# IMPLEMENTATION OF NARCOTICS SPLITSING BY PUBLIC PROSECUTORS IN THE PROSECUTION PROCESS AS AN EFFORT TO EASE OF EVIDENCE

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***Abstract***

Public Prosecutors often separate criminal case files (*splitsing)*for indictments with more than one perpetrator for general criminal cases or special crimes such as narcotics crimes. In the case of a criminal act that has been split, the defendants will testify to each other, whose positions are witnesses and defendants. In the implementation of this splitting implementation, it often violates the principles of fast, simple and low-cost justice and the principle of *due process of law*, but on the one hand this splitting also makes it easier for the Public Prosecutor to prove. The research method is Juridical Empirical, using primary data sources in the form of interviews and secondary data sources from literature, including books and court decisions. In the implementation of *splitsing, the* authority is fully in the hands of the Public Prosecutor. The separation of case files *(splitsing*) is not only based on the lack of evidence, but makes it easier for the Public Prosecutor to analyze a case file.

**Keywords: Implementation, Separation of Case Files, Evidence**

## INTRODUCTION

Criminal law can be interpreted as part of the overall law that applies in a country, which provides basic rules for, *firstly* determining actions that should not be carried out, which are prohibited, accompanied by threats or certain criminal sanctions for anyone who violates them; *the second* determines when and in what cases those who have carried out the prohibitions can be imposed or sentenced to the punishment that has been threatened. *Third*, determine the way in which the imposition of the crime can be carried out if the person suspected of having violated the provision.[1]

Eddy's Hirey argues that criminal law is the last law to be used if other legal instruments cannot be used or cannot function properly.[2] The explanation above explains that in addition to material criminal law, formal criminal law is also an inseparable part of criminal law.

The Law of the Republic of Indonesia No. 1 of 1981 or often called the Criminal Code (hereinafter KUHAP) is also called formal law in Indonesia. Although the Criminal Procedure Code is a product of independent Indonesia, it still has many shortcomings, among others, relating to the implementation of the *criminal justice system* which has not been able to maximally give respect to Human Rights (HAM) or the criminal justice system with the principle of law. *Due process of law*. *Due process of law* is a true or fair legal process which is a principle of the Criminal Procedure Code.[3] In this case, someone suspected of committing a crime must still receive treatment so that the human rights of the victim or suspect are not violated.

One of the topics set out in the Criminal Code is related to the separation of the case *(splitsing),*merging and separation cases are authorized on Public public prosecutor to formulate in the indictment and prosecution. Separation of case files *(splitsing*) is carried out on cases that contain several criminal acts committed by several people at the same time.

The arrangement for the separation of case files (*splitsing)* from one file into several cases is regulated in Article 142 of the Criminal Procedure Code which reads: "In the event that the public prosecutor receives a case file containing several criminal acts committed by several suspects that are not included in the provisions of Article 141 of the Criminal Procedure Code, the public prosecutor may prosecute each defendant separately." The provisions of Article 142 of the Criminal Procedure Code are as follows: The public prosecutor can combine cases and make them into one indictment, if at the same time or almost at the same time he receives several case files in terms of:

1. Several criminal acts committed by the same person and the interests of the examination do not become an obstacle to their merger;
2. Several crimes are related to one another;
3. Several criminal acts are not related to one another, but are related to one another, in which case the merger is necessary for the purposes of the examination."

Separation of case files in general can occur due to the factor of the perpetrators of criminal acts consisting of several people. If the defendant consists of several people, the Public Prosecutor may take the policy to break the case file into several files according to the number of defendants, so that: [4]

a. The file that was originally received by the public prosecutor from the investigator is split into two or more case files.
b. The resolution is carried out if the defendant in the case consists of several people. By splitting the file, each defendant is charged in an indictment that stands alone from one another.
c. Examination of cases in solving case files is no longer carried out simultaneously in a trial. Each defendant was examined in a different trial.
d. In general, solving case files is important if there is a lack of evidence and testimony in the case.

