

THE CRIME CONTROL MODEL OF VIETNAM'S CRIMINAL JUSTICE SYSTEM: THE VITAL ROLE OF PROSECUTORS AND THE NEED FOR PLEA BARGAINING

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Abstract

Vietnam's criminal justice system predominantly follows the crime control model, emphasizing efficiency in detecting, prosecuting, and adjudicating crimes to maintain societal order. Prosecutors are central in overseeing investigations and ensuring rapid case processing, with the pre-trial stage often prioritised in trial proceedings. However, rising crime rates and limited prosecutorial resources have highlighted the need for reforms, such as the introduction of plea bargaining. Plea bargaining could enhance efficiency by allowing prosecutors to handle more cases and reducing criminal process uncertainty. While this aligns with the goals of the crime control model, it also raises concerns about safeguarding defendants' rights. To address these concerns, it is proposed that judges play a more active role in plea negotiations, ensuring fairness and voluntariness. This paper argues that plea bargaining, with proper safeguards, could help maintain the balance between efficiency and justice in Vietnam's criminal justice system.

Keywords: *crime control model, criminal justice, criminal procedure, plea bargaining, prosecutor, Vietnam*

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In 1964, Professor Herbert L. Packer proposed a theory of classifying criminal justice models into crime control and due process models.¹ This classification is based on the underlying values of each approach. As its name suggests, the crime control model prioritises efficient crime regulation to protect society. In contrast, the due process model emphasises safeguards rights of the accused through a fair and just procedural framework.² Packer's theory was proposed 60 years ago. Nevertheless, as many scholars have noted, his analyses of the crime control and due process models offer a valuable framework for examining and debating the functioning of a

1 Packer, H. L. (1964). Two models of the criminal process. *University of Pennsylvania Law Review*, 113(1), 1–68. <https://doi.org/10.2307/3310562>

2 Lu, H., Shuai, H., Li, Y., Liu, J., & Liang, B. (2022). Confession and the crime control model: An analysis of exonerated death penalty cases in China - Special issue on wrongful convictions and exonerations in Asia. *Asian Journal of Criminology*, 17(Supplement 1), S33-S54. <https://heinonline.org/HOL/P?h=hein:journals/asjrcrm17&i=502>

procedural system characterised by conflicts and competition among differing values.³ It continues to exert influence to this day.⁴

Based on Packer's theory, Vietnam's criminal justice model has long been regarded as belonging to the crime control model.⁵ Besides, one of the most significant mechanisms of the crime control model – plea bargaining⁶ – has been rejected in Vietnam. Currently, some researchers have proposed applying plea bargaining in Vietnam to address the increasing crime rate, which places enormous pressure on the criminal justice system.⁷ These authors primarily emphasize the mechanism's potential to save human resources, effort, time, and budget in handling criminal cases. This potential is a common justification for plea bargaining. Another justification, often underestimated by Vietnamese legal scholars, is its ability to ensure predictable outcomes in resolving criminal cases and reduce the uncertainty of criminal proceedings at trial. This justification is particularly significant within the context of Vietnam's model of the criminal justice system, as it reduces unnecessary barriers in convicting criminals, thereby ensuring the objective of combating and controlling crime effectively and efficiently. This paper, drawing primarily on doctrinal literature and comparative legal studies, argues that in the Vietnamese criminal justice system, prosecutors play a crucial role. Faced with an increasing volume and complexity of crime, prosecutors now urgently need plea bargaining to serve the underlying values of the crime control model, which aims to manage crime to protect societal stability and safety effectively.

