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RESEARCH ARTICLE

Plea Bargaining in Tax Crime Resolution: A Normative Legal Analysis of Prosecution Practices in Indonesia

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ABSTRACT

Examining and discovering the essence of the plea bargaining in resolving tax crime cases, a plea is necessary bargaining by the Public Prosecutor in resolving tax crime cases and plea mechanisms bargaining which is ideal and relevant by the Public Prosecutor as dominus litis for the settlement of tax crime cases in Indonesia, both at the pre-prosecution and trial stages. This study uses normative legal research. The nature of plea Bargaining in resolving tax crime cases is a negotiation process between the public prosecutor and the defendant (alleged perpetrator) in which the defendant agrees to reveal the truth about his criminal act, Plea bargaining required by the Public Prosecutor as Dominus Litis in resolving tax crime cases as part of his authority in the field of prosecution to seek negotiation (agreement) in resolving tax crime cases. At the pre-prosecution and prosecution stages, opening up space for negotiation for resolving tax crimes, the taxpayer is willing to reveal the truth about his criminal acts, pay off tax debts and/or be accompanied by tax fines, while the public prosecutor seeks a reduction in sentence.

INTRODUCTION

Tax is the main source of state revenue for the implementation and improvement of development aimed at increasing the prosperity and welfare of the people, by increasing the effectiveness of the use of tax itself, as emphasized in the National Long-Term Development Plan 2005-2025. The [1]largest state revenue is obtained from taxes used to finance routine state spending and for development in order to create prosperity in people's lives. This is stated in the State Budget (APBN) where tax revenue is the largest domestic revenue. [2]Taxpayer awareness of the function of taxation as state financing is very necessary to increase taxpayer compliance. The consequence of taxpayer non-compliance in terms of taxation is that there is a tax sanction for violators and a taxpayer will fulfill his tax obligations if he considers that the tax sanction will be more detrimental to him. This tax is then imposed on each tax subject on the income they earn.[3]

Although "tax law is classified as state administrative law, it is strengthened by the regulation of criminal provisions in the Taxation [4]Law . In Law Number 6 of 1983 concerning General Provisions and Tax Procedures as amended and most recently by Law Number 16 of 2009 concerning

[1] Law Number 17 of 2007 concerning the National Long-Term Development Plan 2005-2025, State Gazette of the Republic of Indonesia 2007 Number 83, Supplement to the State Gazette of the Republic of Indonesia Number 4700.

[2] Muliari , NK and PE Setiawan, 2011, The Influence of Perception on Tax Sanctions and Taxpayer Awareness on Individual Taxpayer Reporting Compliance at the East Denpasar Pratama Tax Service Office. *Journal of Accounting and Business* . Vol. 6 No. 1, pp .: 1-23.

[3]Amalia, N., Ruslan, A., & Hambali, R. (2019). Celebgram Tax Obligations for Digital Advertising Services Based on the Self-Assessment System . *Amanna Gappa* , p. 99.

[4] Yoserwan , Y. (2020). Secondary Function of Criminal Law in Handling Tax Crimes. *De Jure Legal Research Journal , Legal and Human Rights Research and Development Agency* , *20* (2), 165-176.

Amendments to Law Number 6 of 1983 concerning General Provisions and Tax Procedures (UU KUP), two types of sanctions are recognized, namely administrative sanctions and criminal sanctions. Regarding tax disputes and tax crimes are different things.

Criminal law was born and grew in the continuity of community life, it is important to obey in order to create peace and order, [5]tax crimes that start from tax evasion [6]The development of problems in society is always related to legal issues, including criminal problems. [7]The tax crime in question is an act that causes state losses (taxes/customs/excise/regional taxes) which are threatened with criminal penalties.[8] *source principle (location principle),* namely the imposition of tax based on the location or position of the tax object. Based on this principle, the country that is the location of the tax object has the right to collect tax from taxpayers. [9]Criminal acts in the field of taxation do not only involve taxpayers. [10]Criminal sanctions against perpetrators of tax crimes only use criminal sanctions in the form of imprisonment and detention. In order to maintain state revenue, the formulation of criminal fines against perpetrators of tax crimes by taxpayers becomes the main sanction (*premum remedium*), while imprisonment is formulated as an *ultimum sanction remedium* (ultimate weapon).[11]

Criminal sanctions as negative sanctions are considered as the only strategic means to resolve all forms of non-compliance with legislation. This is not an important issue if the criminal formulation is in accordance with the principles of the criminal system, but it will be a serious problem if the deviation of the criminal system of a Law is made at the stage of its formulation not following the " rules " that should be in the provisions of criminal law. [12]Efforts to combat crime are conceptualized in criminal policies and their derivatives known as criminal law policies . Criminal [13]law with harsh sanctions is said to have a *subsidiary function.* This means that if other legal functions are lacking, then criminal law is used. It is often said that criminal law is *the ultimum. Remedy* or *last resort* .[14] Criminal law should not be placed as the first instrument (*primum) remedium*) to regulate the life of society, but rather as a final instrument (*ultimum) remedium*) to control individual behavior in community life.[15]

