



## Plea Bargaining In The 2025 Draft Indonesian Criminal Procedure Code: Legal Certainty And Justice

### Plea Bargaining Dalam RUU KUHAP Indonesia 2025: Kepastian Hukum Dan Keadilan

Dedi Wardana Nasoetion <sup>1)</sup>; Noenik Soekorini <sup>2)</sup>; Hartoyo <sup>3)</sup>

<sup>1,2,3)</sup> Universitas Dr. Soetomo Surabaya

Email: <sup>1)</sup> [dediwardana.nasution@unitomo.ac.id](mailto:dediwardana.nasution@unitomo.ac.id)

#### ARTICLE HISTORY

Received [19 Juli 2025]  
Revised [29 Agustus 2025]  
Accepted [31 Oktober 2025]

#### KEYWORDS

Plea Bargaining, KUHAP 2025,  
Legal Certainty, Fair Trial,  
Procedural Justice.

This is an open access article  
under the [CC-BY-SA license](https://creativecommons.org/licenses/by-sa/4.0/)



#### ABSTRAK

Pengesahan Undang-Undang No. 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana (KUHAP) memperkenalkan plea bargaining sebagai mekanisme negosiasi yang memungkinkan pengakuan bersalah dengan imbalan keringanan pidana. Mekanisme ini menandai pergeseran paradigmatis dari pencarian kebenaran yudisial menuju negosiasi oleh penuntut umum. Penelitian ini mengkaji apakah pergeseran tersebut koheren secara konstitusional dalam kerangka sistem hukum civil law Indonesia. Dengan menggunakan metode yuridis normatif atau doktrinal yang bertumpu pada teori hierarki norma, interpretasi konstitusional, dan penyeimbangan berbasis prinsip, penelitian ini menganalisis kesesuaian plea bargaining dengan asas kepastian hukum, persamaan di hadapan hukum, praduga tidak bersalah, dan prinsip negara hukum berdasarkan UUD 1945. Temuan penelitian menunjukkan bahwa meskipun plea bargaining sah secara formal dalam hierarki peraturan perundang-undangan, legitimasi substantifnya bersifat bersyarat. Ketidakjelasan kriteria kelayakan dan parameter pemidanaan berisiko melemahkan kepastian hukum. Perluasan diskresi penuntut umum menimbulkan persoalan kesetaraan. Perbedaan pidana yang signifikan dapat mengancam kesukarelaan pengakuan bersalah. Pengawasan hakim muncul sebagai instrumen pengaman yang menentukan, yang menuntut verifikasi substantif terhadap kesukarelaan, kecukupan alat bukti, dan proporsionalitas. Penelitian ini menyimpulkan bahwa plea bargaining hanya dapat dipertahankan secara normatif apabila diperkuat melalui kontrol yudisial yang ketat dan perlindungan prosedural yang tersusun secara jelas. Penelitian ini memberikan kontribusi berupa kerangka konstitusional-doktrinal terpadu untuk memperjelas syarat legitimasi keadilan berbasis negosiasi dalam sistem hukum civil law.

#### ABSTRACT

The enactment of Law No. 20 of 2025 on the Indonesian Criminal Procedure Code (KUHAP) introduces plea bargaining as a negotiated mechanism permitting admissions of guilt in exchange for sentencing concessions, marking a paradigmatic shift from judicial truth-seeking toward prosecutorial negotiation. This study examines whether such a shift is constitutionally coherent within Indonesia's civil law framework. Using a normative juridical (doctrinal) methodology grounded in hierarchical norm theory, constitutional interpretation, and principled balancing, the research analyzes the compatibility of plea bargaining with legal certainty, equality before the law, presumption of innocence, and rule-of-law principles under UUD 1945. The findings demonstrate that while plea bargaining is formally valid within the statutory hierarchy, its substantive legitimacy is conditional. Ambiguities in eligibility criteria and sentencing parameters risk undermining legal certainty; expanded prosecutorial discretion raises equality concerns; and significant sentencing differentials may threaten voluntariness. Judicial oversight emerges as the decisive safeguard, requiring substantive verification of voluntariness, evidentiary sufficiency, and proportionality. The study concludes that plea bargaining is normatively defensible only if reinforced by strict judicial control and clearly structured procedural safeguards. This research contributes an integrated constitutional-doctrinal framework clarifying the legitimacy conditions of negotiated justice within civil law systems.

## INTRODUCTION

Justice refers to a balance between law enforcement, victim protection, stigma reduction, exploitation prevention, and the fulfillment of society's right to obtain proper information and adequate social protection (Sufa et al., 2025). Legal certainty in upholding justice means that the law must provide clear boundaries between enforcement, protection, and respect for human dignity. Without legal certainty, the pursuit of justice can easily turn into stigmatization, symbolic violence, or justification for inhumane treatment (Farida et al., 2025).

The enactment of Law No. 20 of 2025 on the Criminal Procedure Code (KUHAP) marks a paradigmatic transformation in Indonesian criminal justice. One of its most controversial innovations is the institutionalization of plea bargaining, a procedural mechanism that permits negotiated admissions of guilt in exchange for sentencing concessions. Comparative scholarship identifies plea bargaining as "one of the most important trends in criminal procedure worldwide," increasingly adopted across legal traditions, including civil law systems (Paolini et al., 2024). While historically associated with common law

jurisdictions, particularly the United States, contemporary empirical studies demonstrate its diffusion into hybrid and civil law systems, often justified on grounds of efficiency, case backlog reduction, and human rights modernization.

