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Legal Review of the Prosecutor's Authority in Setting Aside Cases in the Criminal Justice Process

Ramdhani[1)] & Gunarto[2)]
[1)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: Ramdhani.std@unissula.ac.id
[2)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia, E-mail: Gunarto@unissula.ac.id

Abstract. *The waiver of a case is an authority, it is not impossible that the decision to waive a case can be challenged in court, to question whether in carrying out the duties and authority of the case deponeer, the Attorney General has sufficient reasons, namely: To what extent does the waiver of the case meet the requirements for the sake of public interest, namely the interests of the nation and state and/or the interests of the general public and the ideal measure of the use of the opportunity principle and which is able to provide a picture of the prosecution policy in handling criminal cases effectively, efficiently, and responsibly which is carried out without abandoning the sense of justice. The aim of this research is to find out and analyze (1) the nature of the position of the Prosecutor in the Indonesian Criminal Justice System, (2) the legal barometer of the Prosecutor's authority to set aside cases in the criminal justice process, and (3) the fundamental problems of the Prosecutor's authority to set aside criminal cases. The approach method used in this study is normative juridical. The specifications of this study are descriptive analytical. The data source used is secondary data. Secondary data is data obtained from library research consisting of primary legal materials, secondary legal materials and tertiary legal materials. The research results and discussion can be concluded: (1) In the criminal justice system, the role of the prosecutor's office is very central because the prosecutor's office is the institution that determines whether a person should be examined by the court or not. The prosecutor also determines whether a person will be sentenced or not through the quality of the indictment and charges made. (2) Article 35 letter c of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia is the legal basis for setting aside cases in the public interest as the authority of the Attorney General. The setting aside of cases in the public interest based on Constitutional Court Decision Number 29/PUU-XIV/2016, can be carried out after the obligation to pay attention to the advice and opinions of state authorities that have a relationship with the problem is carried out by the Attorney General. (3) The issuance of a deponeering decision is a debate in Indonesia both among academics and among state institutions. The debate occurs because of the diversity of opinions or it can be said that for multiple interpretations of the meaning of "public interest" to be applied in a case.*

Keywords*: Case Waiver; Criminal Justice; Prosecutor.*

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1. Introduction

The definition of the prosecutor's office has been stated in Article 1 Number 1 of Law Number 11 of 2021 concerning the Attorney General's Office of the Republic of Indonesia, namely a government institution whose functions are related to judicial power which exercises state power in the field of prosecution and other authorities based on the Law. In its assignment, the Prosecutor's Office has the authority in terms of implementing prosecution in criminal matters based on the principle of opportunity. The principle of opportunity is a principle underlying a criminal prosecution in general and can also not carry out prosecution for reasons of the existence of public interest.[1] Based on Article 35 letter c of Law Number 11 of 2021 concerning the Prosecutor's Office which contains the authority and assignment of the Attorney General, namely being able to not carry out a prosecution or set aside a case in a common interest that can be linked to the principle of public interest, the intended explanation is that the public interest is an interest that concerns the interests of the state, nation and the wider community in general. In the existence of the principle of opportunity in prosecuting criminal cases which means the authority of a public prosecutor to be able to make demands, if the existence of the prosecution is considered not an opportunity, not in the interests of the community.

The purpose of Article 35 letter c is that a law enforcer is not obliged to prosecute a person who commits a crime if in his consideration it has the potential to harm the common interest. In its implementation, the attorney general makes a decision letter or determination and is given to someone whose case is set aside in the form of a copy of the decision letter and determination.[2] The prosecutor has the duty and authority as a law enforcement officer in executing court decisions that have permanent legal force against the law in delegating the prosecutor's authority for the public interest on the grounds that the prosecutor's policy is said to be absent. The meaning of interest contained in the prosecutor's law has a narrow meaning and a clearer explanation is needed, namely as the interest of the State/society. Then in the Criminal Procedure Code (KUHAP) Article 14 letter h which reads: "Closing a case in the interests of law". Article 14 letter h of the Criminal Procedure Code (KUHAP) above determines that one of the authorities of the public prosecutor is the act of closing a case in the interests of law. Article 140 paragraph (2) letter a of the Criminal Procedure Code (KUHAP) also states other acts that can be carried out by the public prosecutor, namely in the form of stopping prosecution, while Article 46 paragraph (1) letter c of the Criminal Procedure Code (KUHAP) also determines other authorities, namely setting aside a case in the interests of the public. A case whose prosecution is stopped in the interests of law is a case whose prosecution is stopped because there is insufficient evidence or the incident is not a criminal act (Article 40 paragraph (2) letter a of the Criminal Procedure Code).

In terms of examples of dynamics that occur, in the reform era, the President's vision and mission is to eradicate corruption. Public interest requires that corruption be eradicated to

[1]Y. Harahap (2005), *Pembahasan dan Penerapan KUHAP*. Jakarta: Sinar Grafika
[2]Windi Jannati M.A.S & Frans Simangunsong, Makna Kepentingan Umum di Dalam Deponering, *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance*, 2 (2), May – August 2022, p.236

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its roots.[3] An example can be taken regarding the use of the opportunity principle in the waiver of criminal cases by the Attorney General of the Republic of Indonesia in Indonesia, namely the Bibit-Chandra case. Regarding the Bibit-Chandra case, the Attorney General's Decree on Termination of Prosecution (SKPP) was considered weak resulting in the pretrial motion filed by Anggodo being won by the decision to forward the case to the court. Thus, there needs to be a guideline for prosecutors to be able to waive criminal cases as a guarantee within the framework of a transparent prosecution policy in independence against the use of the opportunity principle which also includes supervision and accountability for the use of the opportunity principle, law enforcement resources, and related relationships in the system.

Referring to the existence of a waiver of prosecution that will be carried out by the attorney general if it is more inclined towards a public interest that is harmed, when something like this will make the image of law enforcement seem rather protruding from the existence of an overlapping law. The existence of laws and institutions that have been built and determined by laws and regulations should be able to create a sense of justice for all citizens in all matters relating to the fulfillment of rights and obligations. In this case, the government should in the form of pouring out regulations regarding the waiver of the interests of prosecuting cases that lead to losses of public interest which is better known as deponering which refers to the principle of opportunity to explain and classify regarding the limitations of the public interest where this concerns the nation, state and its citizens. If in this case there is no explanation regarding the limitations of public interest or losses in general, then the person or group whose rights are obstructed will feel sidelined. In the future, this kind of thing will lead to injustice with the existence of the law itself. The many deviations in criminal cases, especially in Indonesia at this time, as a task within the authority of the attorney general, are not to carry out demands. In further developments, only the Attorney General has the authority to implement policies in anticipating the occurrence of deviations and abuse of authority.[4]

2. Research Methods

To conduct a study in this research, the author uses a normative legal method or a written legal approach (statute approach). The normative legal approach is an approach that is carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this research. This approach is also known as a literature approach, namely by studying books, laws and regulations and other documents related to this research.[5]

3. Results and Discussion

3.1. The Nature of the Position of Prosecutors in the Indonesian Criminal Justice System

The meaning of the system methodologically, in addition to the existence of regularity, orderliness also contains the meaning of a rational and logical approach in achieving a goal.

[3]O.C. Kaligis (2011), *Deponeering Teori Dan Praktik*, Bandung : P.T. Alumni, p.4-5.
[4]Surachman & Andi Hamzah (1995). *Jaksa di Berbagai Negara Peranan dan Kedudukannya*. Jakarta: Sinar Grafika
[5]Rony Hanitijo Soemitro (1990), *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta : Ghalia Indonesia, p.34

The concept of understanding the system as a method is known in general as a system approach. According to Campbell, a system is a system as any group of interrelated components or parts which function together to achieve a goal (the system is a collection of interrelated components or parts that function together to achieve a goal).[6]

According to Rusadi Kantaprawira, a system is a unity, consisting of parts (parts, components, elements, secondary systems, subsystems) which are functionally related to each other in a superordinate bond which shows a movement in order to achieve a goal.[7]

From the definition above, it appears that there are implications for the following elements:

1) Integration;
2) Regularity;
3) Wholeness;
4) Organization; Attachment of components to each other (coherence);
5) The connectedness of components to each other (connectedness);
6) The dependence of components on each other (interdependence).

Furthermore, according to William A Shrode and Dan Voich, the main characteristics of the system are as follows:

1) The system has a purpose;
2) The system is a complete whole
3) The system has an open nature;
4) A system has or carries out transformation activities, activities that change something into something else;
5) In a system there is an interrelationship between components, they are interdependent, and there is also interaction between the system and its environment;
6) The system has a control mechanism. In the system there is a unifying force, so that the system is bound to each other and the system is able to regulate itself.

From all the descriptions above, it appears that the system approach is intended as an application of scientific methods or a new orientation of thinking in seeing something in an effort to solve problems. Thus, the Criminal Justice System as a method or using a system approach requires an understanding that each component that is or is part of a larger or broader system, for the integration of steps and movements to achieve a goal.

The use of the term Criminal Justice System is a term related to the working mechanism in overcoming crime using a systems approach. This term is increasingly popular with the emergence of discourse on integrated justice contained in MPR-RI Decree No. VIII/MPR/2000 concerning the Annual Report of High State Institutions at the MPR-RI annual session in 2000,

[6]Tatang M. Arifin (1989), *Pokok-Pokok Teori Sistem*, Jakarta : Rajawali, p.10.
[7]Rusadi Kantaprawira (1987), *Aplikasi Pendekatan Sistem Dalam Ilmu-Ilmu Sosial*, Jakarta : Bunda Karya, p.5.

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which emphasizes that the Supreme Court needs to implement the principles of an integrated justice system.

The criminal justice system as a system is basically an open system. An open system is a system that in its movement to achieve goals, both short-term goals (resocialization), medium-term (crime prevention) and long-term (social welfare) is greatly influenced by the community environment and areas of human life, so the criminal justice system in its movement will always experience interface (interaction, interconnection, interdependence) with its environment in levels, society, economy, politics, education and technology, as well as the subsystems of the criminal justice system itself (subsystem of criminal justice system).

