



PROSECUTION PARADIGM IN THE INDONESIAN CRIMINAL JUSTICE SYSTEM

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ABSTRACT

The prosecution paradigm is the basis for prosecutors to conduct prosecutions carried out through the criminal justice system. Prosecution is carried out based on the principle of due process of law, the principle of dominus litis, and the principle of opportunism which can be the reason for the implementation of acquittal. This research aims to investigate various aspects related to the application of acquittal in the Indonesian criminal justice system. Public prosecutors are authorized not to file criminal charges against a person suspected of committing a criminal offense. This paper explores the reasons behind the use of acquittals, the impact on victims, society, and the integrity of the criminal justice system, as well as the challenges and issues that arise in the practice of acquittals by prosecutors.

Keywords: Acquittal, Criminal Justice System

A. INTRODUCTION


The term Criminal Justice System indicates the mechanism of work in crime prevention by using a basic system approach (Kadri Husin & Budi Rizki Husin. 2022). Criminal justice system can be interpreted as a mechanism of criminal justice administration, and criminal justice as a system is the result of interaction between legislation, administrative practices and social attitudes or behavior. The criminal justice system aims to seek justice (Barama & Michael. 2006). The main principle of the criminal justice system is to ensure that every individual has the right to be given a fair chance in the judicial process and that sentences are given based on valid evidence and procedures in accordance with the law (Tolib Effendi. 2018).

The criminal justice system also aims to prevent abuse of power in providing appropriate punishment to those found guilty of criminal offenses (Syahrin & M. Alvi, 2018). The punishment should be balanced and proportionate to the crime committed. A fair and reliable justice system is an essential part of a functioning legal system in a country (Rofi et al. 2019).

The criminal justice system, which includes the sub-systems of the police, prosecutors, courts and correctional institutions, is expected to work together and form an integrated criminal justice system (Hardjaloka & Loura, 2018). The design of the criminal justice system procedure organized through KUHAP is divided into three stages, namely the pre-adjudication stage, the adjudication stage, and the post-adjudication stage. He supports the view that the adjudication stage should be considered dominant in the entire process (Siregar & Rahmat Efendy Al Amin, 2016).

This view is based on the Criminal Procedure Code, which states that every decision of any kind must be based on facts and circumstances as well as evidence obtained from the examination in court, so that an honest criminal justice system that protects the rights of a citizen who is a defendant will be most clearly revealed at the adjudication stage. It is only at this stage that the defendant and his or her lawyer can stand tall as equal parties against the public prosecutor (Nelson, Febby Mutiara, 2020). This is the background to the prosecutor's charges which are closely related to the principle of due process of law. Due process is an important legal concept in the legal systems of many countries, including Indonesia. It emphasizes the need to ensure that every individual involved in the judicial process has the right to receive fair and equal treatment under the law (Kristanto & Andri, 2020).

Therefore, in conducting prosecutions, the prosecutor must be based on valid evidence, and the prosecutor must comply with applicable legal procedures. Prosecutors must also respect the rights of the individual charged, such as the right to a competent defense, the right not to



testify against oneself, and the right to a fair trial. Prosecutions by prosecutors cannot be made arbitrarily or without sufficient evidence. If the prosecutor violates the principle of due process of law by making a charge that is not based on the law or invalid evidence, then the charge can be considered invalid and can be disputed in court. Article 2 paragraph (1) of the Prosecutor's Office Law outlines that the Prosecutor's Office of the Republic of Indonesia as a government institution that exercises state power in the field of prosecution must carry out its functions, duties and authority independently, regardless of the influence of government power and the influence of other powers. This guarantees the independence of prosecutors in conducting prosecutions, which include free trials (Faiz & Pan Mohamad, 2016).