Indonesian criminal procedure, however, has traditionally been grounded in a civil law paradigm characterized by judicial dominance, the search for material truth (*materiële waarheid*), and structured evidentiary requirements. Article 183 of the previous KUHAP, for example, required at least two valid pieces of evidence before conviction (Mukayatsyah et al., 2023). The introduction of plea bargaining thus represents a structural shift from a truth-oriented adjudicative model toward a negotiation-based resolution mechanism (Undang-Undang Republik Indonesia Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana, 2025). Although the provision is codified at the statutory level and therefore formally satisfies rule-of-law requirements concerning legality and the hierarchy of norms, its normative compatibility with constitutional guarantees remains contested (Oktobrian et al., 2023).

The central concern is not merely technical but philosophical. Legal certainty, fair trial guarantees, due process of law, presumption of innocence, and equality before the law constitute foundational pillars of Indonesia's constitutional order under UUD 1945. Legal scholarship emphasizes that legal certainty functions both as a guide for societal compliance and as protection against arbitrary state power (Lihawa et al., 2024). The incorporation of prosecutorial negotiation into this framework creates normative tension between procedural efficiency and rights protection. This tension raises a fundamental question regarding whether Indonesia is undergoing a silent transition from judicial truth-seeking to prosecutorial bargaining, and whether such a transition can be considered normatively legitimate.

Despite its statutory codification, the plea bargaining mechanism under Law No. 20 of 2025 generates several unresolved normative inconsistencies. First, the expansion of prosecutorial discretion risks undermining predictability and uniformity in sentencing, thereby challenging constitutional guarantees of legal certainty (Lihawa et al., 2024; Mukayatsyah et al., 2023). Second, comparative research demonstrates that prosecutorial plea offers may vary significantly depending on evidentiary strength and institutional considerations, potentially creating pressure on innocent defendants to plead guilty (Oktobrian et al., 2023). Third, empirical scholarship on the "trial penalty" confirms that substantial sentencing differentials may structurally coerce defendants into negotiated confessions, thereby implicating the presumption of innocence and voluntariness requirements.

These tensions reveal a deeper doctrinal problem: the absence of clear limits on prosecutorial discretion and insufficiently defined judicial control mechanisms within the KUHAP framework. While judicial oversight is formally mandated, its substantive scope remains ambiguous. The general solution proposed by this study is not the rejection of plea bargaining per se, but the reconstruction of its normative architecture through strict judicial supervision, procedural safeguards, and harmonization with constitutional principles of due process and equality before the law.

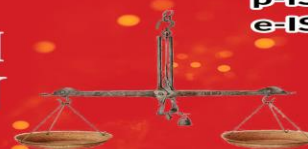
Scientific literature offers several normative models for reconciling plea bargaining with rule-of-law systems. Comparative scholarship emphasizes that regulatory design, rather than mere adoption, determines whether plea bargaining strengthens or weakens justice (McCannon, 2023). Systems that incorporate substantive judicial review, transparent procedures, and evidentiary verification mechanisms demonstrate stronger alignment with fair trial standards. European experiences, for instance, illustrate how constitutional courts have attempted to restore judicial truth-finding authority within negotiated justice models.

Procedural justice theory further provides a theoretical foundation for evaluating the legitimacy of plea bargaining. Research demonstrates that perceived fairness, which includes consistency, impartiality, transparency, and correctability, directly affects public trust and institutional legitimacy (Abdin et al., 2020; Hansen, 2021). Thus, negotiated outcomes may be considered normatively acceptable only when the process satisfies the criteria of voluntariness, equality of arms, and informed consent.

From a doctrinal perspective, Kelsen's hierarchical theory of norms requires statutory coherence with constitutional guarantees; Hart's distinction between primary and secondary rules highlights the necessity of clear procedural legitimacy; and Dworkin's interpretative approach mandates principled balancing between efficiency and rights. Together, these frameworks suggest that plea bargaining may be normatively defensible within a civil law system only if embedded within a robust constitutional structure that restrains discretion and preserves due process.

Existing scholarship has extensively examined plea bargaining from comparative and empirical perspectives, demonstrating both efficiency gains and systemic risks. Paolini et al. (2024) identify its association with democratization and human rights expansion, while other studies highlight the innocence problem and structural coercion inherent in sentencing differentials (Oktobrian et al., 2023). Research on prosecutorial practices further reveals potential inconsistencies and bargaining asymmetries.

However, within the Indonesian doctrinal context, systematic normative analysis remains limited. Most discussions focus on comparative justification or pragmatic efficiency rather than constitutional



coherence. The integration of plea bargaining into a civil law system grounded in material truth-seeking has not been thoroughly evaluated using hierarchical norm theory, constitutional jurisprudence, and procedural justice doctrine simultaneously.

Moreover, insufficient attention has been paid to the structural power imbalance between prosecutors and defendants in Indonesia's institutional setting. The absence of clear doctrinal benchmarks for judicial review, sentencing proportionality, and protection against coercive confessions creates normative ambiguity. This research addresses these gaps by constructing a structured constitutional analysis rooted in legal certainty, fair trial guarantees, and procedural justice principles.

This study aims to analyze the normative consistency of plea bargaining under Law No. 20 of 2025 within Indonesia's constitutional and procedural framework. It seeks to interpret ambiguous statutory provisions, evaluate safeguards protecting suspects and defendants, and assess compatibility with legal certainty, due process, presumption of innocence, and equality before the law. The research constructs a doctrinal argument that plea bargaining, as currently regulated, is normatively problematic unless reinforced by strict judicial control and clearly articulated procedural safeguards.