Before the enactment of the Criminal Procedure Code, the criminal justice system in Indonesia was based on the Inlaands Regelement which was changed to Het Herziene Inlaands Regelement (HIR) Stbld. 1941 Number 44. In 1981, the draft criminal procedure law was passed by a plenary session of the House of Representatives on December 23, 1981, then the President ratified it as Law Number 8 of 1981 concerning Criminal Procedure Law also known as the Criminal Procedure Code.

The criminal justice system in the Criminal Procedure Code is an integrated criminal justice system. This system is based on the principle of functional differentiation among law enforcement officers in accordance with the authority process granted by law.

After the enactment of Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), Het Herziene Regement (Stbl. 1941 No. 44) as the basis of the Indonesian criminal justice system, the basis for the process of resolving criminal cases in Indonesia has been revoked. The components of the criminal justice system that are commonly recognized, both in knowledge of criminal policy and in law enforcement practices, consist of elements of the police, prosecutors, courts, and correctional institutions.

According to Lawrence M. Friedman, the legal system is a legal entity consisting of three elements, namely legal structure, legal substance, and legal culture. In simple terms, the legal structure is related to institutions or institutions that implement the law or can be said to be law enforcement officers. In terms of criminal law, the institution tasked with implementing it is manifested in a criminal justice system, which is essentially a "system of power to enforce criminal law" consisting of investigative power, prosecutorial power, the power to try and pass decisions and the power to implement decisions/criminals by implementing/executing bodies/apparatus.[8]

The Indonesian judiciary today has a legal basis contained in Law Number 48 of 2009 in conjunction with Articles 24 and 25 of the Law of the Unitary State of the Republic of Indonesia. Article 18 of Law Number 48 of 2009 concerning Judicial Power states that Judicial power is exercised by a Supreme Court and judicial bodies under it in the general judicial environment, religious judicial environment, military judicial environment, state

[8]Imman Yusuf Sitinjak, Peran Kejaksaan dan Peran Jaksa Penuntut Umum dalam Penegakan Hukum, *Jurnal Ilmiap.Maksitek*, Vol. 3 No. 3, September 2018, p.98

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administrative judicial environment, and by a constitutional court. So that with this statement it is strengthened in Article 20 (1) of Law Number 48 of 2009 concerning Judicial Power where the Supreme Court is the highest state court of the judicial bodies within the four judicial environments as referred to in Article 18, so that with Article 20 it is strengthened that the Supreme Court is the highest state court. Meanwhile, in the consideration of letter b in Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, it states that the Attorney General's Office of the Republic of Indonesia is one of the bodies whose functions are related to judicial power according to the 1945 Constitution. So with this statement, the Attorney General's Office is an organ of judicial power.

The position of the prosecutor is an independent position, which has the authority as an investigator in Article 39 HIR (Herzien Inlandsch Reglement) and the authority to prosecute is regulated in Article 46 HIR. On January 1, 1981, Law No. 8 of 1981 concerning Criminal Procedure Law was enacted, which revoked the entire Criminal Procedure Law in HIR, so that in 1981 Indonesia entered a new era in its criminal procedure law.

In the criminal justice system, the role of the prosecutor is very central because the prosecutor is the institution that determines whether a person should be examined by the court or not. The prosecutor also determines whether a person will be sentenced or not through the quality of the indictment and the demands made. The position of the prosecutor is so important for the law enforcement process that this institution must be filled by people who are professional and have high integrity.[9]

The Prosecutor's Office as an official authorized by law as a public prosecutor based on Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. The Prosecutor's Office as one of the public prosecution institutions is required to play a greater role in upholding the supremacy of law, protecting public interests, enforcing human rights, and eradicating corruption, collusion and nepotism.

According to Law No. 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, it is understood that the Attorney General's Office is a government institution that exercises state power in the field of law enforcement by adhering to laws and regulations and policies set by the government. The implementation of the powers granted by the state is carried out by the Attorney General's Office, the High Prosecutor's Office, and the District Prosecutor's Office.

According to the Criminal Procedure Code, a prosecutor is an official who is given the authority to act as a public prosecutor and to implement court decisions that have obtained permanent legal force. So the prosecutor as a public prosecutor has the authority to carry out prosecutions and implement judges' decisions. (Article 1 paragraph (6) a and b, in conjunction with Article 13 of the Criminal Procedure Code).

[9]Mocp.Faisal Salam (2001), *Op.Cit*, p.45.

Before the enactment of the Herzien Inlandsch Reglement (HIR) the role (of prosecutors) at that time was firm, where their role was only as an underling of the Assistant Resident, so they did not have their own authority as a public prosecutor like the Openbaar Manisterie in the European court. In addition, prosecutors were under the authority of the regent, so that the regent could order them. The position of prosecutors like that is seen in the practice of having limited authority such as:

1) Does not have the authority to prosecute cases, only Resident Assistants are allowed to prosecute cases.
2) In a court trial, the prosecutor does not have the authority to request a sentence for the accused (make a requisitoir), but can only put forward his feelings and opinions.
3) Does not have the authority to carry out a court decision (execution), only the Assistant Resident has such authority.[10]

Thus, the role of prosecutors before the enactment of HIR seems very limited, only as subordinates or henchmen of the Assistant Resistant. When compared, the prosecutor's office in Indonesia has quite limited authority compared to the prosecutor's office in the Netherlands, England and America. The purpose of this comparison is to evaluate the role of the prosecutor's office so that it relates to the duties and authorities of the prosecutor's office granted by law by looking at world developments and related to the idea of changing the Criminal Procedure Code, where the Criminal Procedure Code itself is the main instrument in the criminal justice system in Indonesia.[11]In addition to being stated in the Criminal Procedure Code, the duties and authorities of prosecutors in carrying out their functions as a subsystem/component of law enforcement in the Indonesian criminal justice system depend on Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

The Prosecutor's Office is a non-departmental institution, which means it is not under any ministry, the peak of the leadership of the Prosecutor's Office is held by the Attorney General who is responsible to the President. This is certainly different from the organizational structure of the Prosecutor's Office in the Netherlands, England and America which are generally under the Ministry of Law. The position of the Attorney General is at the ministerial level, therefore the Prosecutor's Office is not under any ministry. The Attorney General leads the Prosecutor's Office which is divided into legal regions starting from the provincial level (high prosecutor's office) to the district (district prosecutor's office) throughout Indonesia. This legal region division system imitates the regional division system in the Netherlands, where the Netherlands has 5 high prosecutor's offices, each of which has between 4 to 5 prosecutor's offices equivalent to the district level (district prosecutor's office).[12]

[10]Rusli Muhammad (2011), *Sistem Peradilan Pidana Indonesia*, Yogyakarta: UII Press, p.93
[11]Tolib Effendi (2013), *Sistem Peradilan Pidana, Perbandingan Komponen dan Proses Sistem Peradilan Pidana di Berbagai Negara*, Yogyakarta: Pustaka Yustisia, p.153.
[12]Denny Saputra, dkk. Peran Jaksa dalam Sistem Peradilan di Indonesia, *Halu Oleo: Law Review*, Volume 6 Issue 2, September 2022, p.224

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The main task of the prosecutor's office in the Indonesian criminal justice system is prosecution, and conversely, prosecution is the sole authority held by the Prosecutor's Office, and not by any other institution. The authority to prosecute is the dominuslitis of the prosecutor's office in Indonesia, the Netherlands and America, but not in England. In England, prosecution can be filed individually, but in certain cases, individual prosecution can be taken by the public prosecutor of the prosecutor's office.

The authority to prosecute is held by the public prosecutor as a monopoly, meaning that no other body may prosecute. This is called dominus litis in the hands of the public prosecutor or prosecutor. Dominus comes from Latin which means owner. The judge cannot request that the crime be submitted to him. So, the judge only waits for the prosecution from the public prosecutor. The prosecutor's office has a central position in the law enforcement process and is the only agency that can determine whether a case in a criminal case can be submitted to the Court based on valid evidence according to the Criminal Procedure Code. In normative juridical terms, it can be proven that the public prosecutor is Dominus Litis in criminal law enforcement starting from the pre-prosecution stage, prosecution, and in legal efforts and execution.

As stated in Article 30 of 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 the criminal field, the prosecutor's office has the following duties and authorities:

1) Conducting prosecution
2) Implementing judges' decisions and court decisions that have obtained permanent legal force;
3) Supervise the implementation of conditional criminal decisions, supervised criminal decisions, and conditional release decisions;
4) Conducting investigations into certain criminal acts based on laws;
5) Complete certain case files and for that purpose can carry out additional examinations before being transferred to the court, the implementation of which is coordinated with the investigator.

Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia explicitly stipulates that the Attorney General's Office has independence and independence in exercising state power in the field of prosecution. The position of the Attorney General's Office as a government institution that exercises state power in the field of prosecution, when viewed from the perspective of its position, means that the Attorney General's Office is an institution that is under the executive power. Meanwhile, when viewed from the perspective of the authority of the Attorney General's Office in carrying out prosecution, it means that the Attorney General's Office exercises judicial power. In connection with the meaning of the Attorney General's power in exercising state power in the field of prosecution independently. The Attorney General's Office in carrying out its functions, duties and authorities is free from the influence of government power, and the influence of other powers. This means that the state will guarantee that the Attorney General in carrying out his profession without intimidation,

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interference, temptation, inappropriate interference or disclosure that has not been proven true, both for civil, criminal, and other responsibilities.

It is very obvious that the prosecutorial power which should be free and independent from the influence of any power, especially the executive power, is “controlled” and “unwilling” to be released from the “control” of the executive power. As a result, a compromise legal policy was taken by emphasizing that although the prosecutorial power is exercised by the Prosecutor's Office as an executive institution, the implementation of the prosecutorial power is carried out freely and independently. Responding to the reality of the legal policy, and to maintain the purity of the prosecutorial power which is free and independent to protect the interests of the state, the public and the law, legal principles are needed that are able to become the rukh or justification for regulating, implementing and supervising the prosecutorial power.