3 Kubrin, C. E., & Tublitz, R. (2022). How to think about criminal justice reform: Conceptual and practical considerations. *American Journal of Criminal Justice*, 47(6), 1050–1070. <https://doi.org/10.1007/s12103-022-09712-6>

4 Aviram, H. (2011). Packer in context: Formalism and fairness in the due process model. *Law & Social Inquiry*, 36(1), 237–261. <https://www.jstor.org/stable/23011876>

5 Le, L. C. (2018). Role of the court in protecting human rights in crime-control model, according to the Criminal Procedure Code of 2015. *VNU Journal of Science: Legal Studies*, 34(1), 1–7, <https://doi.org/10.25073/2588-1167/vnuls.4139>

6 Packer (1964), *supra* note 1, p. 46–49.

7 Nguyen, T. D. (2016). Thương lượng nhận tội trong Tố tụng hình sự - Kinh nghiệm quốc tế và gợi mở cho pháp luật Việt Nam [Plea bargaining in criminal procedure – International experiences and insights for Vietnamese law]. *State and Law Review*, (2), 43–47; Le, H. T. D. (2018). Chế định mặc cả nhận tội theo pháp luật tố tụng hình sự Hoa Kỳ và kinh nghiệm cho Việt Nam [The plea-bargaining system in U.S. criminal procedure law and lessons for Vietnam]. *Legal Sciences Journal*, 5(117), 45–53; Nguyen, H. Y. (2019). Cơ chế thỏa thuận hợp tác trong tố tụng hình sự Hoa Kỳ [Cooperation agreement mechanisms in U.S. criminal procedure]. *Procuratorate Journal*, (24), 50–55; Vo, M. K., & Nguyen, P. A. (2023). Áp dụng thỏa thuận nhận tội vào Việt Nam: Thuận lợi và thách thức [Implementing plea bargaining in Vietnam: advantages and challenges]. *Democracy and Law Review*, Special Issue on Criminal Law and Criminal Procedure Law.

This paper begins by introducing Packer's framework on the categorization of criminal justice models. It then identifies the features of Vietnam's criminal justice system. The subsequent section examines the pivotal role played by prosecutors in the operational dynamics of Vietnam's crime control framework. Finally, the paper addresses the professional challenges prosecutors face amidst rising crime rates and the potential benefits of implementing plea bargaining.

1. The criminal justice system in Vietnam: A dominant approach toward the crime control model

Packer begins his study with the assumption of an adversarial relationship between the state and the criminal. Criminals typically view punishment as something to be avoided and make every effort to evade capture. If apprehended, they often deny guilt and avoid cooperating with authorities. They utilize all available means to fight their conviction if brought to trial. Even after conviction and imprisonment, their efforts to regain freedom persist. This conflict creates a continuous struggle between the criminal and the state.⁸ This conflicting relationship raises fundamental questions about criminal procedure and helps define justice models.⁹ In broad terms, the crime control model emphasizes the government's efficiency in investigating, prosecuting, and adjudicating criminals.

In the crime control model, the fundamental value system is based on the premise that the suppression and control of crime are the most critical functions of the criminal justice system. A failure to control and prevent crime is seen as a threat to the public. From this perspective, criminal justice is a positive safeguard for a free society. To achieve this, the crime control model emphasizes the criminal justice system's effectiveness in screening suspects, identifying criminals, and ensuring the appropriate punishment of those convicted. In this context, effectiveness refers to the system's capacity to process a high proportion of detected crimes efficiently.¹⁰

Efficiency prioritizes both speed and finality. Speed pertains to the pre-trial investigation and prosecution processes, while finality involves minimizing challenges to case resolution by avoiding procedures that do not contribute to uncovering the truth. The truth of a case can often be determined more swiftly through

8 Packer (1964), *supra* note 1, p. 2.

9 Griffiths, J. (1970). Ideology in criminal procedure or a third 'model' of the criminal process. *Yale Law Journal*, 79(3), 359-417. <https://doi.org/10.2307/795141>

10 Packer (1964), *supra* note 1, pp. 9-10.

police interrogation than through the courtroom, making pre-trial proceedings a higher priority than trial proceedings.¹¹ In this model, plea bargaining is encouraged and widely employed due to its ability to enhance efficiency in investigating, prosecuting, and adjudicating a large number of detected crimes.¹² At the same time, it reduces the risk of offenders avoiding conviction at trial due to procedural errors.