In resolving criminal problems, there is a term known as Penal policy (*penal policy*) which can be interpreted as a rational effort to combat crime by using criminal law. [16]Penal policy is part of the crime prevention policy (*criminal policy*), in addition to non-penal policies (*non-penal policy*). Crime prevention policy is a rational organization of crime prevention by society [17]or a rational effort by society to prevent crime.[18]

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[5] Sirande , E., Mirzana , HA, & Muin, AM (2021). Realizing Law Enforcement Through Restorative Justice . *Journal of Law and Notary* , *5* (4), p. 5702

[6]Nurchalis, N. (2018). The Effectiveness of Criminal Sanctions in the General Provisions of Taxation Law in Combating Corporate Tax Avoidance/The Effectiveness Of Criminal Sanctions On The General Provisions Of Taxation In Addressing Corporation Tax Evasion . *Journal of Law and Justice* , *7* (1), 23-44.

[7]Azisa, N., Mirzana , HA, Rivanie , SS, Munandar, MA, & Ramli, RNH (2024). The Criminalization System for Narcotics Crimes in the Perspective of National Criminal Law. *UNES Law Review* , *6* (3), p. 9019

[8] Bustamar Ayza , *Indonesian Tax Law* 2017, Jakarta: Prenasamedia Group, p.212.

[9]Budiana, U., & Saidi, MD (2020). Effectiveness of Tax Law Enforcement for Hotel Taxpayers. *Al-Azhar Islamic Law Review* , p. 60.

[10]Virginia, EF, & Soponyono , E. (2021). Renewal of Criminal Law Policy in Efforts to Combat Tax Crimes. *Journal of Indonesian Legal Development* , *3* (3), p. 300

[11]Ruben Achmad, Journal: Criminal Law Aspects in Tax Crimes, 2016. P.1

[12]Tri Wibowo, *Effectiveness of Criminal Tax Sanctions in Law Number 28 of 2007 concerning General Provisions and Tax Procedures* , Jurnal Dinamika Hukum, Vol. 9 No. 3 September 2009, p. 209.

[13]Zarkasi, M.F., Azisa, N., & Haeranah , H. (2022). Implications of Renewal System of Criminal Justice Based on the Principles of Restorative Justice on The Role of Probation and Words Officer . *Khazanah Hukum* , *4* (1), p. 30

[14]Nur Ainiyah Rahmawati, *Indonesian Criminal Law: Ultimum Remedium or Primum Remedium ,* Recidive Law Journal Vol. 2 No. 1 January-April 2013, p. 40.

[15]Salman Luthan , 2014, *Criminalization Policy in the Financial Sector* , Faculty of Law, Islamic University of Indonesia Press , Yogyakarta, p. 9.

[16]Barda Nawawi Arief, 1996, *Anthology of Criminal Law Policy* , Citra Aditya Bhakti, Bandung, p. 29.

[17] Mark Ancel , 1965, *Social Defense* , Routledge and Kegan Paul, London, p. 209.

[18]Sudarto, 1987, *Criminal Law and Development Society* , Sinar Baru, Bandung, p. 38.

The term pre- prosecution cannot be found in Article 1 of the Criminal Procedure Code which contains authentic interpretations, namely interpretations made by the legislators themselves. The term pre- prosecution will later be found in the Article that regulates the authority of the Public Prosecutor, namely in Article 14 letter b of the HAP Law, that one of the authorities of the Public Prosecutor is to conduct a pre- prosecution if there are deficiencies in the investigation by paying attention to the provisions of Article 110 paragraph (3) and paragraph (4), by providing instructions in order to improve the investigation by the investigator. [19]Then in the process or stage of the investigation or pre- prosecution, the KUP Law apparently opens up opportunities for negotiation or agreement so that the case can be resolved without the need for a trial process. The concept of resolving criminal cases through negotiation and an admission of guilt is also known as the term *Plea Bargaining* .

If we look closely, it turns out the concept of *plea bargaining* This appears to be implied and is also included in the requirements stipulated in Article 44 paragraph (1) and paragraph (2) of the KUP Law. Then, Article 44B paragraph (1) of the KUP Law stipulates that "For the interests of state revenue, at the request of the Minister of Finance, the Attorney General Agung can stop the investigation of criminal acts in the field of taxation within a maximum period of 6 (six) months from the date of the request letter". Meanwhile, Article 44 paragraph (2) of the KUP Law states that "The termination of the investigation of criminal acts in the field of taxation as referred to in paragraph (1)) is only carried out after the Taxpayer has paid off the tax debt that was not or underpaid or that should not have been returned and is supplemented with an administrative sanction in the form of a fine of 4 (four) times the amount of tax that was not or underpaid, or that should not have been returned". That in addition to the required for termination of investigation as regulated in Article 44B paragraph (2) above , Taxpayers are also required to admit their mistakes, so that the investigation process does not continue to the prosecution stage. Then, if we refer to the HPP Law, there has been an expansion in terms of settlement of losses in state revenues up to the trial stage as regulated in Article 44B.