However, in practice, acquittal by prosecutors is an issue that can present several problems in the criminal justice system. This is a practice where the prosecutor decides not to file criminal charges against a person suspected of committing a criminal offense. Based on the *dominus litis* principle, the prosecution should have sufficient authority to exercise discretion. The paradigm adopted in a prosecution is based on Pancasila as the basis of the state which prioritizes the basic attitude to realize harmony, harmony, and balance in social relations between individuals and humans and is based on the principle of opportunity which is the authority for public prosecutors to prosecute or not prosecute in the public interest. However, this is widely misinterpreted and many prosecutors make free charges that are examined even though in carrying out their charges they are based on valid evidence, applicable law, and objective considerations. Therefore, the problem in this research is how is the existence of free charges in the criminal justice system in Indonesia and how is the construction that can support so that free charges can be implemented.

B. RESEARCH METHOD

The research method used is normative research method, using a statute approach related to the optimization of corporate social responsibility and synergy with government policies in overcoming poverty in order to realize social justice. The statute approach approach is to examine matters concerning legal principles, views and legal doctrines, and laws and regulations related to ideal social responsibility in order to overcome poverty, with accurate data and can be accounted for the truth (Pardon, 2020). In addition, an in-depth examination of the legal facts is also carried out to then try to solve the problems that arise in the symptoms concerned.

C. RESULTS AND DISCUSSION

1. Prosecution Paradigm in the Criminal Justice System

The criminal justice system is one of the main pillars in maintaining justice and order in a society (Pardon, 2020). The prosecution paradigm in the criminal justice system is the basic concept that regulates how the trial process against criminal offenders should be carried out. This paradigm has a huge impact on how a society deals with crime and how individual rights are safeguarded in the judicial process. There are several prosecutorial paradigms that can be found in the criminal justice system, including retributive, restorative and human rights protection paradigms (Nurridlo et al. 2017).

The choice of prosecutorial paradigm in the criminal justice system is critical, as it not only relates to the victim's sense of justice but can also exacerbate the offender's situation (Flora & Henny Saida, 2018). On the other hand, restorative paradigms can assist in offender recovery and improving relationships with victims, but may not provide commensurate punishment. In practice, many criminal justice systems combine several prosecutorial paradigms to achieve the right balance between punishment, rehabilitation, and crime prevention (Appludnopsanji et al. 2020). It is important for a society to continually evaluate and evolve their prosecutorial paradigm in order to create a more just and effective criminal justice system. By understanding and recognizing the importance of the prosecution paradigm in the criminal justice system, we can work towards a safer, fairer and more humane society.

Based on this description, a rule or paradigm is needed in a trial that aims to find the desired legal certainty in a case, especially related to the *dominus litis* of the prosecutor's office.



Normative legal certainty is when a regulation is made and promulgated with certainty because it regulates clearly and logically, so that it does not cause doubt (multi-interpretation), is logical and has predictability. Legal certainty is a situation where human behavior, whether individuals, groups, or organizations, is bound and within the corridors outlined by the rule of law. The principle of legal certainty is needed in the creation of laws and regulations because legal certainty is the main principle of various principles of supremacy (Jainah & Zainab Ompu. 2018).

Legal objectives that are close to realistic are legal certainty and legal benefits. The Positivists emphasize legal certainty, while the Functionalists prioritize legal expediency, and if it can be stated that "summum ius, summa injuria, summa lex, summa crux" which means that harsh law can hurt, except justice that can help it, thus even though justice is not the only legal goal, the most substantive legal goal is justice. The new paradigm related to legal certainty, especially related to dominus litis, makes the entire set of the 1945 Constitution the philosophical foundation of KUHAP, especially regarding the principle of legality, legislation does not apply retroactively, equality before the law, guarantees of legal certainty and a set of provisions on human rights. KUHAP was drafted for the purpose of justice and public welfare as well as legal order and certainty. All parties are equal before the law in the same circumstances. Increase public legal awareness that will support the implementation of good criminal justice. National strategy for crime prevention and eradication.

