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Formulation of Public Prosecutor's Authority in the Legal Certainty-Based Trial Process

Ari Andhika Thomas[1)] **& Andri Wijaya Laksana**[2)]
[1)]Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: AriAndhikaThomas.std@unissula.ac.id
[2)]Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: AndriWijayaLaksana@unissula.ac.id

Abstract. *The purpose of this research: 1) to study and analyze the authority of the public prosecutor in the legal certainty-based trial process; 2) to study and analyze the weaknesses of the public prosecutor's authority in the legal certainty-based trial process; 3) to study and analyze the formulation of the public prosecutor's authority in the legal certainty-based trial process in the future. This research uses a sociological legal approach, with a descriptive analytical research method. The data used are primary and secondary data which will be analyzed qualitatively. The research problems are analyzed using the theory of authority, Lawrence Friedman's legal system theory and the theory of legal certainty. The results of the study conclude that: 1) the authority of the public prosecutor in the legal certainty-based trial process that in carrying out its duties and authorities in order to achieve legal certainty, the Prosecutor's Office is guided by the Criminal Procedure Code and Law Number 16 of 2004, one of the prosecutor's duties is to prepare an indictment, in terms of preparing an indictment the prosecutor is required to be careful; 2). The weakness of the public prosecutor's authority in the legal certainty-based trial process is that the deficiency of the prosecution provisions adopted by the Republic of Indonesia's prosecutor's office is in terms of the Mandatory Prosecutorial System because in this system the public prosecutor handles a case only based on existing evidence, so that the public prosecutor cannot directly handle a case such as conducting investigations, arrests, searches, confiscations and examinations of victims and witnesses; 3). The formulation of the public prosecutor's authority in the legal certainty-based trial process in the future is that the Government together with the People's Representative Council needs to immediately complete the revision of the Criminal Procedure Code which contains the authority of the public prosecutor to be able to set aside criminal cases for certain reasons, by adopting the provisions in the expediency principle of the Dutch Criminal Procedure Code as The adoption is important so that the scope of the case setting aside*

becomes more complete than that which has been formulated in Article 43 paragraph (2) (3) (4) (5) of the Criminal Procedure Code Bill.

Keywords: *Authority; Certainty; Prosecutor.*

1. Introduction

Prosecution (vervloging) is a process that is the authority given by the government to the prosecutor's office. This is in accordance with Article 2 paragraph (1) of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia which states that: "The Attorney General's Office of the Republic of Indonesia, hereinafter referred to in this Law as the Attorney General's Office, is a government institution that exercises state power in the field of prosecution and other authorities based on the Law". In accordance with the explanation above regarding the prosecutor's office which is an institution under the auspices of the government and has the function of implementing state power in the field of prosecution. In carrying out its obligations to prosecute, the public prosecutor can conduct a pre-prosecution. Pre-prosecution is an action by the public prosecutor to monitor the progress of the investigation after receiving notification of the start of the investigation by the investigator, studying or examining the completeness of the case files resulting from the investigation received from the investigator and providing instructions to complete the investigation to be able to determine whether or not the case files can be transferred to the prosecution stage.

Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia in Article 1 Number 4 states that "The Public Prosecutor is a Prosecutor who is authorized by this Law to carry out prosecutions and carry out the determination of judges and other authorities based on the Law". Article 2 states in Paragraph 1 that "The Prosecutor's Office in carrying out its functions related to judicial power is carried out independently".

The public prosecutor has the authority to conduct pre-prosecution as stipulated in Article 14 of the Criminal Procedure Code letter b. States that (pre-prosecution) is if there are deficiencies in the results of the investigation, then based on the provisions of Article 110 paragraph (3) and (4) of the Criminal Procedure Code, the public prosecutor provides instructions to the investigator to perfect the results of his investigation. After the public prosecutor receives the case file from the investigator, he must immediately study and examine it within 7 (seven) days and must notify the investigator whether the results of the investigation are complete or not in accordance with Article 138 paragraph (1) of the Criminal Procedure Code. Regarding the definition of examining according to the provisions of Article 138 paragraph (1) of the Criminal Procedure Code, it is the public prosecutor's action in preparing the prosecution whether the person or object mentioned in the results of the investigation is in accordance with or

has met the requirements of evidence carried out to provide instructions to the investigator.