Based on Packer's theory, legal scholars often classify Vietnam's criminal justice model as tending toward the crime control model.¹³ Vietnam is fundamentally a communitarian society.¹⁴ Various schools of thought influenced the Vietnamese legal system, including Confucianism and socialism.¹⁵ Consequently, community values are often prioritized over individual values. As a result, individual rights are often subordinate to the community's common interests. Therefore, the crime control model that emphasizes the swift, effective, and accurate investigation, prosecution, and trial of crimes to ensure community safety is fundamentally appropriate for Vietnam. Issues of law and justice are always reflections of each culture, tailored to the specific needs of each country, and cannot be arbitrarily copied from outside.¹⁶

According to the Rule of Law Index, Vietnam is ranked 66th out of 142 countries in the Criminal Justice category. However, when examining specific indicators within this category, those related to the crime control model receive relatively high rankings; for instance, the index for an effective criminal investigation system is 42nd out of 142. In contrast, indicators about the rights of the accused, such as

11 Packer (1964), *supra* note 1, p. 10.

12 Packer (1964), *supra* note 1, p. 13.

13 Some legal scholars, such as Associate Professor Le Lan Chi and Dr. Dinh The Hung, have argued that Vietnam's criminal justice system follows the crime control model, with its primary purpose being to detect, combat, and control crime. See Le, L. C. (2018). Role of the Court in protecting human rights in crime-control model, according to the Criminal Procedure Code of 2015. *VNU Journal of Science: Legal Studies*, 34(1), 1–7. <https://doi.org/10.25073/2588-1167/vnuls.4139>; Dinh, T. H. (2020). Về tố tụng công bằng trong cải cách tư pháp ở Việt Nam hiện nay [On due process in judicial reform in Vietnam Today]. In *Continuing to Promote Judicial Reform in Vietnam: Theoretical and Practical Issues* [Symposium]. Graduate Academy of Social Sciences & Hanoi Open University, p. 386–394.

14 Nguyen, D. H. (2016). Tiếp cận tính cộng đồng: Những bàn luận và nghiên cứu về tính cộng đồng ở Việt Nam [Approaching community: Discussions and research on community in Vietnam]. *Journal of Social Science Information*, (7), 35–41.

15 Ngoc, S. B. (2022). Vietnam's mixed constitution and human rights. *The Law & Ethics of Human Rights*, 16(2), 295–319. <https://doi.org/10.1515/lehr-2022-2007>

16 Giannouloupoulos, D. (2013). Custodial legal assistance and notification of the right to silence in France: Legal cosmopolitanism and local resistance. *Criminal Law Forum*, 24(3), 291–329. <https://heinonline.org/HOL/P?h=hein.journals/crimlfm24&i=291>

due process and the rights of the accused, rank lower, at 77th out of 142.¹⁷ The inclination toward the crime control model in Vietnam is reflected in the following aspects:

First, the primary objective of the Vietnamese criminal procedure is to detect and address crimes.¹⁸ Article 2 of the 2015 Criminal Procedure Code (CPC) clearly articulated this objective, ruling that the 2015 CPC is to ensure the accurate detection and fair, timely handling of all criminal acts and prevent and suppress crime, ensuring that offenders do not evade justice and that innocent individuals are not wrongfully convicted; it contributes to the protection of justice, human rights, and civil rights, while also safeguarding the socialist regime and the interests of the State, as well as the rights and legitimate interests of organizations and individuals; it seeks to educate the public on the importance of obeying the law and effectively combat crime. This hierarchical value system is a fundamental characteristic of the crime control model.

Second, Vietnamese criminal procedure emphasizes the investigation and prosecution stages. According to the 2015 CPC, the duration of the investigation and prosecution phases is consistently much longer than that of the trial preparation stage. For instance, in handling a less serious case, the investigation period is set at two months (which can be extended by an additional two months), while the prosecution period lasts 20 days (extendable by ten days). In contrast, the trial preparation period is limited to 30 days (with a possible extension of 15 days). Consequently, the maximum duration for the investigation and prosecution phases is five months, whereas the trial preparation phase is only 45 days.¹⁹ This pattern is similarly observed in cases involving serious, very serious, and especially serious crimes. Once the case file is completed and submitted to the court, most evidence for the prosecution has already been thoroughly compiled. The trial primarily serves to re-examine the evidence that has been collected, with new evidence rarely introduced or presented. As a result, when the trial begins, the court is already well-acquainted with all case details and the evidence for both the prosecution and the defense.