The Prosecutor's Office has a central position in law enforcement, because only this institution can determine whether a case can be submitted to the Court or not based on valid evidence according to the Criminal Procedure Law (Rosita & Dian. 2018). Fachrizal Efendi in his article argues that instead of being the dominus litis (prosecutor in charge of cases), prosecutors are more like 'postmen' of the police to prosecute almost all criminal case files received from the police (Maisari et al. 2020). As a result, Indonesia's criminal justice system will be flooded with cases and prisons will become overcrowded, which cannot be separated from the current weaknesses of the SPP. In addition, because the public prosecutor cannot intervene in the investigation process, there may be differences of opinion on the provisions of the criminal regulations that will be imposed on the suspect. The public prosecutor should also have a system of control over the course of the investigation process, rather than just being coordinative (Ihsan, Muhammad, 2021). Furthermore, Fachrizal Efendibah stated that the public prosecutor is ideally the controller of the case and has control over police actions. However, the discretionary authority and independence of the prosecutor is still something abstract so there needs to be a strengthening prosecutor in a more concrete regulation as a guideline. In addition, it is also important to pay attention to the existence of the Public Prosecutor's Office, which is the only agency that executes criminal decisions (executive ambtenaar). At the time of execution, various new variables affect the execution process itself. The variables in question relate to social, economic, political and cultural aspects that will be related to legal and institutional relationships which in their implementation become obstacles and affect the performance of the prosecutor's office.

In current practice, files go back and forth between investigators and public prosecutors, some of which (in large numbers) no longer appear in court. This, according to Oemar Seno Adji on several occasions, "is very detrimental to justice seekers. There is P 19, which is the return of the file to the investigator to be completed (some of which are scattered without knowing their whereabouts), there is P 21 which states that the case file is complete, which relieves the investigator from further affairs of the file (Adji & Oemar Seno). So, what can be regulated is that since the commencement of the investigation, there must be consultation between the investigator and the public prosecutor, especially serious cases (the Draft Criminal Code pegs serious cases as cases that are punishable by imprisonment of seven years or more). The purpose of punishment is basically not to cause suffering and not to degrade human dignity. In this regard, the term "punishment" must be interpreted in a broad sense, including actions. The discussion of the nature of the purpose of punishment and the meaning of punishment is very important to provide justification for the application of types of punishment and actions (strafsoort) in a criminal law code.



This will be better appreciated if we pay attention to H.L. Packer's opinion that law is a form of social control (. An understanding of the ambiguity of punishment and punishment will require us not to make criminal institutions a tyrannical and destructive tool, always conduct careful research on criminal institutions and criminal justice processes, especially research and assessment of strengths and weaknesses as a means of crime prevention, and always carefully consider the measures to determine an act as a crime. The formulation of the purpose of punishment, namely the first, implies a view of protecting society (social defence) and is general prevention, while in the second goal there is the intention of rehabilitation and resocialization of convicts (special prevention). The third objective is in accordance with the view of customary law regarding adat reactie to restore the balance of the cosmos because crime is considered to have shaken the balance (evenwichtverstoring), while the fourth objective is spiritual in nature in accordance with the First Precept of Pancasila.

To understand the position of the prosecution, the concept of magistrature must be understood. The judiciary is carried out by two institutions, namely the sitting magistrate (Magistature assiss) and the standing magistrate (magistrature debout). Sitting magistrate is the judiciary while standing magistrate is carried out by the Attorney General as the executive. The authority to prosecute and investigate all originates from the Attorney General and is then discretized to various institutions and individuals. So it must be understood that the investigation is part of the prosecution, therefore the investigation must be an investigation activity, therefore due process of law, lawfulness and admissibility become important considering the prosecution process in court. It is necessary to examine again the functional relationship between the investigator and the public prosecutor, because with the compartment system it seems separate between investigation and prosecution. Even though the investigator himself is authorized by the Public Prosecutor, he can still conduct prosecutions for minor crimes. The public prosecutor does not have a legal role in the justice system because the legal role is actually the investigators. If a functional differentiated system is desired then the tasks that must be performed by the Public Prosecutor must be clear. The paradigm of prosecutorial acquittal is a concept in the criminal justice system that recognizes that in some cases, public prosecutors have the authority not to prosecute or to release suspects from criminal prosecution. This concept is based on legal principles that prioritize justice, discretion, and the public interest. There are several situations in which public prosecutors can use the paradigm, namely a) insufficient evidence, b) public interest considerations, c) restoration or rehabilitation. The use of the paradigm of free prosecution by the public prosecutor must be based on the principles of justice, discretion, and public interest and based on the principle of his independence as a public prosecutor with the evidence he has. This does not mean that the public prosecutor has complete freedom to decide who should be granted freedom from prosecution. The decision must be in accordance with the applicable law and must not be arbitrary. It is important to remember that the public prosecutor's decision to acquit a suspect is not final. The court still has a role in overseeing this decision, and if there is any disagreement or legal dispute, the court will decide whether or not the actions of the public prosecutor are in accordance with the law.

