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Legal Uncertainty in Criminal Justice: A Study of the Practice of Changing Charges in Replicas Based on the Criminal Procedure Code

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Abstract. Dynamic legal demands often lead to changes in the criminal justice process, including changes in demands in replies. As the legal basis for criminal procedure in Indonesia, the Criminal Procedure Code gives the public prosecutor (JPU) the authority to change the indictment before the trial begins. Still, it does not explicitly regulate changes in demands in replies. This study aims to analyze demand changes in replies using a qualitative approach and literature study. The data used are in the form of laws and regulations, such as the Criminal Procedure Code, the Prosecutor's Office Law, and court decisions, as well as related legal literature. The study results indicate that changes in demands in replies are a practice that occurs in the dynamics of trials, although they do not have a strong legal basis. This has implications for legal certainty and the principle of legality in criminal procedure law. Changing demands require special attention from stakeholders to formulate more explicit rules to ensure justice and legal certainty for all parties involved in the criminal justice process.

Keywords: Criminal, Court, Replic, Demand.

1. INTRODUCTION

Indonesia as a country of law [1], by Article 1 paragraph (3) of the 1945 Constitution, affirms the principle of equality before the law. This means that every individual, regardless of social, economic, or cultural background, has the same rights to receive fair treatment and equal legal protection. The importance of this principle is also reflected in the need to ensure that everyone is treated equally in the legal system, without discrimination or unfair treatment. The rule of law is a flexible and debatable concept that can be defined in many ways. [2]Selznick wrote that 'There is no single [3]*model for the rule of law.'* The definition of the rule of law is primarily related to the different enumerations of the elements of the rule of law. Different definitions of the rule of law mean that the rule of law does not have a uniform and accepted form. Certain concepts have various forms and meanings, so they are best described as a woven thread of different fibres.[4]

The rule of law must be understood as a concept with at least two core elements: control of power and law. These elements are included in any view of the rule of law. [5]Clear legal rules and a solid legal system are needed to strengthen the principles of the rule of law. This also requires the existence of law enforcement officers who are highly professional, integrity, and disciplined. [6]They need to be supported by adequate legal infrastructure and the adoption of legal principles in community behaviour.[7]

Legal uncertainty related to the regulation of this policy can, of course, cause or create legal chaos, [8]every country of law, including Indonesia, has a quality law enforcement agency. One example is the Attorney General's Office of the Republic of Indonesia, which is part of a number of law enforcement agencies in Indonesia. According to Purnadi Purbacaraka [9]Law enforcement is basically a process of aligning values reflected in strong principles or views on assessment, which are then translated into attitudes and actions. It is a process of realizing

[1]A state of law, or the term *rechtsstaat* or *the rule of law*, is a state that, in acting, all are based on rules or by applicable laws. If someone commits an act that violates the rules, then he has the right to receive punishment because he is considered to have violated the law. The term state of law began to develop around the 19th century. According to Plato, a state of law is a state that has ideals to pursue truth, morality, beauty and justice. Meanwhile, according to Aristotle, a state of law is a state that stands on laws that guarantee justice for all its citizens. Article 1, paragraph 3 of the Constitution states that Indonesia is a state of law. Indonesia is a state of law based on Pancasila. This aims to realize a safe, peaceful, prosperous and orderly state of life. Where the legal position of every citizen is guaranteed so that harmony, balance and harmony can be achieved between individual interests and group interests.

[2] WB Gallie , *'Essentially Contested Concepts'* (1956) Proceedings of the Aristotelian Society 56 , at 167–98; Neil MacCormick , *'Der Rechtsstaat und die Rule of Law'* (1984) Juristenzeitung 39 at 66 ; Brian Z. Tamanaha, *On the Rule of Law, History, Politics, Theory* (Cambridge: Cambridge University Press, 2004); Berta Esperanza Hernandez-Truyol , *'The Rule of Law and Human Rights'* (2004) Florida Journal of International Law 16 , at 167 ; Margaret Jane Radin, *'Reconsidering the Rule of Law'* (1989) Boston University Law Review 69, at 783; Martina Huber, *'Monitoring the Rule of Law, Consolidated Framework and Report'* (2002) Netherlands Institute of International Relations *'Clingendael'* , 18; Randall Peerenboom, *'Human Rights and the Rule of Law: What's the Relationship?'* (2005) Georgetown Journal of International Law 36 , at 18

[3] Philip Selznick, 2005, *'Democracy and the Rule of Law'* , Syracuse Journal of International Law and Commerce 33 , p. 29

[4]What binds these concepts together and makes them a whole is the 'overlapping of many concepts', Garth Hallet, 1977, *A Companion to Wittgenstein's 'Philosophical Investigations'*, Ithaca: Cornell University Press, pp. 72–73

[5] *'Sicher ist nur, dass in der gemeinsamen Tradition übereinstimmende Vorstellungen vorhanden sind: Absage an absolute Macht und Hinwendungen zur Herrschaft des Rechts sowie Gewähr und Schutz persönlicher und Politikcher Freiheit durch Mäßigung, Gliederung und Begrenzung und richterliche Controlle der Staatsgewalt.'* ('The only thing that is certain is that there are consistent ideas in the general tradition is the rejection of absolute power and a turn to the supremacy of law and the guarantee and protection of personal and political freedom through moderation, structure and limitation and judicial control of state power.) ' Klaus Stern, 1984, *Das Staatsrecht der Bundesrepublik Deutschland* , Munich: CH Beck, p. 765.

[6] Marwan Effendy, 2004, *Indonesian Attorney General's Office: Position and Function from a Legal Perspective*, Jakarta: Gramedia Pustaka Umum, page 2

7See Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, State Gazette of the Republic of Indonesia 2004 Number 67.

