



Termination of Criminal Investigations by The Prosecutor Under Criminal Law

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Abstract

One of the functions of a sovereign state of law is to be able to properly administer each judicial process and realize it in a very broad scope of society. This study uses a descriptive method with a qualitative approach and data triangulation analysis, the results of the study explain that each country has its own way of completing each judicial decision as well as Indonesia as a country that is very obedient and obedient to applicable laws, the Indonesian people highly respect every judicial process that is carried out. issued through the prosecutor's decision, while the mechanism for terminating the decision of the prosecution of cases carried out by the attorney general is a special authority regulated through a law and has certain reasons for each decision making, as for several reasons that serve as a reference for prosecutors in implementing The judicial process includes cases that do not have strong enough evidence to be involved in a trial process, then the case has passed the time limit determined by the trial and lastly The case is closed for a legal interest, the purposes of the interests contained in the Act have a broad meaning and one of them concerns the interests of the state and society at large.

Keywords: Prosecution, Case, Criminal Procedure

1. Introduction

As a legal state, Indonesia has a certain way of determining every criminal case according to the rules of the 1945 Constitution and Pancasila, as the basic norm and source of law (Wallad, 2020; Achmad, 2021). As stated in Article 1 paragraph 3 of the 1945 Constitution, it is explained that the Indonesian state is a legal state and is not determined by mere power, therefore the highest power remains in the hands of the people's sovereignty and is carried out according to the law and the law. made and formulated by the people through their representatives in a legislative, judicial and executive government agency (Indarsih, 2021).

The State of Indonesia is a unitary state in the form of a democratic republic, this is the background of all state government systems or ways of controlling the state require a power, but there is no power in Indonesia that is not based on law, there are several law enforcement agencies who certainly want realize and provide a fair legal certainty for the entire community, because everyone has the same position before

the sovereign law, for that is the importance of an integrated criminal justice which regulates every handling of criminal cases in accordance with expectations and runs effectively and efficiently. One legal institution that becomes a subsystem and has the highest authority in handling criminal justice in Indonesia is the Prosecutor's Office, this institution is indeed tasked with carrying out various prosecutions. against several criminal acts that are being handled (Putri & Saini, 2014).

The explanation of Law no. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it is stated explicitly that within the Prosecutor's Office, it is the Attorney General who has the right to set aside cases based on public interest. The Attorney General can assume that there will be more losses if he sues both for the general public and for the state, so the case can be put aside. In the criminal justice system, the existence and position of the prosecutor has a very central and strategic role because the institution must determine every judicial decision that is handed down through an indictment and submitted by a public prosecutor who has very high credibility and integrity. Meanwhile, as the Attorney General's responsibility for some of his rights and obligations, it is regulated in Presidential Regulation no. 38 of 2010 concerning the Organization and Work Procedure of the Prosecutor's Office of the Republic of Indonesia.

Related to Law No. 16 of 2004, it is explained that the authority to exercise state power in the field of prosecution is carried out by the prosecutor's office, because in addition to playing a role in criminal justice the prosecutor also has other roles in the field of civil law and state administration, namely representing the state. and the government in civil and state administrative matters. The prosecutor as the executor of this authority is given the task as a public prosecutor and carries out court decisions and several other powers, in accordance with the provisions of the applicable legislation (Wahyuningsih&Sunaryo, 2017; Abdulah, 2018).

As we know the criminal justice process in Indonesia consists of several stages, starting from the process of investigation, arrest, detention, prosecution by the prosecutor's office, trial, to the last one, namely sentencing by the court. as complete as possible from a criminal case by stipulating various provisions of the criminal procedure law in an honest and open manner. 4 of 2004 concerning the power of the judiciary and one of its points regulates the judicial process that must be completed quickly, simply and does not take protracted time and is open and impartial to any party, then a judicial process is enough to be completed at the prosecutor's office with a process a simple solution, not complicated and certainly does not take a long time, so far we have been busy with the administrative process of cases which are numerous and made in several copies (Suparman, 2017; Nelson & Santoso, 2020).