Basically *plea gain* is a negotiation process offered by the Public Prosecutor or suspect/defendant to consciously admit guilt. This confession is followed by agreements, for example to fulfill the return of criminal assets, asset recovery, payment of fines or other agreements. Settlement of criminal cases with the *plea method bargaining* This is usually applied in the legal system in the United States. It involves regulating taxpayer rights and updating criminal sanctions, thus aligning with the broader sociological perspective of law enforcement in taxation.[20]

In the United States criminal procedure law which *adheres to the common law law system* , *plea concept bargaining* This has been known and applies in criminal cases. In cases between the Public Prosecutor (Prosecutor or *Public The prosecutor* and the accused or his/her defense attorney (*defendant*) have negotiated regarding the type of crime accused and the legal threat that will be demanded in court later, with the bargaining hanging on the perpetrator's confession of the crime, then the prosecution process is stopped.[21]

Please Bargaining System is widely defined as a statement of guilt from a suspect or defendant. *Plea Bargaining* widely adopted in countries that adopt the *Common Law legal system* . *Plea Bargaining* which was developed in the " *common law " legal system This law* has inspired the emergence of "mediation" in judicial practice based on criminal law in the Netherlands and France, known as " *transactie "*. but rather on the issue of the usefulness of the legal system to be imitated and the needs of the country that will receive it,[22] *Please Bargaining* categorized as an out-of-court settlement effort

[19]Angela A Supit, 2016, *Pre-prosecution in the Criminal Procedure Code and the influence of the enactment of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia* , Jurnal Hukum, Lex Crimen Vol. 5 No.1/January 2016, p. 99.

[20] Bolifaar , A.H. (2022). Access to Justice of Please Bargaining in Addressing the Challenge of Tax Crime in Indonesia. *Scientium Law Review (SLR)* , *1* (1), 1-12.

[21]Ketut Sumedana , 2020, *Penal Mediation in a Justice System Based on Pancasila Values* , Genta Publishing , Yogyakarta, p. 99.

[22] Ruchoyah . (2018). *Legal Problem Solving Accumulation Case Criminal Law in Indonesia Through Adoption The Concept of Plea Bargaining to Realize Justice Effective and Efficient Criminal Procedure* . Legal Spirit Journal . *2 (20* pp 10

and its use is also based on certain reasons. [23]Then related to the element of error, in criminal law the most fundamental principle is known, namely the Principle of "No Crime Without Error" which is known as " *keine strife oh " schuld "* or *" geen straf zonder schuld "* or *" nulla Poena sin mistake*

Talking about the aspect of legal certainty, it will cover three interrelated things, namely regulations, implementation, and the judicial process/enforcement of the regulations. Often the regulations and their implementation that aim to simplify the technical difficulties that arise in the law from time to time are not articulated clearly enough. This will actually add to the problems compared to the intended benefits. So it is important to identify and articulate, in the context of taxation, implementing regulations that allow the law to work more effectively while still providing the certainty needed by Taxpayers.[24]

Some problems in the application of plea bargaining in resolving tax crime cases in Indonesia, among others; **First** , considering the concept of *plea gain* should apply to the United States legal system (*common law) law*), while in Indonesia which adheres to the continental European legal system (*civil law*) does not regulate this matter explicitly and clearly, including in the KUP Law, HPP Law and HAP Law, but in reality in tax crimes in Indonesia, *Plea Bargaining* or the settlement of criminal cases through negotiation is accommodated or adopted in the provisions of Article 44B as an alternative form of settlement of tax crime cases. **Second** , the problem *of plea bargaining* In the KUP Law, the Attorney General's Law and the HAP Law, the limits of settlement are not yet clearly outlined, who should play a role or have the authority in implementing *the plea. bargaining* , whether the investigator alone or together with the Public Prosecutor as the case controller (*Dominus Litis)* considering that the Attorney General can stop the investigation based on the provisions of Article 44B of the KUP Law, besides that, it is also based on the principle *of dominus litis* , the responsibility for a case lies on the shoulders of the Public Prosecutor. Previously, it should be known and understood that the Indonesian Attorney General's Office as a law enforcement institution has the function of controlling the case handling process (*dominus litis*), namely the Prosecutor is the Public Prosecutor who has the authority to determine whether a case is worthy or not to be submitted to the prosecution stage or the prosecution must be stopped, and is also free to determine or apply which criminal regulations will be charged and which will not, in accordance with the conscience and professionalism of the Prosecutor himself.[25]

Third, If it turns out that the case has been declared complete both formally and materially and then a P-21 is issued by the Public Prosecutor, is the *plea attempt possible? bargaining* It is still possible for the Public Prosecutor to consider that the case has not been referred to the Court or is still legally considered to be in the investigation process.[26] **Fourth,** regarding the error or admission of error from the taxpayer as one of the grounds or conditions for the Minister of Finance to submit a request for Termination of Investigation to the Attorney General, is the application of *the plea bargaining* accompanied by an acknowledgement of the error does not conflict with the principle of *green straf zonder schuld (no punishment without fault)* and *the principle of presumption Of Innocent (* presumption of innocence *),* whether the admission of guilt is included in the category of a reason for forgiveness, or a reason for the elimination of a criminal act, in the provisions of Article 8 of Law Number 4 of 2004 concerning Judicial Power (UU KK), then we will find a clear contradiction, where the Article reads: " *everyone who is detained, suspected, arrested, charged, and/or brought before a court must be considered innocent before there is a court decision stating his guilt and has obtained permanent legal force* ". **Fifth** , whether the application of the *plea concept bargaining* In tax crime cases, it can provide or create a sense of justice for Taxpayers in accordance with the spirit and soul of Pancasila, especially in the 5th principle and whether the concept of *plea bargaining* This actually confirms that the concept is in fact in harmony and in line with Pancasila as the source of all sources of law, especially in the fourth principle which is based on the principle of deliberation and consensus (*negotiated). and agreed*), which is fundamentally different in its application when compared to the

