

Borobudur Law and Society Journal
ISSN: 2809-9664
Vol. 5 No. 1 (2026)
pp: 79-96
DOI: https://doi.org/10.31603/18099

Plea Bargaining and the Efficiency of Indonesia's Criminal Justice System: The Admission of Guilt under Law No 20 of 2025 and the Limits of Efficiency

Ratu Syifa Maharani Sandjayaputri[1*], Alya Nurul Zahra[2], Evan Praditya[3], Sindi Sulistiawati[4], Aby Maulana[5]

[1] Faculty of Law, Universitas Muhammadiyah Jakarta, Jakarta, Indonesia
[2] Faculty of Law, Universitas Muhammadiyah Jakarta, Jakarta, Indonesia
[3] Faculty of Law, Universitas Muhammadiyah Jakarta, Jakarta, Indonesia
[4] Faculty of Law, Universitas Muhammadiyah Jakarta, Jakarta, Indonesia
[5] Faculty of Law, Universitas Muhammadiyah Jakarta, Jakarta, Indonesia
[*]Corresponding author email: queenzaainsley@gmail.com

Abstract

Plea bargaining is promoted as a remedy for slow, costly and congested criminal courts, and Indonesia now has its own version: Law No 20 of 2025 on Criminal Procedure, in force since 2 January 2026, introduces the admission of guilt (pengakuan bersalah) through three routes. This normative study asks what efficiency this mechanism can deliver, what it costs in due process, and whether it suits corruption cases. It combines statutory, conceptual and comparative approaches, drawing on the new Code, the former Code, the Corruption Law, international fair-trial standards, United States authority, and Indonesian scholarship and early reports on the new provisions. The analysis shows that the mechanism is closer to a judge-supervised summary procedure than to American plea bargaining, yet it still contains a written agreement on the sentence to be requested, and it brings the familiar risks of prosecutorial dominance, pressure to plead, unequal access to restitution and weak transparency. The efficiency claim is plausible but unproven in Indonesia, because no data on time, cost or caseload have been published. Corruption is not excluded by offence type, only by penalty ceiling, which makes prosecutorial guidelines, disclosure of agreements, judicial scrutiny of the factual basis and monitoring necessary. Efficiency is a legitimate aim only as an instrument subordinate to due process.

Keywords

Efficiency; Plea; Prosecutors; Voluntariness; Corruption; Restitution

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Introduction

Criminal justice systems everywhere face a familiar pressure: more cases than courts, prosecutors and prisons can handle with full procedure. Plea bargaining, in which the defendant admits guilt in exchange for a concession from the prosecutor, is the best-known response. In the United States it grew into the normal way of disposing of criminal cases,[1] and it has since been adapted, with changes, in civil law systems.[2] Its attraction is efficiency: a plea removes the contested hearing, with its witnesses, evidence and argument, and releases court time and public money. Its cost is that the trial, which the law treats as the place where the state must prove guilt, is replaced by a transaction in which the outcome is shaped by the prosecutor's charging power and the defendant's fear of a heavier sentence.[3]

Indonesia entered this debate late and in two stages. Under the Code of Criminal Procedure of 1981 (Law No 8 of 1981) there was no plea bargaining, and the court's task was to establish material truth; the defendant's statement was one means of evidence among others and did not end the trial.[4] For years the draft Code of Criminal Procedure proposed a "special track" (*jalur khusus*) for defendants who admit the charges, and Indonesian scholars debated its resemblance to American plea bargaining.[5][6] That debate ended with the enactment of Law No 20 of 2025 on Criminal Procedure, which has applied since 2 January 2026 together with Law No 1 of 2023 on the Criminal Code.[7][8] The new Code defines the admission of guilt (*pengakuan bersalah*) as a mechanism in which the defendant voluntarily admits guilt and cooperates, and it provides for it in three places, arts 78, 205 and 234.[9][10] Courts

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[1] Albert W Alschuler, "Plea Bargaining and Its History" (1979) 79 *Columbia Law Review*.

[2] Máximo Langer, "From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure" (2004) 45:1 *Harvard International Law Journal* 1.

[3] Malcolm M Feeley, *The Process Is the Punishment: Handling Cases in a Lower Criminal Court* (New York: Russell Sage Foundation, 1979).

[4] Law No 8 of 1981 on Criminal Procedure (Indonesia).

[5] Aby Maulana, "Konsep Pengakuan Bersalah Terdakwa pada "Jalur Khusus" Menurut RUU KUHAP dan Perbandingannya dengan Praktek Plea Bargaining di Beberapa Negara [The Concept of the Defendant's Admission of Guilt in the "Special Track" under the Draft Criminal Procedure Code and Its Comparison with Plea Bargaining Practice in Several Countries]" (2015) 3:1 *Jurnal Cita Hukum*, DOI: <10.15408/jch.v2i1.1840>.