[8] Muhammad, AY, Moenta, AP, & Riza, M. (2024). Judicial Review of Policy Regulations: A Comparative Study of Judicial Review in Indonesia and the Netherlands. International Journal, 5(11), 9233-9246.

[9] Purnadi Purbacaraka in Soejono Soekanto, 1983, *Law Enforcement* , Jakarta: BPHN, p. 3 .

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the goals to be achieved by the formation of the law itself. [10]The Attorney General's Office [11]has duties and authorities regulated in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, one of its authorities is to carry out prosecution as regulated in Article 30 which explains:

1. In the criminal field, the prosecutor's office has the following duties and authorities:
    a. Conducting prosecution
    b. Carrying out judges' decisions and court decisions that have obtained permanent legal force
    c. Supervise the implementation of conditional criminal decisions, supervised criminal decisions, and conditional release decisions.
    d. Conducting investigations into certain criminal acts based on the law
    e. Complete specific 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.

As part of enforcing the supremacy of law [12]The role of the Prosecutor's Office is significant in implementing the law in concrete terms. Bagir Manan [13]emphasized that realizing the law in concrete terms is not limited to the court process or the role of judges. The Prosecutor's Office is considered a public institution tasked with enforcing the law, especially in the realm of the criminal justice system. Prosecutors are the most powerful officials in the criminal justice system. [14]Prosecutors' daily decisions have a large influence on the direction and outcome of criminal cases. They make these crucial decisions in a closed room and are only accountable to their fellow prosecutors.

The role of the prosecutor's office is very central because the prosecutor's office in the criminal justice system is the institution that determines whether someone should be able to be examined by the court or not. [15]In carrying out their duties, prosecutors as part of the law enforcement apparatus cannot ignore the "Guidelines on *the Role of Prosecutors "* produced by the UN Congress in 1990 [16]Regarding "Prevention *of Crime and the Treatment of Offenders"*. These guidelines explain the role of the prosecutor's office, namely:

1. Law Enforcement: Improving law enforcement and ensuring that the principles of justice conduct judicial processes.
2. Protection and Custody: Protecting the rights of individuals involved in the legal process and providing assistance and protection to victims of crime.
3. Crime Prevention: Plays a role in preventing crime through preventive measures and a rehabilitation approach to criminals.
4. Justice and Humanity: Uphold the values of justice, humanity, and respect for human rights when carrying out their duties.

In the prosecution process, the Public Prosecutor submits the case to the district court containing the indictment, case files and evidence. The public prosecutor's indictment can be revised or changed before the court sets the trial date and can only be changed 1 (one) time. [17]as regulated in Article 144 of the Criminal Procedure Code

The public prosecutor, in filing a charge, must contain a brief description of the indictment, a legal analysis of the articles that the public prosecutor will prove based on facts and evidence, consideration of mitigating and aggravating factors due to the defendant's actions and the imposition of witnesses/punishments, either criminal or in the form of fines. This has been regulated in the Circular of the Attorney General Number 24 of 2022 concerning Guidelines for Handling General Criminal Cases. The guidelines also restrict how to control the

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[10] Asirah, A., Sofyan, AM, & Muin, AM (2023). Efforts to Enforce the Law on the Circulation of Illegal Cosmetics Through E-Commerce by PPNS Bbpom Makassar. UNES Law Review, *5*(3), 1013-1033.

[11] A prosecutor (Sanskrit: *adhyaksa* ; English: *Prosecutor*; Dutch: *Officier Van Justitie*) is a government employee in the legal field who is responsible for presenting charges or accusations in court proceedings against individuals suspected of committing violations of the law.

[12] In a state of law, there are three basic principles that must be applied. The three basic principles are the supremacy of law , equality before the law, and law enforcement in a manner that does not conflict with the law (*Due Process Of Law*). The supremacy of law means an effort to enforce and place the law at the highest level. The placement of the law in its proper place is expected to protect all people without any intervention or interference from any party including state administrators. Therefore, the supremacy of law can not only be marked by the existence of set legal rules, but must also be accompanied by the ability to bind legal rules. There is also another definition that the supremacy of law is a form of law enforcement that is fair, independent and free. This principle of willgal certainty can lead to the birth of a political culture that will be aware of and obey the law.

[13] Bagir Manan, *Thoughts on Constitutional State in Indonesia.* (Paper presented at the National Scientific Meeting of Law Students throughout Indonesia, FH Unpad, Bandung, April 6, 1999), p.17

[14] See Angela J. Davis, *Prosecution and Race: The Power and Privilege of Discretion*, p. 67 Fordham L. Rev. 13, 19 (1998) (*arguing that prosecutorial discretion, "which is almost always exercised in private," renders the prosecutor the most powerful official in the criminal justice system*); Bennett L. Gershman, *The New Prosecutor*, 53 U. Pitt. L. Rev. 393, 448 (1992) (describing *the American prosecutor "as the most pervasive and dominant force in criminal justice"*); see also James Vorenberg, 1981, *Decent Restraint of Prosecutorial Power* , 94 Harv. L. Rev. 1521, 1555 (*suggests that the power held by the American prosecutor is inconsistent with due process standards*); Daniel J. Freed, 1992, Federal *Sentencing in the Wake of Guidelines: Unacceptable Limits on the Discretion of Sentencers*, 101 Yale LJ 1681, 1696 *(positing that the federal sentencing guidelines enhance the power of American prosecutors by diminishing the power of the judiciary).*

[15] Migano, S., Bachri, S., & Ilyas, A. (2024). Prosecutor's Office Intelligence Actions in Solving Corruption Crimes Through Types of Intelligence Difference. Journal of Law and Sustainable Development, 12(1), e2899-e2899.

