

## Abolition of the Authority to Prosecute and Criminalize Based on Justice Values

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**Abstract.** *The aim of the research is to examine and analyze the abolition of the authority to prosecute and punish based on justice values. The research method used is a statutory approach (statute approach) which prioritizes legal materials in the form of statutory regulations as basic reference material in conducting research. The results of the research show that legal responsibility by the convict can occur due to 2 (two) things, namely: the convict dies or because of an expiration date which determines the authority to carry out the criminal sentence if the convict dies. Based on the adage nemo punitur pro alieno delicto, no one is punished because of another person's actions. Mutatis muntadistically the adage a quo applies when serving the death penalty. So that the authority to carry out the death sentence imposed on the perpetrator after going through the criminal justice process is declared guilty by the court is abolished. The prosecution of the defendant NM (deceased) in the criminal case was declared dropped.*

**Keywords:** Authority; Death; Justice; Prosecute.

### 1. Introduction

Criminal law in the division of conventional law includes the field of public law. Where criminal law regulates the relationship between citizens and the State and focuses on the general interest or public interest. However, criminal law is a law that has special characteristics in terms of sanctions/punishments.<sup>1</sup>What

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<sup>1</sup> Rendy Surya Aditama, Umar Ma'ruf, Munsharif Abdul Chalim. Criminal Law Policy Against Children as Perpetrators of Psychotropic Crimes in the Magelang Police Department. Journal of Legal Sovereignty Vol. 1. No. March 1 (2018),

differentiates it from other laws is that the form of sanctions is criminal/punishment that is deliberately imposed on someone who has committed a violation of the law or a criminal act.<sup>2</sup>

There are three basic principles that must be respected, obeyed and upheld by every citizen, namely supremacy of the law, equality before the law, and law enforcement must be carried out in a way that does not conflict with legal norms.<sup>3</sup> Meanwhile, the sanctions system generally covers 3 (three) main issues, namely the type of crime (strafsoort), the length of the criminal threat (strafmaat), and the implementation of the crime (strafmodus).<sup>4</sup> Criminal (straf) is a sanction that is only applied in criminal law. In criminal law, the types of crimes can be seen from the provisions of Article 10 of the Criminal Code which contains the types of crimes that can be imposed on someone who commits a criminal act. One of them is the main punishment and additional punishment, the main punishment consists of: Death Penalty, imprisonment, imprisonment, fine and criminal penalty. Meanwhile, additional penalties consist of revocation of certain rights, confiscation of certain goods, and announcement of the judge's decision.<sup>5</sup>

Being sentenced to a crime is not a pleasant thing for someone to be convicted of. Apart from spending a relatively large amount of money, for example court costs, prison, parole, consultation centers must be attended and fines collected.<sup>6</sup> Just as criminal responsibility includes a retrospective (retributive) aspect and a prospective (preventive) aspect, criminal prosecution cannot be separated from the retributive and preventive aspects. Retributive and preventive ideas regarding criminal imposition cannot be separated from the principle of proportionality.<sup>7</sup>

Sentencing must take into account the criminal act and the error so that the sentence is commensurate with both. However, retributive and preventive have different perspectives in viewing the principle of proportionality. The retributive

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Url:<http://jurnal.unissula.ac.id/index.php/RH> accessed 9 August 2023.

<sup>2</sup>Teguh Prasetyo, 2016, Revised edition of Criminal Law, Raja Grafindo Persada, Jakarta, p.2

<sup>3</sup>Abdul Salam Siku, 2012, Protection of Human Rights, Sanctions and Victims in Criminal Justice, Rabbani Press, Jakarta, p.1

<sup>4</sup> Wahyu Sudrajad, Umar Ma'ruf. Econstruction as an Effort Revealing the Crime of Premeditated Murder (Case Study of the Legal Area of the Banyumanik Police, Semarang). *Khaira Ummah Law Journal* Vol. 12. No. 3 September (2017).  
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<sup>5</sup>Barda Nawawi Arief, 2003, Kapita Selecta Criminal Law, Citra Aditya Bakti, Bandung, p.136

<sup>6</sup> Doni Cakra Gumilar, Sri Endah Wahyuningsih and Jawade Hafidz. The Formulation of a Special Minimum Criminal Threat System Formulation in the Corruption Law. *Law Development Journal*. Volume 5 No. 1, March 2023, (54-70),  
Url:<https://jurnal.unissula.ac.id/index.php/ldj/article/view/30035/8108> accessed 9 August 2023.