[23]Nella Octaviany Siregar, 2019, *Plea Bargaining in the Criminal Justice System in Several Countries* , Jurnal Wajah Hukum, Vol. 3, No.1/2019, p. 2.
[24]Widi Widodo, Dedy Djefris , 2008, *Tax Payer's Rights , What We Need to Know about Taxpayer Rights* , First Printing, Alfabeta , Bandung, p. 77.
[25]Bambang Waluyo, 2016, *Design of the Prosecutor's Function in Restorative Justice* , PT. Rajagrafindo Persada, Jakarta, p. 199.
[26]See the definition of Prosecution in the Criminal Procedure Code.

western view of conflict which is based on the ideology of " *the survival of the fittest* ". In addition, Pancasila is based on the principle of deliberation and consensus and has the ultimate goal (*ultimate goals*), namely peace for the parties and all (*peace and justice for all*) so as to prevent prolonged hostility or conflict between the disputing parties or between the perpetrator and victim of the crime.[27]

The basis of this research is several previous studies, namely with the title " *Plea Bargaining System* as a Sentencing Model in the Electronic Information and Transactions Law Based on Justice Values", by Rinto Wardana (2021). The study shows the examination of cases using preliminary hearings as a special route with a single judge for defendants who plead guilty and submit a sentence offer, especially for cases regulated in the Electronic Information and Transactions Law. Then, entitled " *Plea Bargaining* and *Deferred Prosecution Agreement* In Corruption Crimes" by Febby Mutiara Nelson (2019). The study shows the return of state financial losses through 2 (two) concepts, namely *Plea Bargaining* and *Deferred Prosecution Agreement* .

2. RESEARCH METHODS

This research is a normative legal research. This legal research uses several approaches, namely:

1. Legal approach (*statute approach*), the legislative approach is to find the ratio legislative and ontological basis for the birth of legislation or the birth of a policy.[28]
2. conceptual *(conceptual approach)* is a type of approach in legal research that provides an analytical perspective on problem solving.[29]

In this study, the deductive analysis method is used, namely the analysis method by analyzing the laws and regulations related to the formulation of the problem contained in this study. Then correlated with several legal principles and legal theories that are the basis or analytical tool in writing this research.

3. RESULTS AND DISCUSSION

3.1 Plea Regulations and Principles Bargaining

Please The Bargaining System is widely interpreted as a statement of guilt from a suspect or defendant in [30]*Anglo- Saxon* countries in the *Plea Practice. Bargaining* is done by making a statement of guilt or what is known as a Plea. Guilty which provides compensation in the form of a reduced sentence for the defendant who pleads guilty. Plea Bargaining is a process where the public prosecutor and the defendant in a criminal case negotiate a mutually beneficial settlement and then seek court approval. This usually includes the defendant admitting guilt in order to obtain reduced charges or to obtain some other benefit that would allow for a reduced sentence.[31]

Indonesia, which tends to adopt *a civil law ,* explicitly the concept of plea bargaining is not mentioned in any applicable laws and regulations in Indonesia. However, implicitly we can find similarities in the meaning of plea bargaining in the tax crime law and the tax harmonization law. The similarity stems from the meaning of what a plea is. bargaining which then clashed with Article 44B of the Tax Crimes Law and Article 44B of the Tax Harmonization Law .

Please Bargaining is defined as a process in which the public prosecutor and the defendant in a criminal case negotiate in a way that benefits both parties and then seeks court approval. This usually includes an admission of guilt from the defendant to obtain reduced charges or to obtain some other

[27]Romli Atmasasmita , 2018, *Reconstruction of the Principle of No Crime Without Fault, Geen Straf Zonder Schuld* , PT. Gramedia Pustaka Utama, 2nd printing, Jakarta, pp. 25-26.
[28] Peter Mahmud Marzuki. 2009. Legal Research. Jakarta. Kencana. p. 93
[29]Irwansyah, 2020. *Legal Research. Choice of Methods and Practices of Writing Articles* . Yogyakarta: Mirra Buana Media.. p. 153.
[30]Siregar, NO (2019). Plea Bargaining in the Criminal Justice System in Several Countries. *Faces of Law* , *3* (1), p. 1
[31]Rezky Abdi Fratama, *Special Lane (Pleas Bargaining) In Criminal Procedure Law,* Badamai Law Journal , Vol. 5, Issues 2, September 2020, p. 237. (See also: Hazel B. Kerper.2002.Introduction to the criminal Justice System. Second ed , (StPaul : West Publishing Company. Page 185)

benefits that make it possible to obtain reduced sentences.[32] Please Bargaining involves an agreement between the public prosecutor and the defendant or his legal counsel that results in the defendant admitting guilt. The public prosecutor agrees to give a lighter charge (to get a lighter sentence) rather than going through a trial mechanism that may be detrimental to the defendant because of the possibility of getting a heavier sentence.[33] Please Bargaining is defined as a negotiation process in which the public prosecutor offers the accused some leniency in order to obtain a guilty plea.[34]

The main reason for the public prosecutor to make a Plea Bargaining is caused by two things; First, because the caseload is very large, making it difficult for the public prosecutor to work effectively considering the time factor. Second, because the public prosecutor believes that the possibility of successful prosecution is very small due to lack of evidence or the defendant is a person who is considered " *respectable* " among the jury.[35]

Meaning of plea bargaining above, then we compare it with Article 44B of the Tax Crimes Law and Article 44B of the Tax Harmonization Law , which have similarities.