[16] *Guidelines on the Role of Prosecutors*, adopted by the Eighth United Nations Congress on Crime Prevention and the Reform of Prisoners, in Havana, Cuba, 27 August-7 September 1990.

[17]See Article 144, paragraphs 5, 6, and 7 of the Criminal Procedure Code (KUHAP), which states:

5) The public prosecutor may change the indictment before the court sets a trial date, either to perfect it or to stop the prosecution.

6) Changes to the indictment may be made only once, no later than seven days before the trial begins.

7) If the public prosecutor changes the indictment, he/she will submit a copy to the suspect, his/her legal advisor, and the investigator.

demands carried out in stages, namely: public prosecutor —> Head of Prosecution Sub-Section —> Head of General Crime Section —> Head of District Prosecutor's Office —> Head of Prosecution Section —> Assistant for General Crimes —> Head of High Prosecutor's Office/Deputy Head of High Prosecutor's Office —> Director of Prosecution at the Deputy Attorney General for General Crimes —> Attorney General for General Crimes/Secretary to the Attorney General for General Crimes —> Attorney General.

In the case of Domestic Violence (KDRT), where Valencia was the defendant because of allegations of committing KDRT for her actions, the public prosecutor stated that the defendant was proven to have violated Article 45 paragraph (1), so the defendant was sentenced to 1 year in prison. However, it was later canceled after the attorney general took over the handling. This was considered that the public prosecutor handling the case was considered not to have followed the Attorney General's Circular Letter Number 3 of 2019 concerning Criminal Charges for General Criminal Cases and the Attorney General's Circular Letter Number 1 of 2021 concerning Access to Justice for Women and Children in Criminal Cases. Changes to the Public Prosecutor's demands in the reply also occurred at the Gorontalo City District Court. The defendant, Sandres S Niode, S.Kom was previously charged by the Public Prosecutor at the Gorontalo City District Prosecutor's Office for 1 (one) year in prison because he was proven to have violated the provisions of Article 310 paragraph (3) and paragraph (4) of Law Number 22 of 2009 and the victim died and 3 were seriously injured. The public prosecutor said the victims' families forgave each other and replaced the motorbikes. However, the demands were changed to 3 years after receiving attention from the Gorontalo High Prosecutor's Office based on Article 182 paragraphs (1) and (2) of the Criminal Procedure Code and consideration of the previous demands, which did not fulfil a sense of justice.

Changes in charges also occurred in the corruption case of the former Regent of Kutai Kartanegara, Syukani Hasan Rais [18], where the amount of compensation was revised after the defendant deposited money into the regional treasury of Kutai Kartanegara Regency. Although changes in charges occurred, this is not regulated in the Criminal Procedure Code, which only allows changes to the indictment. Another example is the revision of the indictment in the case of defendant A. Maya, where the prosecutor corrected irrelevant evidence. Based on the description above, the author assesses that changes to the indictment in the reply are a discovery in the Indonesian justice system whose change mechanism is not regulated in the Criminal Procedure Code or other legal norms, so the author is interested in raising this problem in the author's research.

2. METHODOLOGY

The type of research used in this study is based on the analysis of primary, secondary, and tertiary legal materials. Primary legal materials refer to legal documents and regulations. Meanwhile, secondary legal materials include studies, literature, and analysis conducted by legal experts or previous researchers. Tertiary legal materials are brief references to primary and secondary legal materials used for specific purposes. In the context of normative legal research, tertiary legal materials can also provide significant contributions in strengthening arguments or analysis related to the topic being investigated. This legal research studies the Judge's considerations in court decisions and their synchronization with laws and regulations.

The research approach used is descriptive-analytical research, namely legal research that is explanatory in nature and aims to obtain a complete picture (description) of the applicable legal situation. [19]The data used in this study are secondary data sourced from primary legal materials, secondary legal materials, and tertiary legal materials:

2.1. Primary Legal Materials

In this study, primary legal materials consist of a series of laws and regulations, such as the 1945 Constitution, the Criminal Code (KUHP), Law No. 8 of 1981 concerning the Criminal Code, Law No. 48 of 2009 concerning Judicial Power, Law No. 39 of 1999 concerning Human Rights, Law No. 11 of 2021 concerning the Prosecutor's Office and various other related regulations relevant to the research context. In addition, primary data is also obtained from decision documents produced by the district court relating to the issue being studied in this paper.

2.2. Secondary Legal Materials

This study includes legal reference books, journals, documents, articles, and various publications, both in print and electronic form, relevant to the issues being studied. The use of secondary legal materials in this writing is intended to provide deeper context, analysis, and interpretation of the topics discussed, strengthen arguments, and support the validity of the findings expressed in this writing.

2.3. Tertiary Legal Materials

This includes sources such as draft laws, legal dictionaries, encyclopedias, and documents that provide in-depth information and further interpretation related to the legal issues being studied in this research.

This research was conducted by conducting a literature study; the initial step involves identifying secondary

[18]See Central Jakarta District Court Decision No. 11/PID.B/TPK/2007/PN.JKT.PST

[19]Peter Mahmud Marzuki, *Legal Research* , (Jakarta: Kencana Persada Media Group. 2008), p. 7

data sources that will be used in the study, then the process of searching and identifying secondary data that is in accordance with the legal entity and research topic to be studied, data that is considered relevant and related to the formulation of the problem being studied is recorded and inventoried, After being collected, the identified data is analyzed to assess its relevance to research needs and the extent to which the data can support the formulation of the problem that has been set. This step aims to ensure that the data used supports a comprehensive analysis of the research.