If according to the public prosecutor's research the case file is incomplete, the public prosecutor must immediately return the file accompanied by instructions and within (14) fourteen days from the date of receipt of the file, and the investigator must immediately submit the file back to the public prosecutor, this is in accordance with the provisions of Article 138 paragraph (2) of the Criminal Procedure Code. After the public prosecutor has received the case file from the investigation that is complete or has been completed by the investigator, the public prosecutor will immediately determine whether the file meets the requirements so that it can be submitted to the court, this is in accordance with the provisions in Article 139 of the Criminal Procedure Code.

The Attorney General's Office as a government institution, is based not only on Article 24 and Article 25 of the 1945 Constitution (hereinafter abbreviated as the 1945 Constitution), but also Article 4 Paragraph (1) of the 1945 Constitution, namely that the President of the Republic of Indonesia holds governmental power according to the 1945 Constitution, which is in line with Article 19 Paragraph (2) of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, which states that the Attorney General is appointed and dismissed by the President.

The public prosecutor in a criminal case must clearly understand all the work that must be done by the investigator from the beginning to the end, all of which must be done according to the law. The prosecutor will be responsible for all treatment of the accused, starting from the suspect being investigated, then having his case examined, then being detained, and finally whether the charges made by the prosecutor are legal and correct or not according to the law, so that the sense of justice of the community is truly fulfilled. Law Number 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office, Article 8 paragraph (1) The prosecutor is appointed and dismissed by the Attorney General. Article 8 paragraph (2) of Law Number 16 of 2004 states that in carrying out his duties and authorities, the prosecutor acts for and on behalf of the state and is responsible according to the hierarchical channel. This provides an understanding that in carrying out duties on behalf of the state, the prosecutor as a public prosecutor is responsible according to the hierarchical channel, namely to the official who gave the task and responsibility which is hierarchically the Head of the District Attorney's Office, the Head of the High Prosecutor's Office and the Attorney General.

In carrying out their duties and authorities, prosecutors must be able to realize legal certainty, legal order, justice and truth based on law and respect religious norms, politeness and morality and must explore the values of humanity, law and justice that exist in society.

Based on the background description above, the author is interested in writing

a thesis entitled "The Authority of the Public Prosecutor in the Legal Certainty-Based Trial Process"

This study aims to examine and analyze the authority of the public prosecutor in the legal certainty-based trial process, the weaknesses of the public prosecutor's authority in the legal certainty-based trial process.

2. Research Methods

This study uses a sociological legal approach, with a descriptive analytical research method. The data used are primary and secondary data which will be analyzed qualitatively. The research problems are analyzed using the theory of authority, Lawrence Friedman's legal system and the Theory of Legal Certainty

3. Results and Discussion

3.1.The Authority of the Public Prosecutor in the Legal Certainty-Based Trial Process

A prosecutor is a functional official who is authorized by law to act as a public prosecutor and the implementation of court decisions that have obtained permanent legal force and other authorities based on law. Such a role requires a prosecutor to not only master the discipline of criminal law, but also the discipline of civil law and state administration. Prosecutors are not only required to master positive law of a general nature (lex generalis) but also of a special nature (lex specialis) which has emerged recently.[1]The Prosecutor's Office in carrying out state powers in the field of prosecution and other tasks stipulated by the law is in accordance with the provisions of Article 2 paragraph (2) of Law Number 16 of 2004 concerning the Prosecutor's Office, which implements the provisions on the day and time of the case independently, meaning in accordance with the explanation of the article, independent of the influence of government power and the influence of other powers.

The prosecutor's office in criminal law acts as a functional institution authorized by law to act as a public prosecutor and the implementation of court decisions that have obtained permanent legal force and other authorities based on law. Such a role requires a prosecutor to not only master the discipline of criminal law, but also the discipline of civil law and state administration. Prosecutors are not only required to master positive law of a general nature (lex generalis) but also of a special nature (lex specialis) which have emerged recently.[2]

The duties and authorities of the prosecutor's office in criminal justice are based on the following laws:

