LEGAL ANALYSIS OF THE PUBLIC PROSECUTOR'S ERRORS IN MAKING AMENDMENTS TO THE CHARGES

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Abstract

Amendments in charges are not recognized in the Criminal Procedure Code (KUHAP). There is no mechanism for changing the charges, the Criminal Procedure Code only allows the Prosecutor to change the indictment, in practice it was found that the Public Prosecutor in his response (replik) corrected the indictment which he read out regarding errors regarding evidence where there is one piece of evidence that is not related to the case so that the Public Prosecutor correcting by reflecting/crossing out because it is not included in the evidence receipt at the time of transfer of this case to the Court. This paper aims to analyze the arrangements for the Public Prosecutor's claim letter based on statutory regulations. The result of the research shows that the letter of demands for the Public Prosecutor is determined in the Criminal Procedure Code and the Law on the Prosecution, read out after the examination process has been completed. The examination referred to is the examination of valid evidence in criminal law, namely witness statements, expert statements, letters, instructions and statements of the Defendant, as well as examination of evidence. The indictment contains the charges for the sentence against the Defendant, the indictment is based on the indictment which contains a description of the incident of the criminal act and the Article that is suspected to be proven in the process of examining the evidence.

Keywords: ***amendments, charges, legal analysis, public prosecutor.***

INTRODUCTION

Law is the commander and the vein of all aspects of life as a state and society in the Unitary State of the Republic of Indonesia (NKRI).[1] Law as a rule intends to regulate the order of society, that's where it appears what is a sign of the law, namely orders or prohibitions that everyone should obey.[2] Law as a system will be able to play a good role in society if its implementation instruments are equipped with authorities in the field of law enforcement.[3] The Due Process Model is one model that supports the criminal justice system because it separates the authority of various bodies in the criminal

[1] Moh. Hatta, *Beberapa Masalah Penegakan Hukum Pidana Umum dan Pidana Khusus,* Liberty, Yogyakarta, 2009, p. 1.
[2] Moh. Saleh Djindang, *Pengantar dalam Hukum Indonesia,* Sinar Harapan, Jakarta, 1983, p. 3
[3] L. M Friedman, *The Legal System; A Social Science Perspective,* Russel Sege Foundation, New York, 1975, p. 11

justice system.[4] NKRI is a constitutional state based on Pancasila and the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), so law enforcement and justice are one of the absolute requirements in achieving national goals. In order to achieve this objective, the Public Prosecutor's Office of the Republic of Indonesia as one of the bodies whose functions are related to Judicial power according to the 1945 Constitution of the Republic of Indonesia has the authority, one of which is to exercise state power in the field of prosecution as referred to in Article 30 Paragraph (1) letter a, Law Law Number 16 of 2004 concerning the Republic of Indonesia Attorney General's Office (hereinafter referred to as the Law on the Prosecution).

Criminal law is a set of rules governing 3 elements, namely rules regarding criminal acts, criminal liability and verbal process of law enforcement in the event of a crime. This element shows the relationship between material criminal law and formal criminal law, which means that violations of material criminal law will be meaningless without the establishment of formal criminal law (criminal procedural law). Vice versa, formal criminal law cannot function without violations of material criminal law norms (criminal acts).[5] Prosecutors who serve as Public Prosecutors based on Article 182 Paragraph (1) of Law Number 8 Year 1981 concerning Criminal Procedure Law (hereinafter referred to as KUHAP), namely:

a. After the examination is declared complete, the Public Prosecutor submits a criminal charge;
b. Furthermore, the Defendant and / or the Legal Counsel submits his defense which can be answered by the Public Prosecutor, provided that the Defendant or the Legal Counsel always has the last turn;
c. The demands, defenses and answers to the defense are made in writing and after they are read out they are immediately submitted to the head judge at trial and their derivatives to the parties concerned.