After the data is collected, an analysis is carried out using qualitative analysis methods. According to Miles and Huberman [20]The analysis process consists of three stages that are carried out simultaneously, namely data reduction, data presentation, and drawing conclusions or verification. Winarno Surakhmad explains that qualitative analysis is an analysis process that seeks understanding obtained from research results and responses from respondents, to find relationships between existing elements. The results of this analysis are then compiled systematically. [21]Data analysis techniques in qualitative research include a study of laws and regulations, analysis of judges' decisions, and comparison and adjustment of judges' decisions with the implementation of applicable laws and regulations.

3. RESULT AND DISCUSSION

3.1. Regulation of Changes to The Charges in the Criminal Procedure Code

3.1.1. Discussion of Article 144 of the Criminal Procedure Code Regarding Changes to the Charges

The normative aspects of Indonesian criminal procedure law have paid attention to the protection of suspects, defendants and convicts,[22] Several policies formulated in the Criminal Procedure Code explain the existence of the duties and authorities of the Prosecutor, especially in carrying out prosecution in his position as a Public Prosecutor. The authority of prosecution is limitedly regulated and held by the public prosecutor as a monopoly, meaning that no other body has the right to do so, Requisitoir is not known in the Criminal Procedure Code, but is used in practice to mean demands (prosecution), seen in Article 1 General Provisions point 7. "Prosecution is an action by the Public Prosecutor to transfer a criminal case to the competent District Court in the case and according to the method regulated in this law with a request that it be examined and decided by a Judge in a court hearing. The word prosecution can also be found in Article 6 point (b): The public prosecutor is a prosecutor who is authorized by this law to carry out prosecution and implement the judge's decision".

The possibility of adding or changing the charges, either on the public prosecutor's initiative or on the judge's advice, is legally justified by the explanatory provisions of Article 30 paragraph (1) letter e of Law No. 16 of 2004 in relation to the material provisions of Article 144 of the Criminal Procedure Code, which reads:

> Article 30 paragraph (1) Letter e:
> In the case where the indictment does not meet the requirements, the prosecutor is obliged to pay attention to the suggestions given by the judge before the examination at the trial begins.[23]
> Article 144 of the Criminal Procedure Code:
> 1. The public prosecutor may change the indictment before the court sets a trial date. Either with the aim of perfecting or not continuing the prosecution.
> 2. Changes to the indictment may be made once, no later than seven days before the trial begins.

In this case, the public prosecutor changes the indictment. He conveys his demands to the suspect or counsel to the suspect or legal counsel and the investigator. Additions and changes to the indictment in the HIR system can occur when in the trial examination, the indictment in the HR system can occur when in the trial examination it is known that several things are not charged in the surety but according to the law there are reasons to increase the sentence. So the indictment can be added with these punishments. Changes *in cusu* can occur if the chairman of the District Court is of the opinion that the indictment needs to be changed. Although as a result of the change, acts that cannot be punished become acts that can be punished. Just for fun. The change does not conflict with Article 76 of the Criminal Code. In general, the Criminal Code recognizes three types of reasons for increasing the sentence, namely:

1. The position of the offender as a civil servant
2. The act committed is a combination of several criminal acts (*samenloop*) Articles 63–71 of the Criminal Code
3. The perpetrator of the crime is a recidivist (Article 486-488) of the Criminal Code. Specifically, the aggravating sentence can be found in the formulation of the crime itself. For example, Article 325 paragraph (2) Article (2,3), 340, 363, 373 of the Criminal Code. If in the trial examination of the court the reasons for the aggravating sentence can be known, the court through the judge/judges (in the sense of the panel).

The changes mentioned may occur during the trial Because only in the trial can the actual case be known, and

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[20] *Ulber, Silalahi . Social Research Methods .* (Bandung: PT. Refika Aditama. *2009*). p. 3

[21]Winarno Surakhmad, 2008, *Paper, Thesis, Dissertation*, Bandung: Tarsito p. 16.

[22] Haeranah, H., & Amriyanto, A. (2020). Compensation and Rehabilitation as Forms of Protection for Victims of Criminal Acts and Victims of the Law Enforcement Process in Indonesia. *de Jure Scientific Journal of Legal Science* , *2* (1), p. 69

[23]Rompis, N. (2020). Cancellation of Indictment According to Criminal Procedure Law. *Lex Crimen* , *9* (4).

the indictment is compiled only based on the results of the preliminary examination. It is possible that the defendant or witnesses in front are withdrawing the information that has been given in the preliminary examination with various reasons So that the indictment that was previously compiled precisely and accurately will be weak. if the law does not provide the legality to change the indictment, which in its tendency is likely the indictment is not proven the, Court will end up acquitting the defendant.

3.1.2. Limitations on the Regulation of Changes to Charges in the Criminal Procedure Code

The principle of legal certainty is implemented through the principle of legality, which also has the main objective of legal certainty. Sudargo Gautama emphasized that legal certainty, as a manifestation of the principle of legality, is related to the limitation of state power over individuals and demands state action based on law. In the context of substantive criminal law, the principle of legality (*noela poena sine praevia lege*) is the key to ensuring that punishment is imposed only if the act has been regulated and threatened by law. The principle of legality in substantive criminal law states " *nullum delictum nulla poena sine praevia lege poenali"* (there is no criminal act without previous criminal law). This principle includes the provision that there is no punishment without criminal provisions according to law, without criminal acts, and without punishment according to law. This principle also stipulates certain conditions, such as the prohibition of retroactivity, written regulations, clear provisions, and the prohibition of analogical interpretation. Analogy is prohibited to prevent arbitrary actions by the court or the ruler. A similar principle in criminal procedure law, namely " *nullum iudicium sine lege* " (no decision without law), emphasizes that criminal law enforcement must be in accordance with statutory regulations. Criminal law, both material and procedural, is the basis of the criminal justice system, which needs to be regulated through formal regulations in a democratic, transparent, and accountable manner.[24]