1. Law Number 8 of 1981 concerning the Criminal Procedure Code

a. Receive and examine investigative case files from investigators or assistant

[1]Kelik Pramudya and Ananto Widiatmoko, 2010, Guidelines for Professional Ethics for Legal Officers, Pustaka Yustisia, Jakarta, p. 39
[2]Ibid

investigators;

b. Conduct pre-prosecution if there are deficiencies in the investigation by paying attention to the provisions of Article 110 paragraph (3) and paragraph (4), by providing instructions for improving the investigation by the investigator;

c. Granting an extension of detention, carrying out detention or further detention and/or changing the status of the detainee after the case has been referred by the investigator;

d. Making an indictment;

e. Submitting cases to court;

f. Submitting notification to the defendant regarding the trial accompanied by a summons, both to the defendant and to witnesses, to attend the trial that has been determined;

g. Conducting prosecution;

h. Closing the case for legal purposes;

i. Carry out other actions within the scope of duties and responsibilities as a public prosecutor according to the provisions of the law;

j. Carry out the judge's decision.

2. Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia

a. Carry out prosecution;

b. Implementing judges' decisions and court decisions that have obtained permanent legal force;

c. Supervise the provisions regarding the day and time for the implementation of conditional criminal decisions, supervised criminal decisions, and conditional release decisions;

d. Conducting investigations into certain criminal acts based on the law;

e. Complete certain case files and for that purpose can conduct additional examinations before being transferred to the court, the implementation of which is coordinated with the investigator.

In carrying out their duties and authorities, prosecutors must be able to realize legal certainty, legal order, justice and truth based on law and respect religious norms, politeness and morality and must explore the values of humanity, law and justice that exist in society. Prosecutors must also be able to be fully involved in the development process, including helping to create conditions and infrastructure that support and secure the implementation of development to realize a just and prosperous society based on Pancasila and are obliged to help maintain and uphold the authority of the government and state and protect the interests of the people through law enforcement. A defendant who is brought to court can only be sentenced because he has been proven to have committed a

crime as stated or stated by the prosecutor in the indictment. Therefore, the trial examination approach must start from and be directed at efforts to prove the crime formulated in the indictment. The affirmation of this principle is also in line with the Supreme Court's decision dated December 16, 1976 No. 68 K/KR/1973 which states that court decisions must be based on accusations, in this case based on Article 315 of the Criminal Code, even though the words contained in the indictment are more directed at Article 310 of the Criminal Code.

This is what is often done by some judges in trial examinations. Often trial examinations deviate from what is formulated in the indictment which results in the examination and consideration of the decision deviating from what is intended in the indictment. The purpose and function of the indictment is as a basis or foundation for examining a case in a court hearing, the judge in examining a case must not deviate from what is formulated in the indictment. However, no matter how clear the formulation of the indictment is, it is often found that the implementation is less relevant to the indictment, and there are even some laws that mistakenly realize the function of the indictment as a starting point for examination.

It often happens that the way and direction of the examination are more colored by the taste of the judge or the public prosecutor who acts as the prosecutor, the defendant or the legal counsel who acts as the defendant's companion, must be bound by the formulation of the indictment. While the role of the indictment is as follows:[3]

a. Basis for examination at the district court hearing;

b. Basis for criminal charges (requisi toir);

c. The basis for the defense of the accused and/or the defense attorney;

d. The basis for the judge to issue a verdict;

e. Basis for further judicial examination (appeal, cassation, judicial review and even cassation for legal reasons)

In preparing the indictment, the Public Prosecutor must be able to formulate the elements of the crime/delict charged clearly in the sense that the formulation of the elements of the crime must be able to be combined and explained in the form of a description of the facts of the act committed by the defendant. In other words, the description of the elements or legal understanding of the crime (delict) formulated in the article charged must be able to be explained/described in the form of material facts of the act committed by the defendant. So that in the description of the elements of the indictment it can be clearly known whether the defendant in committing the crime charged was the perpetrator (dader/pleger), as a participant perpetrator (mede dader/pleger), or as a mover (uitlokker) or as an orderer (doen pleger), or only as an assistant (medeplichtige).

[3]Leden Marpaung, Op. Cit., p. 22

Are the elements described as a crime of fraud or embezzlement or theft, or receiving and so on. By formulating the elements of the crime clearly, it can prevent the occurrence of ambiguity in the indictment (Obscuur transfers the case back to libel). The function of the indictment in court is the basis and starting point for examining the defendant.