The splitting of case files into several independent files is intended to place the respective defendants as reciprocal witnesses among themselves. Meanwhile, if they are combined in a file and trial examination, they cannot be used as reciprocal witnesses.[5] In conducting the separation

[1] Moeljatno, *Asas-Asas Hukum Pidana*, Jakarta, Renika Cipta, 2008, hal

[2] Eddy O.S Hiariej, *Prinsip-Prinsip Hukum Pidana*, Yogyakarta, Cahaya Atma Pustaka, 2014, hal. 13

[3] *Ibid*

[4] Harahap, Yahya, *Pembahasan dan Permasalahan dan Penerapan KUHAP (Penyidikan dan Penuntutan*), 2016, Jakarta, Sinar Grafika, hal 134

[5] *Ibid*

case*(splitsing)* is the Public Prosecutor. Separation of case files can be carried out if the Prosecutor receives one case file containing several criminal acts. The crime also involved several suspects. In other words, more than one act and doer. *Splitsing* can be done because the role of each defendant is different. In addition to the role, it can also be seen from the locus.[6] The act of splitting criminal case files (*splitsing)* into an independent criminal case, is to make it easier for the Public Prosecutor to present the defendant to present the defendant as a witness to the Crown against other files, the purpose of which is to strengthen evidence, especially at the witness examination stage. In practice, the separation of case files also aims to facilitate the Public Prosecutor in carrying out evidence

One example is the case No 115 / Pid.Sus / 2021 / PN Medan and case No. 62 / Pid.Sus / 2021 / PN Field which occurred in Medan Regional State Prosecutor, the separation of the case file made due to the different roles among actors play a role Prasetyo Wibowo as a shabu-shabu seller, while Pandi Sugianto only knew but did not report that Wibowo Prasetyo was selling narcotics in the form of methamphetamine. Then on this basis, the case files are separated. The Public Prosecutor will try to prove the role of each defendant in committing a narcotics crime, one of which is by presenting the defendant as a crown witness against other case files on a reciprocal basis. In this regard, the use of crown witnesses also aims to increase the number of witnesses at the examination stage at trial.

Although the practice of splitting cases is to facilitate evidence, in fact the application of splitting criminal cases *(splitsing)* often clashes with the principles of fast, simple and low-cost justice as well as the principle of the right not to provide information that incriminates oneself during the criminal justice process (the principle of *non-self incrimination*). As a result of the separation of case files, the impression of the trial becomes long and convoluted and not simple. The defendants must undergo trial as defendants and as witnesses. If a case is made by more than one suspect/defendant, the Public Prosecutor can combine cases into one indictment only, so that the principles of fast, simple and low-cost trial can be fulfilled.

If the defendant is made a witness in a case *splitsing* when giving testimony, any information given will affect the final outcome of the court's decision, then the testimony given will be potentially dishonest and there will be no match between the facts during the trial process. The irony is that it will aggravate the position of the defendant because he has given information on himself.

Based on the background described above, the formulation of the problem includes: How is the implementation of the separation ofcriminal cases *(splitsing*narcotics) by the Public Prosecutor at the time of prosecution as an effort to facilitate evidence (Study at the Medan District Attorney)?

**RESEARCH**

Methods The approach method used is the empirical juridical approach, which is an approach by examining secondary data first, and then continuing with primary research in the field. [7]Secondary data is a theoretical basis in the form of opinions or writings of experts or other authorized parties and other information in the form of formal provisions, such as laws and regulations, court decisions and others.

The specifications used in this study are descriptive, namely in the form of research that describes the implementation of the applicable laws and regulations and is then linked to legal theory and practice in implementing positive law concerning the above problems. Describe the object that is the problem as well as analyze the data obtained from the research and conclude according to the problem. [8]Therefore, this study describes, describes and describes matters relating to the problems to be discussed.

To obtain the effectiveness of this research, data from the field or other sources is used with a strict separation between primary data and secondary data. Primary data is data obtained directly from the community[9] or data sources. Sources of primary data include data obtained from the Medan District Attorney. The main data of this research was obtained by interviewing directly to the Public Prosecutor in charge of carrying out the prosecution. Interviews were conducted in a directed manner using a guided free method, namely preparing a list of questions in advance, but of course there will be variations. Questions adapted to the situation when conducting the interview. The results of this interview are expected to answer the problems in this study. Secondary data obtained through library materials,[10] Secondary data collection is carried out by studying and understanding scientific literature

[6] Hukumonline.com/klinik/detail/ulasanIt58882750a37c/pemisahan berkas perkara-splitising

[7] Ronny Hanitijo Sumitro, *Metodologi Penelitian Hukum*, Jakarta: Ghalia Indonesia, 1994, hal 3.
[8] Burhan Ashofa, *Metode Penelitian Hukum*, Jakarta: Rineka Cipta, 2001, hal 26.
[9] Lexy J. Moeleong, *Metodologi Penelitian Kualitatif*, Bandung, Remaja Rosdakarya, 1988, hal 52.
[10] *Ibid*

to obtain a theoretical basis in the form of opinions or writings of experts and authorized parties to obtain information. The secondary data used are Law No. 8 of 1981 (KUHAP), Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, Law no. 35 of 2009 concerning Narcotics and the Republic of Indonesia Attorney General's Circular Letter No. B-69/E/02/1997 regarding the law of evidence in criminal cases. Primary data and secondary data that have been obtained will then be processed by sorting out data that is relevant or not to the problem under study and then arranges it into the form of systematic research results.

