JUSTICE EFFICIENCY IMPROVEMENT THROUGH SPECIAL LINE MECHANISM IN THE DRAFT OF INDONESIAN CRIMINAL PROCEDURE LAW (RUU KUHAP)

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Abstract

Simple, fast and low cost principle is the most fundamental principle of justice for the implementation and administration that leads to effective and efficient principles. Drafting Team of the Draft of Indonesian Criminal Procedure Law (RUU KUHAP) has offered some procedures that aim to streamline and expedite the judicial procedure, including the special line mechanism for the defendant who pleads guilty.

Special line in the RUU KUHAP is inspired by plea bargaining in criminal justice system of the United States, which is considered would make judicial procedure becomes more efficient. This paper will discuss the special line in RUU KUHAP as a new mechanism offered. The paper will firstly present the reasons of the importance of case handling efficiency, by outlining the cases burden in our criminal justice system as well as the law enforcement apparatus ability in settle it. Furthermore, it will discuss the comparison between plea bargaining and special line, and finally recommendation on special line mechanism improvement in RUU KUHAP.

Keywords: RUU KUHAP, Special Line, Plea Bargaining

A. Introduction

High load of the case requires the law enforcement apparatus to work extra in conducting their tasks. Unfortunately, limited state budget cannot support all of their needs in carrying out the tasks. For example, settlement offer, with addi- tional number of burden the state budget in the long term. And if the recruiting is still not with reasonable compensation, then the law enforcement apparatus will always complain on the lack of income as the justification of corruption practice.[1] [1]

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[1] Amril Rigo, representing State Attorney of Riau, shared the complaint in discussion forum conducted by Riau Corruption Trial, see http://rct.or.id/index.php/berita/115-amril- kejati-riau-bantu-kami-berantas-korupsi-di-riau, accessed on 28 May 2014

In addition to the offering of additional APH personnel, another important matters is the discussion on more efficient judicial procedure in order to realize "fast, simple and low cost" judicial principle.

Drafting Team of RUU KUHAP has incorporated some procedures aiming to streamline and expedite judicial procedure, i.e. termination of prosecution for public interests and/ or specific reasons[2], in which the Attorney may terminate the light lawsuit[3] and prioritize the prosecution of cases that are difficult on evi- dence. In addition to the prosecution termination procedure, another procedure offered is special line, which is a procedure to expedite and streamline the judi- cial procedure for the defendant to admit his guilt.

Special line in RUU KUHAP is inspired by plea bargaining in the United States, which is considered to drive judicial procedure more efficient. Efficiency will be achieved as the special line gives authority to the law enforcer to stream- line judicial procedure at court. In addition, the special line is put on trial by a single judge, therefore other judges can resolve other cases.

This paper will specifically discuss the special line mechanism in RUU KU- HAP. In the first part, it will be discussed the needs of efficiency in criminal justice system based on backlog lawsuits at first instance court and the lack of criminal case handling budget in the Attorney. Afterwards, it compares between the special line in RUU KUHAP and plea bargaining in the United States, as well as discussion on the special line ambiguity in RUU KUHAP. Then at the end part, this paper will provide some recommendations to refine the special line mecha- nism in the discussion of RUU KUHAP at the parliament.

B. Judicial Efficiency Requirement

Law on Judicial Power mandates, that the justice in Indonesia shall be con- ducted in simple, fast and low cost manner.[4] In the description, "simple" means "the investigation settlement of the case shall be conducted effectively and efficiently".[5] Therefore, the requirement, intention and objective of judicial ef-

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[2] Article 42 paragraph (2) RUU KUHAP

[3] In addition, Attorney may terminate the prosecution to a case with punishable under 4 years imprisonment or fined, the suspect age is more than 70 years old, or the losses has been compensated. See Article 42 paragraph (3) RUU KUHAP.

[4] Article 2 paragraph (4) Law No. 48 Year 2009 concerning Judicial Power

[5] Explanation of Article 2 paragraph (4) Law No. 48 Year 2009 concerning Judicial Power

ficiency has actually been implied factually within the laws.