Based on the formulation of the indictment, it is necessary to prove the defendant's guilt. The trial examination must not deviate from what is formulated in the indictment. If the indictment contains an accusation of committing a robbery at night using a weapon preceded by dismantling and shooting, that is the extent of the examination in the trial. The trial may not examine other crimes and circumstances. That is why the law requires the public prosecutor to formulate a clear indictment, so that it is easy to direct the course of the trial examination.

The legal consequences of the reading of the indictment which is determined/decided by the judge as an indictment which is null and void or "null and void by law" or declared unacceptable. The Public Prosecutor (JPU) can still refer the case back to the District Court based on the following legal reasons:

1. The judge's determination or decision is based solely on the grounds that the indictment is invalid or does not fulfill the requirements as regulated in Article 143 paragraph (2) of the Criminal Procedure Code, so it is not a final decision regarding the main case/criminal act charged as regulated in Article 191 in conjunction with 193, 194 in conjunction with 197 of the Criminal Procedure Code in the sense that the determination or decision relating to the indictment is based on an examination of the main case charged against the defendant;

2. The case that the public prosecutor has transferred again (for the second time) cannot be classified/cannot be assessed as a ne bis in idem case as referred to in Article 76 of the Criminal Code. Because the court decision is not based on an examination of the main case charged or has not touched on the main case charged. And the decision also cannot be classified as a final decision because there is no dictum/order regarding criminal punishment (Article 193 in conjunction with 197 of the Criminal Procedure Code) or acquittal (Vrijspraak) or release of the defendant from all legal charges (Ontslag van alle rechtsvervolging) as referred to in Article 191 in conjunction with 194 of the Criminal Procedure Code. In addition, a case can be assessed as a “ne bis in idem” case if the court decision is a final decision regarding the main case that has obtained permanent legal force (Article 270 of the Criminal Procedure Code in conjunction with 76 of the Criminal Procedure Code).

In accordance with the description above, it can be concluded that "the legal consequences of the cancellation of the indictment or the requirement that the indictment cannot be accepted (NO) only apply to the indictment itself", meaning that the indictment that is cancelled or declared unacceptable can still be corrected/improved in accordance with the requirements stipulated in Article

143 paragraph (2) of the Criminal Procedure Code and then, together with the case files, be returned to the District Court.

The criminal justice system is based on the Common Law legal system (adversarial system/contest system), this legal principle is the main prerequisite for determining that a process has taken place honestly, fairly, and impartially (due process of law). The principle of the presumption of innocence means that a person must be considered innocent if there has not been a court decision with permanent legal force. The principle of the presumption of innocence is an inseparable part of the principle of due process in Indonesia as a country that adheres to the Civil Law system. The principle of the presumption of innocence is specifically stated in Article 8 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, and in general in the general explanation of the Criminal Procedure Code, point 3 letter (c), which states "Any person who is suspected, arrested, detained, prosecuted, and/or brought before a court must be considered innocent before a court decision states his/her guilt, and has obtained permanent legal force".[4]

There are 2 (two) logical consequences of the principle of the presumption of innocence, namely: First Principle, the suspect or defendant is given the right by law not to provide information that will incriminate or harm him/her in court (the right to remain silent). The right to remain silent or commonly known as the right to remain silent is an inseparable part of the Miranda Rules principle.

The Miranda Rules principle itself was first established in the United States in 1966.[5]In the legal regulations in Indonesia, this principle is regulated in Article 175 of the Criminal Procedure Code "If the defendant does not want to answer or refuses to answer the questions put to him, the presiding judge of the trial recommends that he answer and after that the examination is continued". In the sense that the defendant is allowed not to answer the questions put to him by the judge.

The Second Principle, namely (the right of non-self incrimination) or referred to as the right to deny. The principle of the right of non-self incrimination has relevance to the Latin adage "Nemo tenetur seipsum acccusare is a kegal maxim in Latin, it states that no one is bound to incriminate or accuse himself". has the meaning that No one is bound to accuse himself, meaning that no one is bound to incriminate or accuse himself in a legal event. In the legal regulations in Indonesia, this principle is contained in Article 52 of the Criminal Procedure Code that: "In the examination at the investigation and trial levels, the suspect or defendant has the right to provide information freely to the investigator or judge." so this principle is also one of the factors why the defendant was not

[4]M.Karjadi R.Soesilo, Criminal Procedure Code: With Official Explanation and Commentary, (Bogor: Politeia: Bogor, 1997), 9-10.
[5]M Sofyan Lubis, Miranda Rights Principles: The Rights of Suspects Before Examination, (Yogyakarta: Pustaka Yustisia, 2010), 16.

sworn in before the trial.