The analytical method used is qualitative analysis, namely research that uses open interviews to examine and understand the attitudes, views, feelings, and behaviors of individuals or groups of people.[11] Primary data and secondary data that have been collected are then arranged systematically. The data is then analyzed with the existing conditions and facts based on the theories associated with the problems studied, and studying what the respondents/informants stated both orally and in writing.

## DISCUSSION

### 1. The Authority of the Prosecutor as Public Prosecutor

The State of Indonesia is a State of Law, the 1945 Constitution of the Republic of Indonesia (UUD RI 1945) as the Constitution of the Unitary State of Indonesia is the highest positive law in the Indonesian legal system. The criminal justice system contains a systemic movement and its supporting sub-systems, namely the Police, Prosecutors, Courts and Correctional Institutions which as a whole and constitute a whole (total) attempt to transform inputs into outputs which become the criminal justice system, namely tackling crime and controlling crime so that are within the limits of tolerance that can be accepted by society.

One of the driving components of the criminal justice system is the Prosecutor's Office of the Republic of Indonesia or commonly referred to as the Prosecutor's Office. The Prosecutor's Office is a non-departmental institution which means it is not under any ministry, the top leadership of the AGO is held by the Attorney General who is responsible to the President. The Prosecutor's Office as part of the criminal justice system as regulated in Article 24 (3) of the 1945 Constitution Jo. Article 38 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power. The Attorney General's Office of the Republic of Indonesia is a government institution that exercises state power independently, especially the implementation of duties and authorities in the field of prosecution.

Law No. 16 of 2004 concerning the Prosecutor's Office explicitly stipulates that the Prosecutor's Office has independence and independence in exercising state power in the field of prosecution. The position of the Prosecutor's Office as a government institution conducting prosecutions means that the Prosecutor's Office is an institution under the auspices of the executive. The Prosecutor's Authority in carrying out prosecutions means that the Prosecutor's Office exercises judicial power. This relates to the meaning of the power of the Prosecutor's Office in exercising state power in the field of prosecution independently. The Prosecutor's Office in carrying out its functions, duties and authorities is independent from government power and the influence of other powers. This means that the state guarantees the prosecutor in carrying out his profession without intimidation, harassment, temptation and inappropriate interference or disclosures that have not been verified, whether for civil, criminal or other liability.

The position of the Prosecutor's Office in criminal justice is decisive because it is a bridge that connects the investigation with the examination stage in court. Based on the applicable legal doctrine, the Public Prosecutor principle has a monopoly of prosecution, meaning that everyone can be prosecuted if there is a criminal charge from the Public Prosecutor, namely the Prosecutor's Office because only the Public Prosecutor has the authority to propose a suspect perpetrator of a crime before the trial

Article 2 of Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, reads as follows:

1. The Prosecutor's Office of the Republic of Indonesia, hereinafter referred to as the Prosecutor's Office, is a government institution that exercises state power in the field of prosecution and other authorities based on the law.
2. State powers as referred to in paragraph (1) are carried out independently
3. The Prosecutor's Office as referred to in paragraph (1) is one and inseparable.

Article 1 point 6 of the Criminal Procedure Code (abbreviated KUHAP) provides a definition of the Public Prosecutor:[12]

[11] *Ibid*

[12] Pasal 1 butir 6 Kitab Undang-Undang Hukum Acara Pidana.

a. Prosecutors are officials who are authorized by this law to act as public prosecutors and carry out court decisions that have permanent legal force;
b. Public Prosecutors are prosecutors who are authorized by this law to carry out prosecutions and carry out judges' decisions.

The Prosecutor's Office has regulations regarding the duties and authorities of the Prosecutor's Office of the Republic of Indonesia normatively in Article 30 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, namely:

1. In the field of crime, the Prosecutor's Office has the following duties and authorities:
    a. Carry out prosecutions;
    b. Carry out judges' decisions and court decisions that have permanent legal force;
    c. Supervise the implementation of conditional criminal decisions, supervision criminal decisions and parole decisions;
    d. Conduct investigations into certain criminal acts based on the Act;
    e. Completing certain case files and for that purpose can carry out additional examinations before being transferred to the Court which in its implementation is coordinated with investigators;
2. In the field of Civil and State Administration, the Attorney General's Office with special powers can act both inside and outside the Court for and on behalf of the state or government.
3. In the field of Public Order and Peace, the Prosecutor's Office also organizes the following activities:
    a. Increasing public legal awareness;
    b. Security of law enforcement policies;
    c. Supervision of the circulation of printed goods;
    d. Supervision of the flow of beliefs and can endanger society and the state;
    e. Prevention and abuse and/or blasphemy of religion;
    f. Research and development of law and criminal statistics.