In general, the Criminal Procedure Code does not authorize the prosecutor's office to conduct investigations, thus Indonesia can be said to be the only country where the prosecutor or prosecutor is generally not authorized to carry out an investigation even though it is incidental. This can be seen in Article 1 paragraph 1 of the Criminal Procedure Code which states that investigators are state police officers of the Republic of Indonesia or certain civil servants who are given special authority by law to carry out an investigation (Pasalli, 2020; Rusdi et al, 2020). This is of course in accordance with Law no. 16 of 2004 concerning the prosecutor's authority, which contains the main function of the prosecutor, namely, conducting and carrying out

prosecutions of the judicial process through a legal institution, while with the various powers possessed by the Prosecutor's Office as one of the institutions in the Indonesian state criminal justice system, there is authority who can stop a case that is deemed inappropriate to proceed to the prosecution stage by issuing a decision to terminate the investigation in the special criminal field and in the general criminal field delegated to the court, namely by issuing a decision on the termination of prosecution (Rumondor, 2017; Atila& Din, 2019).

As one of the legal institutions that has a very high position, the position of the prosecutor in criminal justice is very decisive, because it is a bridge that connects several stages of the investigation with the stage of examination in court. executive power, meanwhile when viewed from the side of the authority, the position of the prosecutor's office is in the judicial power, while in article 2 of Law no. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, explains that the Prosecutor's Office is a government institution assigned to carry out state power in the field of prosecution and other authorities based on the 1945 Constitution of the Republic of Indonesia, which is then carried out independently and is one and cannot be separated.

2. Approach Method

This research uses descriptive analysis research using qualitative methods. Researchers also want to examine a phenomenon that discusses the termination of prosecution of criminal cases by prosecutors based on the Criminal Procedure Code, qualitative research is aimed at a very detailed and detailed study where the results of the research are studied in depth and then interpreted clearly. There are two sources of data used in this study, where the data includes primary data and also secondary data, then the facts of the findings are described in a very easy form of discussion so that researchers can find a complex and structured understanding in a directed manner.

3. Result and Discussion

3.1 Authority of the Prosecutor in the Prosecution

The State of Indonesia adheres to an Integrated Criminal Justice System which is based on the principle of functional differentiation, meaning that every law enforcement officer carries out law enforcement in accordance with the mechanism of the process of authority given to each law enforcement officer based on what is regulated in the state law book. The mechanism of the integrated justice system is intended to prove and convict people who commit criminal acts. In other words, to prove someone is guilty or not, one must go through the process regulated in the procedural law which is carried out by state apparatus at every stage, while several related decisions taken during the investigation process involve a attorney general who has been assigned by the state with some of the powers it has while carrying out the profession.

The prosecutor is a state apparatus tasked with prosecuting the defendant with some evidence that has been handed over in the trial process, the majority of the public assume that their duties are the same as the public prosecutor. However, they both have different tasks. The duties and powers of the prosecutor are regulated in a

Law of the Republic of Indonesia No. 16/2004 Concerning the Attorney General's Office of the Republic of Indonesia, the Law describes the mechanisms and functions that can distinguish the existence of the Attorney General and the Public Prosecutor (Afriani, 2021).

The existence of Law No. Prosecutor's Regulation. 15/2020 which gives the Prosecutor's authority to stop prosecutions based on restorative justice is a new breakthrough in the settlement of criminal acts. Restorative justice is an approach in resolving criminal acts which is currently being voiced again in various countries, including in Indonesia, through a restorative justice approach, victims and perpetrators of criminal acts are expected to achieve peace by prioritizing win-win solutions, and emphasize that The victim's loss is replaced and the victim forgives the perpetrator of the crime. However, what needs attention is not to let the application of this restorative justice approach be interpreted as limited to a peace agreement because if so, the process that is running will actually be stuck in carrying out its functions only procedurally so that truth, especially material truth and justice cannot be achieved (Negara, 2020).

Meanwhile, Law Number 16 of 2004 concerning the functions and several duties of a prosecutor, which is contained in Article 1 regarding authentic interpretation, explains that, the Prosecutor is an official who is given special authority by the state in the process of enforcing criminal justice and has obtained legal force. according to the 1945 Constitution and according to Pancasila as the nation's ideology, then the public prosecutor is a prosecutor who has a mandate through a law in carrying out every judicial decision, prosecution here is the action of a prosecutor to delegate every case file to the court the competent state according to the method regulated in the criminal procedural law with several requests regarding the examination of the case so that it is immediately processed and examined or decided by the judge at the trial court (Polontalo, 2018; Resmini&Taufikurahman, 2020).