The judicial efficiency requirement is also supported by the increasing cases backlog at the Court of First Instance and limited budget for general criminal resolution at Attorney. For the past three years 2011-2013, it can be identified as follows:

First, criminal case backlogs brought to court with the regular investigation (regular crime) at the Court of First Instance across Indonesia have been increas- ing every year. In 2011, the Court of First Instance across Indonesia could not settle 30,697 cases of regular crime.[6]The number was increased drastically in 2012, reaching 51,874 cases. And in 2013, the increasing of cases backlog could no longer be avoided and reached 67,196 cases.[7] This is shown in the following table:

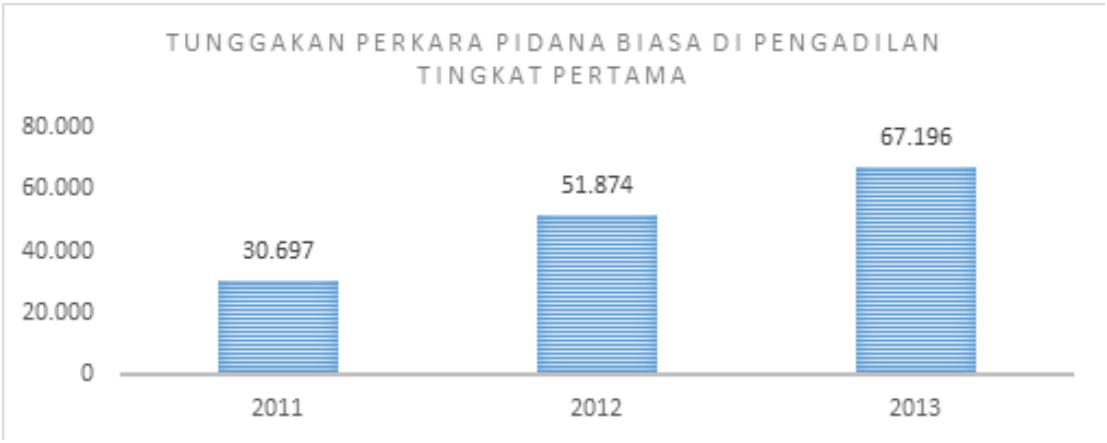

Table 1: Criminal Cases Backlog at the Court of First Instance

The option to settle cases backlog by adding the number of judges is often considered as ultimate option, while actually it will increase state budget burden. Another option is by improving the managerial side, i.e. assigning judge based on the case load. Currently the distribution or assignment of judge is often not tailored to the needs of court. Therefore, there are some courts with very high settlement rate but there are only few judges handle the cases.[8]

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[6] General Court of Supreme Court of Indonesia. Criminal Cases Data of the Entire District Courts within Legal Area of High Court in Indonesia Year of 2011, http://www.badilum.info/index.php?option=com_content&view=article&id=524:data-perkara-pidana-seluruh-pengadi- lan-negeri-dalam-daerah-hukum-pengadilan-tinggi-di-indonesia-tahun-2010&catid=23:statis- tik-perkara-pidana&Itemid=156, accessed on February 13, 2014

[7] Supreme Court of RI, Annual Report of Supreme Court of RI Year 2013, https://www.mahkamahagung.go.id/images/LTMARI-2013.pdf, accessed on March 24, 2014, page 60-61

[8] Interview of Dian Rosita with the assistance of Anugerah Rizky Akbari, MaPPI FHUI

Second, budget constraints on case settlement at Attorney made the prose- cution become less optimum. Attorney budgeting system is based on targeted cases to be prosecuted each year. In the 2011 Annual Report of Indonesian At- torney, Attorney budgeted 10,100 cases of general crimes *(pidum)* to be prosecut- ed.[9] Uniquely, Attorney can prosecute 96,488 cases or 955.32% from available budget.[10]This fact needs to be criticized in order to clarify the source of funding for 86,388 cases that are not budgeted. This funding method is not ideal because it is difficult to predict criminal cases to be handled. However, if the budgeting is conducted based on the number of cases, it will also burden the State budget.