Article 2, paragraph (2) of the Prosecutor's Office Law stipulates that the state's power to prosecute is exercised independently by the Prosecutor's Office. This means that the Republic of Indonesia Prosecutor's Office as part of the executive power that exercises state power in the field of prosecution is obliged to exercise its authority independently, free from the influence of any party. Article 1, paragraph (7) of the Criminal Procedure Code defines prosecution as an action by the public prosecutor carried out to transfer a case to the competent court so that a case that is continued to be examined in court is examined and decided by a judge. In carrying out the prosecution, the Prosecutor's Office is represented by a Prosecutor who is a functional official who is authorized by law to act as a public prosecutor and act for and on behalf of the state and is responsible according to the hierarchical level.[25]

As also stated in Article 13 of the Criminal Procedure Code, the public prosecutor is a prosecutor who is authorized by this law to prosecute and implement the judge's decision. In general, after the enactment of the Criminal Procedure Code, the duties of the prosecutor are:[26]

1. As a public prosecutor;
2. Executor of a court decision that has permanent legal force (executor).

In his duties as a public prosecutor, the Prosecutor has the following duties:

1. Conducting prosecution.
2. Carrying out the judge's decision.

These two tasks are carried out by the public prosecutor in the ongoing criminal trial process. Article 13 of the Criminal Procedure Code and emphasized in Article 137 of the Criminal Procedure Code. The public prosecutor has the authority to prosecute anyone accused of committing a crime in his jurisdiction by referring the case to a court that has the authority to try it.

The provisions of this article follow the locus delicti contained in Article 84 of the Criminal Procedure Code, so that in the case of a public prosecutor prosecuting a criminal case as referred to in Article 15 in conjunction with Article 137 of the Criminal Procedure Code, not only those that occur in their jurisdiction, but can also prosecute criminal acts abroad that can be tried according to the laws of the Republic of Indonesia and the court that has the authority to try it, namely the Central Jakarta District Court (Article 86 of the Criminal Procedure Code). In Article 1 point 1 of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, it is stipulated that a prosecutor is a functional official who is authorized by this law to act as a public prosecutor and implementer of court decisions that have obtained legal force and other authorities based on the law.

The public prosecutor in a criminal case must clearly know all the work that must be done by the investigator from the beginning to the end, all of which must be done according to the law. The prosecutor will be responsible for all treatment of the defendant, starting from the suspect being investigated, then having his case examined, then being detained, and finally, whether the charges made by the prosecutor are legal and correct or not according to the law, so that the sense of justice of the community is truly fulfilled. The public prosecutor, in

[24]Prawira, DY, Chandra, TY, & Ismed, M. (2024). Legality of Changes in Charges in the Public Prosecutor's Response to the Defendant's Plea from the Perspective of Criminal Procedure Law. *SENTRI: Scientific Research Journal* , *3* (2), 633-643.
[25]Ilyas, A. (2021). Independence of Public Prosecutors in the Policy of a Multi-Level Prosecution Plan to Determine Criminal Charges. *Pandecta Research Law Journal* , *16* (1), 120-129.
[26]Day of Suspect, Investigation, Detention, Prosecution, and Pre-Trial in Theory and Practice, Mandar Maju, Bandung, 2007, p. 138

carrying out his duties, has the authority as stated in Article 14 of the Criminal Procedure Code, namely:

a. Receive and examine investigative case files from investigators or assistant investigators.
b. Conducting pre-prosecution if there are deficiencies in the investigation by paying attention to the provisions of Article 110 paragraph (3) and paragraph (4), by providing instructions for improving the investigation by the investigator.
c. Granting extension of detention, carrying out detention or further detention, changing the status of the detainee after the case has been transferred by the investigator and suspending the application.
d. Making an indictment.
e. Submit the case to court.
f. Submitting notification to the defendant regarding the provisions of the day and time the case will be tried, accompanied by a summons, both to the defendant and to witnesses, to attend the scheduled hearing.
g. Conducting prosecution.
h. Closing the case for legal purposes.
i. Carry out other actions within the scope of duties and responsibilities as a public prosecutor according to the provisions of this law.
j. Carrying out the judge's decision

In criminal procedure law, there are two principles of prosecution, namely the principle *of legality* and *the principle of opportunity* . The principle of legality, namely, the public prosecutor is required to prosecute all persons who are considered to have sufficient grounds that the person concerned has committed a violation of the law. The principle of opportunity, namely, the public prosecutor is not required to prosecute someone, even though the person concerned has clearly committed a criminal act that can be punished. [27]According to the principle of legality, the public prosecutor is required to prosecute someone who is accused of committing a crime. According to the principle of opportunity, the public prosecutor is not required to prosecute someone who has committed a crime if in his/her opinion if the person is prosecuted it will harm the public interest. In connection with the recognition of the two principles in the field of prosecution, namely the principle of legality and the principle of opportunity, in practice the opportunity principle is used. In the Guidelines for the Implementation of the Criminal Procedure Code, what is meant by public interest in deposition is based on the interests of the state and society and not for personal interests.