2. Free Choice in the Criminal Justice System

The criminal justice system is one of the main foundations in maintaining a just and civilized social order. Within it, the concept of "independent prosecution" is an important principle that opens up space for discretion, fairness and balance in law enforcement (Putra, Irwan Sapta. 2023). Acquittal refers to the ability of the public prosecutor to determine whether or not to charge a person in court, even if there is sufficient evidence to proceed with the legal process. Acquittal is an important aspect of the criminal justice system as it allows law enforcement to distinguish between cases that are worthy of trial and those that are better resolved by other means (Simamora & Janpatar, 2014). This helps to avoid the use of valuable resources in the courts for cases that may not result in significant convictions. As such, acquittals can avoid overly harsh prosecutorial policies and free up space for more suitable alternative solutions, such as mediation or restoration (Pradana et al. 2020).




In addition, acquittals also allow law enforcement to consider various factors that may not be strictly accounted for under formal law. For example, the public prosecutor can consider humanitarian factors, such as the poor health condition or advanced age of the suspect. This allows the court to remain fair and in accordance with human rights policies. Furthermore, free trials also offer room to consider the social and economic impact of the prosecution. In certain cases, the court may feel that non-criminal sanctions, such as rehabilitation or education programs, will be more effective in changing the suspect's behavior than criminal punishment. This can help to better society in the long run by preventing the development of a criminal career. However, it is important to remember that acquittal is not a unilateral decision. Its use should always be based on fair and proportionate legal principles. Law enforcement must have clear guidelines and procedures to determine whether an acquittal is appropriate in a case. This decision should also be subject to oversight and scrutiny by the courts to ensure that discretion is not abused or used arbitrarily (Laowo & Yonathan Sebastian, 2018).

The implementation of free prosecution is also based on the *dominus litis* principle, which emphasizes that no other body has the right to conduct prosecution other than the Public Prosecutor, which is absolute and monopolistic. The Public Prosecutor is the only institution that has and monopolizes the prosecution and settlement of criminal cases. This means that as the controller of the case, the legal direction of an investigation process as well as whether or not to prosecute a criminal case resulting from an investigation is the absolute authority of the Public Prosecutor. Likewise, the Public Prosecutor can stop the prosecution on the grounds of insufficient evidence, the event is not a criminal offense, or the case is closed for the sake of law as stated in the provisions of Article 139 of the Criminal Procedure Code (Sulastri & Lusua, 2021). Acquittal is a key element in the criminal justice system that creates the flexibility necessary to maintain fairness and efficiency. It helps avoid abuse of the law and promotes alternative resolutions that are more suitable in some cases. However, its use must be carefully monitored and based on just legal principles to ensure that law enforcement discretion does not overstep its bounds and keeps justice at the forefront. Acquittal by the public prosecutor is based on the principles of prosecutorial independence and the principle of opportunism, which are integral to the criminal justice system. These concepts allow the public prosecutor to have discretion in determining whether or not to pursue criminal charges against a suspect, even if there is sufficient evidence to continue the legal process. Let's further explore these two principles and how they play a role in acquittal (Perbawa & Gede Putera, 2014).

Public prosecutor independence is a legal principle that emphasizes that prosecutors should have independence in their legal decision-making. They should not be influenced by political pressures, particular parties, or other external factors that may affect legal decisions. This allows prosecutors to act in good faith and objectively in evaluating cases and whether criminal charges are the appropriate course of action. In the context of acquittals, the independence of public prosecutors allows them to make judgments based on the law and the facts of the case in the absence of external pressures that could force a prosecution that may be unwarranted. This is an important aspect of maintaining fairness in the criminal justice system. The principle of opportunism is a legal principle that gives prosecutors the discretion to pursue or discontinue criminal prosecutions in the public interest. This means that the public prosecutor may consider various factors, such as the public interest, humanitarian factors, and the welfare of the victim in determining whether a criminal prosecution will proceed. This means that, even if there is sufficient evidence to pursue a case, the prosecutor may decide not to pursue prosecution if it is deemed that this is the most prudent step.