The novelty of this research lies in its integrative doctrinal synthesis. It bridges Kelsenian norm hierarchy, Hartian procedural legitimacy, and Dworkinian principled interpretation within the Indonesian constitutional context. By situating plea bargaining within civil law theory rather than purely comparative pragmatism, this study contributes both theoretically and practically: theoretically, by clarifying the doctrinal legitimacy of negotiated justice in civil law systems; practically, by providing interpretative guidance and policy recommendations for harmonization and reform. The scope is limited to normative juridical analysis within Indonesian criminal procedural law, without empirical validation, focusing exclusively on the constitutional and doctrinal dimensions of the plea bargaining mechanism.

## LITERATURE REVIEW

### Plea Bargaining and the Transformation of Criminal Procedure

The institutionalization of plea bargaining under Law No. 20 of 2025 (KUHAP) must be understood within the broader global transformation of criminal procedure. Comparative scholarship identifies plea bargaining as "one of the most important trends in criminal procedure worldwide," extending beyond common law jurisdictions into civil law systems (Paolini et al., 2024). Its diffusion has been associated with democratization, institutional efficiency, and modernization of criminal justice frameworks. This expansion indicates that negotiated justice has evolved into a hybrid procedural model adaptable across legal traditions.

However, doctrinal implications differ significantly depending on systemic foundations. In adversarial common law systems, prosecutorial discretion and negotiated case resolution are structurally embedded within procedural architecture. Civil law systems, including Indonesia's, historically emphasize judicial dominance, structured evidentiary standards, and the pursuit of material truth (*materiële waarheid*). The previous KUHAP reflected this philosophy, particularly through Article 183, which required at least two valid pieces of evidence before conviction (Mukayatsyah et al., 2023). This evidentiary threshold illustrates a truth-oriented adjudicative model centered on judicial fact-finding rather than prosecutorial negotiation. The introduction of plea bargaining therefore represents a paradigmatic shift from judicially controlled truth-seeking to negotiation-based resolution influenced by prosecutorial discretion. The doctrinal challenge lies in determining whether this shift can be reconciled with Indonesia's constitutional and civil law commitments.

### Hierarchical Norm Theory and Constitutional Supremacy

From a Kelsenian perspective, the legitimacy of plea bargaining depends initially on hierarchical validity. Law No. 20 of 2025, enacted as an *undang-undang*, formally satisfies the principle of legality and derives authority from the Constitution (UUD 1945). Indonesian scholarship recognizes that statutory codification enhances normative clarity and legal certainty (Oktobrian et al., 2023). By incorporating plea bargaining into a statute rather than informal prosecutorial practice, the legislature has integrated the mechanism within the formal hierarchy of norms.

Yet hierarchical validity does not ensure constitutional coherence. Article 1(3) UUD 1945 establishes Indonesia as a *negara hukum* (a state governed by the rule of law), requiring all state action to conform to rule-of-law principles. Article 28D (1) guarantees fair legal certainty and equal treatment before the law, while Article 27(1) affirms equality before the law. These provisions impose substantive constitutional limits on procedural innovation. The Indonesian Constitutional Court (*Mahkamah Konstitusi*) has consistently emphasized that procedural regulations must not undermine constitutional justice. In reviewing statutory provisions affecting individual rights, the Court has held that legal formalism cannot override substantive constitutional guarantees. Accordingly, the legitimacy of plea bargaining must be

evaluated not only in terms of statutory enactment but in light of its compatibility with constitutional protections of due process, equality, and fairness.

### **Legal Certainty (Kepastian Hukum) and Predictability**

Legal certainty constitutes a constitutionally protected principle under Article 28D (1) UUD 1945. Indonesian legal scholarship defines it as requiring stability, predictability, and protection against arbitrary state power (Lihawa et al., 2024; Mukayatsyah et al., 2023). While statutory codification of plea bargaining satisfies the formal legality requirement, substantive legal certainty depends on clarity of regulation and uniformity of application.

Comparative research indicates that prosecutorial plea decisions may vary according to evidentiary strength, defendant characteristics, and institutional considerations (Fadil et al., 2024). Such variability risks inconsistent sentencing outcomes and undermines predictability. The Constitutional Court has repeatedly affirmed that discretionary authority must be constrained by clear normative standards to prevent arbitrariness. In decisions concerning executive and judicial discretion, the Court has stressed that the rule of law demands transparency and reviewability. Applied doctrinally, plea bargaining requires clearly defined eligibility criteria, structured sentencing parameters, and meaningful judicial review to satisfy constitutional guarantees of legal certainty. Without these safeguards, prosecutorial negotiation may compromise equality before the law.

### **Prosecutorial Discretion and Rule-of-Law Constraints**

Plea bargaining expands prosecutorial authority from accusation to case resolution. The Prosecutor's Office is constitutionally mandated to uphold legal certainty, justice, and human rights (Mukayatsyah et al., 2023). However, rule-of-law doctrine requires that discretionary power be structured, limited, and reviewable. Indonesian scholarship identifies overlapping regulations and unclear procedural boundaries as major sources of legal uncertainty (Susilowardani, 2023). If plea bargaining provisions interact ambiguously with evidentiary standards, victim rights, and sentencing frameworks, normative incoherence emerges.