Third, the investigation agency and the procuracy typically classify only about half of the reported criminal information as

17 See World Justice Project. (2023). Criminal justice for Vietnam. *Rule of Law Index*. <https://worldjusticeproject.org/rule-of-law-index/country/2023/Vietnam/Criminal%20Justice/>

18 Dinh (2020), *supra* note 13, p. 390.

19 Articles 172, 240, and 277 of the 2015 Criminal Procedure Code.

criminal cases.²⁰ Conversely, the rate of successful prosecutions in court in Vietnam is exceedingly high, often exceeding 99.99%.²¹ Notably, in 2021, the court declared a zero not-guilty verdict.²² This trend underscores the effectiveness of the investigation agency and the procuracy in promptly and effectively detecting, classifying, and addressing crimes at an early stage. Moreover, it highlights the strong alignment between the court, the investigation agency, and the procuracy.

2. Prosecutors as key actors in Vietnam's criminal justice system

In many criminal justice systems worldwide, prosecutors are gaining increasing authority. They now play a pivotal role in administering justice and are increasingly held accountable for any shortcomings in the system.²³ At the heart of a prosecutor's authority lies the power to secure convictions for criminal offenses.²⁴ In Vietnam, prosecutors and their institution, the procuracy, play a central role in the criminal justice system. They prosecute criminals and serve as supervisors who ensure the legality of judicial activities conducted by investigators, judges, and other involved parties. The significant authority wielded by prosecutors is a vital actor in the

20 For instance, in 2021, out of 128,268 resolved reports of criminal information, charges were pressed in 66,376 cases, accounting for 51.75%. Similarly, in 2022, the respective figures were 129,062 resolved reports, 68,359 cases with charges, making up 52.97%. In 2023, the respective figures were 143,299, 74,388, and 51.91%. See more at Supreme People's Procuracy of Vietnam [SPPV]. (2021, October 8). Report no. 145 on Work Report of the General Prosecutor of the Supreme People's Procuracy at the 2nd session, the 15th National Assembly. p. 9; Supreme People's Procuracy of Vietnam. (2022, December 27). Report no. 188 on Work Report of the People's Procuracy of Vietnam in 2022. p. 6; Supreme People's Procuracy of Vietnam. (2023, December 20). Report of the People's Procuracy of Vietnam, No. 175 on Work Report, p. 6.

21 For example, in 2022, the court tried a total of 127,836 defendants, excluding 1,015 defendants who were suspended or temporarily suspended for various reasons. The remaining 126,821 defendants reached a verdict, of which 126,814 were found guilty, accounting for 99.994%. Only 7 defendants were found not guilty, accounting for 0.006%. In 2023, the figures were as follows: 141,142 defendants tried, 1,017 suspended, 140,125 reached a verdict, with 140,144 found guilty, accounting for 99.999%, and 1 defendant found not guilty, accounting for 0.0001%. See SPPV (2022), *supra* note 20, p. 10; SPPV (2023), *supra* note 20, p. 9.

22 SPPV (2021), *supra* note 20, p. 13.

23 Sklansky, D. A. (2016). The nature and function of prosecutorial power. *Journal of Criminal Law and Criminology*, 106(3), 473-520. <https://www.jstor.org/stable/26404025>; Langer, M., & Sklansky, D. A. (2017). Introduction. In D. A. Sklansky & M. Langer (Eds.), *Prosecutors and democracy: A cross-national study* (pp. vii-viii). Cambridge University Press. <https://doi.org/10.1017/9781316941461.001>

24 Sklansky (2016), *supra* note 23, p. 487.

crime control model of Vietnam and a primary factor contributing to Vietnam's exceptionally high conviction rates compared to other countries.

According to Packer, in the crime control model, the efficiency of apprehending, trying, convicting, and disposing of a high proportion of criminal offenders is predicated on a premium on speed and finality.²⁵ Regarding speed and finality, the critical role of Vietnamese prosecutors is evident in two key aspects: (i) early screening to determine the innocence or guilt of individuals and (ii) ensuring that the pre-trial process operates smoothly, rapidly, and efficiently.