Based on Article 182 Paragraph (1) of the Criminal Procedure Code, the Public Prosecutor submits a criminal complaint to the Defendant after the Chairperson of the Panel of Judges has finished examining the evidence based on Article 184 Paragraph (1) of the Criminal Procedure Code which aims to seek material truth based on trial facts. Furthermore, the Defendant or the Legal Counsel filed his defense (pledoi) which was answered by the Public Prosecutor (Replik) and was closed by a response from the Defendant or the Legal Counsel to the Public Prosecutor's replica (duplicate). The process of reading charges, pledoi, replicating and closing duplicates is not a stage in the trial to seek material facts / truths but to test material facts / truths that have been revealed in court.

The Public Prosecutor in making a letter of indictment, apart from being based on evidence to assess the facts of the trial that supports the criminal act committed by the Defendant, also still refers to the indictment guidelines. Although the guidelines for prosecution have been determined both in the Criminal Procedure Code and in the Circular Letter of the Attorney General's Office number 3 of 2019 concerning Criminal Charges in General Crime Cases, there has been no discussion regarding changes in charges. Even so, changes in the demands of the Public Prosecutor have occurred in the corruption case of Syaukani Hasan Rais (Defendant), the Regent of Kutai Kertanegara, as described in the consideration of the Decision of the Central Jakarta District Court number 11 / PID.B / TPK / 2007 / PN.JKT.PST. The Public Prosecutor (JPU) of the Corruption Eradication Commission (KPK) corrected his demands, especially replacement money as in the Syaukani (Defendant) pledoi that he would pay state losses determined by the prosecutor. This is the first precedent for reducing charges in the Corruption Court. In the Prosecutor Khaidir Ramly's replica, he reduced the amount of replacement money to be paid by Syaukani (the Defendant), and was only charged to pay Rp. 27, 593 billion, subsidiary 3 years and six months imprisonment from the previous claim of Rp. 35, 595 billion. Because the defendant had deposited Rp. 8 billion to the regional treasury of Kutai Kertanegara.

Commenting on this, according to Mr. Chairul Huda (a lecturer at the Muhamadiyah University Jakarta) that the content replication only refutes the things that were conveyed in the defense of the Defendant and his Legal Counsel. The Replication of the Public Prosecutor only weakens the pledoi, cannot change the charges, even though the defendant has already returned the state losses pre-verdict by the panel of judges, the prosecutor does not have to change the indictment. The obligation to pay replacement money will be determined in the decision of the council. Changes in charges are not recognized in the Criminal Procedure Code (KUHAP). There is no mechanism for changing charges.

[4] M. Said Karim, *Ganti Kerugian Terhadap Korban penangkapan yang Tidak Sah dalam Proses Peradilan Pidana*, Makassar: Pustaka Pena Press, 2019, p. 68

[5] Andi Sofyan and Nur Azisa, *Hukum Pidana*, Makassar: Pustaka Pena Press, 2016, p. 3

KUHAP only allows the Prosecutor to change the indictment.[6] Likewise as the case in Decision Number: 179/Pid.Sus/2020/Pn. Mr. On October 15, 2020 in the name of the defendant A. MAYA STEFANI aka MAYA binti A. RUMPA, the Public Prosecutor in his response (replik) corrected the letter of action he read regarding errors regarding evidence in which one of the evidences was not related to the case so that the Public Prosecutor correcting by reflecting / crossing out because it is not included in the evidence receipt at the time of transfer of this case to the Court. Based on this description, the problem that will be discussed in this paper is how is the arrangement of the letter of claim for the Public Prosecutor based on statutory regulations?

METHOD

This type of research is normative[7] by using a statutory approach and case approach.[8] The data used is secondary data obtained through library research and document study.[9] All data collected were then analyzed qualitatively.