If the provisions regarding the principle of opportunity are not met and a clear and definite picture has been obtained regarding the existence of a criminal act committed by the suspect, then on that basis the Prosecutor will make an indictment. The essence of the indictment is that the public prosecutor appoints or brings a corruption case to court if there is sufficient reason to prosecute the defendant, which contains events and information regarding the time and place where the corruption crime was committed, the circumstances in which the defendant committed the corruption crime, especially circumstances that mitigate and aggravate the defendant's guilt (Article 143 paragraph (1) of the Criminal Procedure Code). The public prosecutor is required to provide copies of the letter of transfer and the indictment to the suspect or his attorney, together with the submission of the letter of transfer of the case to the District Court (Article 143 paragraph (1) of the Criminal Procedure Code). The public prosecutor is required to provide copies of the letter of transfer and the indictment to the suspect or his attorney, together with the submission of the letter of transfer of the case to the District Court (Article 143 paragraph (4) of the Criminal Procedure Code).

This means that the Criminal Procedure Code does not accommodate circumstances that result in changes in charges. If we refer to several articles formulated in the Criminal Procedure Code regarding the existence of the duties and authorities of the Prosecutor, especially in carrying out prosecution, this is due to the logical consequences of the provisions of Article 139 of the Criminal Procedure Code. In which the Criminal Procedure Code has provided space for the Public Prosecutor to be able to determine whether the case file meets the requirements to be transferred to the Court or not. If the case file meets the requirements in the sense that there are no reasons for the prosecution to be stopped, such as insufficient evidence, not a criminal case, or closed by law, the Public Prosecutor is obliged to transfer the case to the Court with a request to immediately try the case. As the principle of *actori incumbit onus probandi* is known in criminal evidence law. This means that whoever charges is the one who is obliged to prove. On the other hand, if the case file does not meet the requirements to be transferred to the Court, the Public Prosecutor stops the prosecution

3.2. Analysis of Changes in Demands Based on Internal Prosecutor's Guidelines

3.2.1. SEJA No. *3* of 2019, SEJA No. 1 of 2021, and SEJA No. *24* of *2022* as the Basis for Controlling Tiered Demands.

The implementation of the regulation of the prosecutor's responsibility in a hierarchical channel in carrying out the functions and duties as referred to in Article 8 paragraph (2) of the Prosecutor's Law, a prosecution policy system was formed, in this case what is meant is the policy of the prosecution plan which results in the loss of

[27]Lanongbuka, B. (2020). The Authority of the Public Prosecutor to Prosecute Corruption Crimes. *Lex Crimen* , *9* (4).

independence of a Public Prosecutor to determine criminal charges against the accused. The loss of independence is caused by the Prosecutor's Office making Guidelines No. 3 of 2019 concerning criminal charges which regulates the procedure for filing criminal charges. The loss of independence can be seen from the procedure before making a charge, the Public Prosecutor must submit a prosecution plan, the submission of the prosecution plan is carried out in stages, starting from the public prosecutor making a proposal, asking for an opinion from the KASI at the District Attorney's Office to the Attorney General if the case is charged with a demand for acquittal, release from all charges, the death penalty, life imprisonment, a sentence with conditions for cases that are included in the criteria for important cases on a national or regional scale, other principal penalties other than imprisonment for cases that are included in the criteria for important cases on a national or regional scale, and certain cases that receive special attention from the leadership.[28]

In making a letter of indictment, the Public Prosecutor, in addition to basing it on evidence to assess the trial facts that support the criminal acts committed by the Defendant, also continues to refer to the indictment guidelines. Although the indictment guidelines have been determined both in the Criminal Procedure Code and in the Attorney General's Circular Letter number 3 of 2019 concerning Criminal Charges for General Criminal Cases, there is no discussion regarding changes to the indictment

A Public Prosecutor who follows a case directly does not have full authority in determining criminal charges, a Public Prosecutor must ask for the opinion of the Head of Section, instructions from the Head of the District Attorney's Office and if the case is a case that falls into the criteria of an important case with a death penalty, life imprisonment and so on as mentioned or a case on a national scale, then the plan for the charges must be sent to the Deputy Attorney General or Attorney General to ask for instructions.[29]

The criteria for cases considered to be on a national scale in the Prosecutor's Guidelines No. 3 of 2019 include:

1. Cases in which the perpetrator or victim of the crime is a central government official, religious figure, community figure, or a perpetrator who has attracted the attention of the national mass media or has attracted the attention of the wider community or who has received attention from friendly countries;
2. Using a modus operandi or advanced means/technology that has a broad impact both nationally and internationally;
3. Cases that attract the attention of the academic or forensic world, and the mass media;
4. Cases that damage national vital buildings or objects or are carried out in a sadistic manner or that result in a large number of fatalities;
5. Criminal cases concerning public order that have a broad impact or cases that affect state security or disturb the community;
6. Cases where it is suspected that there has been abuse of authority in their handling by law enforcement officers which attract the attention of the mass media or the wider public, and/or;
7. Cases with broad impacts, covering 2 (two) or more jurisdictions of the High Prosecutor's Office.

Meanwhile, the criteria for important regional-scale cases in Guidelines No. 3 of 2019 concerning Criminal Prosecution for General Criminal Cases include:

1. The perpetrators or victims of criminal acts are local government officials, religious figures, or influential community figures in the region;
2. Cases with broad impacts covering two or more jurisdictions of the District Attorney's Office.

The purpose of providing these criteria can then be understood as a limitation to determine which cases in prosecution are controlled by the Attorney General and which cases are controlled by the Head of the High Prosecutor's Office. In Guidelines No. 3 of 2019 concerning Criminal Prosecutions for General Criminal Cases, it is regulated in principle that the Attorney General is the leader and highest person in charge of the Prosecutor's Office so that control in carrying out the duties and authority of a Prosecutor in carrying out prosecution is a delegation of authority held by an Attorney General which is then given to the Head of the District Prosecutor's Office and the Head of the District Prosecutor's Office branch.