To overcome it, Attorney increased the number of budgeted based. This can be viewed in 2012 Annual Report of Indonesian Attorney, in which it increased the number of cases handled to be 112,422 cases, 102,322 higher than the budgeted cases in 2011. (See table 2). However, increasing prosecution budget shall also definitely add burden to the state budget. Due to the limitation of state budget, Attorney mitigated it by decreasing the amount of budget per case. If in 2011 it was allocated Rp29.5 million per case, then in 2012 it was decreased to be Rp5.8 million per case[11] then again decreased in 2013 to be Rp3.3 million (table 3)[12]. As a result, some prosecutors complained on insufficient amount of budget to settle a case,[13] especially in remote areas requiring high transportation costs.[14]

Table 2: Case Prosecution Allocation

researcher.

[9] Supreme Court of RI, Annual Report of Supreme Court of RI Year 2011, http://www.ke-jaksaan.go.id/upldoc/laptah/2011-Laporan%20Tahunan%20Kejaksaan%20RI-id.pdf, accessed on February 18, 2014

[10] Supreme Court of RI, Annual Report of Supreme Court of RI Year 2012), http://kejak-saan.go.id/upldoc/laptah/laptah2012.pdf, accessed on February 18, 2014

[11] Attorney Commission, *Research Report on General Crime Handling Costs*, Unpublished Report, 2013, page 10

[12] *Ibid.*

[13] *Ibid.*

[14] As illustration, the prosecutor in remot areas sometimes need air and sea transportation with a very high cost due to geographical factor.

Table 3: Case Prosecution Cost

Due to limited budget and other resources, the law enforcement apparatus are then less likely to adhere procedural law, aiming to settle the cases faster. For example, theft case that was tried on court for 10 minutes, starting from reading the indictment until the verdict, even though the prosecutor demanded it to go through regular investigation.[15] In addition, exploitation by the law enforcement apparatus shall also become one of the problems that people complain about.[16] The restlessness can be seen from the Global Corruption Barometer 2013, which places Attorney and the Courts as the second most corrupt institution after *Polri* (Indonesian Police).[17] Attorney itself admitted that minimum case handling bud- get becomes one of the trigger of corruption practice.[18]

Based on the above description, it is not surprising to have piles of cases in the Supreme Court (MA). And the limited budget causes judges and prosecu- tors cannot perform their duties optimally and professionally.

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[15] Anton Setiawan, MaPPI Reported 307 Judge Violation to KY (Judicial Committee), December 15, 2011, http://www.jurnas.com/news/47979, accessed on February 18, 2012

[16] The case of prosecutor exploitation can be seen in Muhammad Nur Abdurrahman, Reported to Exploit the Defendant, 10 Prosecutors of Kejati Sulsel Examined by Jamwas, February 24, 2010, http://news.detik.com/read/2010/02/24/154342/1306066/10/dilaporkan-memeras-terdakwa-10-jaksa-kejati-sulsel-diperiksa-jamwas, JPNN, Kejagung Investigates Rp. 10 Billion Blackmail by the Prosecutor, February 11, 2014 http://www.jpnn.com/read/2014/02/11/215895/Kejagung-Periksa-Jaksa-Pemeras-Rp-10-Miliar- , Hukum Online, After Sentenced, Blackmail Prosecutor "Singing", February 12, 2013, http://www.hukumonline.com/berita/baca/lt511a0cb289db6/usai-divonis--jaksa-pemeras-bernyanyi, accessed on March 24, 2014

[17] Rahmat Fiansyah, KPK Boosted Up Corruption Perception Index of Indonesia,December 3rd 2013 http://nasional.kompas.com/read/2013/12/03/1934297/KPK.Dongkrak.Indeks.Persepsi.Korupsi.Indonesia, accessed on March 24, 2014 and Transparency International, Global Corruption Barometer 2013, http://issuu.com/transparencyinternational/docs/2013_globalcorruptionbarometer_en?e=2496456/3903358#search, accessed on March 24, 2014

[18] Muhammad Agung Riyadi, Mental Korup, Jaksa Belum Reformis, http://www.gresnews.com/berita/hukum/10282012-mental-korup-jaksa-belum-reformis/ accessed May 28, 2014

The issues are not necessarily caused by the complexity of procedures, but also other factors such as budget management in Attorney or human resources in MA. Therefore, it needs to conduct managerial transformation at each of institution that become the scope of bureaucratic reform, in addition to the amendment within the procedural law.