[6] Ruchoyah, "Urgensi Plea Bargaining System dalam Pembaruan Sistem Peradilan Pidana di Indonesia: Studi Perbandingan Plea Bargaining System di Amerika Serikat [The Urgency of the Plea Bargaining System in Reforming Indonesia's Criminal Justice System: A Comparative Study of the United States Plea Bargaining System]" (2020) 27:2 *Jurnal Hukum Ius Quia Iustum* 388, DOI: <10.20885/iustum.vol27.iss2.art9>.

[7] Law No 20 of 2025 on Criminal Procedure (Indonesia).

[8] Law No 1 of 2023 on the Criminal Code (Indonesia).

[9] Ady Thea DA, "Plea Bargain KUHAP Baru, Efisiensi Proses Pidana atau Celah Transaksi? [Plea Bargain under the New Code of Criminal Procedure: Procedural Efficiency or an Opening for Transactions?]" (7 January 2026), online: *Hukumonline* <https://www.hukumonline.com/berita/a/plea-bargain-kuhap-baru--efisiensi-proses-pidana-atau-celah-transaksi-lt695de0df70936>.

[10] Raja Bonar Wansi Siregar, "Menelusuri Tiga Pintu Masuk Plea Bargain dalam KUHAP Baru [Tracing the Three Entry Points of Plea Bargain in the New Code of Criminal Procedure]" (28 January 2026), online: *Dandapala* <https://dandapala.com/opini/detail/menelusuri-tiga-pintu-masuk-plea-bargain-dalam-kuhap-baru>.

began to apply the provisions within weeks of their entry into force.[11] The question is no longer whether Indonesia should adopt plea bargaining but how the new mechanism should work and what it will do to criminal justice.

Earlier Indonesian studies mostly argued, before the Code was enacted, for or against the idea. Maulana presented the special track as an adaptation of United States practice that could make case handling more efficient and reduce backlogs, and Ruchoyah argued the philosophical, juridical, sociological and political urgency of adopting plea bargaining in criminal justice reform;[12][13] Hermawati compared it with American plea bargaining and stressed that the Indonesian admission is made before the judge and does not involve bargaining over charges;[14] Wahyudhi and colleagues connected it to the principle of fast, simple and low-cost justice;[15] and Haeranah and colleagues examined the present use of plea bargaining in Indonesia and the framework needed for a future one.[16] Comparative and critical scholarship, by contrast, has long warned that the efficiency obtained through pleas is purchased with diminished adjudication and unequal bargaining power.[17][18] Two gaps remain. First, most Indonesian work predates Law No 20 of 2025 and analyses a draft; the enacted text and the first reports on its use have not been examined against due-process standards. Second, the link with corruption cases, where the public interest and the recovery of state losses are involved, has received little attention, although commentators have already asked whether the new provisions apply to corruption.[19]

This article addresses three questions: (1) how does the admission of guilt in Law No 20 of 2025 differ from plea bargaining in common law systems; (2) what efficiency can the mechanism be expected to deliver, and what risks to fair trial, equality before the law and the presumption of innocence does it carry; and (3) how

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[11] "Plea Bargain Diterima, PN Jepara Alihkan Pemeriksaan Perkara Jadi Acara Singkat [Plea Bargain Accepted, Jepara District Court Transfers Examination to the Short Procedure]" (7 February 2026), online: *Dandapala* <https://dandapala.com/article/detail/plea-bargain-diterima-pn-jepara-alihkan-pemeriksaan-perkara-jadi-acara-singkat>.

[12] Maulana, *supra* note 5.

[13] Ruchoyah, *supra* note 6.

[14] Rifi Hermawati, "Studi Perbandingan Hukum "Plea Bargaining System" di Amerika Serikat dengan "Jalur Khusus" di Indonesia [A Comparative Legal Study of the Plea Bargaining System in the United States and the "Special Track" in Indonesia]" (2023) 4:1 *Rewang Rencang: Jurnal Hukum Lex Generalis*.

[15] Dheny Wahyudhi et al, "Prinsip Plea Bargaining dalam Penyelesaian Perkara Pidana Secara Cepat, Sederhana dan Biaya Ringan dalam Pembaharuan Hukum Acara Pidana [The Principle of Plea Bargaining in Resolving Criminal Cases in a Fast, Simple and Low-Cost Manner in the Reform of Criminal Procedure]" (2022) 6:2 *Jurnal Sains Sosio Humaniora*, DOI: <10.22437/jssh.v6i2.22592>.

[16] Haeranah et al, "The Concept of Plea Bargain in the Criminal Process System in Indonesia" (2025) 21:1 *Law Reform* 1, DOI: <10.14710/lr.v21i1.66764>.

[17] Mirjan R Damaška, *The Faces of Justice and State Authority: A Comparative Approach to the Legal Process* (New Haven: Yale University Press, 1986).