<sup>7</sup>Muhammad Ainul Syamsu, 2016, Criminal Imposition and Two Basic Principles of Criminal Law, Kencana, Jakarta, p.148

side, criminal acts and criminal responsibility are the basis for criminal imposition. The perpetrator deserves to be punished if the conditions for punishment are met. From a preventive perspective, errors are seen as a measure for determining actions oriented towards general and specific prevention.<sup>8</sup>

In criminal law, there are several reasons that can be used as a basis for judges not to impose criminal sentences on perpetrators or defendants who are brought to court because they have committed criminal acts. These reasons are called reasons for eliminating prosecution and criminalization.<sup>9</sup> In the Criminal Code, there are four things that can eliminate criminal prosecution, namely *ne bis in idem* (Article 76 of the Criminal Code), the death of the defendant (Article 77 of the Criminal Code), expiry date (Article 78 of the Criminal Code), and settlement of the case outside of court (Article 82 of the Criminal Code).

In relation to the elimination of the right to criminal prosecution, the Criminal Code contains 4 (four) things that cause the state to lose the right to prosecute criminals against those who commit criminal acts, namely:

- a. The reasons for the actions that have been decided by the court with a decision that has permanent legal force (article 76) are:
  - 1) Except in cases where the judge's decision may still be repeated, a person may not be prosecuted twice for an act that an Indonesian judge has committed against him or her with a decision that becomes permanent. In the sense of Indonesian judges, including judges of independent and customary courts, in places that have these courts.
  - 2) If the final decision comes from another judge, then against that person and because of that criminal act, no prosecution may be held in the event of:
    - a) The decision is in the form of acquittal or release from legal action.

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<sup>8</sup> Oscar Stefanus Setjo, and Umar Ma'ruf. Investigation of Children Who Conflict With Law in Narcotics Criminal Acts In Law Area of the Semarang City Police Jurisdiction. *Journal of Legal Sovereignty* Volume 3 Issue 2, June (2020), Url: <http://jurnal.unissula.ac.id/index.php/RH> accessed 09 August 2023.

<sup>9</sup>A. Zainal Abidin Farid, 1990, Criminal Law 1, Sudarto Foundation, Semarang, p.189

b) The decision is in the form of a sentence and has been served in its entirety or has been pardoned or the authority to carry it out has been removed because it has expired.<sup>10</sup>

b. Due to the death of the author according to article 77 which states "the authority to prosecute a criminal offense is extinguished if the accused dies".

c. Because the time has passed or expired (articles 78-80).

Prosecution Article 1 paragraph (7) of the Criminal Procedure Code is the action of the public prosecutor to transfer a criminal case to the competent court in accordance with the method regulated in law with a request to be examined and decided by a judge in a court session.<sup>11</sup>The right to prosecution is determined by law only for public prosecutors, namely prosecutors who are authorized by KUHAP Law no. 8 of 1981 articles 13 and 14 in the general and military justice environment based on article 17 paragraph 3 of Law no. 1 of 1958 in the military justice environment. This research aims to determine the elimination of the authority to prosecute and criminalize based on the value of justice.

## 2. Research Methods

The approach method using a statutory approach is research that prioritizes legal materials in the form of statutory regulations as basic reference material in conducting research.<sup>12</sup>Apart from that, we also use a case approach. This approach is carried out by reviewing cases related to the legal issues being faced. The specifications used are descriptive analytical in nature, providing a systematic, logical explanation, analyzing them in order to review applicable literature, legislation, legal norms and analyzing them to draw conclusions.<sup>13</sup>The data sources used for secondary data consist of primary legal materials in the form of legislation related to the legal research carried out.

Data collection method with the main activity being literature study, reviewing, reviewing and processing literature, statutory regulations, judge's decisions and articles or writings related to the problem to be researched. The data analysis

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<sup>10</sup>Mahrus Ali, 2015, Basics of Criminal Law, Sinar Graphics, Jakarta, p.206

<sup>11</sup>Sri Endah Wahyuningsih, Model for the Development of Criminal Law Principles in the Criminal Code Based on the Values of the Almighty God, Journal of Legal Sovereignty *Vol 2, No 2, 2018*, Url: <https://jurnal.unissula.ac.id/index.php/ldj/article/view/30035/8108> accessed 09 August 2023.