The legal principles underlying the power of prosecution are able to realize just prosecution, which is comprehensive in nature and meets the principles of scientific truth. The legal principles of prosecution can thus be the basis for justification in the regulation, implementation, and supervision of the power of prosecution to realize just prosecution. Discussing the legal principles cannot be separated from discussing the layers of law itself which consist of 1) Legal values; 2) Legal principles; 3) Legal norms; 4) Concrete legal regulations. In interpreting these legal elements, the higher it is, the more abstract it is, while the lower it is, the more concrete it is. The legal principles are derived from the legal values that become the basic thoughts that inspire a norm and/or legislation and even a judge's decision. Several principles related to the power of prosecution, both those that apply generally and those that apply specifically, are as follows:

1. Principles of Prosecution as Judicial Power

This principle means that prosecution is the state's power in the field of justice or judicial power. The state is the result of a social contract from its people who surrender some of their rights, freedoms, and powers to a joint "power" entity and is called "state", "state power", "power organization", or other identical terms.[13]The state is given power by the people to regulate or protect the interests of its people, one of which is the right to justice. When there is an act that is detrimental to the state, society/individuals and violates the law, it is the state's obligation to prosecute the perpetrators of the act so that justice is created.

In order to realize justice, the state grants the power to enforce the law to several state institutions. Specifically for power in the judicial field, the state divides its power into 3 (three) forms, namely judicial power exercised by judges, prosecutorial power exercised by the Prosecutor's Office led by the Attorney General, and advocacy power to advocates. In various laws and regulations, these three powers are explicitly explained as state powers that are exercised freely and independently which are the characteristics of judicial power. These three judicial powers are powers that have interrelated functions as explained in Article 24 paragraph (3) of the 1945 Constitution (hereinafter referred to as the 1945 Constitution)

[13]Mohamad Nur Wahyudi, Teori Kontrak Sosial (Studi Komparasi Teori Politik Menurut Imam Al-Mawardi, Thomas Hobbes dan John Lock, *An-Nawa: Jurnal Studi Islam*, Vol 4 No. 2, 2022, p.119

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which states that "other bodies whose functions are related to judicial power are regulated by law". The explanation of these other bodies is explained in Article 38 paragraph (2) of the Republic of Indonesia Law Number 48 of 2009 concerning Judicial Power (hereinafter referred to as the Judicial Power Law), which states that "functions related to judicial power include: a) investigation and inquiry; b) prosecution; c) execution of decisions; d) provision of legal services; and e) settlement of disputes outside the court". In Article 24 paragraph (3) of the 1945 Constitution in conjunction with Article 38 paragraph (2) of the Judicial Power Law, the prosecutorial power is related to the functions of investigation, inquiry, prosecution, execution of decisions and settlement of disputes outside the court, while the advocacy power is related to the function of providing legal services and settlement of disputes outside the court, where both carry out functions related to judicial power.

The affirmation of prosecution as a free and independent state power is regulated in various laws and regulations governing the Prosecutor's Office as stated in the background section. Finally, through Law 11/2021, where Article 1 number 1 states that "The Prosecutor's Office of the Republic of Indonesia, hereinafter referred to as the Prosecutor's Office, 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 law. These various laws and regulations make prosecution one of the powers possessed by the state which is referred to as the prosecutorial power. Although what is meant by the prosecutorial power is not explained at all, the prosecutorial power is a power related to the judicial power because both are part of the judicial power which is exercised freely and independently.

2. Principle of Jurisdiction of Prosecution

This principle means that the Attorney General as the implementer of state power in the field of prosecution and as the highest public prosecutor in a country has the authority to prosecute in all courts, both domestically and abroad. Not only in the criminal field but also in other fields, including civil, state administration, military, and state administration. The principle of prosecution jurisdiction is access for the state to be able to prosecute.

The principle of prosecution jurisdiction emphasizes the extent to which the state through the legal instruments it has can defend its interests by prosecuting perpetrators who violate the interests of the state. Therefore, this principle can be divided into 4 (four) forms as follows:

a. Territorial Jurisdiction, namely the state has the authority to prosecute anyone who violates state, public and legal interests in its territory.
b. Personal Jurisdiction, namely the state has the authority to prosecute its citizens for committing violations wherever the citizens are.
c. Protective Jurisdiction, namely the state can prosecute foreign citizens who commit violations of the law abroad that threaten the interests of the state, the public, and the laws of that country.
d. Universal jurisdiction, namely that a country has the right to prosecute violations of the law that threaten the international community, even if the act is committed outside its country.

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In understanding the jurisdiction of the prosecution, it should not be interpreted only as a criminal prosecution, because the essence of the purpose of prosecution is to realize justice. Lawsuits and applications in the civil, state administration and state administration fields are prosecution actions. This can be seen from the content and meaning of the lawsuit letter, the application letter, which contains a petitum which has the meaning of demanding or asking the judge to try something. Looking at the anatomy of the indictment, lawsuit, and application, and although all three have their own procedural laws, all of them lead to the prosecution action, namely "a request to the judge to try".

Based on this, the scope of prosecution is not only in the criminal field, but is very much needed in carrying out prosecutions in other fields, in all courts, both at home and abroad.[14]The formulation of the authority to carry out prosecutions in all courts can also be found in Article 88 number (6) of Ghana's Constitution which states "The Attorney-General shall have audience in all courts in Ghana" which means the Attorney General can take proceedings in all courts in Ghana.[15]The authority of the Ghanaian Prosecutor's Office and the Prosecutor's Office in Indonesia have similarities because both are authorized to conduct criminal, civil, state administrative, military and state administrative cases. This is also the basis for the exclusive authority of the Attorney General to file a cassation in the interests of the law as an extraordinary legal effort that is not only in the criminal field, but also in civil, state administrative and military cases.

The comparative study further strengthens the argument that for and on behalf of the state, the Prosecutor's Office through the Attorney General has the authority to prosecute in all courts. In fact, prosecution must be interpreted as the action of the Prosecutor's Office through the Attorney General to prosecute or not to prosecute in all courts. The state must not be prevented from enforcing the law and providing legal protection to the community.

3. Principles of Prosecution for the Interests of the State, Public and Law

This principle means that prosecution can be carried out if it is in the interests of the state, the public and/or the law. Its use must be carried out in an accountable or measurable manner. The public prosecutor must be able to prove or map the three interests in a concrete legal event. The three interests do have a very thin intersection because they have so many similarities. Although they have similarities, however, the three can be distinguished when viewed from various perspectives, including from the perspective of the theory of sovereignty, namely the theory of state sovereignty, people's sovereignty, and legal sovereignty.

First, state interests, namely interests related to the integrity of the state, which include state sovereignty, territorial sovereignty, and sovereign government. Second, public interests, namely the interests of the nation and state and/or the interests of the wider community.

[14]Muh. Ibnu Fajar Rahim (2020), *Jaksa Dr. Ibnu: Catatan 3 Tahun Menuntut, Edisi Kejaksaan Negeri Kabupaten Bekasi,* Makassar: Humanities Genius, p.3-24.
[15]RM. Surachman, & Jan. S. Maringka (2015), *Eksistensi Kejaksaan Dalam Konstitusi di Berbagai Negara*, Jakarta: Sinar Grafika, p.210.

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Third, legal interests, namely interests related to the enforcement of the constitution and laws and regulations in Indonesia.

These three interests can stand alone and can also be together. It is very possible that if a country or a certain society commits an act that is prohibited by Indonesian law but the act has consequences for the country and/or Indonesian society, then the Prosecutor's Office through the Attorney General can prosecute the act, for the interests of the country, public interest, and/or legal interests.

4. Principle of Single Prosecution

The principle of sole prosecution is a principle that places the Attorney General as the highest public prosecutor in a country, only the public prosecutor can carry out prosecution, and investigation is part of the prosecution. In the context of the principle of sole prosecution, the state grants prosecutorial power only to the Attorney General who can delegate the prosecutorial authority he has to anyone he wishes. As with the principle of no authority without accountability[16], in the delegation of authority there is accountability that must be carried out by the recipient of the delegation to the Attorney General. The implementation of the prosecution must be coordinated and controlled, both in terms of policy, technical implementation, and supervision, by the Attorney General who will be responsible for the implementation of the power of prosecution to parliament as a representation of the people as the owner of power.

The principle of single prosecution itself is a universally applicable legal principle. Although in the Constitutions of Ukraine, Finland, Russia, Vietnam, the People's Republic of China, South Africa, and Ghana, there are several nomenclatures that mention the principle of single prosecution, such as unified system, highest prosecutor, single centralized system, chief procurator of the Supreme People's Organ of Control, the highest procuratorial organ, and single national prosecuting authority, all of them have the same meaning, namely the principle of single prosecution which regulates the Prosecutor's Office as the only prosecution institution and positions the Attorney General as the highest public prosecutor who controls the prosecution.

The statement is a constitutional sentence in these countries. This means that the constitution as a constitutional norm born from the consensus of society agrees that the regulation of prosecutorial power with various prosecution policies in it is under the control of the Attorney General as the highest public prosecutor. In addition to the various constitutions in several countries, the position of the Attorney General as the highest public prosecutor is also regulated in various laws and regulations in Indonesia that regulate the Prosecutor's Office as mentioned in the background section. Finally, through Article 18 paragraph (1) of Law 11/2021 which states "The Attorney General is the highest Public Prosecutor and state attorney in the Unitary State of the Republic of Indonesia".

[16]Sufriadi, Tanggung Jawab Jabatan Dan Tanggung Jawab Pribadi Dalam Penyelenggaraan Pemerintahan Di Indonesia, *Jurnal Yuridis*, Vo. 1 No. 1, 2014, p.63

In practice, the principle of single prosecution is implemented into a system called the single prosecution system. There are several models of the single prosecution system as the implementation of the principle of single prosecution. The first model is a pure single prosecution system. In this model, the prosecution is carried out by the prosecution agency (Prosecutor's Office) absolutely. Absolute authority is held by the Attorney General as the highest public prosecutor who controls and is responsible for the prosecution, although the implementation of the investigation and inquiry is carried out by other institutions.[17]

In addition to the single prosecution system model, there are 2 (two) scopes of the single prosecution system. First, the single prosecution system in the narrow sense, namely the prosecution policy is per se centered on pre-prosecution and prosecution activities only. Second, the single prosecution system in the broad sense, namely the authority of the Attorney General in determining technical and administrative policies for the implementation of investigations, inquiries, prosecutions, evidence in court, up to legal efforts. This makes it so that for the benefit of prosecution at the prosecution stage, the public prosecutor can carry out a series of investigative actions. This is because it cannot be separated from the investigative function.