[18] Andrew Ashworth & Mike Redmayne, *The Criminal Process*, 4th ed (Oxford: Oxford University Press, 2010).

[19] Nanda Yoga Rohmana, "Pengakuan Bersalah, Apa Bisa Diterapkan pada Tindak Pidana Korupsi? [Admission of Guilt: Can It Be Applied to Corruption?]" (4 March 2026), online: *Hukumonline* <https://www.hukumonline.com/berita/a/pengakuan-bersalah--apa-bisa-diterapkan-pada-tindak-pidana-korupsi-lt69a7d507e460e/>.

should it be limited in corruption cases? Its purpose is to state, on the law in force in October 2026, the conditions under which efficiency can be pursued without displacing the justice that criminal procedure exists to serve. Its novelty is to read the enacted provisions together with the efficiency argument and the corruption problem, which Indonesian studies have so far treated separately.

Research Method

This is normative (doctrinal) legal research with a critical orientation: it treats procedure not only as written rules but as a system in which prosecutors, judges and defendants hold unequal power. Three approaches are used. The statutory approach examines Law No 20 of 2025, the former Law No 8 of 1981, Law No 1 of 2023, the Corruption Law (Law No 31 of 1999 as amended), Law No 48 of 2009 on Judicial Power and Law No 11 of 2021 on the Public Prosecution Service. The conceptual approach analyses the theory of plea bargaining and the due-process and crime-control models. The comparative approach is limited: it compares the American practice, as described in the scholarly literature and in the decisions of the United States Supreme Court, with the Indonesian mechanism, taking differences of legal tradition into account. International standards on fair trial (the International Covenant on Civil and Political Rights and the Human Rights Committee's General Comment No 32) serve as the normative yardstick.

The secondary materials are books, journal articles, and reports and commentary in specialist legal media on the new Code, found by searching for the Indonesian and English terms for plea bargaining, admission of guilt and special track. Because Law No 20 of 2025 is very recent, its article-level content is taken from published commentary by academics and judges (see Table 1) and has not been checked against the official gazette text; this is a limitation, and article numbers and thresholds should be confirmed before the article is relied on. Only findings stated in the sources are reported. The analysis is qualitative and argumentative. It does not analyse court records, statistics or interviews, so claims about the effect of the mechanism on duration, cost or caseload are assessments of plausibility, not measurements. The law is stated as at October 2026.

Results and Discussion

Plea Bargaining and the Efficiency Argument

Plea bargaining takes several forms: the prosecutor may reduce or drop charges (charge bargaining), promise a lower sentence or recommend one to the judge (sentence bargaining), or agree on the facts that will be put before the court. What

they share is that the defendant gives up the trial in return for a predictable and lighter outcome.[20] The practice did not grow out of a theory of defendants' rights. Historical work shows that it spread in the United States in the nineteenth and twentieth centuries as a way of managing the volume and complexity of cases, and that it was adopted by courts that were willing to accept the guilty plea as sufficient proof.[21] Its success is therefore measured by speed and closure, not by how fully the truth is tested, which is why scholars of the American lower courts describe the process, not the verdict, as the real punishment and the plea as an outcome produced by case-management pressure.[22]

The efficiency argument rests on three mechanisms. The first is time: without evidentiary hearings, witness examination and argument, a case can be closed in weeks instead of months or years. The second is cost: hearings, expert evidence, transport of witnesses and detention are saved. The third is the allocation of scarce capacity: if routine cases are resolved by agreement, judges and prosecutors can devote their attention to complex and serious ones. These arguments are intuitive, and Indonesian authors repeat them, linking them to the principle of fast, simple and low-cost justice in art 2(4) of Law No 48 of 2009.[2324] The empirical literature is less clear. A review of the research on plea bargaining prepared for the Vera Institute of Justice reports findings that are mixed and sometimes contradictory, which is a warning against treating the efficiency of pleas as settled.[25] For Indonesia the point is sharper: discussion of the mechanism regularly invokes a case backlog, but this study found no verifiable figures, separated by criminal and civil cases and by court level, for the cases to which the mechanism would apply, and unsourced figures have therefore not been used. No published data show how long the admission-of-guilt procedure takes, what it saves or how many cases it covers. Efficiency is thus a hypothesis, to be tested against data that the judiciary and the prosecution service can and should collect.