The principle of opportunity provides room for the discretion necessary to ensure that the criminal justice system does not focus solely on punishment, but also considers the relevant social and humanitarian factors in a case. The combination of prosecutorial independence and the principle of opportunity creates a legal basis for acquittals. This allows law enforcement to better administer justice by avoiding abuse of the law, looking out for the public interest, and ensuring that each case is assessed fairly and objectively. However, it is important to remember that an acquittal does not mean that the decision can be made without careful consideration. The decision



must be based on the applicable law and in good faith to maintain fairness in the criminal justice system. As such, acquittals are a valuable instrument to achieve the main goals of the criminal justice system, namely maintaining justice and social sustainability (Mulya et al. 2022)

The principle of *opportunitas* is translated as the setting aside of cases in the public interest which is the authority of the Attorney General after receiving advice and opinions from state power bodies. The principle of opportunity as applied in Indonesia has problems when viewed from the perspective of the criminal justice system. The existence of the principle of opportunity in the criminal justice system brings many contradictions. Based on the analysis, the Attorney General does not have the authority to set aside cases from the perspective of the criminal justice system. Therefore, it is better for the authority to be strengthened to the public prosecutor in supervising the investigation and free prosecution if the BAP prepared is not appropriate based on the *dominus litis* principle which confirms that no other body has the right to conduct prosecution other than a clean public prosecutor.

However, the problem is that even though the public prosecutor has the authority related to free demands, the fact is that if the public prosecutor implements it, it will become a problem for the public prosecutor himself. Therefore, a new construction is needed that can strengthen the public prosecutor in implementing free demands. Acquittals by public prosecutors in the criminal justice system can be strengthened by promoting interdependence between law enforcement, including public prosecutors, police, and other law enforcement agencies. This interdependence is collaboration and coordination between law enforcement authorities, and can help improve discretion and fairness in the process of public prosecutions. By strengthening interdependence between law enforcement agencies, public prosecutions can become a more transparent, objective and fair process. This will help ensure that law enforcement discretion is in line with the principles of justice and human rights. In addition, effective collaboration between law enforcement agencies can also help avoid abuses of the law and ensure that decisions benefit society as a whole.

Interdependence, or reciprocal relationships between various law enforcement agencies, in this case the Public Prosecution Service, the Police and the Court, can strengthen the charges that will be brought by the public prosecutor. This collaboration allows for faster and more efficient information exchange, as well as better coordination in handling criminal cases. For example, police can provide evidence and information needed for court proceedings, while public prosecutors can better guide investigations and trials. In modern law enforcement, interdependence is not only an option, but also a necessity. By working together, the various agencies and parties involved can create a more effective, efficient and fair criminal justice system. Interdependence in law enforcement allows various elements of the legal system to work together to achieve the ultimate goal of maintaining justice, security and human rights.

D. CONCLUSION

Based on the explanation above related to the existence of free prosecution in the criminal justice system, the Public Prosecutor is a prosecutor authorized by this Law to conduct prosecutions and implement judges' decisions and other powers based on the Law. The criminal justice system is one of the main pillars in maintaining justice and order in a society. The prosecution paradigm in the criminal justice system is the basic concept that regulates how the trial process against criminal offenders should be carried out. This paradigm has a huge impact on how a society deals with crime and how individual rights are safeguarded in the judicial process. Independent prosecution is an important aspect of the criminal justice system because it allows law enforcement to distinguish between cases that deserve to be tried and those that are better resolved through other means. This can be done on the basis of the prosecutor's *dominus litis* principle in conducting prosecutions. Independence and the principle of opportunity are also important aspects of acquittal. However, this is considered less convincing. Therefore, the interdependence of law enforcement agencies is needed to strengthen the prosecutor's demands in the context of acquittal.



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