Both pure and impure single prosecution system models, as well as prosecution systems in the broad sense and narrow sense, all place the Attorney General as the highest public prosecutor who controls the power of prosecution. The principle of single prosecution has a very important role in preventing disparities in prosecution by providing access to justice in the form of equal treatment in every prosecution of cases as in the implementation of the principle of equality before the law and the principle of non-discrimination.

5. The Principle of One and Only

The principle of een en ondelbaar means that the Prosecutor's Office is one and inseparable. This principle functions to maintain the unity of the prosecution policy that displays the mindset, behavior, and work procedures of the Prosecutor's Institution. This principle is regulated in Article 2 paragraph (2) of Law 11/2021 which states that "The Prosecutor's Office is one and inseparable". In the explanation of the article, it is explained that "What is meant by "one and inseparable" is one foundation in carrying out the duties and authorities of the Prosecutor's Office which aims to maintain the unity of the Prosecutor's policy so that it can display characteristics that are united in the mindset, behavior, and work procedures of the Prosecutor's Office (een en ondeelbarheids)". This article emphasizes that the Prosecutor's Office is the only institution given the authority to prosecute where the Attorney General as the leader controls the duties and authorities of the Prosecutor's Office.

The control of the Attorney General is not limited to control over duties and authorities, but also includes the mindset, behavior, and work procedures for public prosecutors and other officials who receive delegations of prosecution so as to display a unity of policy and behavior. The principle of een en ondeelbarheids is a principle that cannot be separated from the principle of single prosecution which places the Attorney General as the highest public

[17]Mia Banulita (2023), *Asas Penuntutan Tunggal,* Jakarta: Guepedia, p.287-307

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prosecutor. It can be said that based on this principle, there is only 1 (one) public prosecutor, namely the Attorney General. Other public prosecutors are the implementation of prosecutorial powers delegated by the Attorney General. Therefore, this principle means that public prosecutors are one and inseparable. Thus, "prosecution activities in court by the prosecutor's office will not stop just because the prosecutor who was originally on duty is prevented. In such a case, the prosecutor's task of prosecution will continue even if it is carried out by another prosecutor as a substitute", as referred to in Article 2 paragraph (3) of Law 16/2004.

6. Principle of Delegation of Authority to Demand
This principle means that prosecution as an authority can be delegated. The basic principle of this principle is that there is no authority that cannot be delegated. The Attorney General as the highest public prosecutor in a country has the authority to delegate the authority to prosecute to anyone appointed by the Attorney General. This principle is regulated in Article 35 paragraph (1) letters i and j of Law 11/2021 which state "The Attorney General has the duty and authority to delegate part of the prosecutorial authority to the prosecutor general to carry out prosecution and delegate part of the prosecutorial authority to the public prosecutor to carry out prosecution".

7. The Principle of Dominus Litis
This principle means that the public prosecutor is the owner of the case or the party who has a real interest in a case, so that he has the authority to determine whether or not a case can be examined and tried in court. In the context of the criminal justice system, dominus litis is the party who has a real interest so that a case is prosecuted, examined and tried in court, namely the public prosecutor. The consequence of the existence of this real interest requires the public prosecutor as the owner of the interest to be active in defending his interests.[18]
The principle of dominus litis is a universally applicable principle and is contained in Article 11 of the Guidelines on the Role of Prosecutors which states “Prosecutors shall perform an active role in criminal proceedings, …….” (Author's translation: Prosecutors must play an active role in the process of handling criminal cases …….). The active role of the public prosecutor is a consequence of the public prosecutor as the owner of the case who has the obligation or burden to prove his charges.

In Indonesia, this principle is regulated in various laws and regulations, including in Article 139 of the Criminal Procedure Code which essentially states that "the public prosecutor determines whether a criminal case can/cannot be submitted to court based on valid evidence as per criminal procedure law". Article 1 number 6 letters a and b of the Criminal Procedure Code also emphasizes that only the prosecutor can act as the public prosecutor and carry out prosecution in criminal cases so that they are also parties who have a real interest in a criminal case. Based on the formulation of these various articles, it can be honestly seen that the Criminal Procedure Code as the operational basis of the criminal justice system positions the public prosecutor as the owner of the case and at the same time

[18]Gita Santika Ramadhani, Peran Kejaksaan Mewujudkan Keadilan Restoratif Sebagai Upaya Penanggulangan Kejahatan, *Progresif: Jurnal Hukum*, Vol. 15 No. 1, 2021, p.79

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recognizes the validity of the dominus litis principle as a legal principle that applies in criminal procedure law in Indonesia.

The principle of dominus litis has also been used several times by the Constitutional Court in its considerations, including, first, Constitutional Court Decision Number 55/PUU-XI/2013, which considers that "The function of the Prosecutor's Office and the profession of prosecutor as the organizer and controller of prosecution or as dominus litis has an important role in the case handling process which is essentially aimed at building a life order based on law, and upholding human rights". Second, Constitutional Court Decision Number 29/PUU-XIV/2016, which considers that "As the sole holder of prosecution authority (dominus litis), the Prosecutor is obliged to refer the case to the District Court with a request to immediately try the case accompanied by an indictment, but the Prosecutor can also stop the prosecution, if the case does not have sufficient evidence, the case being examined is not a criminal case, or the case is closed by law (vide Article 140 of the Criminal Procedure Code)".

Both Constitutional Court Decisions that explicitly mention the principle of dominus litis are erga omnes. In these decisions, the Constitutional Court clearly and explicitly considers the position of the public prosecutor as dominus litis who has an important role in the criminal justice system. The public prosecutor is positioned as the owner of the case who has a real interest so that a case is prosecuted, examined, and tried in court. In addition, the Constitutional Court also considers that as a party with a real interest, the public prosecutor can also stop the prosecution so that a case is not prosecuted, examined, and tried in court.

8. Principle of Obligation to Prosecute (Mandatory Prosecution)
This principle is often referred to as the origin of the legality of prosecution. According to this principle, the public prosecutor is obliged to prosecute a crime. This means that the public prosecutor must continue the prosecution of a case that has sufficient evidence. The public prosecutor does not have the authority to set aside a case, but is obliged to refer the case to the court, without having an attitude of exceptionalism. This principle of legality is adopted by Germany, Austria, Italy, Spain and Portugal.

In Indonesia itself, the principle of legality of prosecution is not adopted because the law regulates the authority of the Attorney General to set aside a case for the public interest as explained in the principle of opportunity later. The meaning of the obligation to prosecute in this principle of legality must be interpreted that the public prosecutor is obliged to prosecute unless there are reasons that dismiss the prosecution or reasons for the elimination of the criminal offense, even though there is sufficient evidence to prosecute. However, the reasons for the dismissal of the prosecution or the reasons for the elimination of the criminal offense are areas not to enforce or areas that cannot be made into facts of the case so that they cannot be prosecuted.

9. Principle of Opportunity
This principle means that the public prosecutor has the authority not to carry out (set aside) prosecution even though there is sufficient evidence. The principle of opportunity is one of the principles known in the power of prosecution (opportunieties beginsel). The principle of

opportunity is a general legal principle that applies universally in various countries, such as the Netherlands, France, Belgium, the Russian Federation, Sweden and Japan, South Korea, and Thailand.[19]

The authority to set aside cases based on the principle of opportunity is recognized in Indonesia and is given only to the Attorney General. Finally, this principle of opportunity is regulated in Article 35 paragraph (1) letter c of Law 11/2011 which states that "The Attorney General has the duty and authority to set aside cases in the public interest."[20]

The application of the opportunity principle limited to the authority of the Attorney General is not without reason. This aims to prevent abuse of power in the implementation of the opportunity principle. For cases that are set aside for the sake of public interest, the public prosecutor is not authorized to prosecute the suspect in the case at a later date. The opportunity principle in Indonesia is the opportunity principle in the narrow sense because it is only carried out if there is a public interest. The opportunity principle in the sense of regulating that the public prosecutor can set aside a case with or without conditions.

10. Principle of Non-Prosecutable Crime

This principle basically places the state's obligation through the public prosecutor to prosecute every crime, whether regulated in laws and regulations or not regulated in laws and regulations. Prosecution is a state power that aims to protect state interests, public interests and legal interests. There are 3 (three) interests that must be protected through prosecution, including protecting them from crime. Why is that? Because crime is an act that is certain to harm the interests of the state, the public and the law.

This principle becomes important when Article 12 of Law Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the Criminal Code Law) states that "a criminal act is an act that is threatened with criminal sanctions and/or actions by statutory regulations. To be declared a criminal act, an act that is threatened with criminal sanctions and/or actions by statutory regulations must be unlawful or contrary to the laws that apply in society. Every Criminal Act is always unlawful, unless there is a justification". The formulation of Article 12 of the Criminal Code Law at least states that there are crimes that are regulated by statutory regulations and those that have not been regulated by statutory regulations. Especially for crimes that have not been regulated by statutory regulations, they must be unlawful or contrary to the laws that apply in society.

11. Principle of No Punishment Without Prosecution

This principle only applies in the criminal field because this principle is basically a principle that was born from the approach of the criminal justice system where there can be no crime without being preceded by prosecution. The criminal justice system is a system that consists of components or institutions, each of which has the authority and duties according to its field and the regulations that underlie each of them. Although divided into components, these

[19]Andi Hamzah, dkk (2006). *Laporan Hasil Kerja Tim Analisis dan Evaluasi Hukum Tentang Pelaksanaan Asas Opurtunitas Dalam Hukum Acara Pidana*, p. 92

[20]Ramelan (2006), *Hukum Acara Pidana Teori dan Implementasi*, Jakarta: Sumber Ilmu Jaya, p.10.