First, Vietnamese prosecutors play crucial role in the early screening process to determine the innocence or guilt of individuals. Prosecutors become involved in a case as soon as the investigation agency receives a report of criminal information. Their early involvement ensures that the criminal process is both legal and effective, reflecting the principle of closely linking prosecution to investigation. Every reported criminal case requires the collaboration of at least one investigator and one prosecutor, who are responsible for determining whether the issue involves a criminal offense, a civil dispute, or an administrative violation. If the investigator concludes that a criminal offense has occurred and presses charges, establishing criminal cases, those charges must be reviewed by the competent prosecutor. Based on the prosecutor's assessment, the procuracy may cancel the charges if they are found to be false or unlawful.²⁶ After the formal charge, if the investigators identify a potential suspect as the actual wrongdoer, they can press a criminal charge against this suspect, and such a decision must receive formal and explicit approval from procuracy.²⁷ In other words, any criminal charge that leads to establishing a criminal case or against a criminal accused must implicitly or explicitly be approved by the procuracy.

Regarding the data of criminal charges to establish cases, in 2021, out of 128,268 resolved reports of criminal information, charges were pressed in 66,376 cases, accounting for 51.75%. Similarly, in 2022, the respective figures were 129,062 resolved reports and 68,359 cases with charges, making up 52.97%. In 2023, the respective data were 143,299, 74,388, and 51.91%. As regards the data of criminal charges against the accused, in 2021, the investigation phase

25 Packer (1964), *supra* note 1, p. 10-11.

26 Paragraph 6 Article 159, Paragraph 1b Article 161 of the 2015 Criminal Procedure Code.

27 Paragraph 3 Article 179 of the 2015 Criminal Procedure Code.

resolved 137,946 accused and proposed prosecution for 132,737; the prosecution phase resolved 129,718 and prosecuted 129,041. In 2022, the investigation phase resolved 134,329 accused and proposed prosecution for 130,091; the prosecution phase resolved 129,482 and prosecuted 128,856. In 2023, the investigation phase resolved 156,039 accused and proposed prosecution for 151,373; the prosecution phase resolved 151,986 and prosecuted 149,763. Conversely, the number of defendants declared not guilty by the court was zero in 2021, seven in 2022, and one in 2023.²⁸

Data from 2021 to 2023 demonstrates that prosecutors carefully screen cases in the early stages of criminal proceedings, distinguishing criminal violations from non-criminal ones and identifying actual wrongdoers from innocent individuals. As the proceedings advance, the number of accused excluded from the criminal process gradually decreases. This accuracy in distinguishing guilt and innocence during the pre-trial stages contributes to the efficiency of later stages, making them smoother and less prone to complications.

Second, Vietnamese prosecutors are in a position to enhance the speed and efficiency of the pre-trial criminal process. During the pre-trial investigation, the prosecutorial power, combined with the supervisory authority, empowers the prosecutors with a significant effect on the effectiveness and speed of the investigation. Notably, compared to other jurisdictions, the supervisory authority in Vietnam transfers all judicial authority for issuing warrants from judges to prosecutors.

During the pre-trial stages, the application of investigative and preventive measures falls under the authority of the investigation agency, with the approval of the procuracy. These measures, which include actions that restrict the fundamental freedoms of the accused – such as searches, special investigative procedures, arrests, and temporary detention – require different levels of approval. In some cases, approval may be implicitly granted for actions that do not require prior authorization but can be subject to cancellation by the procuracy after their implementation (e.g., temporary detention).²⁹ In contrast, activities that require explicit approval before being carried out, such as arrests, searches, or special investigative measures, must receive written approval from the procuracy.³⁰

28 See SPPV (2021), *supra* note 20, pp. 9, 10, 12, 13; SPPV (2022), *supra* note 20, pp. 6, 7, 9, 10; SPPV (2023), *supra* note 20, pp. 6 - 9.