Comparative experience warns of unequal or politically selective application of plea bargaining mechanisms (Nwozor & Afolabi, 2022). The Constitutional Court has consistently affirmed that equality before the law prohibits discriminatory enforcement. Therefore, prosecutorial negotiation must operate within clearly articulated statutory limits to prevent structural inequality among defendants. From a Hartian perspective, plea bargaining modifies secondary rules of adjudication. If safeguards governing discretion are inadequately defined, the legitimacy of the procedural system itself is jeopardized. The doctrinal issue is thus whether KUHAP sufficiently structures prosecutorial discretion to comply with rule-of-law requirements.

### **Fair Trial Guarantees and the Presumption of Innocence**

The constitutional right to a fair trial encompasses presumption of innocence, equality of arms, access to counsel, and impartial judicial oversight. The principal doctrinal concern in plea bargaining relates to voluntariness. Empirical research documents the "trial penalty," whereby defendants who proceed to trial may receive substantially harsher sentences than those who plead guilty (Abdin et al., 2020). Such sentencing disparities create structural pressure that may undermine voluntary consent. Although the "Bargaining in the Shadow of the Trial" model suggests that plea outcomes should approximate expected trial sanctions (McCannon, 2023), substantial discounts risk transforming negotiation into coercion.

The Constitutional Court has consistently protected the presumption of innocence as a fundamental constitutional principle. In decisions concerning pre-trial detention and evidentiary burdens, the Court has emphasized that procedural mechanisms must not invert the burden of proof or compel admissions of guilt. Applied to plea bargaining, this jurisprudence requires that guilty pleas be informed, voluntary, supported by sufficient factual basis, and subject to substantive judicial scrutiny. A merely formal confirmation process would fail to meet constitutional standards. Thus, the doctrinal legitimacy of plea bargaining depends upon effective safeguards protecting the presumption of innocence.

### **Judicial Oversight as Constitutional Safeguard**

Judicial oversight represents the central mechanism capable of reconciling plea bargaining with constitutional principles. Comparative research demonstrates that active judicial involvement enhances perceptions of procedural justice and fairness (Istiqomah et al., 2024). European constitutional courts have preserved judicial truth-finding authority to prevent excessive prosecutorial dominance (McCannon, 2023). Article 24 UUD 1945 establishes the independence of judicial power, mandating courts to uphold law and justice.



The Constitutional Court has repeatedly affirmed that courts must conduct substantive review of executive decisions affecting constitutional rights. In this doctrinal framework, judicial approval of plea agreements must involve examination of voluntariness, assessment of evidentiary sufficiency, and proportionality of sanction. Judicial oversight must function as constitutional control rather than procedural endorsement. The adequacy of this safeguard determines whether plea bargaining remains consistent with Indonesia's commitment to rule-of-law principles.

### **Procedural Justice and Democratic Legitimacy**

Procedural justice theory emphasizes that institutional legitimacy depends not only on outcomes but on fairness of process. Perceived consistency, impartiality, transparency, and correctability shape public trust (Abdin et al., 2020; Hansen, 2021). The Constitutional Court has linked rule-of-law legitimacy to fairness in adjudication. If plea bargaining is perceived as opaque or discriminatory, public confidence in criminal justice may erode despite formal legality. Empirical research associates plea bargaining adoption with democratic consolidation and human rights enhancement (Paolini et al., 2024). However, these benefits materialize only when safeguards are robust and consistently implemented. The constitutional evaluation of plea bargaining must therefore extend beyond legality to legitimacy, ensuring that negotiation-based justice preserves transparency and equality.

### **Restorative Justice and Victim Participation**

Indonesian criminal procedure increasingly incorporates restorative justice principles, particularly within juvenile contexts (Oktobrian et al., 2023). Plea bargaining may complement or undermine restorative aims depending on regulatory design. If negotiation occurs solely between prosecutor and defendant, victims risk marginalization. Equality before the law, as constitutionally protected, extends to victims as participants in the justice process. Doctrinal coherence therefore requires integration of victim participation and transparency within plea proceedings. Absent such safeguards, efficiency considerations may eclipse substantive justice and weaken constitutional commitments to fairness.

### **Doctrinal Gap and Normative Reconstruction**

Existing scholarship confirms the global diffusion of plea bargaining and its democratic associations (Paolini et al., 2024), acknowledges risks of coercion and innocence problems (Oktobrian et al., 2023), identifies tension between legal certainty and justice (Shalihah et al., 2022), and emphasizes judicial oversight as a critical safeguard (McCannon, 2023). However, Indonesian legal scholarship has not yet produced an integrated constitutional-doctrinal synthesis combining hierarchical norm theory, procedural legitimacy analysis, principled balancing, and explicit Constitutional Court jurisprudence. This study addresses that gap by constructing a structured constitutional evaluation of plea bargaining under KUHAP 2025, assessing its compatibility with legal certainty, fair trial guarantees, procedural justice, and rule-of-law doctrine. The unresolved normative question remains whether Indonesia's transition toward negotiated justice represents a constitutionally coherent development within a civil law system or requires doctrinal reconstruction to preserve constitutional integrity.