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components work together to achieve the same goal, namely to overcome and prevent crime.[21]

In the context of the criminal justice system, a crime can only be punished if a prosecution has been carried out starting from the investigation stage. In the investigation process, the investigator will determine whether a criminal event has occurred or not in order to determine whether an investigation can be carried out. It is at the investigation stage that it will then be determined whether a crime has actually occurred and the suspect is the perpetrator of the crime based on sufficient evidence. In determining these things, of course, based on instructions from the public prosecutor to the investigator. And then, the public prosecutor will determine whether or not the case can be referred to the court for examination and trial. Thus, it is impossible for there to be a conviction without being preceded by a prosecution carried out by the public prosecutor. This makes prosecution a strategic and crucial stage in the criminal justice system to determine whether or not a perpetrator can be convicted.

12. The Principle That Public Prosecutors Are Presumed to Know the Law

This principle is a derivative of the ius curia novit principle, which means that judges are assumed to know the law.[22]However, for the author, this principle also applies to public prosecutors. After all, judges and public prosecutors are executors of state power in the field of justice, the same as judges. In the criminal field, cases will not be processed in court without going through the prosecution stage. Because the public prosecutor is the one who has the authority to prosecute or not to prosecute a crime. Of course, in deciding whether a case can be prosecuted or not, the public prosecutor must be careful in applying the law so as not to make a mistake in making a decision. Wrong prosecution will certainly violate human rights and harm the trust of justice seekers in the public prosecutor. For this reason, the public prosecutor must know correctly about the law that will be applied so that he can construct legal arguments that are argumentative and acceptable to the community.

13. Principles of Legal Protection for Public Prosecutors

The principle of legal protection for public prosecutors is regulated in Article 8A of Law 11/2021 which states "In carrying out their duties and authorities, prosecutors and their family members have the right to receive state protection from threats that endanger themselves, their lives, and/or their property". The regulation of protection for prosecutors and their families is a form of adjustment to the standards for protecting public prosecutors regulated in the United Nations Guidelines on the Role of Prosecutors, Declaration of Minimum Standards Concerning The Security and Protection of Public Prosecutors and Their Families - International Association of Prosecutors and the International Association of Proseantor (IAP).[23]

[21]T. Effendi (2013), *Sistem Peradilan Pidana: Perbandingan Komponen & Proses Sistem Peradilan Pidana Di Beberapa Negara*, Yogyakarta: Pustaka Yustisia, p. 19

[22]Muhidin, dkk., Implementation of The Ius Curia Novit Principle in Examining Case At The Constitutional Court of The Republic of Indonesia, *Baltic Journal of Law & Pollitics*, Vol. 15 No. 1, 2022, p.459

[23]Jojon Desduan Lumban Gaol dan Joko Setiyono, Urgensi Perlindungan Hukum Terhadap Jaksa, *Al Qalam: Jurnal Ilmiap.Keagamaan dan Kemasyarakatan*, Vol. 17 No. 2, 2023, p.87-99

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14. The Principle of Free and Independent Prosecution

As is known, prosecution is a state power in the judicial field in addition to judicial power, each of which is exercised independently. There are many constitutions in several countries that regulate the independence in carrying out the duties, functions and authority to prosecute for public prosecutors. The principle of independent prosecution is also regulated in Article 2 paragraph (1) of Law 11/2021 which states that "The Prosecutor's Office in carrying out its functions related to judicial power is carried out independently". The function of the Prosecutor's Office related to judicial power is of course the power of prosecution and all actions taken in the interests of prosecution. Although Law 11/2021 does not explain what is meant by independent, the Explanation of Article 2 paragraph (1) of Law 16/2004 has explained the meaning of the word independent, namely "in carrying out its functions, duties, and authorities free from the influence of government power and the influence of other powers."

15. Principle of Independence of Prosecution

The principle of prosecutorial independence means that the prosecution institution must be an independent institution so that in carrying out the tasks, functions and authorities given by the state, they can be carried out independently. The principle of prosecutorial independence began to be adopted in Indonesia when. On July 22, 1960, a cabinet meeting decided that the Prosecutor's Office would become a separate department through Presidential Decree Number 204 of 1960 dated August 1, 1960, which came into effect on July 22, 1960. Since then, the Prosecutor's Office has been separated from the Department of Justice.[24]

16. Proprio Motu Principle

The proprio motu principle is a legal principle that applies in the prosecution of serious human rights (HAM) crimes. The proprio motu principle is a principle that gives the public prosecutor the authority to conduct investigations on their own initiative. The proprio motu principle is a principle that gives broad authority to the public prosecutor in handling cases of serious human rights violations. Through the proprio motu principle, the public prosecutor can conduct investigations on their own initiative based on information or data on the alleged occurrence of serious human rights violations as regulated in Article 15 of the Rome Statute of the International Criminal Court (Rome Statute).[25]

17. Principle of Obligation to Prove

The public prosecutor is the party that prosecutes the legal subject in court. Therefore, the public prosecutor is the one who has the obligation to prove. The party being prosecuted is not burdened with the obligation to prove at all except in the context of reversed proof in the crime of gratification and money laundering. In the criminal field, the public prosecutor's

[24]Dian Rosita, Kedudukan Kejaksaan Sebagai Pelaksana Kekuasaan Negara Di Bidang Penuntutan Dalam Struktur Ketatanegaraan Indonesia, *Jurnal Ius Constituendum*, Vol. 3 No. 1, 2018, p.36

[25]Riry Delany dan Diap.Apriani Atika Sari, Investigasi Proprio Motu Terhadap Pelanggaran Hukum Perang Pada Konflik Israel Palestina Dalam Operation Protective Edge, *Belli Ac Pacis: Jurnal Hukum Internasional,* Vol. 3 No. 1, 2017, p.29.

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obligation to prove is explained in the postulate actori incumbit onus probandi which means whoever prosecutes is the one who is obliged to prove. The public prosecutor is burdened with the obligation to prove the defendant's guilt. If he cannot prove it, then the postulate actore non prabante reus absolvitur applies which means if it cannot be proven, the defendant must be acquitted.[26]

18. Principle of Public Prosecutor as Executor of Judge's Determination
This principle is regulated in Article 1 number 3 of Law 11/2021 which states that "The public prosecutor is a prosecutor who is authorized by this law to carry out prosecution and carry out the judge's determination and other authorities based on the law". Likewise in Article 30 paragraph (1) letter b of Law 16/2004 which states that "In the criminal field, the Prosecutor's Office has the duty and authority to carry out the judge's determination and court decisions that have obtained permanent legal force".

19. The Principle of Prosecution is Carried Out for Justice and Truth Based on the Almighty God
This principle is regulated in Article 8 paragraph (3) of Law 11/2021 which states that "For the sake of justice and truth based on the Almighty God, the Prosecutor carries out the prosecution". The depth of meaning of this principle is that the actions of the public prosecutor in carrying out the prosecution must be able to provide a sense of justice based on the Almighty God to the community. The meaning of "For the sake of justice and truth based on the Almighty God" is very broad and important because it is not only related to those seeking justice, but is also closely related to God Almighty, the creator of life. Not only does it encompass the responsibility of the public prosecutor to those seeking justice and the general public, but spiritually it also encompasses the responsibility of the public prosecutor to God Almighty.

20. Principle of Integrity of Prosecution
Integrity is a mandatory requirement for public prosecutors in carrying out prosecution. Why is that? This is because prosecution is a state power in the field of justice which is carried out independently, freely and independently. The public expects that the prosecution of anyone who violates the law and harms the interests of society or individuals can be prosecuted fairly. We all know how important the position of the prosecution function is in the integrated criminal justice system. The public prosecutor is the one who controls the case as per the principle of dominus litis. Providing instructions to investigators, determining whether a case is worthy of being referred to court or not, stopping the prosecution if it is deemed no longer necessary for the interests of the state or the victim, making detentions, and the obligation to prove in court, all of which are responsibilities given to the public prosecutor.

[26]Eddy O.S. Hiariej (2012), *Teori dan Hukum Pembuktian*, Jakarta: Erlangga, p.43.

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3.2. Legal Barometer of the Prosecutor's Authority to Set Aside Cases in the Criminal Justice Process

General explanation of the 1945 Constitution, first paragraph That the Constitution is a written basic law, in addition to that the Law also applies unwritten basic law, namely basic rules that arise and are maintained in the practice of organizing the State even though they are not written. It is clear that the law that applies in Indonesia is not only written law in the form of statutory regulations but also unwritten law which includes customary law and customary law both arising in the organization of the State and customs that live and are experienced by the Indonesian people in community life. Regulations in accordance with the laws that serve as guidelines in resolving criminal cases can resolve the crime with components of the criminal justice system such as the Police, Prosecutor's Office and the Judiciary.[27]In the Criminal Procedure Code (KUHAP), the authority to investigate, prosecute, arrest and detain lies in the hands of the Police. While prosecution lies in the hands of the Prosecutor's Office. The separation of the Police as an investigative institution and the Prosecutor's Office as a public prosecutor reflects the existence of a supervisory system for the sake of the interests of the rights of the suspect/defendant.

The implementation of law enforcement in the Republic of Indonesia greatly influences order and legal certainty in the wider community. The regulation of functions, duties and authorities held by law enforcement agencies has an important role in the sustainability of law enforcement which in this case has a close relationship with the proportion of duties held by each law enforcer itself.[28]In the regulation of article 1 point b and article 137 of Law Number 8 of 1981 concerning the Criminal Procedure Code, it is stated concretely that there is a special body known as the public prosecutor whose main duties are to carry out criminal prosecutions in court. This means that the authority to prosecute is only owned or can be carried out by the public prosecutor alone, so this means that no other body has and participates in carrying out the authority to prosecute other than the public prosecutor, considering that the public prosecutor is classified or included in the category of law enforcement officers.