A second point concerns what "efficiency" is allowed to mean. Packer's two models of criminal procedure, the crime control model, which values speed and finality, and the due process model, which values reliability and the protection of the individual, describe the choice that plea bargaining makes visible.[26] A mechanism

[20] Alschuler, *supra* note 1.
[21] *Ibid*.
[22] Feeley, *supra* note 3.
[23] Law No 48 of 2009 on Judicial Power (Indonesia), art 2(4).
[24] Wahyudhi et al, *supra* note 15.
[25] Ram Subramanian et al, *In the Shadows: A Review of the Research on Plea Bargaining* (New York: Vera Institute of Justice, 2020).
[26] Herbert L Packer, "Two Models of the Criminal Process" (1964) 113:1 *University of Pennsylvania Law Review* 1.

that treats the number of cases closed as its measure moves the system towards the first model. Damaška's distinction between proceedings that solve conflicts and proceedings that implement state policy offers a related lens: a procedure designed to implement a policy of case clearance has little room for the contest that makes the trial a test of the state's claims.[27] Efficiency is therefore not value-free. It is a legitimate aim only when it serves, and is limited by, the guarantees that make a conviction legitimate.

Plea Bargaining and the Admission of Guilt in Indonesian Law

Plea bargaining developed in adversarial systems, in which the parties control the case and the judge is a referee; a plea of guilty is then a waiver of trial. Indonesia follows the continental tradition, in which the judge is responsible for finding the truth and a confession is evidence to be weighed, not a substitute for proof. Under the 1981 Code the defendant's statement was one means of evidence and could not alone establish guilt.[28] Langer's study of the spread of plea bargaining to Argentina, Germany, France and Italy shows that such systems do not copy the American model; they "translate" it, changing its structure to fit their own premises.[29] Indonesian scholars made the same observation about the draft: the special track was presented as inspired by plea bargaining but as differing from it, because the defendant's admission is given before the judge and does not involve negotiating charges or sentence with the prosecutor.[30][31]

Law No 20 of 2025 confirms the translation approach but goes further than the draft. As reported in the commentary, the Code defines the admission of guilt in art 1 point 16 and provides for it in three places.[32][33] Article 78 operates at the prosecution stage: the prosecutor may apply to the head of the district court where the defendant is a first offender, the offence is punishable by imprisonment of not more than five years or by a fine up to category V, and the defendant is willing to pay compensation or restitution. The defendant must be assisted by an advocate; the admission and the agreement are recorded in writing, including the consequences of the admission, the waiver of the right to remain silent, the sentence the prosecutor will request and the basis of any reduction. The judge must assess whether the admission is voluntary and understood, and may reject it if there are doubts or signs

[27] Damaška, *supra* note 17.
[28] Law No 8 of 1981, *supra* note 4.
[29] Langer, *supra* note 2.
[30] Hermawati, *supra* note 14.
[31] Maulana, *supra* note 5.
[32] Thea, *supra* note 9.
[33] Siregar, *supra* note 10.

of coercion, in which case the case proceeds in ordinary form; if the admission is accepted, the case is examined in the short procedure and the sentence is capped.[34][35] Article 205 provides for the court, at trial, to transfer a case to the short procedure on an admission, for offences punishable by less than five years, without compensation or a written record. Article 234 allows the prosecutor to propose such a transfer for offences punishable by more than five and up to seven years, with a written record and a sentence not exceeding two-thirds of the maximum.[36] The first judicial applications in 2026 followed this pattern, with the court examining the voluntariness of the admission in the presence of legal aid counsel and then transferring the case to the short procedure.[37] Table 1 summarises the three routes as reported.

Table 1. The three routes for the admission of guilt in Law No 20 of 2025 (as reported in commentary; to be confirmed against the official text)

Feature	Article 78	Article 205	Article 234
Stage	Prosecution; the prosecutor applies to the head of the district court	Trial; the court decides to examine the case in the short procedure	Trial; the prosecutor proposes transfer to the short procedure
Penalty threshold	Imprisonment of up to five years or fine up to category V	Imprisonment of less than five years	Imprisonment of more than five and up to seven years
Compensation or restitution	Required	Not required	Not required
Written record of admission	Yes, with the agreement signed by the parties	No	Yes
Sentence limit	Not more than three years	Not more than three years	Not more than two-thirds of the maximum

Source: compiled from Siregar and Thea; the details are secondary reports of Law No 20 of 2025 and must be checked against the official text.

Three conclusions follow. First, the Indonesian mechanism is closer to a judge-supervised summary procedure than to American plea bargaining: the judge, not the parties, decides whether the admission is accepted, and the sentence is capped by law. It cannot be said, as part of the draft-era literature suggested, that the Indonesian model involves no negotiation at all. Article 78 provides for an agreement that records the sentence to be requested and the basis of any reduction, which is a negotiated element, even if the bargaining over charges, which characterises the American system, is absent. Second, the draft's single seven-year limit has become a graded structure: five years for the prosecution-stage route, and up to seven only where the court itself supervises the transfer. Third, the Code does not require that the admission be tested by evidence only in the way a trial would;