The existence of the principle of the right to remain silent and the right of non-self-incrimination is an effort to prevent deviant actions such as the use of torture in the investigation process until it reaches the scope of the court in order to realize law enforcement based on the principle of certainty, fairness and humanity of the court. Then if the suspect or defendant uses these two principles when carrying out the legal process, the judge or public prosecutor may not interpret the silence of the defendant as behavior and actions that hinder and disrupt the order of the trial (Contempt of Court). Moreover, to consider and draw conclusions that reluctance to answer is a circumstance that aggravates the defendant's guilt and punishment. The silence of the defendant must be assessed casuistically and realistically, with mature arguments and sufficient consideration.

The application of the presumption of innocence in the judicial system in Indonesia has actually also reflected the enforcement of the law according to the principles of certainty, fairness and humanity. Without the application of the principles of certainty, fairness and humanity, public trust in the law and the judicial system will collapse. In the current criminal justice process, the paradigm that is to be built is that citizens who are suspects or defendants can no longer be viewed as objects but must be viewed as legal subjects who have rights and obligations based on laws and regulations, especially regarding guarantees of human rights. Then in the criminal justice system, due process of law is interpreted as a good, certain, fair and humane legal process. In order to realize law enforcement based on the principles of certainty, fairness and humanity, especially in the criminal justice system (SPP), it must have a basis (Ground Norm or Ground Program). In this case, the main goal is to create a conducive system order and run according to the desired track.

The principles that form the basis for the mechanism or operation of the criminal justice system in the Criminal Procedure Code are as follows:[6]

1. The principle of presumption of innocence

2. Opportunity Principle 3. Legality Principle

4. Principle of Fast, Simple and low Cost Justice

5. Priority Principle

6. Principle of Proportionality

7. Principle of Equality Before the Law

3.2. Weaknesses of the Public Prosecutor's Authority in the Legal Certainty-Based Judicial Process

The criminal justice system has structural devices, in addition to legal and cultural devices, which work together in an integral, coherent and coordinated manner to

[6]Rusli Muhammad, Criminal Justice System, (Yogyakarta: UII Pres, 2011), 10 –13.

create an integrated working mechanism.[7]Law enforcement is also always associated with the protection of society against crimes related to criminal law enforcement issues. The purpose of establishing criminal law is as one of the means of criminal politics, namely for "social protection" which is often also known as "social defense".[8]Criminal law enforcement is not merely a study of the provisions of regulations and legal sanctions contained and contained in the law. But also studies the factors that influence criminal law enforcement so that it can be enforced consistently. As the legal adage "Fiat Justia et Perereat moudus" which means even if the world collapses, the law must be enforced. So Soerjono Soekanto explains in his book what are the factors that influence law enforcement so that it can be enforced consistently, namely as follows:[9]

1. Legal Factors

In this case, the legal factor will only be limited to statutory regulations. Regarding the validity of a law, there are several principles whose purpose is for the law to have a positive impact. This means that the law achieves its objectives, so that it can run effectively. However, the practice of law enforcement in the field sometimes results in a conflict between legal certainty and justice caused by the concept of justice which is an abstract formulation, while legal certainty is a procedure that has been determined normatively. In essence, the implementation of law does not only include law enforcement, but also peace maintenance, because the implementation of law is actually a process of harmonizing the values of rules and real behavioral patterns that aim to achieve peace.[10]

2. Law Enforcement Factors

Law enforcers are role models in society, who should have certain abilities that are in accordance with the aspirations of society. However, currently, it is not uncommon for law enforcers to carry out their duties and/or discretion not in accordance with the laws and regulations. Therefore, if you want to see a just law, then look at good law enforcers. Law enforcers must also pay attention to how all law enforcement procedures are in accordance with the principles of certainty, fairness and humanity. As well as the fulfillment of the principle of Equality Before the Law in the justice system in Indonesia. Improving the quality of knowledge of law enforcement officers is also an important discourse to be carried out. Equalizing the balance of improving the quality of knowledge of people involved in the process of law enforcement and justice will certainly also