Article 44B of the Taxation Law

(1) In the interests of state revenue, at the request of the Minister of Finance, the Attorney General may stop the investigation of criminal acts in the taxation sector for a maximum period of 6 (six) months from the date of the request letter.

(2) Termination of investigations into criminal acts in the taxation sector as referred to in paragraph (1) shall only be carried out after the Taxpayer has paid off the tax debt which was not or underpaid or which should not have been returned and shall be supplemented with an administrative sanction in the form of a fine of 4 (four) times the amount of tax which was not or underpaid, or which should not have been returned.

Article 44B of the Tax Harmonization Law

(1) In the interests of state revenue, at the request of the Minister of Finance, the Attorney General may stop the investigation of criminal acts in the taxation sector for a maximum period of 6 (six) months from the date of the request letter.

(2) Termination of investigation into criminal acts in the taxation sector as referred to in paragraph (1) shall only be carried out after the Taxpayer or suspect has paid in full:

a. losses to state revenue as referred to in Article 38 plus administrative sanctions in the form of a fine of 1 (one) times the amount of the loss to state revenue;

b. losses to state revenue as referred to in Article 39 plus administrative sanctions in the form of a fine of 3 (three) times the amount of the loss to state revenue; or

c. the amount of tax in the tax invoice, proof of tax collection, proof of tax deduction, and/or proof of tax payment as referred to in Article 39A plus administrative sanctions in the form of a fine of 4 (four) times the amount of tax in the tax invoice, proof of tax collection, proof of tax deduction, and/or proof of tax payment.

(2a) In the event that a criminal case has been referred to the court, the defendant may still pay off:

a. losses to state revenue plus administrative sanctions as referred to in paragraph (2) letter a or letter b; or

[32]Hazel B. Karper. Introduction to the Criminal Justice System, second edition , (West Publishing Company, 1979), p. 185.

[33]F. Zimring and R. Frase. The Criminal Justice System (Little Brown Company, 1980), p. 498.

[34]Harvard Law Review , "The Unconstitutionality of Please Bargaining ", Vol. 83, 1970, p. 1389.

[35]Romli Atmasasmita . Criminal Justice System. Perspective of Existentialism and Abolitionism (Bandung: Binacipta , 1996), p. 112. "A defendant who is considered respectable will create a risky condition for the public prosecutor if he has to face the defendant in front of a jury, because it is very likely that the jury will say that The defendant is not guilty because of the jury's subjectivity regarding the defendant's figure"

b. the amount of tax in the tax invoice, proof of tax collection, proof of tax deduction, and/or proof of tax payment plus administrative sanctions as referred to in paragraph (2) letter c.

(2b) Payment as referred to in paragraph (2a) shall be taken into consideration for prosecution without being accompanied by the imposition of a prison sentence.

(2c) In the event that the payment made by the Taxpayer, suspect or defendant at the investigation stage up to the trial does not meet the amount as referred to in paragraph (2), the payment may be calculated as payment of the criminal fine imposed on the defendant.

In the *Collins English dictionary explanation Dictionary and Thesaurus* mediation is an activity that bridges between two disputing parties in order to produce an agreement . In [36]relation to the urgency of adding *a plea bargaining* In the criminal justice system in Indonesia, it is an effort to reform criminal law which aims to realize the principles of justice, namely simple, fast and low cost. [37]In each legal principle there are ideals which are expected to be fulfilled in resolving concrete events . [38]The principle of accelerating, simplifying and saving costs in Criminal justice is expressly stated in Article 2 paragraph (4) of the Judicial Power Law , which states that trials are carried out simply, quickly and at low cost. [39]It can be concluded that the regulation of pleas Bargaining in the laws and regulations in force in Indonesia has not been explicitly mentioned, however in several criminal law practices, it has been carried out on the basis of the existence of rules which in substance and implicitly have the same meaning as a plea. bargaining .