<sup>12</sup>Amirudin and Zainal Asikin, 2004, Introduction to Legal Research Methods, Raja Grafindo Persada, Jakarta, p.118

<sup>13</sup> Amirudin and Zainal Asikin, 2004, Introduction to Legal Research Methods, Raja Grafindo Persada, Jakarta, p.118

method was carried out qualitatively using a data analysis method by grouping and selecting data obtained from literature studies.

### 3. Results and Discussion

Every perpetrator of a criminal act who has fulfilled the objective and subjective requirements will be held accountable for his actions. When responsible for the perpetrator's actions, he only faces law enforcement officials (police, prosecutors, judges).<sup>14</sup>The legal reality is not always as expected. There are cases where according to law the authority to carry out criminal prosecution is removed. The basic rules for the authority to carry out criminal prosecution are established with the aim of creating legal certainty for a person, so as to avoid situations of uncertainty or uncertainty in facing criminal prosecution.<sup>15</sup>

One of the things that is being sentenced to a crime is that it is not a pleasant thing for someone who is being punished. Punishment also costs relatively a lot of money, for example in court costs, prison and parole. As for the background justifying the existence of punishment, the existence of violations of the law, then violations of the law and punishment have a close correlation. So that punishment is one part of the implementation of criminal law. Therefore, the function of criminal law with criminal sanctions is very necessary. Meanwhile, criminal sanctions are a tool or means to deal with major and immediate dangers, as well as to deal with threats from danger.<sup>16</sup>

The function of punishment is designed to strengthen collective values, protection of society through eliminating the physical capacity of the perpetrator to carry out the next action (physical incapacitation of the convicted offenders), rehabilitation of the perpetrator, deterring the perpetrator from repeating his actions, known as specific deterrence and serves as an example to deter other people from committing evil acts committed by the perpetrator or general deterrence.<sup>17</sup>Just as criminal responsibility includes both retrospective (retributive) and prospective (preventive) aspects, criminal imposition cannot be separated from the retributive and preventive aspects. Retributive and preventive ideas regarding criminal imposition cannot be separated from the

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<sup>14</sup> Ali Imron, "Transformation of Islamic Law into Indonesian National Law", *Journal of Islamic Legal Thought al-Ahkam* Vol.5 No.2 April 2012, IAIN Walisongo Semarang, p.128

<sup>15</sup> Mahrus Ali, 2015, *Basics of Criminal Law*, Sinar Graphics, Jakarta, p.206

<sup>16</sup> Ira Alia Maerani, Siti Rodhiyah Dwi Istinah, *The Formulation of the Idea of Forgiveness in Indonesian Criminal Law Policy (A Study Based on Restorative Justice & Pancasila Values)*. *Journal of Legal Sovereignty* Volume 5 Issue 4, December 2022, Url : <https://jurnal.unissula.ac.id/index.php/RH/article/view/24290/7688> accessed 09 August 2023

<sup>17</sup> Symbolon Alum and Desy Indriani Grace Sinaga, *The Legality of Cryptocurrency Transactions in Indonesia*, *Journal of Legal Sovereignty* Volume 5 Issue 3, September 2022. Url: <https://jurnal.unissula.ac.id/index.php/RH/article/view/26722/7395> accessed 09 August 2023.

principle of proportionality. This principle is that the imposition of a crime must take into account the criminal act and the mistake so that the sentence is commensurate with both. However, retributive and preventive have different perspectives in looking at the principle of proportionality.<sup>18</sup>

With regard to the abolition of the authority to prosecute criminals and carry out criminal penalties, it is regulated in book I, Chapter VII. In the Criminal Procedure Code, regulations regarding the loss of the right to claim punishment can be seen in article 140 paragraph (2) point (a), which states:

"In the event that the public prosecutor decides to stop the prosecution because there is not enough strong evidence or the incident turns out not to be a criminal act or the case is closed by law, the public prosecutor will state this in a decision letter."

This article can be seen that the Public Prosecutor can stop the case by law, which is interpreted in accordance with Book I of the Criminal Code, Chapter VIII regarding the elimination of the right to sue as regulated in articles 76, 77 and 78 of the Criminal Code. In accordance with article 1 point 7 of the Criminal Procedure Code, "Prosecution is the action of the public prosecutor to transfer a criminal case to the competent district court in the terms and according to the manner regulated in the Law with a request that it be examined and decided by a judge at a court hearing.