## **METHODS**

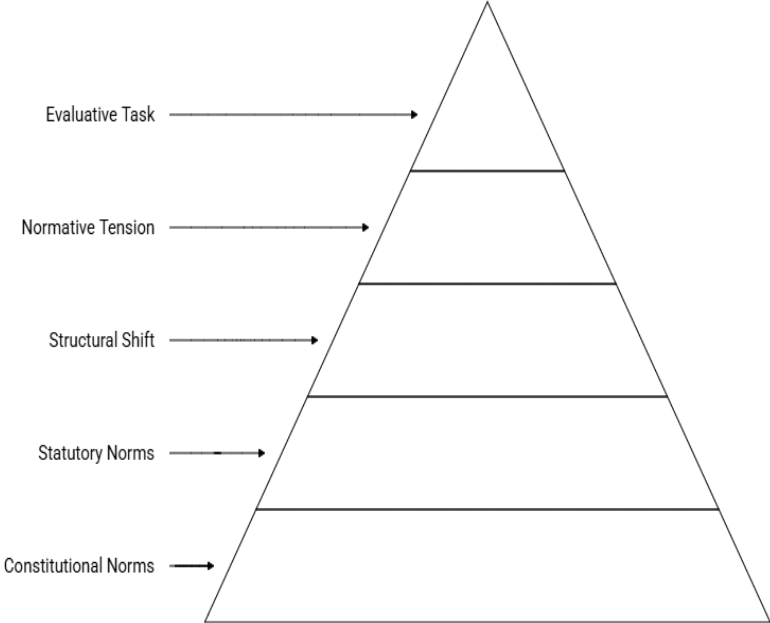
This study employs a normative juridical (doctrinal) research design that conceptualizes law as a structured system of norms and focuses on coherence, hierarchy, interpretation, and doctrinal consistency rather than empirical measurement or hypothesis testing (Majeed et al., 2012). The choice of methodology is grounded in the nature of the research problem, namely the introduction of plea bargaining under Law No. 20 of 2025 and its implications for constitutional compatibility, legal certainty, fair trial guarantees, and rule-of-law integrity within Indonesia's civil law framework. Accordingly, the analysis examines the internal consistency of plea bargaining provisions within the hierarchy of norms established by the 1945 Constitution (UUD 1945), statutory regulations, and Constitutional Court jurisprudence. The methodological foundation integrates three principal theoretical pillars: Kelsen's hierarchical norm theory to assess vertical consistency between statute and Constitution, Hart's distinction between primary and secondary rules to evaluate procedural legitimacy and institutional authority, and Dworkin's theory of principled interpretation to balance efficiency objectives against constitutional rights. The research employs a statutory approach through systematic analysis of KUHAP 2025 and relevant constitutional provisions; a conceptual approach to clarify normative benchmarks such as legal certainty, due process, presumption of innocence, equality before the law, prosecutorial discretion, and procedural justice; a case approach examining Constitutional Court jurisprudence concerning proportionality, non-arbitrariness, and substantive justice; and a comparative approach situating Indonesian plea bargaining within global developments without normative transplantation. Legal

materials consist of primary sources (UUD 1945, Law No. 20 of 2025, and Constitutional Court decisions), secondary scholarly literature, and limited tertiary references for terminological clarification. The study applies grammatical, systematic, teleological, historical, and comparative interpretation to identify, interpret, and evaluate relevant norms, followed by structured doctrinal synthesis aimed at resolving normative tensions through reinforced judicial oversight, clearer limits on prosecutorial discretion, and strengthened procedural safeguards. The research is confined to normative constitutional analysis without empirical fieldwork and relies on established jurisprudential principles due to the recency of KUHAP 2025. Ultimately, the methodological contribution lies in constructing a systematic constitutional framework to determine whether Indonesia's transition toward negotiation-based criminal justice represents a coherent doctrinal evolution or requires structural recalibration to preserve rule-of-law integrity.

**RESULT AND DISCUSSION**

**Norm Identification and Structural Mapping**

The normative evaluation begins with identification of the relevant constitutional and statutory norms governing plea bargaining under Law No. 20 of 2025. At the constitutional level, the controlling provisions include Article 1(3) UUD 1945 (rule of law), Article 27(1) (equality before the law), Article 24 (judicial power), and Article 28D (1) (legal certainty and fair treatment). These provisions collectively establish the constitutional architecture within which any procedural innovation must operate. At the statutory level, KUHAP 2025 introduces plea bargaining (*jalur khusus/pengakuan bersalah*) as a negotiated mechanism permitting admissions of guilt in exchange for sentencing concessions, thereby shifting certain procedural dynamics from judicial fact-finding toward prosecutorial negotiation.

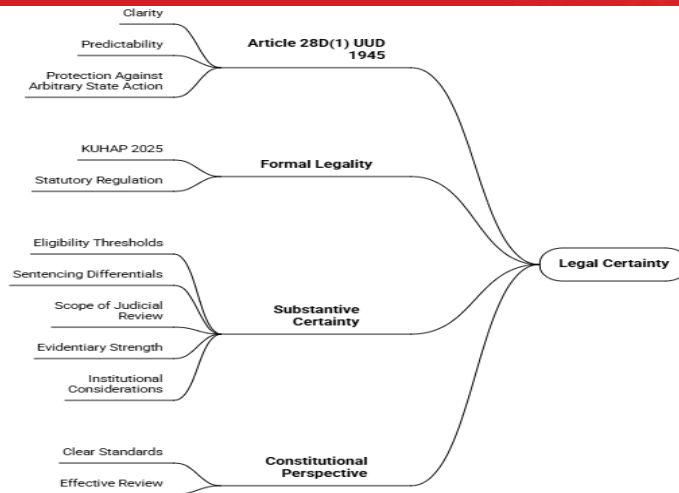
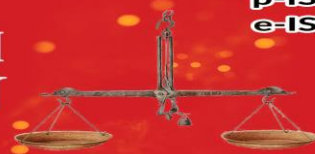


**Figure 1. Plea Bargaining Normative Hierarchy**

Structurally, this innovation modifies the traditional evidentiary paradigm reflected in the previous KUHAP, particularly Article 183's requirement of at least two valid pieces of evidence before conviction. The normative tension arises from the potential reconfiguration of truth-seeking mechanisms into efficiency-driven resolution. The central evaluative task is therefore to determine whether this structural shift remains vertically coherent within the hierarchy of norms and horizontally consistent with constitutional guarantees of fairness and equality.

