

Embodiment of The Principle of Opportunity Through The Authority of Deponering by The Attorney General in Criminal Justice in Indonesia

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How to cite:

Bismantara, I, P, G, T., Sugama, I, D, G, D. (2025). Embodiment of The Principle of Opportunity Through The Authority of Deponering by The Attorney General in Criminal Justice in Indonesia. *Sociological Jurisprudence Journal*. Volume 8(1), Page 30-35. <https://doi.org/10.22225/scj.8.1.2025.30-35>

Abstract—This study aims to provide an explanation regarding the authority of the Attorney General in deponering a case, which is an important aspect of the Indonesian criminal justice system. It relates to prosecutorial policies that can influence the course of legal proceedings and the legal consequences arising from the deponering provisions outlined in the Prosecutor's Office Law. Deponering, in simple terms, refers to the cessation of prosecution of an ongoing case, granted to the Attorney General with the aim of considering the broader public interest and the utility of the law. However, the existing regulations still provide ambiguous provisions regarding the authority of deponering. For example, Law Number 11 of 2021 does not clearly outline the criteria for cases that can be classified as involving "public interest," leading to multiple interpretations and norm confusion, which causes legal uncertainty. Therefore, it is necessary to establish clear and comprehensive regulations regarding this issue. The research method used in this paper is a normative legal research method, with an approach focused on the analysis of legal regulations, examining the substance of the existing laws as the main object of the study.

Keyword: attorney general; deponering; opportunity

Introduction

Indonesia as a country of law has agreed that its understanding in all state administration should always be based on the provisions that have been regulated in the existing legal system. This provision is in accordance with the substance that has been regulated in the constitution, namely in article 1 paragraph (3) of the Constitution of the Republic of Indonesia. Referring to the concept of the state of law, all forms of rules that have been formed by state institutions should be obeyed by the entire community because of the binding nature of the law. The Constitution as the highest written law in the hierarchy of laws and regulations in Indonesia should be the basis of reference to form regulations under it so that every regulation that applies in Indonesia adheres to the values that have been set forth in the constitution.

The purpose of Indonesia adhering to the system of the state of law is none other than to realize peace and order in the life of a nation and state. In addition, according to Gustav Radbruch, he explained

his insight that the purpose of forming a law is to realize Justice, Certainty and Utility. These legal objectives should be considered by all law enforcers so that the enforcement of the law becomes effective in society. One of the legal systems that apply in Indonesia is criminal law which is part of public law. Then the criminal law is also divided into two parts, namely formal criminal law and material criminal law. These two parts are a legal system whose application cannot be separated in carrying out the criminal law system in Indonesia.

Formal criminal law regulates the procedures of law enforcers as a tool of the state to criminalize and impose crimes. In practice, formal criminal law is often also referred to as criminal procedure law. The provisions of the criminal procedure law are regulated in Law No. 8 of 1981 concerning the criminal procedure code. The function of formal criminal law is to maintain material criminal law in the process of imposing a criminal penalty in Indonesia. The criminal procedure law contains the stages in carrying out the process, including investigation, investigation, prosecution, trial and penalization. In each of these sub-systems, the authority is given to law enforcers to carry out their duties and functions in accordance with the provisions that have been regulated in the laws and regulations. The division of authority in law enforcement at this time is often referred to as the integrated criminal justice system where the police have authority in the realm of investigation and investigation, the prosecutor has the authority to prosecute, the court as the institution in charge of examining and sentencing decisions and the correctional institution as the institution in charge of carrying out criminal decisions. The context of material law enforcement, if we associate it with formal criminal law, is to provide a framework or picture to carry out performance for law enforcement in an effort to carry out their duties in accordance with the provisions of the formal criminal law.

One of the sub-systems involved in criminal procedure law is the Prosecutor's Institution of the Republic of Indonesia. Provisions regarding the prosecutor's office are regulated in Law No. 11 of 2021 as amended to Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (hereinafter referred to as the Prosecutor's Law). The Prosecutor's Office has the main function of prosecuting criminal cases where the case is a follow-up to the investigation process that has been carried out by the police. In the case of carrying out the prosecution process, the prosecutor serves as a state lawyer which is simply interpreted as defending the rights of the victim and pleading with the court for the criminal case to be heard immediately by the court. The basis for prosecutorial prosecution in the criminal justice process is called an indictment where the prosecutorial authority in Indonesia is only owned by the prosecutor's institution as an embodiment of the principle of *dominus litis*.

Institutionally in Indonesia, the Prosecutor's Office of the Republic of Indonesia is led by an attorney general, where in the process of his appointment is appointed by the President in his capacity as the head of government in Indonesia. Refer to Article 18 paragraph (4) of the Prosecutor's Law, the duties of the Prosecutor's Office and other duties given by the state. In addition to the authority in the realm of prosecution, the Attorney General has the authority to set aside the case or known as the authority of the deponing authority. Deponing is the authority of the attorney general as the head prosecutor in Indonesia to consider a case to be stopped with consideration for the public interest. Deponing is the embodiment of the principle of opportunism given to the Attorney General.