[7]Pujiyono, "Reconstruction of the Indonesian Criminal Justice System from the Perspective of the Independence of the Judicial Power", Journal of Legal Issues 41 No. 1, (2012) :25, 10.14710/mmh.41.1.2012.118-127
[8]Barda Nawawi Arief, Several Aspects of Criminal Law Enforcement and Development Policy, (Bandung: PT. Citra Aditya Bakti, 1998), 11
[9]Soerjono Soekanto, Factors Influencing Law Enforcement, (Jakarta: RajaGrafindo Persada, 2016), 8.
[10]Aria Zurnetti, Op.Cit.

affect the weight and quality of the judicial process and the quality of the legal decisions that are handed down.[11]

3. Facilities and infrastructure factors

Without certain means or facilities, it is impossible for law enforcement to run smoothly. These means or facilities include, among others, educated and skilled human resources, good organization, adequate equipment, sufficient finances, and so on. Means and facilities have a very important role in law enforcement. Without these means or facilities, it will be impossible for law enforcers to harmonize their proper roles with their actual roles.

4. Community Factors

Law enforcers come from the community, and aim to achieve peace in the community. Therefore, the community also influences the enforcement of the law. This is also a starting point if the community obeys the law then community life will be peaceful, but if the community violates the law it will be a controversy in the middle of society.

5. Cultural Factors

As a system, law includes structure, substance, and culture. Structure includes the container or form of the legal system that includes the order of formal legal institutions and their rights and obligations. Substance includes legal norms and their formulations, while culture basically includes the values that underlie applicable law, values that are abstract conceptions of what is considered good (and therefore adhered to) and what is considered bad (and therefore avoided).

Every law in this world certainly has its own advantages and disadvantages, as is the case with Indonesian Criminal Procedure Law which has basic advantages, such as:

• More attention is paid to the rights of suspects and defendants;

• Availability of legal assistance at all levels of examination;

• The legal basis for arrest/detention is regulated along with time limits;

• Provisions regarding compensation and rehabilitation;

• Provisions regarding the possibility of combining claims for compensation in criminal cases;

• Availability of more comprehensive legal remedies;

• Provisions regarding connectivity; and

• There is supervision of the implementation of court decisions.[12]

However, the shortcomings of the Indonesian Criminal Procedure Code are as quoted by the author, namely: That in the Criminal Procedure Code, the

[11]Barda Nawawi Arief, Op.Cit.
[12]Al. Wisnubroto and G. Widiartana, Op. Cit, Page 2.

provisions regulating the human rights of victims of crime have received less attention from lawmakers, because the provisions regarding human rights contained in the Criminal Procedure Code generally only regulate the rights of suspects and defendants and the rights of legal counsel (CHAPTER VI Articles 50 to 68 in conjunction with CHAPTER VII Articles 69 to 74), while the human rights of victims of crime in the Criminal Procedure Code can be said to be non-existent or not regulated clearly (in writing), except for the right to submit a report or complaint to the investigator/investigator (Article 108 paragraph (1) of the Criminal Procedure Code) and the right to sue for compensation through a pre-trial hearing (Article 80 of the Criminal Procedure Code) or the examination of the lawsuit can be combined with the examination of the criminal case (Article 98 in conjunction with 99 of the Criminal Procedure Code).[13]The criminal justice system in Indonesia is more oriented towards the Due Process Model, in which this model applies what is called the "Presumption of Innocence" (the principle of presumption of innocence).[14], namely the suspect or defendant must be considered legally innocent. The prosecution system adopted according to Indonesian Criminal Procedure Law is:

1. Mandatory Prosecutorial System: Based on this system, prosecutors handle a case only based on existing evidence and not on matters outside of what has been determined (except in certain circumstances).

2. Discretionary Prosecutorial System: In this system, prosecutors can implement various specific policies and can take various actions in resolving or handling a case. In this system, prosecutors in making decisions, in addition to considering the available evidence, also consider the factors underlying the occurrence of a crime, the circumstances in which the crime was committed, the personal attributes of the defendant and the victim, the level of remorse of the defendant, the level of forgiveness of the victim and considerations of public policy.[15]

Of the two prosecution systems, Indonesia adheres to both and this is the advantage of the Attorney General's Office of the Republic of Indonesia in carrying out prosecutions as quoted by the author, namely: The Attorney General's Office of the Republic of Indonesia in carrying out prosecutions adheres to both systems, entering the Mandatory Prosecutorial System in handling general criminal cases and also entering the Discretionary Prosecutorial System in handling special criminal cases (corruption).