**Evaluation of Legal Certainty**

The first benchmark concerns legal certainty as protected under Article 28D (1) UUD 1945. Legal certainty requires clarity, predictability, and protection against arbitrary state action. Although plea bargaining is codified at the statutory level, thereby satisfying formal legality, substantive certainty depends on how prosecutorial discretion is structured and constrained. As noted in the doctrinal review, legal scholarship emphasizes that certainty functions both as a guide for compliance and as a safeguard against arbitrary authority (Lihawa et al., 2024; Mukayatsyah et al., 2023).

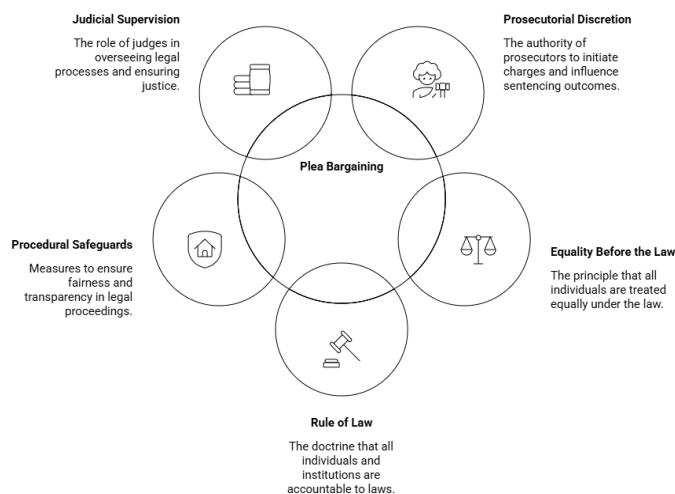


**Figure 2. Legal Certainty in Plea Bargaining**

The evaluation reveals that while KUHAP 2025 formally regulates plea bargaining, ambiguities remain concerning eligibility thresholds, sentencing differentials, and the scope of judicial review. Comparative research indicates that prosecutorial plea offers may vary depending on evidentiary strength and institutional considerations, creating potential inconsistencies (Fadil et al., 2024). From a constitutional perspective, such variability risks undermining predictability and equality before the law. The Constitutional Court’s jurisprudence consistently requires that discretionary authority be guided by clear standards and subject to effective review. Therefore, unless plea bargaining provisions are interpreted restrictively and supported by transparent criteria, they risk falling short of substantive legal certainty.

**Prosecutorial Discretion and Equality Before the Law**

The second evaluative dimension concerns prosecutorial discretion and its compatibility with equality before the law under Article 27(1) UUD 1945. Plea bargaining expands prosecutorial authority from initiating charges to effectively determining sentencing outcomes through negotiation. While prosecutorial discretion is inherent in criminal procedure, rule-of-law doctrine requires that such discretion be structured, limited, and reviewable. The normative concern is that negotiation-based resolution may produce disparities between similarly situated defendants depending on bargaining capacity, evidentiary strategy, or institutional pressure. Comparative scholarship warns of unequal application and political selectivity in plea systems (Nwozor & Afolabi, 2022). Indonesian scholarship further highlights regulatory overlap and ambiguity as sources of legal uncertainty (Susilowardani, 2023). When discretion operates without clearly articulated statutory boundaries, equality before the law may be compromised.



**Figure 3. Constitutional Compatibility of Plea Bargaining**

Applying Hart's framework, plea bargaining modifies the secondary rules governing adjudication. If procedural safeguards regulating prosecutorial authority are insufficiently defined, institutional legitimacy becomes vulnerable. The normative matrix therefore indicates conditional compatibility: prosecutorial discretion is constitutionally acceptable only when accompanied by transparent eligibility standards, proportional sentencing frameworks, and robust judicial supervision.

### **Fair Trial Guarantees and the Presumption of Innocence**

The third evaluative benchmark concerns fair trial guarantees, particularly the presumption of innocence and voluntariness of confession. Empirical scholarship identifies the "trial penalty" phenomenon, whereby defendants who proceed to trial face substantially harsher sanctions than those who plead guilty (Abdin et al., 2020). Such sentencing disparities may exert structural pressure on defendants, potentially transforming voluntary admission into strategic compulsion. Although theoretical models suggest that plea outcomes should approximate expected trial sanctions, significant sentencing differentials risk undermining the voluntariness requirement. The Constitutional Court has consistently emphasized that procedural mechanisms must not invert the burden of proof or undermine the presumption of innocence. Applied to plea bargaining, constitutional coherence requires that guilty pleas be informed, voluntary, supported by sufficient factual basis, and subject to substantive judicial scrutiny. The normative evaluation indicates that fair trial guarantees may be weakened if judicial review remains merely formal and is limited to confirming the existence of an agreement. Conversely, plea bargaining may remain compatible with constitutional standards if judges actively verify voluntariness, evidentiary sufficiency, and proportionality.