The Prosecutor's Law regulates the deponing in article 35 letter c which explains the duties and authority of the Attorney General. The authority to defonering a criminal case is a discretionary authority possessed by the attorney general to assess whether or not a criminal case can be waived. The prosecutor's law only explains that a criminal case can be considered given a deponing based on the public interest. The general discretion in question is not explained in detail either in the explanation of the Prosecutor's Law or in other laws and regulations. This ambiguity is certainly a problem both legally and in its implementation.

The problem that occurs in the regulation of deponing in the Prosecutor's Law in Indonesia is a legal problem that will later have a bad impact. The phrase "in the public interest" in article 30 C of the Prosecutor's Law does not clearly explain what matters can be classified as public interest. The existence of

these legal problems can result in confusion of interpretation so that the problems that occur are in the ambiguity of the norms in the article. The ambiguity of norms results in legal problems, namely the non-realization of legal objectives, especially legal certainty. In addition to problems in the substance of norms, the ambiguity of norms also has an impact on the implementation of legal provisions. Likewise, article 30 C of the Prosecutor's Law does not explain clearly and firmly the phrase "public interest" so that it is feared that it is vulnerable to the practice of subjectivity in the exercise of the authority of the deponer.

Methods

The method used in writing this journal is using normative research methods. The object of normative research is research that focuses on normative problems. Normative legal research focuses on an in-depth study of legal materials consisting of primary legal materials, namely principles, theories and legal concepts as well as laws and regulations related to the issues raised. The approach used in this study is a legislative approach that specifically examines the laws and regulations regarding the Prosecutor's Law of the Republic of Indonesia. The analysis of legal concepts in the process of assessing the problems raised in this journal uses a conceptual approach, namely exploring the principles and theories that develop and are related to the problems raised so as to provide a more comprehensive understanding in the process of researching legal materials.

Results And Discussion

Arrangements Related to the Authority of Deponering by the Attorney General in Positive Law in Indonesia

As a country of law, of course, all forms of systems in Indonesia must be based on existing laws or rules. This provision is in accordance with the theory issued by F.J. Stahl who is a continental European jurist where the requirements of the state of law include a government based on laws and regulations. There is recognition related to human rights, separation of powers between state institutions and the existence of administrative justice. These four conditions must be met as a condition of a state of law. Referring to this theory, countries that declare themselves as a state of law should meet these conditions to be recognized as a state based on law.

The existence of provisions regarding all processes must be in accordance with the provisions of laws and regulations also apply in the law enforcement process in Indonesia. The criminal justice system in Indonesia is divided into law enforcement officials who have duties and authority in each criminal justice process. The entire criminal justice sub-system consisting of the police, prosecutor's office, courts, correctional institutions and legal advisors is the key to the success of law enforcement in Indonesia. One of the law enforcement officials in the criminal justice system in Indonesia is the Prosecutor's Office. As a law enforcement officer, the prosecutor's office has its duties and authority as a public prosecutor regulated in the laws and regulations in Indonesia.

Referring to the regulations that apply in Indonesia, namely the Prosecutor's Law in article 1 number 1 explains that the Prosecutor's Office of the Republic of Indonesia is a government institution whose function is related to the judicial power that exercises state power in the field of prosecution and other authorities based on the law. Meanwhile, a prosecutor is a position that exercises authority as a public prosecutor. The Prosecutor's Office is the only state institution that has authority in the realm of prosecution when a criminal act occurs in Indonesia, so it is called *a dominus litisis* institution. The prosecutor's authority is the task of the prosecutor, starting from compiling an indictment which is the result of a follow-up to the investigation process in the police which is then submitted to the court in the form of an indictment which contains the formulation of the articles charged to the defendant so that the indictment becomes a consideration by the judge in deciding a criminal case.

In addition to the main task of the prosecutor as a state institution in the field of prosecution, the prosecutor also has other authorities regulated in the Prosecutor's Law. This authority includes the implementation of court decisions that already have permanent legal force, including in the implementation of executions, as investigators in special criminal acts, namely in corruption crimes, and prosecutors can act as state lawyers when the state is litigating in the realm of civil law so that prosecutors can be asked for legal opinions in the form of studies related to legal issues that arise in a state process.

The institutional structure of the Prosecutor's Office in Indonesia is led by the Attorney General who is domiciled in the State Capital. The Attorney General is the highest leadership in the prosecutor's office organization in Indonesia. In the process of his assignment, the Attorney General is directly responsible to the President as the head of the Indonesian government. The authority of the Attorney General is the highest public prosecutor in Indonesia, so his position is very central in the prosecution process in Indonesia.

One of the duties and authorities of the Attorney General listed in the Prosecutor's Law is to set aside cases for the sake of legal interests. This provision is the embodiment of the principle of opportunism owned by the Attorney General. Setting aside cases in the public interest in practice is often referred to as deponering is an authority owned by the Attorney General in accordance with the mandate of article 35 paragraph (1) letter c. This article explains that the Attorney General, in his authority as the leader and person responsible for the performance of prosecutors throughout Indonesia, can consider not prosecuting a case if in his consideration the case has the potential to interfere with the public interest. These considerations can be issued in the form of decrees and determinations.