Options of streamlining and expediting the judicial procedure needs to be dis- cussed and formulated by the stakeholders of criminal justice system. Develop- ing an efficient procedural law is still rarely discussed in Indonesia. Discussion on procedural law is still related human rights protection or anti-corruption. Dis- cussing human rights issue and efficient justice becomes highly important and urgent, as the efficiency and human rights issues have potential to be conflicting each other. The experience occurred in Taiwan that is too focused on efficiency and caused unbalance "battle" between the prosecutor and the defendant or his attorney.[19] This imbalance results in adversarial system that is driven more to protect human rights of the defendant cannot be achieved maximum.[20] By initiat- ing the discussion on both matters (efficiency and human rights), Indonesia may find the best solution to formulate KUHAP, by not only focusing on one of the issues.

C. Special Line in RUU KUHAP

Drafting Team of RUU KUHAP has conducted benchmarking study on crimi- nal procedure law in several countries such as Italy, Russia, Netherland, France and United States.[21] However, it is undeniable that US plea bargaining inspired the drafting team in formulating special line in RUU KUHAP. Drafting Team describes special line with sub-title of "plea bargaining" in the academic script of RUU KUHAP.[22] According to Robert Strang, the plea bargaining setup in RUU KUHAP was added after the drafting team conducted benchmarking study to the United States.[23] Drafting Team conducted seven formulation sessions in In- donesia and one benchmarking study to the United States with the support of
U.S. Department of Justice's Office for Overseas Prosecutorial Development, As- sistance and Training ("DOJ/OPDAT")[24] as part of their mission to empower the -

[19] Margaret K. Lewis, Taiwan's New Adversarial System and the Overlooked Challenge of Efficiency-Driven Reforms, 49 Va. J. Intl. L. 651 (2009)

[20] Ibid.

[21] RUU KUHAP Academic Script, November 19, 2011

[22] Ibid.

[23] Robert R. Strang, "More Adversarial, but Not Completely Adversarial": Reformi of the Indonesian Criminal Procedure Code, *32 Fordham Intl. L.J. 188* (2008), page 210-211

[24] Ibid. page 2010

criminal justice system outside the United States.[25]

Plea bargaining setup in US is different with the special line in RUU KUHAP. The most significant distinction is there is no bargaining of charges and penalties between the prosecutor and the defendant or his lawyer. This distinction makes the special line in RUU KUHAP is less appropriate to be called as pleas bargain- ing. As the terms of Graham Hughes, the special line in RUU KUHAP shall be more appropriate to be referred as "pleas without bargains"[26] or "admission of guilt without negotiation".

1. Plea Bargaining Characteristics

Plea Bargaining has had the historical root since the 18th century in England[27] and 19th century in the United States (US).[28] However, it was not plea bargaining that was developed, but the guilty plea or admission.[29] Even the judge reminded the defendant that he should have the right to defend himself and proof not to be guilty at the court. During the period. The defendant who admits his guilt is not guaranteed to get deduction or commutation.