### **Judicial Oversight and Constitutional Control**

Judicial oversight functions as the decisive safeguard within the normative matrix. Article 24 UUD 1945 mandates independent judicial power to uphold law and justice. Comparative experience demonstrates that active judicial involvement enhances procedural fairness and legitimacy (Istiqomah et al., 2024; McCannon, 2023). European adaptations further show that constitutional courts have intervened to preserve judicial truth-finding authority within negotiated justice systems (McCannon, 2023). The evaluation reveals that the constitutional viability of plea bargaining depends largely on the substantive depth of judicial review. Judicial approval must include examination of voluntariness, verification of evidentiary basis, and assessment of proportionality between offense and sanction. Without such substantive scrutiny, prosecutorial negotiation risks dominating adjudication, thereby weakening the judicial function central to civil law tradition. Thus, judicial control serves as the constitutional fulcrum balancing efficiency and rights protection.

### **Procedural Justice and Institutional Legitimacy**

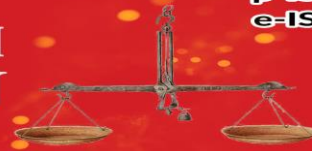
Beyond formal legality, procedural justice theory provides an additional evaluative dimension. Research demonstrates that perceived fairness, which includes consistency, impartiality, transparency, and correctability, directly influences institutional legitimacy (Abdin et al., 2020; Hansen, 2021). If plea bargaining is perceived as opaque or unequal, public trust in the criminal justice system may decline despite statutory authorization. Empirical research associates plea bargaining with democratization and human rights expansion when properly regulated (Paolini et al., 2024). The normative matrix therefore suggests that legitimacy depends not merely on codification but on procedural design. Transparent procedures, access to counsel, victim participation, and appellate review mechanisms strengthen perceived fairness. In their absence, efficiency gains may be offset by diminished public confidence.

### **Restorative Justice and Victim Rights**

The final evaluative dimension concerns restorative justice and victim participation. Indonesian criminal procedure has increasingly incorporated restorative principles, particularly in juvenile contexts (Oktobrian et al., 2023). Plea bargaining may align with restorative objectives when negotiation incorporates victim interests and proportional accountability. However, if negotiations occur exclusively between prosecutor and defendant, victims risk marginalization. Equality before the law extends to victims as rights-bearing participants. The normative evaluation therefore indicates that constitutional coherence requires mechanisms for victim notification, participation, and transparency of negotiated outcomes. Without such safeguards, plea bargaining may prioritize efficiency over substantive justice.

### **Doctrinal Synthesis: Conditional Constitutional Legitimacy**

Synthesizing the normative evaluation matrix reveals that plea bargaining under Law No. 20 of 2025 is neither inherently unconstitutional nor automatically compatible with Indonesia's civil law system. Its constitutional legitimacy is conditional. Vertical coherence with the hierarchy of norms is formally



satisfied through statutory enactment, yet substantive compatibility depends on interpretative reinforcement of constitutional safeguards. The matrix demonstrates that legal certainty requires clearer limitations on prosecutorial discretion; equality before the law demands transparent and consistent application; fair trial guarantees necessitate protection of voluntariness and presumption of innocence; and rule-of-law principles require substantive judicial oversight. Absent these safeguards, the shift from truth-oriented adjudication to negotiation-based resolution risks doctrinal inconsistency within Indonesia's constitutional framework. Accordingly, the results support the central thesis articulated in the introduction: plea bargaining represents a paradigmatic transition that is normatively defensible only if judicial control and procedural safeguards are strengthened to preserve constitutional coherence and rule-of-law integrity.

## CONCLUSION AND SUGGESTION

### Conclusion

This study examines the constitutional and doctrinal compatibility of plea bargaining under Law No. 20 of 2025 within Indonesia's civil law framework and demonstrates, through hierarchical norm analysis and constitutional interpretation, that while plea bargaining is formally valid within the statutory hierarchy and consistent with the principle of legality, its substantive constitutional legitimacy remains conditional due to normative tensions with legal certainty, equality before the law, presumption of innocence, and rule-of-law principles under UUD 1945. The findings establish that substantive legal certainty under Article 28D(1) depends on clear eligibility thresholds, sentencing parameters, and defined judicial review standards, since ambiguities risk unpredictability and inconsistent application, as reflected in comparative variability in plea practices (Fadil et al., 2024), that expanded prosecutorial discretion creates structural vulnerability regarding equality before the law under Article 27(1), particularly where bargaining asymmetry may produce unequal outcomes absent transparent and reviewable limits (Nwozor & Afolabi, 2022) that the "trial penalty" phenomenon indicates significant sentencing differentials may exert coercive pressure undermining voluntariness and the presumption of innocence (Abdin et al., 2020), and that judicial oversight constitutes the decisive constitutional safeguard, requiring substantive verification of voluntariness, evidentiary sufficiency, and proportionality rather than formal approval. Accordingly, the study affirms that plea bargaining is not inherently unconstitutional but is compatible with Indonesia's civil law tradition only if reinforced by strict judicial control, structured prosecutorial discretion, and strengthened procedural safeguards. Theoretically, the research contributes by integrating Kelsen's hierarchical norm theory, Hart's procedural legitimacy, and Dworkin's principled balancing into a unified constitutional evaluation, advancing beyond comparative diffusion analyses (Paolini et al., 2024) and restorative justice harmonization debates (Oktobrian et al., 2023) to construct a structured normative matrix; practically, it provides interpretative guidance for judges, prosecutors, and defense counsel during implementation of KUHAP 2025; and from a policy perspective, it underscores the need for regulatory refinement concerning sentencing differentials, evidentiary standards, and victim participation to ensure fairness and predictability (Lihawa et al., 2024; Mukayatsyah et al., 2023). While doctrinally rigorous, the study is limited to normative constitutional analysis and does not incorporate empirical investigation of plea bargaining practice following the enactment of Law No. 20 of 2025.