Furthermore, in Article 14 of the Criminal Code, the public prosecutor has several authorities that have gone through applicable legal procedures including, receiving and examining the investigator's case file, then holding a pre-prosecution if there is a deficiency in the investigation by taking into account several provisions of Article 110 paragraph 3 and paragraph 4. In the context of perfecting the investigation process further providing an extension of detention as well as carrying out further detention or detention and changing the status of the detainee after the case file has been delegated by the investigator, the next point is to make an indictment, delegate the case to the court, deliver notification to the defendant about the terms and time of the case at trial. which is accompanied by a summons, both to the defendant and to witnesses to be able to attend the trial process that has been determined, then carry out prosecutions to close the case for a legal interest and finally carry out determination of the ruling judge in a trial.

The authority to override criminal cases for the sake of a public interest is the application of the principle of opportunity which is only owned by a Attorney General who has obtained the guarantee from the state in carrying out every legal action process, as regulated in Article 35 letter C of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, of course this is very different

from the termination of prosecution owned by the public prosecutor as regulated in article 140 paragraph 2 of the Criminal Code which confirms that the public prosecutor can make a decision including stopping the prosecution of a case, the full contents of the article are, the public prosecutor can stop the judicial process because there is some strong evidence or the event is not a criminal case, then if there is a new reason, the public prosecutor can re-prosecute the suspect. The explanation of the Criminal Code above explains that the examination of the criminal act investigation process that has been sidelined by the public prosecutor is not delegated to a state court trial, but this is not intended to rule out criminal cases for the sake of a public interest.

Basically a prosecutor in carrying out his authority is required to act on behalf of the state and the general public, and according to hierarchical channels in order to achieve justice and truth based on the principle of God Almighty.

based on the belief of several valid evidences according to witnesses who have been processed legally and are sovereign, and in carrying out their duties the prosecutor always acts according to the law and can heed religious norms, decency, morality that live within the scope of the wider community and always According to Irfan & Hadi (2019) in Indonesia the public prosecutor can also be referred to as a prosecutor and the prosecution authority is held in a legal entity called the prosecutor's office, meaning that there is no other institution that can replace the prosecutor's office and the position of the judge is only waiting for prosecution from a person. public prosecutor only.

As for several threats against prosecutors who are proven to have committed fraud in carrying out their duties and professions, then the process is regulated in Article 8 paragraph 4 and paragraph 5 with sanctions in the form of summons, examination, search, arrest, up to the detention of the prosecutor concerned and can only be prosecuted. carried out with the permission of the Attorney General, then this provision is strengthened by another article, namely Article 37 paragraph 1 which states that the Attorney General is responsible for several prosecutions carried out legally and independently for the sake of upholding legal justice and conscience.

To carry out each of its obligations, the prosecutor has several duties and authorities both in the fields of criminal law, civil law, and state administration, but in addition to regulating the duties and authorities of the public prosecutor in article 35, it is also explained related to the special tasks mandated to the attorney general in deciding a case. judicial case decisions include determining and controlling law enforcement and justice policies within the scope of the prosecutor's duties and authorities, then directing the law enforcement process issued by law, then setting aside cases for the sake of a public interest including the interests of the nation, state and society. broadly, then file a cassation in the interest of law to the Supreme Court in criminal, civil and state administrative cases (Law No.1981 concerning the Criminal Procedure Code and Law Number 5 of 2004 concerning the Supreme Court), may submit legal technical considerations to the Supreme Court in the examination of cassation of criminal cases, and the last one prevents or prevents certain people from entering or leaving the territory of the Unitary State of the Republic of Indonesia because of their involvement in criminal cases in accordance with the 1945 state laws and regulations (Saputra et al, 2014; Pahlevi, 2021).

Law is a tool used to develop the values of justice that apply in a nation and state, so that it becomes a measure of the success of the ideal and efficient application of law for all its people. become a tool used to develop normative and constitutive justice. Normative because positive law refers to justice while Constitutive because absolute elements must be provided by law, if there is no justice, then a regulation is not worthy of being called a legal process, the existence of criminal law is intended to protect the community and enforce order, because in its implementation criminal law in Indonesia function to maintain wider social life for the realization of a sovereign legal state, Hartono (2020) divides law into 3 basic values, namely justice, usefulness, and certainty. tug of war that creates a tension, this is due to the difference in the content of the demands and the potential to contradict each other, therefore, a priority principle is needed in determining which values will be used in creating a legal process that applies to the wider community.