These three principles aim to realize; First, the principle of simplicity means that the examination and resolution of cases must be attempted in an efficient and effective manner; Second, the principle of speed is related to the resolution time which is not prolonged, which is also known as the adage of *justice. delayed justice danied* which means that a slow trial process will not provide justice to the parties; Third, the principle of low costs means that court costs can be afforded by the community.[40]

Indeed, if viewed historically, the use of the concept of plea Bargaining in the early 19th century was a solution to the ineffectiveness of the criminal justice system at that time because of the large number of cases that resulted in a long time to complete a case. [41]In addition to the increasing burden of cases in court which was the background for adding plea bargaining in the criminal justice system in Indonesia, another thing that is no less important is related to the increasing number and types of diverse cases. Various acts that were initially only business matters and regulated in civil law have been transformed into criminal acts so that the massive increase in the burden of cases cannot be avoided.[42]

This was also revealed in Anugerah Rizki Akbari's research that Indonesian legislation from 1998 to 2014 criminalized 716 acts that were previously not prohibited by law and became prohibited by law, where of the 1,608 criminal acts, 885 of them were previously existing criminal acts, while the remaining 716 were new criminal acts contained in 112 new or revised [43]laws .

The practice of plea bargaining, although rooted in the common law system, has inspired adaptations in various legal systems, including Indonesia, where it is being integrated into the criminal justice

[36]Rahmah, DM (2019). Optimizing dispute resolution through mediation in court. *Jurnal Bina Mulia Hukum* , *4* (1), p. 3

[37]Maramis, J. (2022). Addition of Plea Bargaining in the Criminal Justice System in Indonesia. *Lex Administration* , *10* (5).

[38] Widowati . (July , 2021). *Obstacles in the Implementation of the Principles of Simple , Fast and Low Cost* . Yustitiabelen Law Journal . 7(1) p. 99

[39]Bagaskoro, LR (2021). Reconceptualization of Special Paths in the Draft Criminal Procedure Code as a Form of Reform of the Indonesian Criminal Justice System. *Legal Arena* , *14* (1), 190-206.

[40]See Explanation of Article 2 paragraph (4) of Law Number 48 of 2009 concerning Judicial Power

[41]Joko Sriwondo , (2020). Development of the Criminal Justice System in Indonesia. Yogyakarta: Kepel Press . P. 91

[42]Febby Mutiara Nelson, Plea Bargaining & Deferred Prosecution Agreement in Corruption Crimes, (Jakarta, Sinar Grafika, First Edition, 2020)., p. 320

[43]Choky Ramadhan, Introduction to Economic Analysis in Criminal Policy in Indonesia, (Jakarta, Institute for Criminal Justice Reform (ICJR)., p. 14

framework as a non- litigation settlement method . [44]Referring to Romli Atmasasmita's opinion that the main reason for the public prosecutor to make a plea bargain is Bargaining is caused by two things: First, because the number of cases is very large, so that it can complicate the position of the public prosecutor who cannot work effectively considering the time factor. Second, because the public prosecutor believes that the possibility of success of the prosecution is very small. In general, this second thing is due to a lack of evidence, a lack of reliable witnesses, or the accused is someone who is considered " *respectable* " among the jurors.[45] Likewise with Mardjono's opinion Reksodiputro explained that the background to the public prosecutor implementing the plea bargaining in a case, namely:[46]

1) The public prosecutor felt that the evidence was not strong enough;
2) the problem of witnesses that the public prosecutor felt were not convincing enough;
3) the possibility of diversion (*pretrial diversion*).

The principle of fast, simple and low-cost justice can essentially coexist with pleas. bargaining in the settlement of tax crime cases. This is intended so that a sense of justice, benefit, and legal certainty can be enjoyed by taxpayers in their position as suspects or defendants. The presence of please Bargaining aims to provide convenience in implementing the principles of fast, simple and low-cost justice.

3.3 Refund of State Revenue Losses

state losses have occurred if the elements of state losses have been fulfilled. Based on Law Number 1 of 2004, State Losses have occurred if there is a perpetrator/person responsible for the loss, namely a treasurer, a civil servant who is not a treasurer/other official who has committed an unlawful act either intentionally or negligently which results in a shortage of money, securities, and goods in a real and definite amount and the unlawful act he committed has a causal relationship with the loss that occurred.

Based on the constitution and laws, the institution that determines state losses is the authority of the Audit Board of Indonesia (BPK). As stated in Article 23E to Article 23G of the 1945 Constitution and Law Number 15 of 2006 concerning the Audit Board of Indonesia (hereinafter referred to as the BPK Law). [47]Article 10 paragraph 1 and paragraph 2 of the BPK Law states that the BPK has the authority to assess and/or determine the amount of state losses caused by unlawful acts intentionally or negligently, which are determined through a BPK decision. This means, according to Pradnyana and Parsa , the authority held by the BPK in carrying out its duties to assess and/or determine the amount of state losses is an attributive authority obtained from the 1945 Constitution and the BPK Law which is also an independent institution that is not included in the branch of power .[48]

In addition to the BPK, an institution that also assesses and/or determines (audits) the amount of state losses in criminal acts of corruption (unlawful acts) is the Financial and Development Supervisory Agency (BPKP), whose authority comes from Government Regulation Number 60 of 2008 concerning the Government Internal Control System. BPKP's duties as an internal supervisor who is responsible for state finances and the regulation of its authority are regulated in Presidential Regulation No. 20 of 2023 concerning Amendments to Presidential Regulation Number 192 of 2014 concerning the Financial and Development Supervisory Agency (hereinafter referred to as the BPKP Presidential Regulation).[49]