In United States, plea bargaining has been regularly performed by the pros- ecutor and defendant since the end of 19th century and the beginning of 20th cen- tury, even though there was not any regulation that ruled it in details. The prac- tice was conducted due to the increasing number of cases handled by the law enforcer, as well as longer trial process if the defendant filed a legal action.[30] Plea Bargaining finally received acknowledgement in 1970, when the court convicted on Brady v.s United States case.[31]

Plea Bargaining in the Black's Law Dictionary is defined as "A negotiated agreement between a prosecutors and a criminal defendant whereby the defen- dant pleads guilty and get a lesser sentence or is charged on a more lenient crimi- nal offense".[32]. In the practice, the prosecutor and the defendant conduct negotia-

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[25] http://www.justice.gov/criminal/opdat/about/mission.html, accessed on March 3rd, 2014

[26] Graham Hughes, Pleas Without Bargains, *33 Rutgers L. Rev. 753* (1980-1981)

[27] Albert W. Alschuler, Plea Bargaining and Its History, *79 Colum. L. Rev*. 1 (1979), page 9

[28] Wayne R. LaFavea, et.al, Criminal Procedure, 5 Crim. Proc. § 21.1(b) (3d ed.)

[29] Alschuler, Op.Cit.

[30] George Fisher, Plea Bargaining's Triumph, *109 Yale L.J. 857* (2000), page 1041

[31] Jenia I. Turner, *Plea Bargaining Across Borders*, (New York: Aspen, 2009), page 10

[32] Black's Law Dictionary (9th ed. 2009), accessed through www.westlaw.com on March 2nd 2014, literal translation by the writer.

tion or bargaining at least in three formats as follows[33]:

1) Charge bargaining (negotiating the article charged), in which the pros- ecutor offers to reduce the type of criminal offense charged;

2) Fact bargaining (negotiating the legal facts), in which the prosecutor will only provide the facts for defense of the defendant; and

3) Sentencing bargaining (negotiating the sentence), which is the negotia- tion between prosecutor and the defendant regarding the sentence to be charged to the defendant. The sentence is generally lower.

The negotiation may be conducted by phone, at the Attorney Office, or the court room.[34] However, the negotiation may also be conducted without the in- volvement of judge.[35] Agreement between the two parties may result on the pros- ecutor 1.) not to charge or charge the lighter criminal offence to the defendant; 2) recommend the sentence to be imposed to the judge; 3.) agree with the defendant to impose specific sentence.[36] However, the judge shall not be bound to take the court judgment in accordance with the agreement between prosecutor and the defendant or his lawyer.[37]

In United States, plea bargaining may settle more cases. This procedure en- courages the enforcement apparatus to settle 97% of central government criminal case and 94% of state government criminal case.[38] The efficiency resulted from plea bargaining shall inspire law experts and parliament members in many coun- tries.[39] Countries with civil law such as Italy,[40] Russia,[41] or Asian countries such as Taiwan[42] has regulated provisions on please bargaining within their criminal -

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[33] Regina Rauxloh, *Plea Bargaining in National and International Law*, (London: Routledge, 2012), page 25-26

[34] Ibid. page 22

[35] Fed. R. Crim. Proc. 11 (c) (1) (C)

[36] Fed. R. Crim. Proc 11 (c) (1) (A) (B) (C)

[37] Fed. R. Crim. Proc 11 (c) (3) (A)

[38] Missouri v. Frye, 132 S. Ct. 1399, 1407 (2012) (Citing Dept. of Justice, Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics Online, Table 5.22.2009, http://www.albany. edu/sourcebook/pdf/t5222009.pdf)

[39] Cynthia Alkon, Plea Bargaining As A Legal Transplant: A Good Idea for Troubled Crim- inal Justice Systems?, *19 Transnatl. L. & Contemp. Probs. 355* (2010)

[40] William T. Pizzi & Mariangela Montagna, The Battle to Establish an Adversarial Trial System in Italy, *25 Mich. J. Intl. L. 429* (2004), page 438

[41] Inga Markovits, Exporting Law Reform-but Will It Travel?, 37 Cornell Intl. L.J. 95 (2004), page 109

[42] Margaret K. Lewis, Taiwan's New Adversarial System and the Overlooked Challenge of Efficiency-Driven Reforms, *49 Va. J. Intl. L. 651* (2009), page 672

procedure law. Moreover, the Government of the United States "exports" their criminal procedure law to be the catalyst of plea bargaining concept deployment to other countries.[43]

2. Special Line Characteristics

Special Line in RUU KUHAP is only regulated with one article, i.e. Article 199 RUU KUHAP, which is mentioned as follows:

Section Six

Special Line

Article 199

(1) When the public prosecutor read out the indictment, the defen- dant pleads to all acts indicted and pleads guilty to have con- ducted the criminal offense sentenced of penalty not more than 7 (seven) years, the public prosecutor may delegate the case to the trial with short examination procedure.