With this principle, it can be interpreted that in cases that do not fall into the criteria of important cases, a Head of the District Attorney's Office or Head of the District Attorney's Office branch is the one who determines or provides instructions regarding criminal charges. If a case falls into the criteria of being important but not on a national scale or can be said to be an important case on a regional scale, then the authority of the Attorney General in controlling criminal charges is delegated to the Head of the High Prosecutor's Office, and as the author has explained, if the criteria of the case are important on a national scale, then the plan for the charge or control of the prosecution is directly carried out by the Deputy Attorney General or the Attorney General.

3.2.2. The Legal Force of Circulars and Implications for the Formal Criminal Law System

The development of the era and accompanied by the increasing demands of life needs, the role of the state becomes very necessary to meet the needs and welfare of its citizens. The role of the state is increasingly large

[28] *ibid*

[29] Ilyas, A. (2021). Independence of Public Prosecutors in the Policy of a Multi-Level Prosecution Plan to Determine Criminal Charges. *Pandecta Research Law Journal*, *16* (1), 120-129.

and broad entering almost all aspects of people's lives and the variety of challenges faced, which are developing rapidly and demanding immediate resolution, therefore the government needs *Freis Ermessen* or *discretionaire* . *Freis Ermessen* is the authority given to the Government to take action to resolve an important, urgent problem, which comes suddenly where there are no regulations. So, the policy is taken without being based on general regulations. In order to provide authority to the state administration to make the policy[30]

In practice, this policy is often expressed in various forms, such as: circulars, guidelines, announcements, abstract and general decrees, and even in the form of regulations called *pseudo-wet geving* (pseudo legislation). In the practice of governance based on the principle of law, especially seen from the perspective of administrative law, it turns out that the existence of the *freis ermessen* or *dicretionaire institution* has caused various dilemmas and created various problems. Because for a country based on law, it requires that every policy issued by the government be based on the authority of higher laws or regulations in accordance with the principle of legality.

A Circular Letter is issued by a government agency as an official document containing notification of certain matters that are considered important and urgent where the authority to determine and sign the Circular Letter is carried out by the highest-ranking official of the government agency, which can be delegated to the head of the secretariat of the government agency or an appointed official in accordance with the substance of the circular letter.[31]

A circular is a policy regulation (beleidsregel), not a decision (*beschikking*) or statutory regulation (*regeling*), which means that a policy regulation is a pseudo-legislation that is not comprehensive but rather individual in nature, namely for the interests of the government and the parties involved in the circular.[32] Legislation is recognized as existing and has a broad binding legal force. However, in practice, it is not uncommon to find policy regulation products (*beleidregel*, *policy rule*) that have different characteristics from legislation. Policy regulations are inseparable from the terminology of *freies ermessen* , namely officials or state administrative institutions that are related to formulating a policy in the form of " *jurisdiche regels* " such as guidelines, announcements, circulars and announcing the policy. [33]Freies ermessen is one of the means that provides administrative bodies or officials to move or take action without being fully bound by legislation. [34]The granting of *freies ermessen* is actually a consequence of the adoption of the welfare state concept . The [35]elements of *freies ermessen* in the concept of a state of law, namely:

1) *Free services* are intended to carry out public service tasks
2) *Free ermessen* is an active attitude of state administrative officials
3) *Free ermessen* as an attitude of action is taken on one's own initiative
4) *Free response* as an attitude of action aimed at resolving important problems that arise suddenly
5) This attitude and action can be accounted for to God Almighty and also to the law.

According to this theory, circulars are included in *beleidsregel*, which must also comply with the principles of forming good laws and regulations. In addition, it must also comply with the principles of making good policy regulations (*beginselen van behoorlijke regelgeving*). Policy regulations that bind the public will cause problems if in their creation they do not comply with the principles of forming laws and regulations, both formal and material principles. Some of the characteristics of policy regulations are:

1) These regulations are directly or indirectly based on formal statutory provisions.
2) These are unwritten regulations issued by the government based on its authority in carrying out its duties in government.
3) The regulations provide general guidance

According to Indroharto, the creation of policy regulations must take into account the following elements:[36]

1) Policy regulations must not conflict with the basic rules outlined therein.
2) Policy regulations must not conflict with common sense
3) Policy regulations must be created and prepared carefully.
4) The content of policy regulations must clarify the obligations and rights of citizens who are the objects.
5) The basis for consideration and objectives must be clear.
6) Must meet the requirements of legal certainty

According to Jimly Asshiddiqie, in practice in Indonesia, policy regulations can be made in forms such as:[37]

1. Circular letter.

[30]Darji Darmodiharjo and Arief Sidharta, 1995, The Main Points of Legal Philosophy What and How Indonesian Legal Philosophy, Gramedia Pustaka Utama, Jakarta, p. 30

[31]FITRI, RD Efforts to Recover State Financial Losses through Criminal Prosecution Based on Circular Letter of the Attorney General of the Republic of Indonesia Number: SE003/A/JA/02/2010 in Corruption Crime Cases (Case Study at the Sanggau District Attorney's Office). *Nestor Magister Hukum Journal* , *3* (4), 209945.

[32]Rio Trifo Inggiz et al., The Position of Circular Letters Related to Law Number 15 of 2019 Juncto Law Number 12 of 2011 Concerning the Formation of Legislation, Journal of Legal Dialectics Vol. 1 No. 1 of 2019, p. 17.

[33] Philipus M. Hadjon, Introduction to Indonesian Administrative Law, (Yogyakarta, Publisher Gadjah Mada University Press, 2005), p. 130

[34]Cholida Hanum. (2020) Legal Analysis of the Position of Circulars in the Indonesian Legal System. Journal Humani (Law and Civil Society). 10.(2) p. 146

[35] Ridwan HR State Administrative Law, (Yogyakarta, UII Press) 2002 p. 178

[36] Indroharto, Efforts to Understand the Law on State Administrative Courts, (Jakarta, Pustaka Sinar Harapan), 2003, pp. 45-46

[37]Jimly Asshiddiqie, 2010. Regarding the Law, (Rajawali Press: Jakarta,), p. 274.