Furthermore, Article 31 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia confirms that "The Prosecutor's Office may ask the judge to place the defendant in a hospital or mental care facility, or other appropriate place because the person concerned is unable to stand on his own due to the following reasons: things that can harm other people, the environment, or themselves".

Then Article 32 of Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia also stipulates that in addition to the duties and authorities mentioned in this law, the Prosecutor's Office may be assigned other duties and authorities based on the law. Furthermore, Article 33 of Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia stipulates that in carrying out its duties and authorities, the Prosecutor's Office maintains cooperative relationships with law and justice enforcement agencies as well as State agencies or other agencies.

Then Article 34 of Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia stipulates that the Prosecutor's Office can provide legal considerations to other government agencies.

Article 1 paragraph (1) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia states that the Prosecutor is a functional official who is authorized by law to act as a public prosecutor and implementer of court decisions who have obtained permanent legal force and other powers based on the Act.[13]

Prosecution according to the laws of the Prosecutor's Office of the Republic of Indonesia is the action of the public prosecutor to delegate the case to the competent district court in the matter and according to the method regulated in the Criminal Procedure Code with a request that it be examined and decided by a judge in a court session.[14] In short, it can be said that prosecution is the act of the public prosecutor submitting a criminal case to the judge to be examined and decided.[15]

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[13] Pasal 1 ayat (1) Undang- Undang Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia

[14] Daniel Ch. M. Tampoli, *"Penghentian Penuntutan Perkara Pidana Oleh Jaksa Berdasarkan Hukum Acara Pidana"*, Lex Privatum, Vol. IV/No. 2/Feb/2016.

[15] Soedirjo, *"Jaksa dan Hakim dalam Proses Pidana"*, Jakarta: Akademika Pressindo, 1985, Hlm. 4.

According to Article 14 of the Criminal Procedure Code, the public prosecutor has the following powers:

1. Receive and examine investigator case files from investigators or assistant investigators:
2. Conduct pre-prosecution if there is a deficiency in investigators by taking into account the provisions of Article 110 paragraph (3) and paragraph (4), by giving instructions in the context of perfecting investigations and investigators;
3. Provide an extension of detention, carry out further detention or detention and or change the status of the detainee after the case has been delegated by the investigator;
4. Make an indictment;
5. Delegating the case to the court;
6. Deliver notification to the defendant about the terms and time of the case to be heard accompanied by a summons, both to the defendant and to witnesses to come at the specified trial;
7. Carry out prosecutions;
8. Closing the case for the sake of law;
9. Carry out other actions within the scope of duties and responsibilities;
10. Carry out the judge's decision.

In the prosecution of criminal cases, there are two principles that apply, namely the principle of legality and the principle of opportunity. The two principles are in opposite positions, on the one hand the principle of legality requires the prosecution of all cases before the court, without exception. On the other hand, the principle of opportunity provides an opportunity for the Public Prosecutor not to prosecute criminal cases in court.

**2. Regarding Evidence and Evidence The**

Word "proof" comes from the word "proof" which means something (events and so on) which is sufficient to show the truth of something (events and so on); anything that is a sign of an act (crime and so on).[16] Evidence is the central point of examination of cases in court proceedings. Evidence is provisions that contain outlines and guidelines on ways that are justified by law to prove the guilt that has been charged to the defendant.[17]

Darwan Prints mentions "proof is that it is true that a criminal event has occurred and it is the defendant who is guilty of doing it, so he must be held accountable,"[18] further CT Simorangkir, that proof is "an attempt by the authorities to present to the judge as many things as possible. matters relating to a case that aims to be used by judges as material for making decisions such as those cases.[19]

Evidence in criminal cases is different from evidence in civil cases, because evidence in criminal cases aims to seek material truth, namely the true truth, while proof in civil cases is aimed at seeking formal truth, meaning that judges must not exceed the limits. submitted by the litigants. So the judge in seeking the formal truth is enough to prove it with *preponderance of evidence,* while the criminal judge in seeking the material truth, then the incident must be proven (*beyond reasonable doubt*). In principle, it is necessary to know that the only things that must be proven are those that are in dispute, namely everything that is proposed by one party but is denied by the other party. Things that are submitted by one party and acknowledged by the other party do not need to be proven because there is no dispute.[20]

Based on the explanation above, this evidence is carried out in the interest of the judge who must decide the case. In this case, what must be proven is a concrete event, not something abstract. Therefore, with evidence, the judge can decide even though he does not see with his own eyes the occurrence of a criminal event and can also describe in his mind what actually happened, so that he can gain confidence in the occurrence of a crime.