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[44]Almi, AA (2023). Plea Bargaining System as a Non- Litigation Settlement Within The Framework of Repositioning Criminal Justice In Indonesia. *Andalas Law Journal* , *8* (1), 18-28.
[45]Romli Atmasasmita , Contemporary Criminal Justice System, (Jakarta, Kencana, Second Printing 2011)., pp. 125-126
[46]Joko Sriwidodo , *Op.CIt .,* p. 87
[47]Edy Suranta, et al. (2023). "The Existence of Prosecutor's Authority in Determining Elements of State Financial Losses as Evidence in Corruption Cases". Locus Journal of Academy Literature Review , Vol. 2, no. 2. Pg. 184
[48]Pradnyana IMF, & Parsa IW (2021). "The Authority of BPK and BPKP *in* Determining State Financial Losses in Corruption Cases". Udayana *Master* Law Journal , Vol. 10 No. 2. pp. 344-356
[49]Edy Suranta, et al. (2023). *Op.CIt .,* p. 184

Then, it was linked to a plea bargaining as the author has explained previously that Plea Bargaining is defined as a process in which the public prosecutor and the defendant in a criminal case conduct negotiations that benefit both parties and then seek court approval. Usually this includes an admission of guilt from the defendant to obtain a reduced sentence or to obtain some other benefits that make it possible to obtain a verdict. leniency.[50]

3.3 Please Bargaining by the Prosecutor's Office as Dominus Litis In Settlement Of Tax Crime Cases

Dominion litis is a prosecutor (representing the state), the prosecutor may prosecute only one feit (action) even though the defendant committed more than one feit (action), but that one really happened and was truly proven with sufficient evidence. [51]The subject being considered is a criminal case. One of the basic rights given to a person is a guarantee of legal certainty in connection with the ongoing process of the case they are handling. [52]This means that the judge in deciding the case as intended by Prof. Dr. Lotuloung is "free from the influence of the executive or all other state powers and freedom from coercion, directives or recommendations coming from *extrajudicial* parties , except in cases permitted by law. [53]The judge can question the truth of the defendant's confession whether it was given voluntarily or under duress.[54]

Ultimate Remedium as a last resort, Ultimum Remedium is a legal term that is commonly used and is interpreted as the application of criminal sanctions which are the final (last) sanctions in law enforcement. [55]Then Wirjono Prodjodikoro said that norms or rules in the field of constitutional law and state administrative law must first be responded to with administrative sanctions, likewise norms in the field of civil law must first be responded to with civil sanctions. Only if these administrative sanctions and civil sanctions are not sufficient to achieve the goal of straightening the social balance, then criminal sanctions are also imposed as the last (ultimate) or ultimum remedium . [56]At this point we can judge that ultimum Remedium is a type of criminal sanction whose implementation is carried out at the end (last resort).

In tax crimes, ultimum remedium is the most important principle applied in tax law in Indonesia. This means that the application of criminal sanctions in tax crimes is the last weapon if administrative efforts are unsuccessful. In fact, the application of ultimum remedium in tax crimes is also applied in countries around the world. Abdul Basir in his research[57]

Furthermore, if it is associated with the concept of *Plea bargaining* , this is where the public prosecutor can play his role by negotiating with the defendant of a tax crime so that he is willing to pay off his debt and/or tax fines with the lure of the public prosecutor reducing his demands, so that the judge can decide more lightly. Settlement of criminal cases in the tax sector, the handling of these cases is not through the tax court but through the courts in the general court environment.[58] *Please The Bargaining System* requires a procedural exchange of dialogue between the prosecutor and the defendant or their legal representative. [59]The public prosecutor with his negotiating ability can ask the defendant to pay his tax debt and/or tax fines in order to maximize the return of lost state

[50]Hazel B. Karper. Introduction to the Criminal Justice System, second edition , (West Publishing Company, 1979), p. 185.

[51]Jan S, Maringka, Prosecutorial Reform in the National Legal System (Jakarta: Sinar Grafika, 2017), p. 28

[52] Ruchoyah . (2020). Urgency of Plea Bargaining System in Reform System Justice Criminal Procedure in Indonesia: A Comparative Study of the Plea Bargaining System in the United States. *Ius Quia Iustum Law Journal* , *27* (2), 389.

[53]Rolando Ritonga, *Manifestation of the Prosecutor's Authority in the Implementation of Peace Fines in Economic Crimes to Change the Social Order of Society,* The Prosecutor Law Review , Vol. 1, No. 2, August 2023, p. 28

[54] Ziyad. (March, 2018). *The Concept of Plea Bargaining Against Perpetrator Action Criminal Corruption that is detrimental State Finance* . Journal Badamai Law. 3(1) p. 92

[55]Lani Dharmasetya , 2024, *Tax Crimes,* Central Java: Eureka Media Aksara, p. 60

[56] *Ibid.*

[57]Abdul Basir, 2021, *Ultimate Remedy in Tax Crimes of Corporate Taxpayers and Efforts to Recover State Losses in State Revenue,* Law Study Program, Jayabaya University , Jakarta, p. 143

[58] Howan , S. (2017). Legal Study of Criminal Acts in the Field of Taxation Based on the Provisions of Taxation Legislation . LEX *PRIVATUM* , *5* (8). Pg. 127

[59]Gemilang, HF, & Agustanti , RD (2023). Use of Plea Bargaining in the Criminal Justice System: Balancing Efficiency and Fairness. *Journal of Legal Interpretation* , *4* (3), p. 424

finances. Likewise, the defendant and/or his legal advisor , with his negotiating ability, can ask for his demands to be truly reduced, so that the judge's decision can be lighter, it could even be that the judge's decision is only a formality. If referring to Article 44B paragraph (2b) *in conjunction with* Article 14a-f of the Criminal Code states that the judge may not impose a prison sentence on the defendant but may only impose a suspended sentence.