This refers to Article 284 paragraph 2 of the Criminal Procedure Code and crimes related to Human Rights (HAM) refer to Article 21 paragraph 1 of Law No. 26 of 2000 concerning Human Rights Courts. Thus, the system adopted by the Indonesian Attorney General's Office is a combination of the two systems which

[13]MA Kuffal, Application of the Criminal Procedure Code in Legal Practice, Muhammadiyah University of Malang, Malang, 2005, pp. 173-174.
[14]Yesmil Anwar and Adang, Op. Cit, Page. 42
[15]Marwan Effendy, Op. Cit, Page 86.

do not appear to be adopted by prosecutors in other countries. The advantage of the prosecution provisions in Indonesia is that it is strictly regulated regarding the minimum standards of evidence that must be met to carry out prosecution to court, because the evidence found must show that the suspect is strongly suspected of having committed a crime (in the arrest) or the defendant has committed a crime (in the sentencing). This is clearly stated in Article 17 of the Criminal Procedure Code which states that: "An arrest order is made against a person who is strongly suspected of committing a crime based on sufficient preliminary evidence". This article stipulates that an arrest order cannot be carried out arbitrarily, but is directed at those who have actually committed a crime.

Based on the provisions of prosecution according to Indonesian criminal procedure law, only the public prosecutor, known as dominus litis, has the authority to carry out prosecution.[16] So that no other party may prosecute other than the public prosecutor, therefore the victim is less empowered in the criminal justice process so that the problem of the victim's human rights is often neglected, because the public prosecutor who is the victim's lawyer often cannot understand the suffering experienced by the victim due to the crime that befell the victim, then if in this case the victim can be empowered and can also be given the opportunity to be part of the criminal justice process, such as in the type of joint prosecutors prosecution, the victim can directly fight for justice for himself with the assistance of a public prosecutor who has good knowledge and legal basis to accompany the victim during the prosecution so that the public prosecutor can empathize with the victim's suffering and participate in fighting for justice for the victim and continue to fight for justice for the public interest, so that with the absence of an opportunity for the victim to be part of the criminal justice process, law enforcement officers in this case the public prosecutor can take arbitrary actions on the grounds of public interest. In terms of consolidating cases for compensation as the author stated in Chapter III regarding victims who file compensation issues contained in Article 141 of the Criminal Procedure Code, this is a deficiency in Indonesian criminal procedure law in terms of protection for criminal victims, namely it is stated in Article 141 of the Criminal Procedure Code that: "The public prosecutor can consolidate cases and make them in one indictment, if at the same time or almost at the same time he receives several case files in the case of:

a. Several criminal acts committed by the same person and interests do not constitute an obstacle to their combination;

b. Several criminal acts are related to one another;

c. Several criminal acts are not related to each other, but they are related to each other, in which case the combination is necessary for the purposes of investigation."

[16]Andi Hamzah, Loc. Cit.

The criminal justice system in Indonesia is more oriented towards the Due Process Model, in which this model applies what is called the "Presumption of Innocence" (the principle of presumption of innocence).[17], namely the suspect or defendant must be considered legally innocent. The prosecution system adopted according to Indonesian Criminal Procedure Law is:

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2. Discretionary Prosecutorial System: In this system, prosecutors can implement various specific policies and can take various actions in resolving or handling a case. In this system, prosecutors in making decisions, in addition to considering the available evidence, also consider the factors underlying the occurrence of a crime, the circumstances in which the crime was committed, the personal attributes of the defendant and the victim, the level of remorse of the defendant, the level of forgiveness of the victim and considerations of public policy.[18]

Of the two prosecution systems, Indonesia adopts both and this is the advantage of the Indonesian Attorney General's Office in carrying out prosecution as quoted by the author, namely: The Indonesian Attorney General's Office in carrying out prosecution adheres to both systems, entering the Mandatory Prosecutorial System in handling general criminal cases and also entering the Discretionary Prosecutorial System in handling special criminal cases (corruption). This refers to Article 284 paragraph 2 of the Criminal Procedure Code and criminal acts related to Human Rights (HAM) refer to Article 21 paragraph 1 of Law No. 26 of 2000 concerning Human Rights Courts. Thus, the system adopted by the Indonesian Attorney General's Office is a combination of the two systems which does not seem to be adopted by prosecutors in other countries.[19]