According to Article 184 paragraph (1) of the Criminal Procedure Code, the evidence consists of *first,* Witness testimony is one of the evidence in a criminal case in the form of testimony from a witness regarding a criminal event that he heard for himself, he saw for himself, and he experienced it himself by mentioning the reasons from his knowledge. . Witness testimony as evidence is what the witness

[16] *Ibid*

[17] M. Yahya Harahap,*Pembahasan Permasalahan dan Penerapan KUHAP Pemeriksaan Sidang Pengadilan, Banding, Kasasi, dan Peninjauan Kembali*, Jakarta: Sinar Grafika, 2016, hal. 273.

[18] Andi Sofyan dan H. Abd. Asis, *Hukum Acara Pidana Suatu Pengantar*, Jakarta: Kencana, 2014, hal. 230.

[19] *Ibid*

[20] R. Subekti, *Hukum Pembuktian,* Jakarta: Pradnya Paramita, 2005, Hal. 11.

stated before the trial (Article 185 paragraph 1 of the Criminal Procedure Code). So it can be concluded that witness testimony is the most important evidence in a criminal case, it can be said that there is no criminal case that escapes the evidence of witness testimony at least in addition to evidence with other evidence. *Second,* expertor *testimonyverklaringen van een deskundige/expect testimony* is what an expert declares in court (Article 187 of the Criminal Procedure Code), then the expert testimony must be given by someone who has special expertise on the things needed to make light of a criminal case in order to the interests of the examination (Article 1 paragraph 28 of the Criminal Procedure Code). KUHAP does not explain who is called an expert and what is expert testimony. However, KUHAP stipulates expert testimony as valid evidence. *Third*, a letter made on an oath of office or strengthened by an oath, is a. minutes and other letters in an official form prepared by an authorized public official or made before him, containing information about events or circumstances that he heard, saw or experienced himself, accompanied by clear and unequivocal reasons for the statement. b. a letter made according to the provisions of the legislation or a letter made by an official regarding matters included in the management for which he is responsible and which is intended to prove a thing or a situation; c. a statement from an expert containing an opinion based on his expertise regarding a matter or a situation that is officially requested from him; d. another letter that can only be valid if it has something to do with the contents of other evidence (Article 187 of the Criminal Procedure Code). *Fourth,* Instructions, are actions, events or circumstances, which due to their correspondence, both with one another, and with the crime itself, indicate that a crime has occurred and who the perpetrator is (Article 188 paragraph 1 of the Criminal Procedure Code). In judicial practice, there are often difficulties in applying the evidence. Where the consequences of being careless in using the evidence can be fatal in the decision. *Fifth, the* Defendant's Information is what the defendant stated at the trial about the actions he had committed or which he himself knew or experienced himself (Article 189 paragraph 1 KUHAP). This is supported by a valid evidence as long as it relates to what he is accused of (Article 189 paragraph 2 of the Criminal Procedure Code), the defendant's statement can only be used against himself (Article 189 paragraph 3 of the Criminal Procedure Code) and furthermore the defendant's statement is not sufficient to prove that he is guilty of committing a crime. the act he is accused of, but must be accompanied by other evidence (Article 189 paragraph 4 of the Criminal Procedure Code)

### 3. Implementation ofCase File*Splitting*Narcoticsby Public Prosecutors as an Effort to Facilitate Evidence (Study at the Medan District Attorney's Office

During the period 2018-202, there were a number of narcotics crime cases handled by Medan District Attorney Investigators and at the same time having permanent legal force (*in kracht*);

| No | Year | Month | Number of Cases |
|---|---|---|---|
| 1 | 2018 | January - December | 1709 Case |
| 2 | 2019 | January - December | 1965 Case |
| 3 | 2020 | January - December | 1618 Case |
| 4 | 2021 | January – 14 July 2021 | 1307 Case |
| Total | | | 6599 Cases |