29 Paragraph 4 Article 117 of the 2015 Criminal Procedure Code.

30 Article 119, 193, and 225 of the 2015 Criminal Procedure Code.

3. The need for plea bargaining

Vietnam's socio-economic situation and annual population growth rate have recently seen positive developments. This economic and population growth has contributed to increasingly complex crime trends, with a rise in criminal cases being prosecuted. Specifically, during the five years from 2016 to 2021, investigation agencies at all levels charged 375,884 criminal cases, marking a 1.2% increase compared to the 2011–2016 period.³¹ Simultaneously, the 2015 CPC has expanded the tasks of the procuracy, enhancing its authority and responsibility to meet the requirements of judicial reform. This combination of rising crime rates and increased demands on prosecutors' performance presents significant challenges for the procuracy, particularly a lack of human resources to fulfill their responsibilities effectively.

In 2021, Le Minh Tri, the former General Prosecutor of the Supreme People's Procuracy, suggested that the procuracy maintain its current workforce to alleviate the excessive burden.³² If Le had only requested to maintain the current workforce within the procuracy, his successor would have gone further by requesting additional positions for prosecutors. In 2024, Nguyen Huy Tien, the current General Prosecutor, noted that the procuracy is now under considerable pressure due to staff shortages. He proposed to the Standing Committee of the National Assembly that 2,000 more prosecutor positions be added to the procuracy.³³

Two thousand is a significantly large number. In comparison, Japan, a country with a population about 25% larger than Vietnam's, had only 2,751 prosecutors as of 1 July 2023.³⁴ It is essential to acknowledge that Vietnamese prosecutors are also tasked with

31 Supreme People's Procuracy of Vietnam. (2021, April 9). Báo cáo tổng kết công tác nhiệm kỳ Quốc hội khóa XIV của Viện trưởng VKSND tối cao [Report summarizing the work of the General Prosecutor of the Supreme People's Procuracy in the 14th National Assembly Term]. <https://www.vksndtc.gov.vn/tin-hoat-dong-vksnd-toi-cao/bao-cao-tong-ket-cong-tac-nhiem-ky-quooc-hoi-khoa-x-d2-t9125.html?Page=4#new-related>

32 Huong, Q. (2021, March 25). Ông Lê Minh Trí: Áp lực quá lớn, ngành Kiểm sát xin không giảm biên chế [Mr. Le Minh Tri: The procuracy faces heavy pressure and requests no staff cuts]. *Vietnamnet Newspaper*. <https://vietnamnet.vn/ong-le-minh-tri-ap-luc-qua-lon-nganh-kiem-sat-xin-khong-giam-bien-che-722275.html>

33 Duc, M. (2024, September 10). VKSND Tối cao đề nghị bổ sung hơn 2000 biên chế kiểm sát viên [The Supreme People's Procuracy requested the addition of over 2,000 prosecutor positions]. *PLO Newspaper*. <https://plo.vn/vksnd-toi-cao-de-nghi-bo-sung-hon-2000-bien-che-kiem-sat-vien-post809319.html>

34 Cabinet Secretariat (n.d.). 検察官在職状況統計表 [Statistics on prosecutors' workplaces]. https://www.cas.go.jp/jp/gaiyou/jimu/jinjiyoku/files/kensatu_toukei.pdf

supervising judicial activities, which may require more prosecutors than Japan. Despite this rationale, the number of prosecutors in Vietnam is still notably large.

Government budgets operate on a zero-sum basis, where allocating funds to one area reduces the available funds for other areas.³⁵ The allocation of additional prosecutor positions necessitates corresponding funding to support these roles. However, government funding is limited, making it unfeasible to regularly increase the number of prosecutors. As a result, many legal scholars in Vietnam consider plea bargaining – a legal mechanism aimed at streamlining procedures and reducing barriers in the resolution of criminal cases.³⁶

In a broad definition, a plea bargain is a negotiated agreement between a criminal defendant and a prosecutor in which the defendant agrees to confess in exchange for certain concessions from the prosecutor, such as a reduced sentence or lesser charges.³⁷ Three main arguments often justify the application of plea bargaining. First, engaging in a plea bargain lowers costs and enables the prosecutor to use resources more efficiently. Second, it enhances social welfare by minimizing uncertainty, as the outcome of a criminal trial is unpredictable. Third, it functions similarly to discretion in regulatory proceedings, and thus, implementing a market approach—which is generally regarded as beneficial—improves the quality of prosecution.³⁸

The first justification is the main reason why most legal scholars in Vietnam advocate for the adoption of plea bargaining, as the current criminal justice system appears to be overloaded. In contrast, the second and third justifications have garnered less attention. However, within the framework of Vietnam’s crime control model, the first and second justifications should be emphasized equally.