[34] "Plea Bargain Resmi dengan Syarat Ketat Maksimal 5 Tahun [Plea Bargain Made Official with Strict Conditions, Maximum Five Years]" (undated), online: *Justisio* <https://justisio.com/blog/plea-bargain-kuhap>.
[35] Siregar, *supra* note 10.
[36] *Ibid*.
[37] "Plea Bargain Diterima, PN Jepara", *supra* note 11.

commentators stress that the admission is not a substitute for proof and must be supported by evidence, but how much evidence is required, and how the judge verifies it without a trial, will be decided in practice.[38]

Efficiency Gains and Their Conditions

Within these limits the new mechanism can deliver the three kinds of efficiency described above. On time, the short procedure dispenses with the full evidentiary hearing; the first reported applications show cases transferred and heard by a single judge within days.[39] On cost, savings arise in hearings, witness attendance and, where the defendant is detained, detention costs, although the savings are modest where the offences concerned are minor and already resolved quickly. On capacity, the mechanism is likely to matter most where the volume of low-penalty offences is high; the thresholds in arts 78 and 205 point to this category. Prosecutors have said that the mechanism fits the principle of fast, simple and low-cost justice, provided that technical guidelines ensure uniform application.[40] The mechanism also has a restorative element: a first offender who makes restitution to the victim obtains a lighter, capped sentence, and the Code in this way attaches procedural benefit to compensation of the victim.

These gains depend on conditions that the Code leaves partly open. The first is the quality of the factual basis. If the judge accepts admissions without independent verification, the saving in time is obtained at the cost of accuracy, and the risk of wrongful conviction rises. The second is advocate availability. The Code requires that the defendant be assisted by an advocate under art 78, but the quality and distribution of legal aid vary widely, and a defendant assisted by an overworked appointed counsel may not be able to evaluate the offer. The third is that restitution may be priced beyond the means of poor defendants, so that the benefit of the lighter, capped sentence is available chiefly to those who can pay. A commentator has made this point sharply: wealthier defendants may buy leniency while poorer defendants remain fully imprisoned.[41] The fourth is monitoring. Without data on the number of admissions, the offences involved, the reductions given and the proportion of rejected admissions, nobody can determine whether the mechanism

[38] Thea, *supra* note 9.

[39] "Plea Bargain Diterima, PN Jepara", *supra* note 11.

[40] Aji Prasetyo, "Pentingnya Pedoman Pelaksanaan Plea Bargaining oleh Jaksa [The Importance of Guidelines for the Implementation of Plea Bargaining by Prosecutors]" (12 February 2026), online: *Hukumonline* <https://www.hukumonline.com/berita/a/pentingnya-pedoman-pelaksanaan-plea-bargaining-oleh-jaksa-lt698d580922ad3>.

[41] Thea, *supra* note 9.

saves anything or merely shifts the work. Efficiency is therefore achievable only if the mechanism is accompanied by the safeguards and data discussed next.

Due Process Risks: Voluntariness, Equality and the Presumption of Innocence

The central objection to plea bargaining is that the admission is not freely chosen. The defendant knows that conviction at trial may bring a much heavier sentence than the offer, and a rational defendant, even an innocent one, may take the offer. The United States Supreme Court has held that a guilty plea induced by the prospect of a lighter sentence is valid if made voluntarily, knowingly and intelligently,[42] and that the right to effective assistance of counsel applies to the plea stage, since pleas now make up most of the criminal process.[43][44] International standards point the same way: the ICCPR guarantees the right not to be compelled to confess guilt, a fair hearing before a competent, independent and impartial tribunal, and the Human Rights Committee's General Comment No 32 elaborates these guarantees, including the prohibition of compelled confessions.[45][46] Indonesia is bound by the Covenant, which it ratified in Law No 12 of 2005.[47]

The Indonesian mechanism contains some of the safeguards that these standards demand: a compulsory advocate for art 78, a written record, a judicial duty to assess voluntariness and to reject doubtful admissions, and a cap on the sentence.[48][49] It nevertheless leaves gaps. The pressure on the defendant does not come only from the sentence at trial; in Indonesia, pre-trial detention and the length of proceedings create a strong incentive to admit guilt in order to leave detention sooner. Where the admission is requested by the prosecutor, the offer of a reduction is itself a pressure. The reporting on the mechanism indicates that critics worry above all that efficiency will encourage admissions that are not voluntary because of pressure, unequal bargaining power or pragmatic motives.[50] The judge is described as the "last bastion", but a judge who has a heavy docket and who sees the admission as a means to reduce it is under pressure of his or her own, and judicial control that

[42] Brady v United States, 397 US 742 (1970) at 748.
[43] Missouri v Frye, 566 US 134 (2012).
[44] Lafler v Cooper, 566 US 156 (2012).
[45] International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), art 14(3)(g).
[46] UN Human Rights Committee, *General Comment No 32: Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial*, UN Doc CCPR/C/GC/32 (2007).
[47] Law No 12 of 2005 on the Ratification of the International Covenant on Civil and Political Rights (Indonesia).
[48] "Plea Bargain Resmi", *supra* note 34.
[49] Siregar, *supra* note 10.
[50] Thea, *supra* note 9.

becomes a formality turns the court from a place of truth-seeking into a place for ratifying negotiated outcomes.