RESULTS AND DISCUSSION

Arrangement of the Public Prosecutor's Requisitor

Legislation as a legal product becomes a very important tool in the implementation of state life.[10] The power of prosecution by the Public Prosecutor is regulated in Article 137 of the Criminal Procedure Code. The Law on the Prosecution also stipulates in Article 30 Paragraph (1) letter a regarding the duties and powers of prosecutors in carrying out prosecutions. Prosecution is an act of a public prosecutor to delegate a criminal case to the competent district court in matters and according to the manner regulated in this law by requesting that it be examined and decided by a judge at a court session.[11] Meanwhile, according to Wirjono Projodikoro, prosecuting a Defendant means submitting the case of a Defendant to a Judge with a request that the Judge examine and then decide the criminal case to the Defendant. In short, prosecution is the act of the Public Prosecutor to submit the defendant's case file to the District Court so that the Judge will give a verdict against the Defendant concerned.

The Public Prosecutor submits a criminal charge after the examination is declared complete, meaning that the criminal charges are not included in the court examination, as is stipulated in Article 182 Paragraph (1) letter a of the Criminal Procedure Code. Court examination is an examination of valid evidence in criminal law, namely witness statements, expert statements, letters, instructions and statements of the Defendant, as well as examinations of evidence. Therefore, a letter of demand is a letter submitted by the Public Prosecutor in the form of a demand for punishment to the Defendant after the examination in court is declared complete. The demands submitted by the Public Prosecutor are contained in the letter of demand, as specified in Article 182 Paragraph (1) letter c "The demands, defense, and answers to the defense are made in writing and after they are read out they are immediately submitted to the head judge at trial and their derivatives to the parties concerned".

Based on the indictment submitted earlier or at the beginning of the trial. The indictment contains a description of the incidence of the criminal act and the Article being suspected which will be proven in the process of examining evidence. The indictment forms the basis for the examination of the Defendant at trial and becomes the basis for the indictment, as it contains the following matters:[12]

1. The criminal offense which was charged against the Defendant was elaborated before being discussed the results of the trial examination in the criminal charges;
2. The facts of the trial examination are none other than the results of the proof of the Public Prosecutor of what he has been accused of in the indictment he read out at the beginning of the trial.
3. In a juridical discussion which is the core part of a criminal charge, the public prosecutor will elaborate on all the facts revealed at the trial and then bring those facts together with the elements of the criminal act under suspicion in the indictment;
4. The results of the juridical discussion of the Public Prosecutor obtain a complete picture of

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[6] https://www.hukumonline.com/berita/baca/hol18124/kali-pertama-jaksa-ralat-tuntutannya-, accessed on Thursday 3 September 2020, at 1 pm.

[7] Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif*, Jakarta: Rajawali Pers, 2011, p. 14

[8] Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, 2010, p. 96

[9] Kadarudin, *Riset Sederhana di Bidang Ilmu Hukum*, Ponorogo: Uwais Inspirasi Indonesia, 2020, p. 63

[10] Achmad Ruslan, *Peraturan Perundang-Undangan Sebagai Sarana Hukum Penyelenggaraan Negara*, Professor's Oration, 2011, p. 6

[11] See Article 1 point 7 KUHAP.

[12] Badan Diklat Kejaksaan RI, *Modul Penuntutan*, Badan Pendidikan dan Pelatihan Kejaksaan Republik Indonesia, Jakarta, 2019, p. 80

how the crime was committed and its consequences, what evidence was presented in the trial and who could be accounted for as the perpetrator of the crime, the Public Prosecutor pointed back to the indictment and stated which indictment was which is proven and which is not proven or is no longer needed;

5. When asking for the sentence to be imposed on the Defendant, the Public Prosecutor shall designate the qualifications of the proven criminal act according to the indictment.

In essence, before submitting the case file to the court session, in general the Public Prosecutor in the prosecution must:[13]

a. Studying and examining the case files submitted by the investigator, are they strong enough and there is sufficient evidence that the defendant has committed a criminal act.
b. After obtaining a clear and definite picture of the criminal act of the defendant, based on this the public prosecutor prepared an indictment letter.