In a court, the position of an Attorney General occupies a fairly important place in carrying out an obligation in terms of authority and tasks assigned spatially or specifically, matters relating to and concerning the authority and assignment of an Attorney General have been recorded or stated in Article 35 of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia which contains the authority and assignment of the Attorney General. In essence, the existence of criminal law has a function, namely to regulate and create an orderly and safe community environment. The Attorney General has a vital role. The vital existence of the Attorney General must act or be independent without any pressure or intervention from any

[27]Ahmad M. Ramli (2008), *Analisis dan Evaluasi Hukum Penuntutan dan Pemeriksaan Tindak Pidana Korupsi*, Jakarta : Badan Pembinaan Hukum Nasional Departemen Hukum dan Hak Asasi Manusia RI, p.8

[28]Ahmad Hisamudin (2016), Penerapan Asas Oportunitas dalam Perkara Pidana Bambang Widjojanto Dihubungkan dengan Tujuan Hukum Tentang Kemanfaatan. *Thesis Fakultas Hukum Universitas Pasundan*, p.38

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party and a professional attitude with the rules in the corridor of carrying out his assignment.[29]

The Attorney General has the duty and authority to set aside cases for the sake of public interest. In the explanation section, it is stated that "public interest" is the interest of the nation and state and/or the interest of the wider community. Setting aside a case, as explained in Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, is an implementation of the opportunity principle that can only be carried out by the Attorney General after considering the suggestions and opinions of state authorities that have a relationship with the problem.[30]

In Indonesian criminal procedure law, the term “setting aside a case for the sake of public interest” is known, which term is found in Article 46 paragraph (1) letter c of the Criminal Procedure Code, the explanation of Article 77 of the Criminal Procedure Code, and Article 35 letter (c) of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. In the legal treasury, both at the practical and theoretical levels, “setting aside a case for the sake of public interest” can be known as the term deponering.

The waiver of cases for the sake of public interest is the absolute authority of the Attorney General. The authority to waive cases based on public interest as such, in the science of criminal law is also known as the authority to waive cases based on the principle of opportunity (opportuniteits beginsel), which is a principle that is solely found in criminal procedural law and is not found in penitentiary law.

The definition of the opportunity principle itself is a legal principle that gives the public prosecutor the authority to prosecute or not to prosecute with or without conditions a person or corporation that has committed a crime in the public interest. AZ Abidin provides a formulation of the opportunity principle as a legal principle that gives the public prosecutor the authority to prosecute or not to prosecute with or without conditions a person or corporation that has committed a crime in the public interest.

According to Lamintang, who was quoted from Franken's opinion, he said that the authority to set aside a case based on the principle of opportunity includes the authority to:

a) Not to prosecute or not to continue prosecution;
b) Limiting prosecution or further prosecution, namely limiting it to implementing criminal provisions that have a lighter principal criminal threat, in cases where such behavior is included in more than one criminal provision;
c) Not to prosecute or continue prosecution on condition;

[29]I Gusti Agung Ngurap.Satya Widiana, dkk. Wewenang Jaksa Agung dalam Penyampingan Perkara (Deponering) dalam Proses Peradilan Pidana, *Jurnal Analogi Hukum*, Volume 4 Nomor 1, 2022, p.62
[30]Yelina Rachma P (2010), *Tinjauan Tentang Pengaturan Asas Penyampingan Perkara Demi Kepentingan Umum (Asas Oportunitas) Dalam KUHAP dan Relevansinya Dengan Asas Persamaan Kedudukan di Muka Hukum (Equality Before The Law),* Surakarta : FP.Universitas Sebelas Maret, p.6

The mechanism for implementing the authority to set aside cases in the public interest as referred to above, the Criminal Procedure Code does not provide a detailed explanation. However, if we examine several definitions of the case setting aside that have been mentioned, it appears that the institution of setting aside cases is closely related to the authority of prosecution. This relationship can be seen from the aspect of the institution that has the authority in matters of prosecution, namely the prosecutor's office through the Public Prosecutor and the Attorney General as the highest leaders in the institution. Prosecution is one of the stages in the criminal justice system whose procedures and implementation have been regulated in laws and regulations. Therefore, the authority to set aside cases is very closely related to the authority to prosecute, while the prosecution process is a stage in the criminal justice system, making the matter of the act of setting aside cases in the public interest part of criminal procedural law (formal criminal law).[31]

Because it is part of criminal procedure law, the implementation of the case setting aside must be carried out according to the provisions of the applicable laws in criminal procedure law and must also be in accordance with the principles or principles applicable in procedural law. In criminal procedure law there are several principles including:

1) Equal treatment of every person before the law without making any distinction in treatment;
2) Arrests, arrests, searches and confiscations are only carried out based on written orders by officials authorized by law and only in cases and in the manner regulated by law;
3) Every person who is suspected, arrested, detained, charged and/or brought before a court must be considered innocent until there is a court decision stating his guilt and obtaining permanent legal force;
4) A person who is arrested, detained, prosecuted or tried without a reason based on law and/or due to an error regarding the person or the law applied must be compensated and rehabilitated from the investigation stage and law enforcement officials who intentionally or through negligence cause the legal principles to be violated, must be prosecuted, punished and/or given administrative penalties.
5) The trial must be carried out quickly, simply and at low cost, as well as being free, honest and impartial and must be implemented consistently at all levels of the trial;
6) Every person involved in a case must be given the opportunity to obtain legal assistance which is provided solely to carry out the interests of defending himself;
7) A suspect, from the time of arrest and/or detention, must not only be informed of the charges and legal basis for the charges, but must also be informed of his rights, including the right to contact and request assistance from a legal advisor;
8) The court examines criminal cases with the defendant present;
9) Court hearings are open to the public except in cases regulated by law;
10) Supervision of the implementation of court decisions in criminal cases is determined by the chairman of the relevant district court.

However, the position of the Public Prosecutor and the Attorney General in the situation of setting aside a case is different. The Public Prosecutor, based on the provisions of Law Number

[31]Hari Sasangka, Lily Rosita, and August Hadiwijoyo (1996). *Penyidikan, Penahanan, Penuntutan, dan Praperadilan*. Surabaya: Surya Berlian

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8 of 1981 concerning Criminal Procedure Law, also known as the Criminal Procedure Code (KUHAP), only has the authority to stop prosecution based on reasons that have been determined in a limited manner (limitative) in Article 140 paragraph (2) letter a. According to Article 140 paragraph (2) letter a of the Criminal Procedure Code, "In the event that the public prosecutor decides to stop the prosecution because there is insufficient evidence or the incident turns out not to be a criminal act or the case is closed by law, the public prosecutor shall state this in a decision letter."

Based on Article 140 paragraph (2) letter a of the Criminal Procedure Code, the Public Prosecutor can only decide to stop the prosecution for one of the following reasons: (1) There is insufficient evidence or; (2) The incident is not a criminal act or; (3) The case is closed by law. These reasons can be explained as follows:

1) There is insufficient evidence. Regarding this reason, M. Yahya Harahap explained that the case in question "does not" have sufficient evidence, so that if the case is submitted to a court hearing, it is strongly suspected that the defendant will be acquitted by the judge, on the grounds that the alleged guilt has not been proven. To avoid such an acquittal decision, it is wiser for the public prosecutor to stop the prosecution. If the Public Prosecutor considers that there is insufficient evidence for a case, so that it is strongly suspected that if it is brought to court, the defendant will be acquitted by the judge because it is considered that the defendant's guilt has not been proven, then it would be wiser for the Public Prosecutor to be given the authority to stop the prosecution of the case;
2) The incident turned out not to be a criminal act. M. Yahya Harahap explained the reason for this, that after the public prosecutor studied the case files resulting from the investigation, and concluded that what was suspected of the defendant was not a criminal act in the form of a crime or violation, the public prosecutor would be better off stopping the prosecution. Because in any case, the charges that are not criminal acts of crime or violations that are submitted to the court hearing, basically the judge will release the defendant from all legal charges (ontslag van rechtsvervolging). If the Public Prosecutor considers that the case in the case file does not constitute a criminal act, either a crime or a violation, so that if it is submitted to court the judge will decide that it is free from all legal charges, then the Public Prosecutor is given the authority to stop the prosecution of the case.
3) The case is closed by law. The case can be closed by law for several reasons as regulated in Book I Chapter VIII on the Elimination of the Authority to Prosecute Criminal Charges and Execute Criminal Sentences. These reasons are:

a. *No bis in the same way*; Article 76 paragraph (1) of the Criminal Code stipulates that a person may not be prosecuted twice for an act for which an Indonesian judge has already tried him with a final verdict;
b. The suspect/defendant dies. Article 77 of the Criminal Code stipulates that the authority to prosecute is removed if the accused dies;
c. Expiration. Expiration is regulated in Article 78 to Article 80 of the Criminal Code. For example, regarding crimes that are threatened with the death penalty or life imprisonment, after eighteen years. So, for example, for the crime of premeditated

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murder (Article 340 of the Criminal Code) which is threatened with the death penalty, after 18 years it becomes an expiration and can no longer be prosecuted.

There is a difference between terminating prosecution and setting aside a case based on the principle of opportunity. In setting aside a case based on the principle of opportunity, the case in question has sufficient evidence to be brought to court and it is likely that the defendant will be sentenced. However, this case with sufficient evidence is set aside for reasons of public interest. M. Yahya Harahap said that, "in setting aside a case, it can be concluded that law and law enforcement are sacrificed for the sake of the public interest."

Yahya Harahap also added several principles including the principle of balance, the principle of unification, the principle of functional differentiation, and the principle of mutual coordination. In addition, the action of setting aside the case must also be adjusted to the provisions and principles that apply in the prosecution process, namely the principle of legality and the principle of opportunity. Simply put, in a prosecution based on legality, the prosecutor is required to prosecute all criminal acts committed by the suspect. While in a prosecution based on opportunity, the prosecutor is not required to prosecute all criminal acts committed by the suspect.

The principle of legality is understood as a principle that has the meaning that the public prosecutor is required to prosecute someone who commits a crime where the principle of legality is a manifestation of the principle of equality before the law, while the principle of opportunity gives the public prosecutor the authority not to prosecute someone who violates criminal law regulations by setting aside cases that already have clear evidence for the public interest. Because the principle of legality is a manifestation of the principle of equality before the law, the two principles are actually contrary to the principle of opportunity, which means that even though a suspect is clearly guilty according to the investigation, and will most likely be sentenced, the results of the examination are not submitted to the court by the public prosecutor. The case process is "seponering" by the prosecutor's office on the basis of considerations "for the public interest".[32]

Indonesia is an adherent of the principle of opportunity, where not all cases can be prosecuted, but can be set aside on the grounds of public interest. The criminal cases that are set aside have sufficient evidence and can be prosecuted, but are not prosecuted on the grounds of public interest. Prosecution discretion is in principle a decision by the public prosecutor based on certain considerations to decide not to continue the prosecution to court. The considerations taken are policies based on justice and are not bound by statutory provisions.