Equality before the law is the second concern. Negotiated outcomes depend on the skill of counsel and the resources of the defendant. A defendant with competent counsel and the means to pay restitution can obtain better terms than a poor one, and the result is no longer determined only by the facts and guilt but also by bargaining power. The restitution condition in art 78, which is desirable for victims, intensifies this effect. The presumption of innocence is the third. A mechanism that invites the defendant to concentrate on how lenient a sentence can be obtained treats guilt as a given from the start of the process; the presumption is eroded not by any rule but by the culture of the process. The problem would be aggravated if investigators already rely heavily on the suspect's confession, as is often alleged, although a confession is not conclusive evidence; this article does not assess that allegation, but a mechanism that rewards admissions may reinforce such a habit and the risk of forced confessions. Finally, transparency suffers when agreement is reached out of public view. The public cannot see what evidence the state possesses or how far guilt was established, and over time this can erode confidence in the courts as institutions that seek justice and not only closure.[51]

The risk of wrongful conviction deserves separate mention. The common law literature has long warned that innocent defendants may plead guilty when the penalty at trial is severe and the offer is attractive, and American doctrine accepts that inducement by leniency is not in itself coercion,[52] and Indonesia has no more reason than other systems to assume that the problem will not arise. The safeguards that matter most are therefore those that tie the admission to evidence: a factual basis stated in the record, the judge's duty to ask questions, and the right to withdraw the admission when coercion or fraud is found. The Code's approach of returning to ordinary examination when the judge doubts the admission is the right one, but it works only if judges actually use it.

Legal certainty (*rechtszekerheid*) is a further value at stake. Certainty requires clear norms, predictable decisions and consistent application, so that the public and defendants know what consequences follow from conduct and from procedural choices. A mechanism whose reductions are negotiated case by case, whose thresholds differ across three provisions and whose details depend on prosecutorial guidelines that have not yet been issued, threatens predictability. Defendants in

[51] Ashworth & Redmayne, *supra* note 18.
[52] Brady, *supra* note 42 at 751.

similar cases may receive different offers, and prosecutors in different regions may apply the mechanism differently. The experience of systems that have used plea bargaining for a long time shows a further danger: prosecutors may overcharge, that is, bring heavier or more numerous charges than can be proved, in order to create leverage for negotiation. The practice is difficult to detect because it occurs in closed negotiation, and it is contrary to proportionality. Indonesian procedure does not by itself prevent it, which is a further reason for guidelines on charging and for disclosure of the agreement to the judge.[5354]

Prosecutorial Power and the Roles of the Participants

Plea bargaining relocates power to the prosecutor, who decides whether to offer the route, which sentence to request and how far to reduce it. In Indonesia the prosecutor is usually described as the controller of the case (*dominus litis*) and holds the authority to prosecute and to decide which cases go to court,[55] so that the mechanism enlarges an already strong position. The concerns are those familiar from other systems: charges drafted to create leverage, inconsistent practice between regions, and, in a country where integrity in law enforcement remains a concern, the opening of new opportunities for bribery and "case trading". Senior prosecutors have recognised the point: the Deputy Attorney General has said that prosecutors need clear technical guidelines on the application of art 78, and the Junior Attorney General for Supervision has stressed internal oversight to close gaps for arbitrary action and transactional practices.[56] These statements are welcome but they are statements of intent; the sources consulted do not report that such guidelines have been issued.

The roles of the three participants should be defined more precisely than the Code does. The prosecutor must assess the strength of the evidence, the seriousness of the offence and the public interest in deciding whether to offer the route, must not threaten charges that cannot be proved, and must inform the defendant, before the admission, of the rights that are given up, such as the right to remain silent and the right to a full trial. The advocate must explain the stages, the consequences of the admission and the sentence that may follow, evaluate whether accepting the offer is better than trial, and compare it with offers in similar cases. The judge must examine, personally and with sufficient time, three matters: whether the admission is voluntary, whether the defendant understands its consequences, including the

[53] Ashworth & Redmayne, *supra* note 18.
[54] Packer, *supra* note 26.
[55] Law No 11 of 2021 amending Law No 16 of 2004 on the Public Prosecution Service (Indonesia).
[56] Prasetyo, *supra* note 40.

waiver of the right to a full trial and the possible sentence, and whether there is a sufficient factual basis. The judge must also be free to reject the admission, to point out to the defendant that the court is not bound by the prosecutor's request, and to inform the defendant of the right to withdraw. These duties follow from the Code's requirement of a voluntary and understood admission and from the fair-trial standards discussed above.[5758]