According to Wirjono Prodjodikoro, the definition of prosecution is: Prosecuting a defendant before a criminal judge means handing over a defendant's case with his case files to the judge with a request that the judge examine and then decide the criminal case against the defendant.<sup>19</sup>In criminal law, there are several reasons that can be used as a basis for judges not to impose criminal sentences on perpetrators or defendants who are proposed by the court because they have committed criminal acts. These reasons are called reasons for eliminating prosecution and criminalization.<sup>20</sup>In the opinion of Abdul Hakim G. Nusantara, SH, stated:

The meaning of the case being closed by law Article 140 paragraph (2) of the Criminal Procedure Code, this happens when the suspect dies, the case classified as *nebis in idem* or expired and so on, this situation should be

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<sup>18</sup> Muhammad Ainul Syamsu, 2016, Criminal Imposition and Two Basic Principles of Criminal Law, Jakarta, p.148

<sup>19</sup> Hartono, 2012, Investigation and Enforcement of Criminal Law Through a Progressive Legal Approach, Sinargrafika, Jakarta, p.77

<sup>20</sup> A, Zainal Abidin Farid, 1990, Criminal Law 1, Sudarto Foundation, Semarang, p.189

linked to Book I Chapter VIII concerning the abolition of the right to sue, namely Articles 76, 77 and Article 78 of the Criminal Code."<sup>21</sup>

The explanation in the guideline for the implementation of the Criminal Procedure Code issued by the Indonesian Ministry of Justice also provides explanations regarding the authority of the Public Prosecutor to close cases by law as in article 140 paragraph (2) point (a), "...cases closed by law are interpreted in accordance with the abolition of the right to sue as regulated in articles 76, 77 and 78 of the Criminal Code."<sup>22</sup> Termination of prosecution The judge has the authority to test whether the termination of the prosecution is valid or not. Like the case in the decision of the Sampit District Court which examined and decided the first instance case Number: 20/Pid.B/2020/PN Spt.

Based on the trial The public prosecutor was unable to present the defendant in court because he died on Thursday, January 23 2020 due to illness. So during the trial the public prosecutor showed the court the Death Certificate Number: 44/TU-3/815/DM/2020, dated 23 January 2020 issued by the Murjani Sampit General Hospital and the Death Certificate Number: W.17.PAS.PAS .5.PK.01.06.03.-201 from the Head of the Class II B Sampit Correctional Institution which basically stated that a person named NM (deceased) had died on Thursday, January 23 2020.

The public prosecutor in his indictment charged the defendant's actions as regulated and punishable by crime in Article 303 paragraph (1) 1 of the Criminal Code and the defendant's actions as regulated and punishable by crime in Article 303 paragraph (1) 2 of the Criminal Code. In accordance with the provisions of Article 77 of the Criminal Code, it is stated that "the authority to prosecute criminal charges is forfeited if the accused dies", thus the prosecution of Defendant NM (deceased) in criminal case Number 20/Pid.B/2020/PN Spt., is declared void, and Therefore, the Public Prosecutor's indictment was declared unacceptable by the panel of judges at the Sampit District Court.

Because the prosecution of Defendant NM (deceased) in criminal case Number 20/Pid.B/2020/PN Spt., was declared invalid, then the evidence that has been legally confiscated based on the Court's decision must be returned to the rightful person through the Public Prosecutor. The gambling game of guessing numbers or white coupons was done just by chance and did not require special skills and the defendant did not have permission from the authorities. In the above

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<sup>21</sup>Abdul Hakim G. Nusantara, Luhut Pangaribuan, Cs, 1986, KUHAP and Implementing Regulations, Djangkat, Jakarta, p.43

<sup>22</sup>Sri Endah Wahyuningsih, Model for the Development of Criminal Law Principles in the Criminal Code Based on the Values of the Almighty God, Journal of Legal Sovereignty *Vol 2, No 2, 2018*, [Url: https://jurnal.unissula.ac.id/index.php/RH/article/view/26722/7395](https://jurnal.unissula.ac.id/index.php/RH/article/view/26722/7395) accessed 09 August 2023.

incident, it is clear that if the defendant dies, legally the defendant's right to be prosecuted by the Public Prosecutor and the defendant's right to serve a sentence will be lost.

Article 137 of the Criminal Procedure Code, states that "The public prosecutor has the authority to prosecute anyone accused of committing a criminal offense within their jurisdiction by transferring the case to a court that has the authority to try." Cases that can be stopped from prosecution are:

- a. In the public interest (e.g., insufficient evidence)
- b. Closed by law (for example, suspect/defendant dies, ne bis in idem, expired)
- c. The exclusion of cases by the Attorney General is in the public interest (principle of opportunity/deponering).