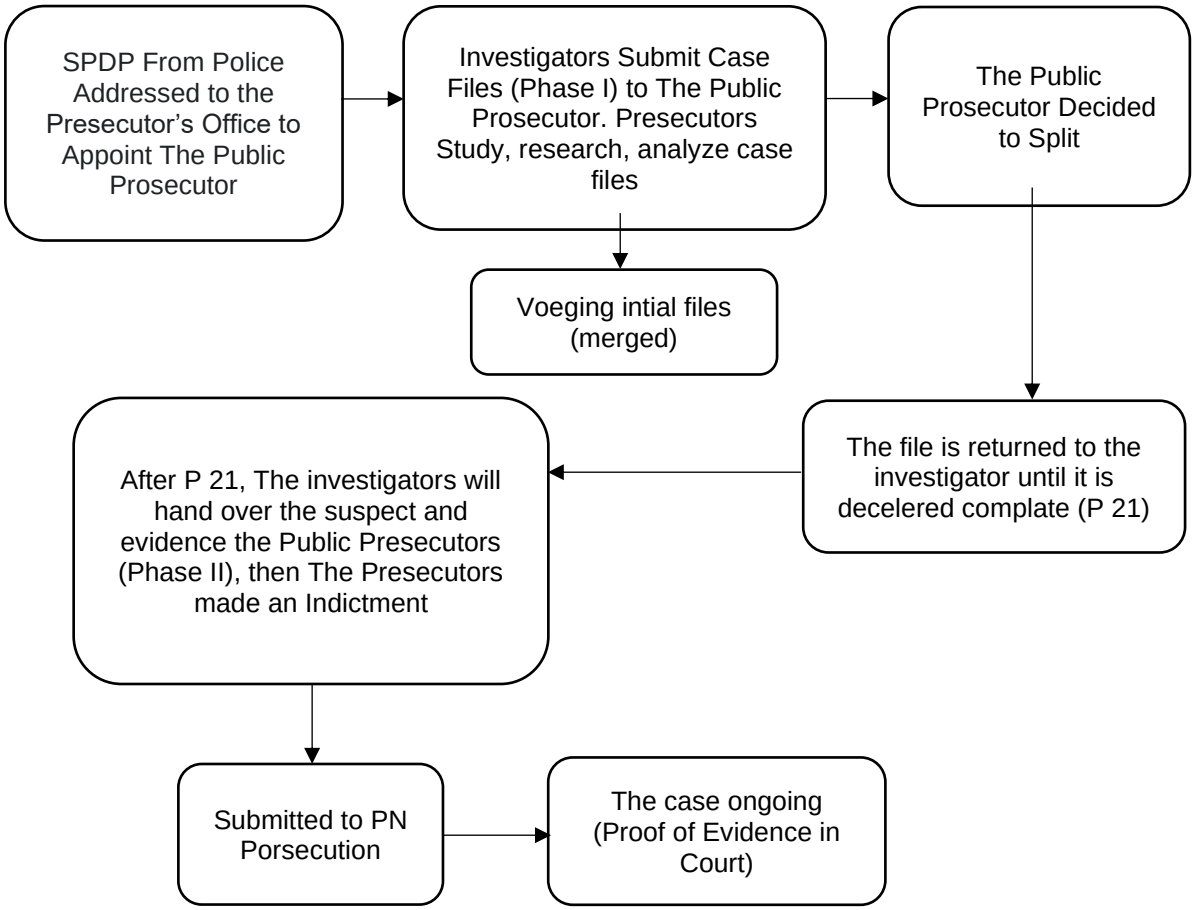
Sources from the Medan District Attorney

Looking at the data above, from 2018 to 2019 there was an increase in cases, but from 2020 to July 14, 2021, there was a decrease in narcotics crime cases. This data is also related to the number of separate narcotics crime case files. (*split*).

The separation of criminal case files (*splitsing*) by the Public Prosecutor, especially in narcotics crimes, must be based on the right reasons, for example a lack of witness evidence. The separation of criminal case files (*splitsing)* has begun at the pre-prosecution stage. Pre-prosecution is one of the powers of the Public Prosecutor if there is a deficiency in the investigation by taking into account the provisions of Article 110 paragraph (3) and paragraph (4) of the Criminal Procedure Code to provide instructions in the context of completing the investigation of the investigator. If the Prosecutor is of the

view that there are still shortcomings in the results of the investigation carried out by the Police, the Public Prosecutor has the authority to give instructions in the context of completing the investigation by the investigator. (Article 14 b of the Criminal Procedure Code).