35 Bishop, J., & Osler, M. (2015). Prosecutors and victims: Why wrongful convictions matter. *Journal of Criminal Law and Criminology*, 105(4), 1031-1047, p. 1046. <https://www.jstor.org/stable/26402743>

36 See Nguyen (2016), *supra* note 7; Le (2018), *supra* note 7; Nguyen (2019), *supra* note 7; Vo & Nguyen (2023), *supra* note 7.

37 United Nations Office on Drugs and Crime (2019). Plea bargain fact sheet. https://www.unodc.org/documents/easternafrika/ODPP_PLEA_BARGAINING_FACTSHEET_ENG_Sept2019-web.pdf

38 Garoupa, N., & Stephen, F. H. (2008). Why plea-bargaining fails to achieve results in so many criminal justice systems: A new framework for assessment. *Maastricht Journal of European and Comparative Law*, 15(3), 323-358, p. 328. <https://doi.org/10.1177/1023263X0801500303>

The first justification focuses on saving prosecutors time, effort, and resources to handle criminal cases. When the accused agrees to a plea bargain, prosecutors can resolve the case quickly and with more straightforward procedures than by taking it to a full trial. It allows prosecutors to allocate their time and resources to other cases. In this way, individual prosecutors can handle more cases through plea bargains compared to taking them to trial. As a result, it increases the system's overall capacity to efficiently process a more significant proportion of detected crimes, aligning with the goals of the crime control model.

The second justification emphasizes the ability to reduce the uncertainty of the cases' outcomes. Once the prosecutors get a plea bargain with the accused, they can avoid a full trial with unpredictable elements that may lead to the escape of the actual wrongdoer.

Nonetheless, plea bargaining has its own issues, which have drawn significant criticism from legal scholars. One major concern is the reliability of plea bargains, as prosecutors may base their offers on the strength of the incriminating evidence.³⁹ However, this reliability concern can be addressed through technical solutions, such as allowing the involvement of judges and defense counsel in the plea-bargaining process. Given Vietnam's specific context, where defense counsel participates in only a few criminal cases, some modifications are necessary to adapt this legal practice. As one study suggests, plea bargaining in Vietnam should involve the early participation of judges. Judges should actively engage in the negotiation process between prosecutors and the accused, explaining the accused's rights and the consequences of accepting a plea bargain, overseeing the prosecutors' power, and ensuring the impartiality and fairness of the process.⁴⁰

Another criticism concerns the rights of criminal suspects, as entering a plea bargain requires them to waive several fundamental rights during the criminal proceedings, such as the right to be presumed innocent, the right to a fair and public hearing by a competent, independent, and impartial tribunal, and the right to cross-examine witnesses against them.⁴¹ This concern related to individual rights aligns more closely with the values of the due

39 Turner, J. I. (2012). Prosecutors and bargaining in weak cases: A comparative view. In E. Luna & M. Wade (Eds.), *The prosecutor in transnational perspective* (pp. 1-13). Oxford University Press. https://scholar.smu.edu/cgi/viewcontent.cgi?article=1312&context=law_faculty

40 *Ibid.*

41 Vo & Nguyen (2023), *supra* note 7, p. 186-187.

process model.