Article 35 letter c of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia is the legal basis for setting aside cases in the public interest as the authority of the Attorney General. The cases set aside in this case have sufficient evidence, but are related to the public interest

[32]Muhamad Iqbal, Implementasi Efektifitas Asas Oportunitas di Indonesia dengan Landasan Kepentingan Umum, *Jurnal Surya Kencana*, Vol 9 No1, 2018, p.98

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requiring no prosecution. The existence of the opportunity principle is to see whether a case is worthy of prosecution or not by looking not only from the perspective of the cause and effect of the case but also from the perspective of the public interest.[33]

The duties and authority of the Attorney General to set aside/set aside a case for the sake of public interest, were originally stated in Law Number 15 of 1961 concerning the Main Provisions of the Attorney General's Office of the Republic of Indonesia. Article 8 of Law Number 15 of 1961 stipulates that, "The Attorney General may set aside a case based on public interest". Law Number 5 of 1991 concerning the Attorney General's Office of the Republic of Indonesia, which replaced Law Number 15 of 1961, regulates the duties and authority of the Attorney General to set aside a case for the sake of public interest in Article 32 letter c, where the entire Article 32 of Law Number 5 of 1991 reads as follows:

The Attorney General has the following duties and authorities:

a) determine and control law enforcement and justice policies within the scope of the prosecutor's duties and authorities;
b) coordinate the handling of certain criminal cases with related agencies based on laws, the implementation of which is determined by the President;
c) set aside matters for the sake of public interest;
d) file an appeal in the interests of law to the Supreme Court in criminal, civil and state administrative cases;
e) submit technical legal considerations to the Supreme Court in the cassation examination of criminal cases;
f) submit considerations to the President regarding requests for clemency in cases of the death penalty;
g) prevent or prohibit certain people from entering or leaving the territory of the Republic of Indonesia due to their involvement in criminal cases.[34]

The Law on the Prosecutor's Office after being revised in 2004, namely Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, mentions the duties and authorities of the Attorney General in Article 35 letter c, where the entire text of Article 35 of Law No. 16 of 2004 is formulated as follows;

The Attorney General has the following duties and authorities:

a) determine and control law enforcement and justice policies within the scope of the prosecutor's duties and authorities;
b) to make the law enforcement process provided by law more effective;
c) set aside matters for the sake of public interest;

[33]Tumpal Napitupulu, Penerapan Azas Oportunitas Berhubungan dengan Tugas dan Wewenang Kejaksaan dalam Sistem Peradilan Pidana (Kajian Perkara Terhadap Terdakwa Novel bin Salim Baswedan), *Tanjungpura Law Journal*, Vol 2 No 1, 2018, p.121.
[34]Law Number 5 of 1991 concerning the Attorney General's Office of the Republic of Indonesia

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d) file an appeal in the interests of law to the Supreme Court in criminal, civil and state administrative cases;
e) can submit technical legal considerations to the Supreme Court in the examination of criminal cassation cases;
f) prevent or prevent certain people from entering or leaving the territory of the Unitary State of the Republic of Indonesia due to their involvement in criminal cases in accordance with statutory regulations.[35]

If we pay attention to the use of terms, in Law No. 15 of 1961 (Article 8) and Law No. 5 of 1991 (Article 32 letter c) the same term is used, namely the term "setting aside" the case, while in Law No. 16 of 2004 (Article 35 letter c) a slightly different term is used, namely "setting aside" the case. So, there is a difference in the use of terms between the term setting aside and the term setting aside.

The requirement to “consider the suggestions and opinions of state authorities that have a relationship with the problem” has undergone certain changes following the Constitutional Court decision Number 40/PUU-XIV/2016 dated January 11, 2017. Several main points of the case and the Constitutional Court decision 40/PUU-XIV/2016 dated January 11, 2017 are as described below:[36]

1	Main Points	Testing of Article 35 letter c of Law No. 16 of 2003 2004 concerning the Attorney General's Office of the Republic of Indonesia regarding the 1945 Constitution of the Republic of Indonesia Article 28D paragraph (1): "Everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law."
2	Applicant	Inspector General of Police (P) Drs. Sisno Adiwinoto, MM The applicant is the Deputy General Chairperson of the Indonesian Police Graduates Association (ISPPI).
3	Applicant's Arguments	According to the Applicant as an individual Indonesian citizen, constitutionally he has been disadvantaged in fulfilling his constitutional rights, because (among other things): • Article 35C of the Republic of Indonesia Attorney General's Law reduces the Applicant's constitutional rights to obtain recognition, guarantees, protection and fair legal certainty as well as equal treatment before the law as guaranteed in Article 28D paragraph (1) of the 1945 Constitution. • Equality before the law is one of the most important principles in modern law. This principle is one of the doctrines of the Rule of Law which is also spreading in developing countries such as Indonesia.
4	MK's considerations	• The Constitutional Court in decision Number 40/PUUXIV/2016 provided considerations by referring to the previous Constitutional Court decision, namely Constitutional Court decision Number 29/PUU-XIV/2016, 11 January 2017, which provided considerations including: • The seponering authority in Article 35 letter c of the Attorney General's Law is not intended to eliminate the right to recognition, guarantee, protection, and certainty of fair law

[35]Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia
[36]Constitutional Court Number 40/PUU-XIV/2016 dated 11 January 2017 Concerning the Meaning of “Public Interest” as the Basis for Waiving Cases by the Attorney General

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		and equal treatment before the law (equality before the law) as stipulated in Article 28D paragraph (1) of the 1945 Constitution and is not intended to treat one citizen discriminatorily against another. Article 35 letter c of Law 16/2004 is implemented by the Attorney General in the public interest, in this case in the interests of the nation and state and/or the interests of the wider community. According to the Court, the problem is that the Attorney General's extensive authority only pays attention to suggestions and opinions from state power bodies that have a relationship with the problem (vide Explanation of Article 35 letter c of Law 16/2204). • According to the Court, seponering which is the implementation of the opportunity principle is not in conflict with the 1945 Constitution even though it is not regulated in the 1945 Constitution. • The seponering authority regulated in Article 35 letter c of Law 16/2004 is still needed in the enforcement of criminal law in Indonesia, only to prevent abuse of authority by the Attorney General considering the large authority, it is necessary to impose strict restrictions on the applicability of the a quo Article so as not to violate or conflict with constitutional rights or human rights in general which are guaranteed in the 1945 Constitution of the Republic of Indonesia. • The suggestions and opinions of the a quo state power agency seem to be completely non-binding and the Attorney General only pays attention. This means that the authority to carry out seponering is truly a full authority that can be taken by the Attorney General. Therefore, in order to protect the constitutional rights of citizens guaranteed by the 1945 Constitution in the implementation of seponering, the Court needs to interpret the explanation of Article 35 letter c of Law 16/2004 so that it does not conflict with the 1945 Constitution, namely that the phrase "after considering the suggestions and opinions of state power agencies that have a relationship with the problem" must be interpreted as, "The Attorney General is obliged to consider the suggestions and opinions of state power agencies that have a relationship with the problem".
5	Verdict	Declare the Petitioner's petition cannot be accepted.

In the Constitutional Court Decision Number 40/PUU-XIV/2016, dated January 11, 2017, the Applicant's request that Article 35c of Law No. 16 of 2004 be declared contrary to the 1945 Constitution, was decided as "Declaring the Applicant's request inadmissible".

The considerations of the Constitutional Court, which are taken from the considerations in the Constitutional Court Decision Number 29/PUU-XIV/2016, are that setting aside (seponering) cases for the sake of the public interest in Article 35 letter c of Law 16/2004 is applied by the Attorney General for the sake of the public interest, in this case for the sake of the interests of the nation and state and/or the interests of the wider community, so that the seponering of cases which is the implementation of the opportunity principle does not conflict with Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia and is not intended to treat one citizen discriminatorily against another citizen.

The principle of opportunity in written positive law of Indonesia has a definite place, namely in Article 35 letter c of the Law on the Attorney General of the Republic of Indonesia. Due to public interest, the public prosecutor in this case is the Attorney General can set aside cases, including:

1) As for what is meant by public interest, there are no clear boundaries;
2) In general, the public interest referred to in these main ideas is the interest of the state and society.[37]

Public interest in the application of the opportunity principle is something that does not demand or is a reason for stopping prosecution for policy reasons, namely setting aside cases for the sake of public interest. According to Prof. JM Van Bemmelen, quoted by Andi Hamzah, there are 3 (three) reasons for not being able to prosecute, including:

a) For the sake of the state interest (Straatsbelang);
b) In the Interest of Society (Maatschapelijk belang); And
c) For Personal Interest (Particular interests).