The advantage of the prosecution provisions in Indonesia is that it is strictly regulated regarding the minimum standards of evidence that must be met to carry out a prosecution in court, because the evidence found must show that the suspect is strongly suspected of having committed a crime (in the arrest) or the defendant has committed a crime (in the sentencing). This is clearly stated in Article 17 of the Criminal Procedure Code which states that: "An arrest order is made against a person who is strongly suspected of committing a crime based on sufficient initial evidence."

This article stipulates that arrest warrants cannot be carried out arbitrarily, but are directed at those who have actually committed a crime. In line with the explanation above, Article 183 of the Criminal Procedure Code states that: "A judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the conviction that a crime has actually occurred

[17]Yesmil Anwar and Adang, Op. Cit, Page. 42
[18]Marwan Effendy, Op. Cit, Page 86.
[19]Ibid, Page 87.

and that the defendant is guilty of committing it". Article 183 of the Criminal Procedure Code states that this provision is to guarantee the upholding of truth, justice, and legal certainty for a person, and is supplemented by the existence of pre-prosecution, at which stage the Indonesian public prosecutor can provide instructions to complete incomplete investigation results to investigators, as the author has explained previously, and in terms of prosecution authority, Indonesia adheres to the principle of legality in which in this case the public prosecutor is obliged to prosecute anyone suspected of committing a crime if the available evidence is sufficient, so that the public prosecutor will not be subjective in carrying out the prosecution.

The shortcomings of the prosecution provisions adopted by the Indonesian prosecutor's office are in terms of the Mandatory Prosecutorial System because in this system the public prosecutor handles a case only based on existing evidence, so that the public prosecutor cannot directly handle a case such as conducting investigations, arrests, searches, confiscations and examinations of victims and witnesses. This only applies to corruption crimes and does not apply to general crimes. Based on the prosecution provisions according to Indonesian criminal procedure law, only the public prosecutor who is referred to as dominus litis has the authority to carry out prosecution.[20]so that no other party may prosecute other than the public prosecutor, therefore the victim is less empowered in the criminal justice process so that the problem of the victim's human rights is often neglected, because the public prosecutor who is the victim's lawyer often cannot understand the suffering experienced by the victim due to the crime that befell the victim, then if in this case the victim can be empowered and can also be given the opportunity to be part of the criminal justice process, such as in the type of joint prosecutors prosecution, then the victim can directly fight for justice for himself with the help of a public prosecutor who has good knowledge and legal basis to accompany the victim when prosecuting so that the public prosecutor can empathize with the victim's suffering and participate in fighting for justice for the victim and continue to fight for justice for the public interest, so that with the absence of an opportunity for the victim to be part of the criminal justice process, law enforcement officers in this case the public prosecutor can take arbitrary actions on the grounds of public interest.

4. Conclusion

The authority of the public prosecutor in the legal certainty-based trial process is that in carrying out its duties and authorities in order to achieve legal certainty, the prosecutor's office is guided by the Criminal Procedure Code and Law Number 16 of 2004, one of the duties of the prosecutor's office is to prepare an indictment, in terms of preparing an indictment the prosecutor is required to be careful, because when the indictment prepared by the prosecutor is not careful,

[20]Andi Hamzah, Loc. Cit.

it will result in the cancellation of the indictment or the requirement that the indictment cannot be accepted (NO) only applies to the indictment itself, in the sense that the indictment that is cancelled or declared unacceptable can still be corrected in accordance with the requirements stipulated in Article 143 paragraph (2) of the Criminal Procedure Code to then be transferred back together with the case files to the District Court. The weakness of the authority of the public prosecutor in the legal certainty-based trial process is that the deficiency of the prosecution provisions adopted by the prosecutor's office of the Republic of Indonesia is in terms of the Mandatory Prosecutorial System because in this system the public prosecutor handles a case only based on existing evidence, so that the public prosecutor cannot directly handle a case such as conducting investigations, arrests, searches, confiscations and examinations of victims and witnesses. This only applies to corruption crimes and does not apply to general crimes.

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