(2) Plea of the defendant shall be set forth in the minutes signed by the defendant and public prosecutor.

(3) The judge is obliged to:
   a. inform the defendant on the rights released by pleading as referred to in paragraph (2);
   b. inform the defendant on the length of criminal sentence that may be applied; and
   c. question whether the plea as referred to in paragraph (2) pro- vided voluntarily.

(4) The judge may refuse the plea as referred to in paragraph (2) if the judge doubts on the truth of the plea of the defendant

(5) Excluded from Article 198 paragraph (5), criminal impose to the defendant as referred to in paragraph (1) shall not exceed 2/3 from maximum criminal offence charged.

Similar to plea bargaining, the special line is given to the defendant confessing the criminal offense charged. As the impact of the confession, the defendant will

[43] Lihat Hiram E. Chodosh, Reforming Judicial Reform Inspired by U.S. Models, 52 DePaul L. Rev. 351 (2002) and Allegra M. McLeod, Exporting U.S. Criminal Justice, *29 Yale L. & Policy Rev*. 83 (2010)

be adjudicated using "short examination procedure".[44] The shifting from regular examination procedure is expected to expedite the trial process.

On the short examination procedure, RUU KUHAP regulates that the trial shall be led by 1 (one) judge[45] This arrangement is considered to be appropriate to review the result of MaPPI FHUI monitoring, that found the judge members tend to just sit down, or even fall asleep during the trial therefore the proof is considered to be easy by the judge and the prosecutor.[46] With such arrangements, the time and energy of the judge can be allocated to major cases that are difficult to prove or to settle other cases backlog.

Different with plea bargaining, the drafting team closes the opportunity of agreement on sentences between prosecutor and the defendant, due to the con- cern on potential corruption on the attorney.[47] The drafting team prefers open court, which is lead and decided by the judge in imposing sentence to the defen- dant.[48] This setting is the sign that the drafting team does not want RUU KUHAP to fully become adversarial system. The drafting team still regulates one of the inquisitorial Systems, which is the major role of the judge in leading the trial, particularly in the proving proses and sentences.[49]

Confession of the defendant is performed in front of the judge on the trial after the public prosecutor read the indictment.[50] The judge will then decide whether the confession if appropriate or not. If the judge is doubtful on the truth of the defendant's confession, the judge may reject the confession.[51] This is different with the plea bargaining in US, in which the confession of the defendant is not performed in front of the judge.

RUU KUHAP also limitedly regulates the criminal offenses that can be prose- cuted through the special line. It is unlike the plea bargaining in the United States that can be applied to all type of criminal acts, including those with punishable

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[44] *Ibid.*

[45] Article 198 (6) RUU KUHAP of 2012 version, http://icjrid.files.wordpress.com/2012/12/r-kuhap.pdf, accessed on March 24, 2014, http://icjrid.files.wordpress.com/2012/12/naskah-aka- demik-r-kuhap.pdf, accessed on March 24, 2014

[46] Judge Fell Asleep During Trial will be Sentenced, 11 Juni 2011, http://www.jpnn.com/read/2011/06/11/94724/Hakim-Tidur-Saat-Sidang-Akan-Dihukum-, accessed on March 24, 2014

[47] Strang, *Op. Cit.*,Hlm.229

[48] Ibid.