### Suggestion

Future research should therefore examine prosecutorial behavior, sentencing patterns, and judicial review trends, assess forthcoming Constitutional Court jurisprudence on negotiated justice, undertake comparative civil law analyses of safeguarded plea models, and adopt interdisciplinary approaches combining doctrinal, socio-legal, and empirical methods to determine whether Indonesia's transition from a truth-oriented paradigm to a negotiation-based system ultimately strengthens institutional legitimacy or risks eroding constitutional safeguards.

## REFERENCES

- Abdin, F., Ismail, A., Muhamad, N. S., & Nor, A. M. (2020). Effect of Perceived Fairness in Pay System on Work-Related Attitude. *International Journal of Management Studies*, 27(2). <https://doi.org/10.32890/ijms.27.2.2020.7792>
- Fadil, L. M., Septyanun, N., Erwin, Y., & Harun, R. R. (2024). Legal Certainty-Based Implementation of Exploration and Exploitation Authorization Permits in Iron Sand Mines. *JILPR Journal Indonesia Law and Policy Review*, 5(2), 328–335. <https://doi.org/10.56371/jirpl.v5i2.212>
- Farida, Brumadyadisty, G., Prakoso, R. A., Suhesti, N., & Putro, H. E. (2025). Sex Workers Still Human? Reading Dehumanization in Photo-Journalism. *International Journal Of Humanities Education And Social Sciences (IJHESS)*, 4(6), 2860–2874.

- Hansen, F. G. (2021). Can Warm Behavior Mitigate the Negative Effect of Unfavorable Governmental Decisions on Citizens' Trust? *Journal of Experimental Political Science*, 10(1), 62–75. <https://doi.org/10.1017/xps.2021.23>
- Undang-Undang Republik Indonesia Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana, 116287 Jakarta: UUD (2025).
- Istiqomah, M., Kurniaty, R., & Kurnia, R. A. P. (2024). The Role of the New Criminal Code as an Effort to Eradicate Criminal Acts of Terrorism in Indonesia. *International Journal of Humanities Education and Social Sciences (IJHESS)*, 3(5). <https://doi.org/10.55227/ijhess.v3i5.990>
- Lihawa, L. D., Mawuntu, R., Senewe, E. V. T., & Pinasang, R. (2024). Policies of Regional State Officials in Managing Non-Natural Disasters Covid 19 Based on Indonesian Regulations Relating to Criminal Acts of Corruption. *Journal of the Community Development in Asia*, 7(1). <https://doi.org/10.32535/jcda.v7i1.2563>
- Majeed, N., Hilal, A., & Khan, A. N. (2012). *Doctrinal Research in Law: Meaning, Scope and Methodology*. 12(4), 135–142.
- McCannon, B. C. (2023). Alaska's Ban on Sentence Bargaining. *Contemporary Economic Policy*, 42(1), 110–119. <https://doi.org/10.1111/coep.12626>
- Mukayatsyah, R., Surbakti, N., & Iksan, M. (2023). Review of the Punishment of Substitute Money and Its Consequences in the Criminal Act of Corruption (Study of Decision Number 51/Pid. Sus-TPK/2020/Pn. Smg). *Jurnal Indonesia Sosial Teknologi*, 4(10), 1775–1787. <https://doi.org/10.59141/jist.v4i10.754>
- Nwozor, A., & Afolabi, O. (2022). Keeping Up Appearance? Nigeria's Anti-Corruption Crusade and Image Dilemma in the Global Arena. *Journal of Financial Crime*, 30(3), 813–827. <https://doi.org/10.1108/jfc-02-2022-0039>
- Oktobrian, D., Prayitno, K. P., Ikbaar, O. I., & Ramadhani, S. (2023). *The Harmonization of Restorative Justice Regulation in Investigation and Prosecution* (hal. 602–614). [https://doi.org/10.2991/978-2-38476-164-7\\_55](https://doi.org/10.2991/978-2-38476-164-7_55)
- Paolini, G., Kantorowicz-Reznichenko, E., & Voigt, S. (2024). Plea Bargaining Procedures Worldwide: Drivers of Introduction and Use. *Journal of Empirical Legal Studies*, 22(1), 27–75. <https://doi.org/10.1111/jels.12406>
- Shalihah, F., Adhayanto, O., Suryanto, I. D., & Agusmidah, A. (2022). Determination of the Maximum Time Limit on a Specific Time Work Agreement in the View of Legal Certainty and Fairness. *Economic Annals-XXI*, 198(7–8), 40–44. <https://doi.org/10.21003/ea.v198-05>
- Sufa, S. A., Sumartias, S., Zubair, F., Perbawasari, S., & Aristi, N. (2025). Government Communications to Address Online Prostitution: Social Strategies for Awareness. *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan*, 19(2), 1266. <https://doi.org/10.35931/aq.v19i2.4113>
- Susilowardani, S. (2023). Government Regulation in Lieu of Law Number 2 of 2022 Concerning Employment Creation in Perspective. *International Journal of Social Science*, 3(1), 41–44. <https://doi.org/10.53625/ijss.v3i1.5754>