The termination of the investigation by the public prosecutor is closely related to his duties and authority within the framework of the Dominus principle. Litis . As *a center of gravity ,* prosecutors adhere to the principle of dominus litis which states that the Public Prosecutor is obliged to ensure the achievement of the legal objectives, namely justice, certainty and usefulness by referring criminal cases to the courts.[60] Dominion litis , which translates to "prosecutor" or "case manager", is one of the principles used in the prosecution stage. That is, the prosecutor determines whether a case can be brought to trial in the criminal justice system. [61]As a result, the judge cannot ask that he be charged with a crime; instead, he simply waits for the prosecution from the public prosecutor.[62]

As regulated in Article 140 paragraph (2) of the Criminal Code , continuation of the dominus principle The article regulates the prosecutor's authority to stop prosecution. According to the article, there are three reasons for stopping prosecution:

1) There is insufficient evidence;
2) The incident turned out not to be a criminal act; or
3) The case is closed or resolved by law.

Through the principle of dominus The litis mentioned in Article 140 paragraph (2) of the Criminal Code is linked to Article 44B paragraph (2) of the Law on General Provisions and Tax Procedures, the public prosecutor can stop the prosecution of the perpetrator of a tax crime, on the grounds that the perpetrator has fulfilled the requirements mentioned in Article 44B paragraph (2) of the Law on General Provisions and Tax Procedures. This means that the criminal tax case has been resolved by law.

The requirements that must be met by the taxpayer and by law enforcement will be the basis for the implementation of negotiations (*plea) bargaining*). For that, the requirements of both must be met. From Article 8 paragraph (3) of the General Provisions and Tax Procedures Law and Article 44B of the HPP Law, the mechanism begins when the taxpayer is suspected of committing a tax crime, then an examination of the initial evidence will be carried out. At this stage, the taxpayer can apply Article 8 paragraph (3) of the General Provisions and Tax Procedures Law , namely disclosure of the truth. The taxpayer must explain the disclosure clearly, clearly and honestly. After this stage, the taxpayer can submit an application to return the state revenue loss. The application must be followed up by depositing the return of state losses by obtaining proof of deposit of the return of state revenue losses from the Director General of Taxes or an authorized official representing him. After receiving proof of deposit of the return of state revenue losses, it means that the taxpayer as the suspect has the right to submit an application to the Minister of Finance of the Republic of Indonesia . The application submitted is in the form of termination of the investigation of the tax crime case that he is suspected of.

After the results of the investigation are received by the Attorney General of the Republic of Indonesia, the public prosecutor appointed to carry out the prosecution, first examines the results of the investigation whether they are perfect or not. When it is proven that the taxpayer as a suspect has made a deposit of the return of state revenue losses, it means that the Minister of Finance of the Republic of Indonesia is obliged to ask the Attorney General of the Republic of Indonesia to stop the investigation. When the position has changed from a taxpayer as a suspect to a taxpayer as a defendant, he still has the right to return the state revenue losses.

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[60] Marjudin Djafar, Tofik Yanuar Chandra, and Hedwig Adianto Mau, "The Authority of the Public Prosecutor as Dominus Litis In Termination of Prosecution Based on Restorative Justice ," SALAM: Jurnal Sosial dan Budaya Syar-i 9, no. 4 (2022), p. 1076

[61]Tiar Adi Riyanto, "Functionalization of the Dominus Principle Litis in Criminal Law Enforcement in Indonesia," Le Renaissan 6, no. 3 (July 2021), p. 484

[62]Andi Hamzah, Indonesian Criminal Procedure Law (Revised Edition) (Jakarta: Sinar Grafika, 2004), p. 16

The role of the Public Prosecutor in implementing the *Plea mechanism Bargaining* very important because the actors who have legal standing in the implementation of this system are only the public prosecutor and the defendant or his legal [63]advisor . In essence, the plea mechanism bargaining can only be applied before a tax crime case is decided by a competent judicial institution. In other words, before there is a court decision that tries a tax crime case, it means that the plea Bargaining can still be done

4. CONCLUSION

The nature of plea Bargaining in resolving tax crime cases is a negotiation process between the public prosecutor and the defendant (alleged perpetrator) in which the defendant agrees to reveal the truth about his criminal act, Plea bargaining required by the Public Prosecutor as Dominus Litis in the settlement of tax crime cases as part of his authority in the field of prosecution to seek negotiation (agreement) in the settlement of tax crime cases. At the pre-prosecution and prosecution stages, opening up space for negotiation for the settlement of tax crimes, the taxpayer is willing to express the truth about his criminal act, paying off tax debts and/or accompanied by tax fines, while the public prosecutor seeks a lighter sentence

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