The Constitutional Court's considerations in Decision Number 29/PUUXIV/2016 related to the main points of the petition include: that the opportunity principle is not intended to ignore or eliminate the constitutional rights of citizens guaranteed by the 1945 Constitution of the Republic of Indonesia. The choice of the opportunity principle or the legality principle or not choosing both is the choice of the legislator. Indonesia in its legal system chooses the opportunity principle, so that this choice is a choice that does not conflict with the 1945 Constitution of the Republic of Indonesia. The next consideration states that the authority of the Attorney General to carry out seponering is the authority granted by the Law on the Attorney General's Office of the Republic of Indonesia, so that it has a legal basis in its implementation. The seponering authority is the implementation of the opportunity principle which is part of the discretionary principle (freies ermesen) of the Attorney General to prosecute or not to prosecute a case. The authority of seponering is not intended to eliminate the right to recognition, guarantee, protection and certainty of fair law and equal treatment before the law (Article 28D paragraph (1) of the 1945 Republic of Indonesia Law) and is not intended to treat one citizen discriminatorily against another. The 1945 Republic of Indonesia Law does not specify an article that provides authority or as a justification for the application of the opportunity principle in law enforcement in Indonesia, but this does not mean that the application of the opportunity principle is contrary to the 1945 Republic of Indonesia Law.[38]

According to the Constitutional Court, seponering which is the implementation of the opportunity principle does not conflict with the 1945 Republic of Indonesia Law even though it is not explicitly regulated in its articles. Furthermore, the Constitutional Court provides an interpretation of the Explanation of Article 35 letter c of the Republic of Indonesia Attorney

[37]I Kadek Darma Santosa, dkk. Pengaturan Asas Oportunitas dalam Sistem Peradilan Pidana di Indonesia, *Jurnal Pendidikan Kewarganegaraan Undiksha*, Vol. 9 No. 1, February, 2021, p.76
[38]Ani Triwati, Pengesampingan Perkara Demi Kepentingan Umum Pasca Putusan Mahkamah Konstitusi, *Jurnal Ius Constituendum*, Volume 6 Nomor 2, April 2021, p.49

General's Law so that it does not conflict with the 1945 Republic of Indonesia Law, namely the phrase "after considering the suggestions and opinions of state power agencies that have a relationship with the problem" must be interpreted as "The Attorney General is obliged to consider the suggestions and opinions of state power agencies that have a relationship with the problem". The interpretation of the Explanation of Article 35 letter c is needed so that there is a clear and strict measure in the use of the authority to set aside cases in the public interest or seponering by the Attorney General, because there is no other legal remedy to cancel the seponering authority except the Attorney General himself.[39]

Constitutional Court Decision Number 29/PUU-XIV/2016 which states the phrase "setting aside a case as referred to in this provision is an implementation of the principle of opportunity which can only be carried out by the Attorney General after considering the advice and opinions of state authorities that have a relationship with the matter" in the Explanation of Article 35 letter c of the Republic of Indonesia Attorney General's Law is contrary to the 1945 Republic of Indonesia Law conditionally and does not have binding legal force as long as it is not interpreted as the Attorney General is obliged to pay attention to the advice and opinions of state authorities that have a relationship with the matter". The waiver of a case in the public interest based on Constitutional Court Decision Number 29/PUU-XIV/2016, can be carried out after the obligation to pay attention to the advice and opinions of state authorities that have a relationship with the matter has been carried out by the Attorney General. The advice and opinions of state authorities that have a relationship with the matter must be considered by the Attorney General. The phrase "The Attorney General is obliged to pay attention to the advice and opinions..." does not provide an obligation for the Attorney General to follow the advice and opinions of the relevant bodies. The Constitutional Court's interpretation that the Attorney General's obligation to pay attention to suggestions and opinions from state authorities that have a relationship with the problem, is intended to provide clear and strict provisions in the use of the Attorney General's authority to set aside cases.

Testing of laws against the Constitution is basically aimed at obtaining justice, namely substantive justice. According to Mochtar Kusumaatmadja, a positive legal system, which means it must be based on justice, injustice will disrupt the order that is the legal order. Disturbed order means that order and therefore certainty are no longer guaranteed. Every rule that is made, contains the value of justice, because justice is the goal of the law of the positive legal system. Law as a manifestation of a system of values means that its presence is to protect and advance the values that are upheld by its society.

The values that live in society, including the value of justice which is described in the form of norms (especially legal norms) become a guideline for society in solving problems that arise in everyday life. Gustav Radbruch put forward three basic legal values, namely the values of justice, certainty and utility. The basic value of utility places law in relation to a larger social context. Thus, it is a pioneer for legal studies that also pay attention to the interaction of law

[39]Constitutional Court Decision Number 29/PUU-XIV/2016 concerning the Judicial Review of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia Against the 1945 Constitution of the Republic of Indonesia

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and society. Radbruch's three basic values are related values. The value of justice can be obtained when there is certainty that the legal norms are properly obeyed, thus providing usefulness or benefits to society.

C. Fundamental Problems of the Prosecutor's Authority to Set Aside Criminal Cases

Indonesia rarely implements deponeering even though it has been regulated in Article 35 letter c of Law Number 16 of 2004. About the Attorney General's Office of the Republic of Indonesia is the implementation of the principle of opportunity which the Attorney General has to set aside a case for the sake of “public interest”. The action of not prosecuting for reasons of policy The Attorney General is allowed to set aside a case even if the evidence is sufficient and can be submitted to a court hearing, but a case that is ready to be tried is not tried.

There are many pros and cons to the waiver of cases (deponeering) in society and among academics, because the waiver of cases (deponeering) itself is considered discriminatory against legal principles such as legal certainty, and is contrary to equality before the law as mandated by Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "all citizens have the same status before the law and government and are obliged to uphold the law and government without exception."

The concept of public interest in the implementation of the waiver of cases when applied in a case, then the question arises in each individual how the Attorney General interprets public interest to be applied in a case while the criteria for public interest are unclear. What are the formal requirements in the implementation of this opportunity principle, because the understanding of public interest itself is not the same or can be said to be very diverse from doctrine or in legislation so that the understanding of public interest becomes multi-interpretable.

In the case example, the Attorney General officially set aside the case of Abraham Samad and Bambang Widjojanto for the sake of public interest, because the two former leaders of the two KPKs are widely known as figures who have a commitment to eradicating corruption to the two former leaders of the Corruption Eradication Commission Abraham Samad regarding document falsification which is threatened with Article 263 Paragraph (1) Juncto Article 53 Paragraph (1) ke-1 of the Criminal Code sub Article 264 Paragraph (1) Juncto Article 55 Paragraph (1) of the Criminal Code and abuse of power is threatened with Article 36 Juncto Article 65 of Law Number 30 of 2002 concerning the Corruption Eradication Commission. Then Bambang Widjojanto was caught in a case of influencing witnesses to provide false testimony during the trial of the West Waringin City Pilkada dispute in Central Kalimantan at the Constitutional Court in 2010, threatened with Article 242 Juncto Article 55 of the Criminal Code and Article 56 of the Criminal Code.

Public Interest as regulated by Article 35 letter c of the Attorney General's Law means that an interest of the nation and state and/or the interests of the wider community. In this case, the interests of the nation and state mean that everything that can affect the balance of the

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formation of a nation & state, but the absence or discovery of that necessity, can have an impact on the stability of the continuity of a government. While the interests of the wider community can mean, especially in terms of the exclusion of cases (deponering), an event can occur as a result of the provisions taken by the government regarding a case that causes something that is not desired by the wider community. This is due to policies that have an impact on the lack of existence in the application of the value of justice for the wider community. Thus, the government receives a response or reaction from the community to cancel the prosecution of the case. The response or reaction that occurs in the territory of the Republic of Indonesia caused by the community can be interpreted as an act of opposition or demonstration in a massive sense. So, in this case, the implementation of security and public order can be threatened which causes the prosecution of the case to not be held. Therefore, the interests of the wider community can be categorized or classified into the form of security, peace, order, or public welfare.

Case waiver (deponeering), it is necessary to adjust the implementation of deponeering in Indonesia. In the Netherlands, there has been such a modification regarding this deponeering. The Netherlands has previously expanded the implementation of deponeering which is also based on the principle of opportunity with a new provision, that all cases with a criminal threat of less than 6 (six) years in prison can be afdoening (settlement of cases outside the court), but only minor cases. Settlement of cases based on the principle of opportunity by imposing administrative fines, so that it can increase state revenue, reduce the number of cases in court and reduce the number of prisoners.

Waiving a case can have implications for justice seekers, namely the party being deponeered and the public in general. For the party being deponeered or the case being waived, there are pros and cons regarding whether the suspect status for the party being deponeered is lost or remains a suspect because there are no regulations. Deponeering or in other words, case waiver is final and valid because deponeering is an authority granted by Article 35 letter c of the Law on the Attorney General of the Republic of Indonesia to the Attorney General and there are no regulations on efforts that can be made to re-examine a case that has been waived by the Attorney General, unlike the termination of prosecution which can be carried out by pretrial efforts at a later date.

In the theory of legal certaintyAccording to Kelsen, law is a system of norms. Norms are statements that emphasize the aspect of "should" or das sollen, by including several regulations about what should be done. Norms are products and deliberative human actions. Laws that contain general rules become guidelines for individuals to behave in society, both in their relationships with other individuals and in their relationships with society. These rules become limitations for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules create legal certainty.

Normative legal certainty is when a regulation is made and enacted with certainty because it regulates clearly and logically. Clear in the sense that it does not cause doubt (multiple interpretations) and is logical. Clear in the sense that it becomes a system of norms with other norms so that it does not clash or cause norm conflicts. Legal certainty refers to the

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implementation of clear, permanent, consistent and consequent laws whose implementation cannot be influenced by subjective circumstances. Certainty and justice are not merely moral demands, but factually characterize the law. A law that is uncertain and unwilling to be fair is not simply a bad law.

4. Conclusion

Several principles related to the power of prosecution, both those that apply generally and those that apply specifically, namely (1) The Principle of Prosecution as Judicial Power; (2) The Principle of Prosecution Jurisdiction; (3) The Principle of Prosecution for the Interests of the State, Public, and Law; (4) The Principle of Single Prosecution; (5) The principle of Een En Ondeelbaar; (6) The principle of delegation of authority to prosecute; (7) The principle of Dominus Litis; (8) The principle of the obligation to prosecute (Mandatory Prosecution); (9) The principle of opportunity; (10) The principle of no crime that cannot be prosecuted; (11) The principle of no crime without prosecution; (12) The principle that the public prosecutor is considered to know the law; (13) The principle of legal protection for the public prosecutor; (14) The principle of free and independent prosecution; (15) The principle of independence of prosecution; (16) The principle of proprio motu; (17) The principle of the obligation to prove; (18) The principle of the public prosecutor as the executor of the judge's decision; (19) The principle that prosecution is carried out for justice and truth based on the Almighty God; (20) The principle of the integrity of prosecution. Article 35 letter c of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia is the legal basis for setting aside cases in the public interest as the authority of the Attorney General. The case that is set aside in this case has sufficient evidence, but is related to the public interest requiring no prosecution.

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