandatory sentence reduction, the judiciary must maintain its role as a safeguard of material justice. With rigorous oversight and a shift in legal culture, this mechanism has the potential to modernize the Indonesian criminal justice system, ensuring that procedural speed does not come at the expense of fundamental legal integrity.

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[31] Mardian Putra Frans et al., *Op.Cit.*

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