The authority to defining criminal cases can only be issued by the Attorney General and cannot be issued by the Prosecutor under the position of the Attorney General. The prosecutor as the state repertoire in carrying out the criminal prosecution process has a very important role in the criminal justice system in Indonesia. As a law enforcer, independence, precision and meticulousness are needed in drafting indictments. So that the prosecutor can determine the status of a defendant can continue in the trial process or can be released based on the available evidence. Certainty, justice and usefulness will be realized if prosecutors carry out their duties professionally and uphold integrity as law enforcement officials, especially in the field of prosecution.

Legal consequences arising related to the regulation of depoering regulated in Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia

The Attorney General is the main official within the prosecutor's office of the Republic of Indonesia which has special authorities in the laws and regulations. The Attorney General has authority related to the coordination and supervision of the implementation of the prosecutor's duties covering the whole of Indonesia, supervising the process of prosecuting criminal cases and coordination between other law enforcement officials such as the Supreme Court and the Police. The process of appointing a prosecutor who is given the mandate to become the attorney general is carried out by the President. The process of appointing the attorney general is the prerogative of the President as the head of government in Indonesia. The term of office of the Attorney General is 5 years and can be re-elected in one subsequent period.

The authority possessed in a position is usually the implementation or application of a legal principle that develops in the world of law. This provision also applies to the authority possessed by the Attorney General in carrying out his duties as the highest leadership of the prosecutor's office in Indonesia. The principle of opportunism is a principle that only the attorney general has where the principle gives the attorney general the authority to set aside the case if in its assessment it has a major impact on the public interest. The principle of opportunism in its application carried out by the attorney general is often referred to as the authority of the deponing authority.

The Prosecutor's Law contains the authority of the Attorney General in representing a case that is considered to have an impact on the public interest. These provisions are regulated in Article 35 paragraph (1) letter c. The article contains "The Attorney General has the duty and authority to set aside cases for the sake of the public interest". Then in the explanation of this article, only the phrase public interest is explained, namely the public interest includes interests related to the state, the interests of the nation and society at large. The formulation of articles and explanations in the Prosecutor's Law still seems vague so that various circles freely interpret this provision so that there is no proper certainty regarding the phrase of public interest as a condition for deponering a case.

In simple terms, public interest can be interpreted as an interest that appeals to the public, including the interests of the nation and state. However, this understanding is certainly not enough in the rules of legal science that must be based on legal certainty. Similarly, it can be seen that the substance of the article is still vague so that it causes multiple interpretations and does not reflect legal certainty in its implementation. The ambiguity of the norm requires the attorney general to interpret the provisions before exercising his authority in presenting a case.

The authority of the deponering regulated in article 35 Paragraph (1) letter C owned by the Attorney General has become a problem in the legal system, especially in its application to the criminal justice system in Indonesia. The application of the article is feared to be a legal loophole for agencies and individuals who want to take advantage of the provisions that are still multi-interpreted. The application of this article is also vulnerable to being applied subjectively based on personal assessments so that it can interfere with the performance of law enforcers in carrying out their duties, especially the prosecutor's office which has the authority to deponering in the process of prosecuting cases.

The use of the term "public interest" in the context of deponering often clashes with the public interest. Although the purpose of deponering is to consider the public interest, in some cases, the legal interests of individuals (such as the rights of victims or suspects) may not be fully considered. Therefore, it is important to set clear boundaries on how "legal interests" should be prioritized in every deponering decision, so that the decision not only prioritizes efficiency or a particular interest, but also ensures the protection of individual rights and the fulfillment of a community's sense of justice. The influence of circularity is also a problem in the application of this authority because there is no definite interpretation in the public interest phrase so that it is feared to be abused by individuals who want to take advantage of the legal loophole.

Conclusion

Deponering as the implementation of the principle of opportunism owned by the Attorney General in Indonesia is regulated in the Prosecutor's Law, namely in article 35 paragraph (1) letter c. The article states that the attorney general has the duty and authority to set aside cases for the sake of the public interest. This provision gives the attorney general the authority as the highest prosecutor in Indonesia to stop prosecution in the public interest. The deponering arrangement contained in the Prosecutor's Law still causes multiple interpretations because there is no explanation of the phrase public interest in the authority of the attorney general in exercising his authority in setting aside criminal cases. These provisions seem vague so that they do not reflect legal certainty in their implementation. In addition, as a result of the absence of an explanation of the phrase public interest in the provision, it is vulnerable to be infiltrated by elements of subjectivity in its implementation so that the principle of legal justice cannot be realized. Legal arrangements related to the implementation of deponering by the Attorney General in Indonesia should be updated so that it reflects certainty, justice and usefulness for the law enforcement process in Indonesia.

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