Before prosecution is carried out there is usually a pre-prosecution stage. Pre-prosecution is the authority of the Public Prosecutor as regulated in Article 14 letter b of the Criminal Procedure Code, namely in the event that the Public Prosecutor receives an investigation case file from an investigator (Article 8 Paragraph (3) letter a KUHAP) and is of the opinion that the results of the investigation are considered incomplete and incomplete, the Prosecutor The public must immediately return it to the investigator with the necessary instructions and in this case the investigator must immediately carry out additional investigations in accordance with the instructions given by the public prosecutor (Article 110 Paragraph (3) of the Criminal Procedure Code) if the public prosecutor is within 14 (fourteen) days. not returning the results of the investigation, then the investigation is deemed complete (Article 110 Paragraph (4) of the Criminal Procedure Code) and this also means that pre-prosecution cannot be carried out.

Guidelines for the implementation of the Criminal Procedure Code, emphasized in attachment number 5 to prevent case files going back and forth more than 2 times between the investigator and the public prosecutor, by way of:

a. Intensifying coordination among law enforcers in the regions and as far as possible coordination at level II regions;
b. Carry out the contents of the Joint Instruction of the Attorney General of the Republic of Indonesia and the Head of Police on Increasing Security Efforts and Smooth Trial of Criminal Cases.

After the Public Prosecutor receives or receives back (due to the pre-prosecution) the results of the investigation or after conducting additional examinations of the investigation files, he / she immediately determines whether the files meet the requirements to be submitted to the court or not (Article 139 of the Criminal Procedure Code). However, the fact often occurs in practice, files that are declared incomplete by the Public Prosecutor and returned to the Investigator are not sent back to the Public Prosecutor even though they have been given instructions to be completed and no sanctions are regulated. So, from the case file there are two possibilities for the public prosecutor, namely to stop the prosecution (Article 140 Paragraph (2) of the Criminal Procedure Code), or to carry out the prosecution (Article 140 Paragraph (1) KUHAP).

Termination of prosecution by the public prosecutor is based on the sound of Article 140 Paragraph (2) of the Criminal Procedure Code, the termination of prosecution is a case that has been transferred to the District Court, then the process is terminated for the following reasons:

a. Because there is not enough evidence;
b. This incident turned out to be not a criminal act.

The excuse is also used for not being prosecuted by the Public Prosecutor as determined in Article 46 Paragraph (1) letter b of the Criminal Procedure Code, meaning that the case has not yet been transferred to court. Apart from the right of the Public Prosecutor to be able to carry out or not be able to carry out a Prosecution, there is also the abolition of the right of prosecution for the following reasons:

There is a decision which has permanent legal force

This is regulated in Article 76 of the Criminal Code "Except in the case where a judge's decision can be changed, a person cannot be prosecuted again for an act for which a judge in Indonesia has

[13] Hari Sasangka, et.al., *Penuntutan dan Teknik Membuat Surat Dawaan,* Dharma Surya Berlian, Surabaya, 1996.

decided with a final decision." The provisions of this Article are intended to provide assurance to the public and to each individual to respect the decision. The principle contained in Article 76 of the Criminal Code is known as nebis in idem, which means that no similar case may have been decided, examined and decided again for the second time by the court.

If the decision has permanent legal force, the legal remedy can no longer be used. The decision, which has permanent legal force, can be in the form of:

a. Free verdict;
b. The decision is free from all charges;
c. The decision cannot accept the demands of the public prosecutor;
d. Criminal verdict.

The decisions above are regarding the conviction of the accused (criminal offense). It is different from the judge's decision or statement in terms of:

1. The court is not competent (powerful) to hear;
2. Cancellation of the indictment;
3. Criminal charges cannot be accepted.

The correct application of nebis in idem can be accomplished if the meaning of "action" is applied correctly. In the handling of a case, it is necessary to observe whether the actions of the suspect or defendant have ever been tried? If a suspect or defendant has ever been tried, it is necessary to examine whether his actions were idealist or realist discourses. For example: A has been convicted based on a court decision which has permanent legal force in the act of rape of a woman named R. but particularly investigators, are more careful about the definition of "deeds".