2. Warrant
3. Work Guidelines or Manual;
4. Implementation Instructions (Juklak);
5. Technical Instructions (Juknis);
6. Guidebook or "guide" (guidance);
7. Terms of Reference (TOR);
8. Work Design or Project Design

In criminal procedure law in Indonesia, two principles of prosecution are known, namely:[38]

1. The principle of legality requires the public prosecutor to prosecute someone who violates criminal law regulations. This principle is the embodiment of the principle of *equality before the law.*
2. The principle of opportunity gives the public prosecutor the authority not to prosecute someone who violates criminal law regulations by setting aside cases that have clear evidence of the public interest.

In essence, the contents of policy rules can be intended to be implemented by the policymaker himself or by agencies and officials whose authority is under the policymaker. Therefore, although state administrators or officials carry out the implementation of provisions in policy rules, this mechanism can indirectly impact the community. [39]The strength of SEJA lies in the legal and regulatory order that regulates various types of laws and levels of regulations, based on the principle of " *Lex Superior Derogat Legi Inferiori.*" This principle states that lower-level rules must not conflict with higher-level rules.

In principle, before submitting the case files to the court, in general, the public prosecutor and prosecution must study and examine the case files submitted by the investigator regarding whether the evidence submitted is sufficient that the defendant has committed a crime and within seven days must notify the investigator whether the results of the investigation are complete or not. If the investigation results are incomplete, the public prosecutor returns the case files to the investigator along with instructions on what must be done to complete them. After the investigator receives the incomplete case files, the investigator must resubmit the files to the public prosecutor within fourteen days of receipt. After the public prosecutor receives the complete results of the investigation from the investigator, the public prosecutor submits the case files to the court that has the authority to try.[40]

The Prosecutor's Office is basically a law enforcement agency that carries out its main function, namely prosecution. This often intersects with circumstances where the interests of law enforcement, for the sake of legal certainty, are in conflict with the public interest, which is the will of the public, which currently greatly influences law enforcement. [41]In relation to the right to prosecution, two principles are known, namely the so-called principle of legality and the principle of opportunity (*het legalities en het opportunities begins*). According to the first principle, the public prosecutor is obliged to prosecute an offence. According to the second principle, the public prosecutor is not obliged to prosecute someone who commits an offence if, in his opinion, it will harm the public interest. So, for the sake of the public interest, someone who commits an offence is not prosecuted. [42]Waiving a case for the sake of the public interest is one of the authorities held by the Attorney General to waive a case for the sake of the public interest. This authority is based on the provisions of Article 35 letter c of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. The Attorney General himself is the leader and highest person in charge of the Attorney General's Office; he leads and controls the implementation of the duties and authorities of the Attorney General's Office.

Article 35 letter c of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. The Attorney General is the leader and highest person in charge of the Attorney General's Office and leads and controls the implementation of duties and the authority of the Attorney General's Office. Regarding when and what the results of the case waiver with the principle of opportunity, the author considers it does not matter whatever form it takes. For example, a SKPP (Letter of Termination of Prosecution) or a demand for acquittal is made.

The mechanism of the chain that applies within the Prosecutor's Office is the impact of the characteristics of the centralized Prosecutor's Office with a hierarchical command accountability system, a characteristic of the Prosecutor's Office in the Continental European justice system. The Attorney General is the leader and highest person responsible for prosecution policy because the one with the authority to prosecute is the Attorney General who fully formulates and controls the direction and policy of handling cases.[43]

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[38]Hari Sasangka, 2007, Investigation, Detention, Prosecution and Pre-Trial in Theory and Practice, CV. Mandar Maju, Bandung. p. 155.

[39]Santoso, RA, Jaelani, E., & Rosidin, U. (2023). Position and Legal Force of the Supreme Court Circular (Sema) in Indonesian Positive Law. *Deposition: Journal of Legal Science Publication* , *1* (4), 07-15.

[40]Siregar, Vivi. (2020). Analysis of the Demand Plan Policy (Rentut) in the Indonesian Prosecutor's Office. Das Sollen Law Journal. 4. 10.32520/das-sollen.v4i2.1414.

[41]Sibuea, HP, & Putri, EA (2020). Legal Basis and Position, as well as Duties and Authorities of the Prosecutor's Commission, are in the Framework of the Indonesian Constitutional System as a State of Law. Sasana Law Journal, 6(2). https://doi.org/10.31599/sasana.v6i2.384

[42]Sulastri, L. (2021). The Legality of the Acquittal Prosecution in the Valencia Case. *Krtha Bhayangkara* , *15* (2), 351-368.

[43]Siregar, Vivi. (2020). Analysis of the Demand Plan Policy (Rentut) in the Indonesian Prosecutor's Office. Das Sollen Law Journal. 4. 10.32520/das-sollen.v4i2.1414.

4. CONCLUSION

Changes in charges in replicas are a new phenomenon in the criminal justice system in Indonesia, which is not explicitly regulated in the Criminal Procedure Code. Although the Criminal Procedure Code limits changes to the indictment, changing charges raises questions about legal certainty and the principle of legality. Although intended to standardize prosecution practices, the Attorney General's Circular does not have the same legal force as the law. This creates a dilemma between the need for flexibility in handling cases and legal certainty. Changes in charges in replicas, although not ideal, indicate the dynamics in the criminal justice process. Further study is needed to formulate an appropriate mechanism so that these changes continue to guarantee justice and legal certainty for all parties.

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