In the U.S. jurisdiction, where the criminal justice system leans more toward the due process model,⁴² nearly 98% of convictions nationwide result from plea bargains.⁴³ The U.S. Supreme Court has long acknowledged the financial necessity of plea bargaining, recognizing it as an accepted practice. There is now a widespread consensus on this issue, with financial constraints being a primary rationale for plea bargaining, as public funding for courts and prosecutors is insufficient to try more than a small portion of criminal cases.⁴⁴ In 1970, *Brady v. United States* addressed a potential conflict between plea bargaining and a fundamental individual right in criminal proceedings – the right to remain silent. In this case, the defendant argued that his decision to accept a plea bargain was not voluntary, as it was influenced by the threat of receiving the death penalty if he refused the prosecutor’s offer. The Supreme Court ruled that the guilty plea was voluntary because the defendant, with the assistance of competent legal counsel, carefully weighed his options between going to trial and accepting the plea. The plea was entered in open court before an impartial judge, ensuring that legal standards were upheld.⁴⁵ The presence of legal counsel provided sufficient protection against coercion, confirming that the decision to accept the plea was voluntary.⁴⁶ This precedent demonstrates that the application of plea bargaining does not necessarily infringe on the individual rights of criminal suspects. The most crucial point is that plea bargaining is a voluntary process; if criminal suspects understand their rights and voluntarily waive their rights to enter into a plea bargain, there is no reason for concern.

Finally, a concern arises that the application of plea bargaining may conflict with the traditional principles of Vietnam’s criminal law and criminal procedure law. The notion of negotiation or dealing between the state and the accused regarding crime and punishment

42 Lu et al. (2022), *supra* note 2, p. S35.

43 American Bar Association. (2023, February 22). 2023 plea bargain task force report urges fairer, more transparent justice system. <https://www.americanbar.org/news/abanews/aba-news-archives/2023/02/plea-bargain-task-force/>

44 Brown, D. K. (2019). The case for a trial fee: What money can buy in criminal process. *California Law Review*, 107(5), 1415-1454. <https://www.jstor.org/stable/26870221>

45 *Brady v. United States* (1970), 397 U.S. 742, 754–55.

46 Johnson, M. (2022). Consequences of plea bargaining: In consideration of the rights of the accused. *Columbia Undergraduate Law Review*. <https://www.culawreview.org/journal/consequences-of-plea-bargaining-in-consideration-of-the-rights-of-the-accused>

does not traditionally align with the Vietnamese legal tradition.⁴⁷ However, one key principle of Vietnam's criminal law is leniency toward those who confess and demonstrate remorse for their crimes.⁴⁸ The 2015 Penal Code also states that confessions can be considered a factor in reducing criminal liability and punishment.⁴⁹

In practice, authorities such as investigators, prosecutors, and judges often advise and encourage defendants to confess in exchange for more lenient sentences. However, these authorities cannot specify the level of leniency, as the current law does not formalize such promises. In this context, adopting sentence bargaining as a type of plea bargaining formalizes and legitimizes the existing practice of offering leniency in exchange for confessions. This approach ensures that defendants clearly understand the benefits of their confessions while providing competent authorities with a legal framework to encourage confessions. While the concept of bargaining and negotiating over crime and punishment may seem foreign to Vietnam's traditional criminal justice system, it does not conflict with the core principles of Vietnamese law or the practical application of criminal law.

In short, according to the author, plea bargaining, particularly sentence bargaining, is an acceptable and suitable legal practice in better serving the underlying values of Vietnam's criminal justice system.

Conclusion

As Vietnam faces rising crime rates and a shortage of prosecutorial resources, there is a growing need for reforms like plea bargaining to streamline case resolutions and reduce the burden on prosecutors. Plea bargaining could enhance efficiency by resolving cases more quickly and reducing trial-related uncertainties, allowing prosecutors to handle more cases. However, its introduction must be carefully managed to avoid infringing individual rights. Involving judges earlier in the process and ensuring that plea bargains are voluntary could address these concerns and make the system more balanced while preserving the crime control model's focus on efficiency. ●

47 Nguyen (2016), *supra* note 7, p. 46.

48 Paragraph 1(d) Article 3 of the 2015 Penal Code of Vietnam.

49 Paragraph 1(tr), (s) Article 51 of the 2015 Penal Code of Vietnam.

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Author Contribution

The author solely contributed to the study conception and design. The author read and approved the final manuscript.

Declarations

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