[49] See Franklin Strier, What Can the American Adversary System Learn from an Inquisito- rial System of Justice?, *76 Judicature 109* (1992)

[50] Article 199 paragraph 1 RUU KUHAP

[51] Article 199 paragraph 4 RUU KUHAP

death penalty.[52] The drafting team refers to plea bargaining concept in Russia which is closed for serious crime.[53]Special line can only be applied to the criminal offence which is accused for no more than 7 (seven) years.[54]

The defendant who confessed cannot make a deal with the prosecutor regard- ing the duration of sentence charged. They also cannot negotiate on the type of charges to be applied to the defendant as the chance of guilty pleas exists after the prosecutor create and read out the charges. RUU KUHAP regulates that the judge still plays important role in sentencing. However, the judge is restricted to exceed 2/3 of the maximum criminal offence charged.[55] Reduction of sentence is in aligned with the objective of plea bargaining, which is to impose more lenient sentence to the defendant who pleads guilty.

Drafting Team actually does not develop certain examination procedure for the implementation of special line. The team only regulates that the short exami- nation procedure shall be applied in adjudicating the defendant pleads guilty. In the special line mechanism, the prosecutor is authorized to reduce the proving stage that is considered to be unnecessary.[56] Confession of the defendant shall definitely be considered as a strong evidence to judge the case. Thus, the prosecu- tor does not have difficulty to add another evidence. Therefore, the case handling can be settled immediately. The quick settlement of the case shall provide op- portunity to the judge for checking other cases backlog and saving case handling cost of the prosecutor which is very limited.

3. Special Line Refinement

Special line arrangement in RUU KUHAP is currently still not perfect, there are still some unclear or ambiguous provisions. One of the root causes is that the drafting team did not develop a certain examination procedure for the defendant to plain to be guilty and only refers to the short investigation proce- dure. DPR and the policy stakeholders need to revise and discuss some provi- sions that require to be clarified. Among others are the transitional examination procedure from regular examination procedure to the short examination proce-

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[52] In United States, prosecutor sometimes “threats” the defendant by death penalty in or- der to obtain confession easily and quickly so that the case can be settled through plea bargaining. See: Sarah Breslow, Pleading Guilty to Death: Protecting the Capital Defendant’s Sixth Amend- ment Right to A Jury Sentencing After Entering A Guilty Plea, *98 Cornell L. Rev.* 1245 (2013)

[53] Strang, *Op.Cit.*,page 211-212

[54] Article 199 paragraph 1

[55] Article 199 paragraph (5) RUU KUHAP

[56] Article 198 paragraph (2) RUU KUHAP

dure, provisions on the sentences and evidence. This shall be based on the fol- lowings:

First, the ambiguity within special line occurs in the examination pro- cedure applied to prosecute defendant who plaids to be guilt. The draft- ing team arranges that the transfer to the short examination proce- dure can be done after the prosecutor read out the indictment and hear the confession of the defendant.[57]The existence of the word "transfer" indicates that the case is adjudicated with regular examination procedure before it is adjudicated with the short examination procedure.[58]

Transferring from regular examination procedure that is adjudicated by three judges to the short examination procedure that is also adjudicated by three judg- es to the short examination procedure which may lead to inefficient at judicial procedure. This shall also complicate administration at the Court, that after as- signing three judges, but then it was adjudicated and imposed by one judge in the short examination procedure, We are saving the time, energy and thought of two judges who do not continue to execute the trial, and the time is consumed for reading, learning and prosecute the case until the implementation of the first trial.

Second, provision on sentence stipulated in the special line and the short ex- amination procedure part have different arrangement. Special line may be ap- plied by the law enforcer to the defendant with criminal charges not more than 7 (seven) years[59] has maximum sentences limit of 2/3 (two thirds).[60] For example, a defendant is accused by a criminal act with maximum sentence of 7 (seven) years in prison, then the judge may impose the imprisonment for him at maximum 4 (four) years and 8 (eight) months, 2/3 (two thirds) of the 7 (seven) years impris- onment. Meanwhile, the defendant tried through a short examination procedure shall not be sentenced to more than 3 (three) years in prison.[61]

Third, the short examination procedure in the special line does not enforce pro- visions on evidence.[62] Provision of evidence in the RUU KUHAP is considered as

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[57] Article 199 paragraph (1) RUU KUHAP

[58] It is not possible to adjucate it with short examination procedure (lenient criminal act examination procedure) as in the short examination procedure the investigator with the authority from the public prosecutor does not read the indictment.