The success of a prosecution really depends on the role of the public prosecutor from pre-prosecution or research of files to the evidentiary stage before a court hearing. Providing the public prosecutor's ability to prove the defendant guilty. So the explanation above can be concluded that prosecution is the public prosecutor's action to provide instructions to investigators in order to perfect the investigation.<sup>23</sup>In this case, the judge places his authority (in adjudicating concrete cases) as determining whether the perpetrator has special circumstances, as formulated in the reasons for abolishing the crime. In fact, the perpetrator or defendant has fulfilled all the elements of a criminal act that have been formulated in the criminal law regulations, however there are several reasons why a person cannot be prosecuted and sentenced or excluded from the imposition of criminal sanctions as formulated in the statutory regulations. Thus, the elimination of the authority to prosecute and punish based on the value of justice in the Sampit District Court decision Number: 20/Pid.B/2020/PN Spt as a legal responsibility as reasons that allow someone who has actually fulfilled the formula of the offense, not to be punished and this is authority granted by law to the competent authority.<sup>24</sup>

The provisions regarding the abolition of the authority to carry out a crime by a convict can occur due to 2 (two) things, namely: the convict dies (Article 83 of the Criminal Code) or due to expiration (Article 84 and Article 85 of the Criminal

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<sup>23</sup>Sekar Tresna Raras Tywi, Ira Alia Maerani, Arpangi. Law Enforcement against Entrepreneurs who Conduct Criminal Acts to Pay Wages Below the Minimum Wage. *Journal of Legal Sovereignty* Volume 4 Issue 1, March (2021).  
Url:<http://jurnal.unissula.ac.id/index.php/RH/article/view/13882/5379> accessed 09 August 2023.

<sup>24</sup> Sudarto, 2009, *Criminal Law and Community Considerations*, Sinar Baru, Bandung, p.189



Code). Article 83 of the Criminal Code determines that the authority to carry out criminal penalties is extinguished if the convict dies. Meanwhile, Article 84 of the Criminal Code regulates the abolition of the authority to carry out criminal penalties due to expiration. Regarding the death of the convict, based on the adage *nemo punitur pro alieno delicto*, no one is punished because of another person's actions. Therefore, *mutatis muntadis* the adage *a quo* also applies to the failure to undergo a sentence because the convict dies as is also regulated in Article 83 of the Criminal Code.<sup>25</sup> So the abolition of the authority to carry out a crime because the convict dies is in line with the concept that a sentence is imposed on the perpetrator who, after going through the criminal justice process, is declared guilty by the court.

According to Remmelink, the death of the convict will undoubtedly invalidate the authority to execute the crime, which is in line with the personal nature of responsibility in criminal law and retribution for a crime which is the imposition of suffering that should be felt (only) by the convict. In other words, only the convict must bear the consequences of a criminal act that has been committed. This is different from what happened in the past where the death of the convict did not stop the enthusiasm for carrying out the execution of the criminal decision against the convict. At that time, when suicide was still seen as a separate criminal act, the punishment threatened against the perpetrator was also realized, by (re)hanging the convict. Apart from that, fines and confiscated items are also included in the execution of the decision, namely by compensating for the objects belonging to the deceased convict.<sup>26</sup>

#### 4. Conclusion

The abolition of the authority to prosecute and punish based on the value of justice can occur due to 2 (two) things, namely: the convict dies or due to an expiration date which determines the authority to carry out criminal penalties to be abolished if the convict dies. Based on the adage *nemo punitur pro alieno delicto*, no one is punished because of another person's actions. *Mutatis muntadistically* the adage *a quo* applies when serving the death sentence. In the decision of the Sampit District Court Number: 20/Pid.B/2020/PN Spt, the legal responsibility of the convict is based on the value of justice, because the convict died, so that the authority to carry out the crime imposed on the perpetrator after being declared guilty through the criminal justice process was abolished. the court is declared invalid, because another person cannot replace the

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<sup>25</sup>Eddy OS Hiariej, 2014, Principles of Criminal Law, Cahaya Atma Pustaka Publisher, Yogyakarta, p.378

<sup>26</sup> Jan Remmelink, 2003, Criminal Law. Comments on the Most Important Articles of the Dutch Criminal Code and Their Equivalents in the Indonesian Criminal Code, Gramedia Pustaka Utama, Jakarta, p.583

defendant's position as the perpetrator in committing the crime, then the evidence that has been legally confiscated based on the Court's decision must be returned to the rightful person through the Public Prosecutor.

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