The following is the implementation of the separation of criminal case files by the Public Prosecutor or the administrative flow of a separate file until the case process runs in court (at the Medan District Attorney):




In the event that the Police have completed their investigation and have been raised to the stage of investigation, the Police are obliged to notify the Prosecutor's Office that the investigation has commenced by the investigator by issuing a Notice of Commencement of Investigation (SPDP). The SPDP is sent to the Public Prosecutor through the Head of the District Attorney concerned. This SPDP is the first step in an ongoing case, where in this case there has been coordination between the Investigator and the Public Prosecutor in terms of carrying out an investigation. It can be underlined that if the SPDP has been issued, in this case the suspect has been determined. In addition, through the SPDP, the Head of the District Attorney appoints the Public Prosecutor to follow the progress of the investigation of criminal cases (attached in form P-16). The Public Prosecutor will coordinate with investigators regarding whether a case is appropriate or not to be submitted to the prosecution stage.

If the investigator has finished carrying out the investigation, the investigator will make a case file which will later be transferred to the District Attorney or the Investigator in a real and physical manner submitting the case file to the Public Prosecutor for study. The Public Prosecutor who has been appointed must follow the progress of the investigation of the criminal case. The Public Prosecutor who has been appointed examines the formal requirements and material requirements to be transferred to the court for 7 (seven) days from the time the Public Prosecutor receives the case file from the investigator. In the event that the Public Prosecutor analyzes the files, then with his authority as the Public Prosecutor he will decide whether the files will beor split*merged*. As a side note, if the file has been decided by the public prosecutor for at *splitsing* (separate) the investigator will publish the new file new SPDP, whereas the old files (files that are combined) will be withdrawn.

If the file has to be *splitcarry*, the Public Prosecutor will ask the Police investigator toout an additional investigation (accompanied by form P-18 which states that the results of the investigation are

not complete). Then in the case of returning the file by the Public Prosecutor to the investigator, it must be accompanied by instructions from the Prosecutor concerned to be completed by the investigator (along with form P-19). Then in the P-19 form it is also explained that the returned case files are examined separately or in another sense that the investigator conducts a re-examination of each suspect separately. In addition, from each of these case files, the Public Prosecutor provides instructions for investigators to replace the articles that have been violated in accordance with the instructions given (according to Article 110 paragraphs (2) and (3) and Article 138 paragraph (2) of the Criminal Procedure Code). The period of time is limited to a maximum of 14 (fourteen) days from the time the file is received by the investigator.

After the investigator has completed the instructions and the deficiencies have been completed by the investigator, the Public Prosecutor will then declare the file complete (as stated in form P-21). If the case file has been declared complete by the Public Prosecutor, then proceed with submitting phase II files (the process of submitting the suspect and evidence from the investigator to the Prosecutor's Office). Then after stage II is complete, the Head of the District Attorney appoints the Public Prosecutor to resolve the criminal case (attached in form P-16A), based on the P-16A, the case file can be used as a basis by the Public Prosecutor to be submitted to court and prosecution of defendant and used in making the indictment (P-29). After being accepted by the relevant District Court, the panel of judges who will examine and date the trial will take place, the case is ready for prosecution and proof.

In connection with the process of implementing the separation of criminal cases (*splitsing) is* carried out based on the authority of the Public Prosecutor after following the progress of the investigation of the criminal case. The authority of the Public Prosecutor in separating criminal case files (*splitsing*) can be seen in Article 142 of the Criminal Procedure Code that "In the event that the Public Prosecutor receives a case file containing several criminal acts committed by several suspects that are not included in the provisions of Article 141 of the Criminal Procedure Code, the Prosecutor The public can prosecute each defendant separately.

Based on the results of the separation of criminal case files (*splitsing*), the Public Prosecutor will direct it to the preparation of a letter of accusation or indictment against each defendant in accordance with the number of case files that have been separated, so that there will be several independent cases. Based on this information, it can be seen that the use of *splitsing is* intended to strengthen efforts to prove a criminal case, because in cases where the file is *split, the* judge can find out firsthand the criminal acts committed by each defendant clearly because the file is independent. By splitting the case files (*splitsing*) will speed up the proof because when the case files have been separated it will become clear the elements of the crime, who the defendant is and the role of the defendant.

In the event of separation case*(splitsing)*Criminal Procedure Code does not regulate how the shape of the charges, but in practice the form of charges is often used in the case file which is split*(splitsing)*is an indictment in the singular and alternatives. Meanwhile, subsidiary, cumulative or mixed charges are rarely found in *split cases*.