Victims are the participants least protected by the structure of the mechanism. In a negotiation between prosecutor and defendant, the victim's interest is easily neglected, although the Code makes compensation or restitution a condition of the art 78 route. Restitution agreed in the shadow of a sentence reduction may be inadequate, or may be offered because it is useful to the defendant and not because the victim has been heard. A restorative reading of the mechanism, in which the defendant acknowledges responsibility, compensates the victim and gains a lighter sentence, is attractive and consistent with modern criminal justice; but it requires that the victim be informed, be able to state views on the agreement, and be assisted where necessary. The Code's silence on these points, as reported, should be remedied by the guidelines recommended below. Without them there is a risk of secondary victimisation and of the perception that the process is a transaction between the state and the offender.[59]

Corruption Cases: Asset Recovery against Impunity

The new provisions raise a specific problem in corruption cases. Article 78 sets a ceiling on the penalty and a requirement of restitution, but, as reported, no limit by type of offence;[60] corruption is therefore not excluded in principle, and a corruption defendant has already applied for the mechanism in a Jakarta court in January 2026.[61] Which corruption offences fall within the ceiling depends on the provisions applicable: the main offences of causing loss to the state and abusing office carry long minimum and maximum terms, well above five years, while some other offences, such as lesser forms of bribery or gratification, may carry maxima within it. Since 2 January 2026 the Criminal Code of 2023 also contains corruption offences, so which of the low-penalty offences of the Corruption Law remain applicable must be confirmed.[6263] The practical consequence is that the mechanism will apply mainly

[57] UN Human Rights Committee, *General Comment No 32*, *supra* note 46.
[58] Siregar, *supra* note 10.
[59] Thea, *supra* note 9.
[60] Rohmana, *supra* note 19.
[61] *Ibid*.
[62] Law No 31 of 1999 on the Eradication of Corruption (Indonesia), as amended by Law No 20 of 2001.
[63] Law No 1 of 2023, *supra* note 8.

to lesser corruption offences, but may also be applied in cases in which a bargain could be disproportionate.

The case for using the mechanism in corruption cases is the recovery of assets. Corruption involves money flows and assets that can be moved or concealed, and a long trial gives the defendant time to hide them. An agreement that makes restitution a condition may recover more, and more quickly, than a conviction followed by years of enforcement. In this respect art 78's requirement of compensation or restitution is useful. But recovery of state losses cannot be bought as a way out of criminal responsibility. The Corruption Law provides that return of state losses does not remove the defendant's criminal liability,[64] and the public dimension of corruption, in which every misappropriated rupiah is one that should have served health, education or infrastructure, means that a plea cannot be treated as a civil settlement between the state and the offender. Corruption is, in the standard definition, the abuse of public office for private gain, causing distortion of policy, inefficiency and loss of legitimacy,[65] and a mechanism that leaves these wrongs unmarked by proportionate punishment contradicts the reason for criminalising it.

Three risks follow. The first is moral hazard. If a potential offender can expect to negotiate the return of part of the proceeds in exchange for a substantial reduction, the penalty ceases to be an uncertain and heavy sanction and becomes a calculable cost, with the plea acting as a form of insurance. This is a hypothesis grounded in the economics of deterrence, not an observed fact; there is no evidence on it for Indonesia, and it should be tested once data exist. The second risk is disguised impunity: proceedings occur and a judgment is entered, but the accountability is smaller than the gravity of the offence. Where actors with greater resources and information can negotiate better terms, middle-level participants may bear the heavier burden, while the principal organisers obtain lenient outcomes. The third risk is weakened deterrence and public trust. A public that sees prominent offenders receive symbolic punishment after "making peace" with the state may conclude that the law is blunt against the powerful and sharp against the weak, and public participation in reporting and monitoring corruption, which anti-corruption policy relies on, may decline.

[64] Corruption Law, *supra* note 62, art 4.

[65] Susan Rose-Ackerman & Bonnie J Palifka, *Corruption and Government: Causes, Consequences, and Reform*, 2nd ed (Cambridge: Cambridge University Press, 2016).

Two positions are often held side by side: that plea bargaining is the right response to the need for faster recovery of state losses, and that corruption as an extraordinary crime must always go to full trial. The analysis here reconciles them. The efficiency argument applies in corruption cases only where the offence is of low gravity and the defendant has made full restitution; for serious corruption, the ceiling of five or seven years already excludes the main offences of loss to the state, and the mechanism should not be extended by raising the ceiling. Because the Code itself does not exclude corruption by offence type, the exclusion of serious and organised corruption, and of cases involving high officials or abuse of public trust at a senior level, should be placed in binding prosecutorial guidelines and in judicial practice, and restitution should be treated as a condition that does not by itself justify a lower sentence.