3.2 Authority of the Prosecutor in Terminating Prosecution in Criminal Cases

Some characteristics of the rule of law are equality of position in obtaining legal certainty and the rule of law as an important part in protecting every citizen, as well as in Indonesia the ideal law enforcement process is still being pursued to this day, because the Indonesian state highly upholds the position of law. as well as the process of its application in accordance with the norms and values that apply in society, as contained in Article 27 paragraph 1 of the 1945 Constitution it is stated that, all citizens together with their position are obliged to uphold the applicable law and government without exception, with equality before the law and the government, every citizen who is proven to have violated the applicable law will be punished according to his actions. Legal regulations that are applied to one person must also be applied to others in the same case regardless of rank, class, religion, and position. This is one of the principles of law enforcement as mandated by the Criminal Code, which is attached as one of the links in the human rights chain.

The prosecution function as regulated by the 1945 state law is then handed over to the prosecutor's office according to the Criminal Code and reaffirmed in Law No. 16 of 2004 concerning the Prosecutor's Office, has the authority in addition to carrying out criminal prosecutions and other authorities according to the law, on the other hand there are also special authority not to prosecute criminal cases based on the principle of opportunity. What is meant by the principle of opportunity is the right and authority of a public prosecutor not to prosecute a criminal case in the trial process for reasons of the public interest or through the decision of the Attorney General through his power to deport criminal cases, even though in the implementation process there is some sufficient evidence. to impose a sentence, but he has another opinion that, there will be more harm to the public interest by demanding a case than not demanding it, in other words the case can be set aside even though there is sufficient evidence and if it is continued in court, the defendant is likely to be found guilty.

Indeed, in reality the meaning of the principle of opportunity is not clearly formulated in an Indonesian Criminal Law Act, but this provision can be found in Law no. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia Article 35 letter c which states that the Attorney General has a special authority to override cases in the public interest, public interest as referred to in the elucidation of

Article 35 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia letter (c) is an interest that concerns the nation and state or the interests of the wider community. The definition of public interest described in the article is very broad in meaning, so that in the interpretation of this public interest in the context of using the principle of opportunity, each person implements it differently.

The reasons for stopping the prosecution contained in Article 140 paragraph 2 of the Criminal Code include, because there is not enough strong evidence, then the incident is not contained as a criminal case, and finally the case is closed for legal purposes, while in Article 1 point 7 of the Criminal Code It is explained about the meaning of prosecution which is actually the action of the public prosecutor to delegate a criminal case to the competent district court in the matter and according to the method regulated in this law with a request that it be examined and decided by a judge in a court session (Wullur, 2015; Bimantara et al, 2021).

The public interest is the reason for the Attorney General to be able to set aside criminal cases, as for what is meant by public interest there is no clear definition limit in the laws and regulations of the Indonesian state, for that the problem must be returned to the legal objectives or legal ideals owned by a nation. and the state, as for the legal ideals for the Indonesian nation itself, it is embodied in the main ideas contained in the Preamble to the 1945 Constitution of the Republic of Indonesia. Broadly speaking, the interests of the state are reflected in the implementation of the duties and authorities of state institutions, especially for the administrators of the authorities and duties of the government, while the interests of the community are reflected In the law that lives in the community, the definition of public interest is expanded and includes legal interests, because it is not only based on legal reasons but is also based on other reasons, social reasons, reasons for the interests of state safety and currently includes also important factor in achieving national development.

4. Conclusion

Legal certainty is one of the obligations that must be fulfilled and carried out in a sovereign and fair manner, the state as the organizer of the judicial process must guarantee every judicial decision issued through its government agency called the prosecutor's office, the legal decision is certainly able to create equitable welfare in every joint. community life is very broad, besides that the involvement of prosecutors in determining judicial decisions does have a very strategic role, the involvement of prosecutors in the process of stopping the prosecution of criminal cases must also provide an appropriate policy and not harm any of the parties involved, as for the principle of opportunities and Law no. 16 of 2004 concerning the Attorney General of the Republic of Indonesia The authority of the prosecutor as a public prosecutor is to examine every criminal case and delegate it to the trial, besides that there is a termination of prosecution carried out by the attorney general is a special authority issued by law and obtain guarantees from In the state, the implementation of the termination of the criminal case lawsuit is based on several things and one of them is in the interests of the judiciary of a country and its people, and it is hoped that with the formation of an ideal legal institution that can answer all public doubts in

obtaining legal guarantees and protections that are felt has not been realized properly, as we know the legal interests of the nation Indonesia is the establishment of justice and welfare for all Indonesian people.

5. Reference

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