For example, the Narcotics Crime Case which wasin *split* Decision No. 115/Pid.Sus/2021/PN Mdn on behalf of the defendant Wibowo Prasetyo and Decision No. 62/Pid.Sus/2021/PN Mdn on behalf of the defendant Pandi Sugianto. Initially, the case files were combined by the investigators, then after being studied and examined by the public prosecutor at the time of the submission of the first stage case file (pre-prosecution), the public prosecutor concluded that the case files were*splitting.* The following is the position of the case, that on Wednesday, July 29, 2020 at approximately 13:00 WIB, witnesses Chandra Sitepu, Faisal, Wahyu, Samuel, password and Dionesius (each member of the Medan Polrestabes Police) received information that the defendant Wibowo Prasetyo was conducting a transaction. narcotics on Jalan Java No. 63 Ex. Dwikora district. Medan Helvetia, where at that time the witness was conducting surveillance and saw the defendant Wibowo Prasetyo with suspicious movements. Then the witnesses came to Wibowo Prasetyo where at that time he was conducting a narcotics transaction and at that time found evidence in the form of 1 (one) plastic clip of shabu type Narcotics in Wibowo Prasetyo's left hand. When the arrest was made, Wibowo Prasetyo shouted for help, then Pandi Sugianto (Wibowo Prasetyo's brother) came out of the house and tried to release the man's grip. Furthermore, the man explained that he was a police officer and made an arrest because Wibowo Prasetyo was selling shabu. Then 3 (three) police officers arrived and immediately arrested Wibowo Prasetyo and Pandi Sugianto. Then the police conducted a search around the house and found evidence in the form of 2 (two) plastic clips of narcotics of methamphetamine and 1 (one) empty clip pack. Then when asked about the ownership of all the evidence that was secured, Wibowo Prasetyo explained that all the evidence was his and Pandi Sugianto knew that Wibowo Prasetyo was selling narcotics of methamphetamine. Pandi Sugianto had forbidden Wibowo Prasetyo from selling narcotics,

but Wibowo Prasetyo ignored him. Pandi Sugianto never helped Wibowo Prasetyo to become an intermediary for buying and selling narcotics. Then Pandi Sugianto had no intention of reporting Wibowo Prasetyo to the authorities because Wibowo Prasetyo was his younger brother.

In this case it is clear that the roles played by each defendant are different. On the basis of this, the Public Prosecutor uses his authority to separate case files (*splitsing).* Furthermore, the Public Prosecutor conducted a prosecution against each of the defendants using an alternative form of indictment, which means that the indictment consists of several articles indicted by the Public Prosecutor which the defendant may have violated. This also gives the Public Prosecutor a choice to prove which article was violated by the defendant at the stage of proof by the Public Prosecutor at the trial and also gives the Judge a choice to apply a more appropriate sentence, so the possibility of the defendant to escape the lawsuit is very small.

Based on the principal case on Prosecution quite carefully and wisely in separating the dossier*(splitsing)*because each of them has a different role, it can be seen that the defendant Wibowo Prasetyo selling narcotics while the defendant Pandi Sugianto only know the behavior Wibowo Prasetyo but did not report it to the authorities. Therefore, it is inappropriate for the Public Prosecutor to continue to combine case files in one trial with the same article. If there is no separation of case files, of course, it will injure legal certainty which is the right of everyone. The Public Prosecutor must formulate the form of the indictment in line with the results of the investigation.

To avoid the mistakes of the application of the separation of the docket*(splitsing)*by the Public Prosecutor against the implementation of criminal matters are the criteria that should be considered include:[21]

1. The case files have been merged by the investigator from the beginning, then the case files are separated into several case files according to the need or it can also be in accordance with the number of defendants.
2. The separation of the case files is carried out for criminal acts that have been committed by several people (participation) and then an independent indictment is prepared so that the examination in the trial will be carried out at a different trial.
3. Separation of criminal case files can also be based on the different elements of the offense committed by each defendant.
4. Separation of criminal case files becomes important when there is a shortage of evidence and witnesses in the case.

Based on the description above that the implementation of the separation does docket*(splitsing)*authority rests with the Prosecution. The separation of case files *(splitsing*) is not only based on the lack of evidence, but makes it easier for the Public Prosecutor to analyze a case file.

## D. CLOSING

Implementation of the splitting of criminal cases (splitsing) has led to a convoluted process, the defendant must come to court with 2 (two) statuses simultaneously as a defendant and a witness. During the examination of witnesses in court, it becomes difficult and confusing because of their positions as defendants and witnesses. When the Public Prosecutor examines the case file, at that time the Public Prosecutor decides that the files will beor split in*merged*accordance with the provisions of Article 142 of the Criminal Procedure Code. If the case files are split (*splitsing*), the Public Prosecutor will inform that the results of the investigation are not complete and additional investigations need to be carried out (attached in form P-18).

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