Death of the Offender

This is regulated in Article 77 of the Criminal Code which reads: "The right to sue for loss because of the death of the suspect". This provision is based on the basis of punishment, namely that the punishment is aimed at the person who commits the offense. Thus, if the person who committed the offense has died, there will be no more prosecution for the act he has committed.

Expired

This is regulated in Article 78 of the Criminal Code which reads:

(1) The right to criminal prosecution is abolished due to expiration:
    1. Within one year for all violations and for crimes committed by printing;
    2. Within six years for crimes punishable by a fine, imprisonment or imprisonment, the duration of which is not more than three years;
    3. Within twelve years for all crimes punishable by a temporary prison sentence of more than three years
    4. Within eighteen years for all crimes, punishable by the death penalty or life imprisonment

(2) For persons, prior to committing the act they are not quite eighteen years old, the above-mentioned grace period will be reduced by one third".

The basis for the abolition of criminal prosecution rights is that with the passage of time, the memory of the events has been lost so that the possibility of proving it becomes complicated and even the evidence may disappear. It is necessary to pay close attention to Article 80 of the Criminal Code, which contains "prosecution action" (daad van vervolging), preventing or holding expiration; thus, daad van opsporing (action of investigation / investigation), does not hold the expiration date.

With regard to expiration, it must also be noted that Article 79 of the Criminal Code which determines the exemption for the expiration period, including:

1. In the case of counterfeiting or vandalism of money, the grace period starts the next day after it is used;
2. Crimes against independence contained in Articles 328, 329. 330, and 333 respectively of the Criminal Code, the time limit starts the next day after being released.

Apart from stuitting against the expiration period, the delay (schorsing) of criminal prosecution related to the existence of a religious dispute, also postponed the expiration (Article 81 of the Criminal Code). What is meant by prayudisial dispute (praejudicieel geschil) is the existence of a legal dispute which must be decided by another judge before a criminal case is examined in court. For example: A person is suspected of having committed theft, but the suspect claims that the property belongs to his wife. In that example, regarding the ownership of goods, it is decided by the civil judge. During the civil case process, the schorsing expires. After completion of schorsing, the grace period for expiration is

calculated plus the time before prosecution occurs. This is necessary considering that the settlement of civil cases may take years.

Out of Court Settlement

This is regulated in Article 82 Paragraph (1) of the Criminal Code which reads, among other things, as follows. "The right to prosecute a criminal for an offense, for which no other basic sentence is determined than a fine, is lost if the maximum fine and the court fee have been paid voluntarily." The above provisions are rational for the sake of efficiency. This is regulated in this way to provide legal certainty for the perpetrators of violations and for the prosecuting apparatus.

Apart from the above, outside the Criminal Code there are still provisions that can abolish the right to prosecute criminals, namely abolition and amnesty. Both of these are the prerogative of the president by considering the considerations of the DPR as regulated in Article 14 of the amended 1945 Constitution.

Abolition is the elimination of the right to carry out criminal prosecution and to stop criminal prosecution that has already begun. Amnesty is a statement of forgiveness or the abolition of punishment to the public who have committed certain criminal acts. Both abolition and amnesty are means to protect the public interest or to prevent greater victims. The Public Prosecutor must be careful and thorough in making a letter of demand so that no mistakes occur.

CONCLUSION

The letter of charges for the Public Prosecutor is determined in the Criminal Procedure Code and the Law on the Prosecution, read out after the examination process has been completed. The examination referred to is the examination of valid evidence in criminal law, namely witness statements, expert statements, letters, instructions and statements of the Defendant, as well as examination of evidence. The indictment contains the charges for the sentence against the Defendant, the indictment is based on the indictment which contains a description of the incident of the criminal act and the Article that is suspected to be proven in the process of examining the evidence.

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