Comparison with Earlier Research

Table 2 compares the findings with the studies discussed in the introduction.

Table 2. Earlier research and the contribution of this article

Study	Focus and finding	Contribution of this article
Maulana (2015); Ruchoyah (2020)	The special track in the draft Code as an adaptation of United States plea bargaining that could improve efficiency	Tests the idea against the enacted Law No 20 of 2025 and against due-process standards
Hermawati (2023)	The Indonesian special track differs from plea bargaining because the admission is made before the judge	Shows that the enacted Art 78 nevertheless contains a written agreement on the requested sentence
Wahyudhi et al (2022); Haeranah et al (2025)	Plea bargaining is compatible with fast, simple and low-cost justice if limited	Adds that the efficiency gains are unmeasured and depend on factual basis, legal aid and monitoring
Langer (2004)	Civil law systems translate rather than copy plea bargaining	Uses the thesis to explain the structure of arts 78, 205 and 234
Feeley (1979); Damaška (1986)	Case management and the displacement of adjudication by process	Applies the critique to the Indonesian efficiency argument
Commentary on the new Code (2026)	Describes the provisions, early applications and concerns about voluntariness and guidelines	Evaluates them systematically and extends the analysis to corruption cases

Source: compiled from the studies cited.

The findings agree with Indonesian scholars that the admission of guilt, as designed, is not American plea bargaining and that it serves the principle of fast, simple and low-cost justice. They add that the difference is smaller than the pre-enactment literature assumed, because Art 78 provides for an agreement on the requested sentence, and that the efficiency claim, which the earlier literature took for granted, has not been demonstrated for Indonesia. They agree with Feeley and Damaška that case-management logic can displace adjudication, and with Langer that civil law systems reshape the mechanism, and they apply these insights to the new Indonesian provisions, to which they had not been applied. They differ from authors who treat prosecutorial integrity as a matter of training alone: the reports of the Attorney General's Office itself show that guidelines and oversight are

needed. And they differ from the draft-era view that the seven-year limit is the central restriction: the enacted Code uses a graded set of limits, and the real issues are verification, access to counsel, restitution and transparency.

Conclusion

Law No 20 of 2025 turns the long-debated special track into an enacted mechanism for the admission of guilt in arts 78, 205 and 234. It is not American plea bargaining: the judge supervises the admission, the sentence is capped, and bargaining over charges is absent. But it contains a written agreement on the requested sentence, and it brings the characteristic risks of plea mechanisms: prosecutorial dominance, pressure on defendants, unequal access to counsel and restitution, a thin factual basis, and low transparency. Efficiency is a legitimate aim, and the mechanism may reduce time, cost and workload for low-penalty offences, but these gains are plausible and not proven, because no data on time, cost or caseload have been published. In corruption cases the mechanism is not excluded by offence type; it creates a trade-off between faster asset recovery and the risks of moral hazard, disguised impunity and weakened deterrence, which is acceptable only for lesser offences and full restitution. The law now in force confirms the central position of this study: procedural efficiency must not become an autonomous objective, and any plea-based mechanism must be limited so that it serves substantive justice and the legitimacy of the criminal justice system.

Six recommendations follow. First, the Attorney General's Office should issue binding guidelines on when the admission route may be offered, the sentence reductions that may be requested and the exclusion of serious and organised corruption. Second, the Supreme Court should issue a regulation or circular on the judge's examination, requiring a recorded factual basis, specific questions on voluntariness and understanding, and reasons for accepting or rejecting the admission. Third, advocate assistance should be guaranteed in practice, with funded legal aid in all three routes, including those in which the Code, as reported, does not require a written record. Fourth, the position of victims should be strengthened by giving them a chance to be heard on the agreement and on restitution, while preventing restitution from becoming a price for leniency. Fifth, agreements and decisions should be recorded and made available in anonymised form so that practice can be monitored and compared. Sixth, the Supreme Court and the Attorney General's Office should publish data on the number of admissions, offences, reductions, rejections and durations so that the efficiency claim can be tested.

The study has limits. It is doctrinal and does not analyse court records, statistics or interviews; the content of arts 78, 205 and 234 is taken from commentary and early reports, and must be confirmed against the official text; the comparison with the United States relies on the scholarly literature; and the corruption analysis is provisional until it is confirmed which low-penalty corruption offences remain in force. Future research should collect data on the use of the three routes since 2 January 2026, examine the decisions in which admissions were accepted or rejected, and study the effect of the mechanism on duration, detention and sentencing.

Ethics and Data Availability

This normative legal research did not involve human participants or personal data, so ethical approval was not required. All legal materials used are publicly available.

Use of Generative AI

Generative AI was used only to improve the language of this article (grammar, clarity and style). The authors reviewed the output and are responsible for the content of the article.

Funding and Conflicts of Interest

The authors declare no conflict of interest. This research received no external funding.

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