[59] Article 199 paragraph (1) RUU KUHAP

[60] Article 199 paragraph (5) RUU KUHAP

[61] Article 198 paragraph (5) RUU KUHAP.

[62] Article 198 paragraph (2) RUU KUHAP.

one step forward by some parties[63] as it requires the law enforcer to obtain evi- dence with the procedure that is not against the law.[64] Therefore, the judge may refuse the evidence presented by the prosecutor when obtained unlawfully, such as torturing.

The invalidity of the evidence provision shall stimulate and sustain torturing practices in order to obtain confessions. As we know, in 2008, LBH Jakarta found 81.1 % of 639 respondents in Jakarta stated to be subjected to torture during the examination by the investigator.[65] This torture, according to Edy Halomoan, law- yer at LBH Jakarta. Is commonly performed in order to obtain confessions from the suspect.[66] Edy also found torturing practices occurred in other cities such as Banda Aceh and Surabaya.[67]

Based on the above description, then DPR and policy stakeholders should re-formulate the provisions of special line in RUU KUHAP by establishing separate procedure for the defendant who pleads guilty, among others by :

1. Reinforce the sentence limit, either 2/3 (two thirds) from the maximum penalty or 3 (three) years of imprisonment. The incentives in the form of more lenient sentence shall encourage the defendant who are completely guilty to confess so that the case can be immediately settled.

2. Provision concerning the validity of evidence is absolute to be applied. Indonesia as a country that ratifies various international convention, particularly the International Convention Against Torture (CAT) and International Covenant on Civil and Political Rights (ICCPR) shall not ignore provisions on the evidence. The provision may prevent and stop torture practice by the law enforcer to obtain confession. This provision also may encourage ideal special line implementation, which is plea of guilty by the defendant voluntarily.

The writer believes that the measure can reduce the procedural complexity,

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[63] Strang, Op. Cit., page 218-221.

[64] Article 175 paragraph (2) RUU KUHAP.

[65] LBH Jakarta, Rights to be Freed from Torture and Treatment or other Sentences that are Cruel, Inhuman and Degrading Human Dignity, http://www.bantuanhukum.or.id/web/blog/ hak-bebas-dari-penyiksaan-dan-perlakuan-atau-penghukuman-lain-yang-kejam-tidak-manu- siawi-dan-merendahkan-martabat-manusia/ accessed on May 28, 2014

[66] Ariehta Eleison Sembiring, LBH Jakarta: Investigators of Polda Metro Jaya Tortures U, http://megapolitan.kompas.com/read/2013/01/28/13481563/LBH.Jakarta.Penyidik.Polda.Metro.Jaya.Lakukan.Penyiksaan accessed on May 28, 2014

[67] Edy Halomoan Gurning, Index of Perception and Torture as the Public Monitoring Mechanism, http://www.elsam.or.id/mobileweb/article.php?act=content&m=6&id=1589&cid=14&lang=en, accessed on May 28, 2014

therefore it shall facilitate the law enforcement apparatus in performing their duties. This ease shall definitely drive the justice efficiency.

D. **Conclusion**

Efficient justice is highly required, besides due to the law mandate, there is also the fact that the criminal justice system is currently resulting to a stacking of cases and on the other hand the state budget is not sufficient to fund all indict- ments of the prosecutor. Special line offers an efficient procedure, as the defen- dant plaids to be guilty shall be prosecuted and put on trial in a short examina- tion procedure. Short examination with one of the judges will maximize other judges to settle other cases. By elimination some evidentiary process, special line is considered to accelerate case handling, so that it can realize a fast, low cost and simple justice.

However, special line setup using short investigation procedure still needs to (1) eliminate ambiguity of procedures, (2) maximum threshold of punishment, and (3) re-apply the provisions on evidence. Therefore criminal procedure law going forward may provide human rights protection as well as building justice efficiency.

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