Splitting of Accusations: Criticism-Ideology Through a Relation of Trichotomy Approach

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Abstract. The success of a prosecution in a criminal case is highly dependent on the ability and shrewdness of a Public Prosecutor in constructing an Indictment and Charges. However, often the construction of the two letters in many cases involving the Offense of Participation, raises violations of the legal rights of the Defendants. In this regard, each defendant has received legal protection through Article 66 of the Criminal Procedure Code (CPC), whereby the accused cannot be forced to provide evidence that is self-directed. Based on this, this article discusses the pattern of cognitive-interpretive activities regarding the separation of charges in the prosecution of the offense of inclusion in the evidentiary process in criminal trials as a form of violation of human rights through the relational trichotomy approach. This article aims to dismantle the hidden agenda and the inability of the Public Prosecutor to provide evidence. This study uses legal research methods using the concept of relational trichotomy as an approach method in dismantling the ideological aspects of criminal law enforcement. The results of this study are that the behavior of the Public Prosecutor who applies the separation of cases as a method of prosecution is a form of violation of the legal rights of the Defendant, which is normatively not burdened with proof. However, in the case of Participation in a crime, each Defendant is faced with admitting guilt to one another. Therefore, the use of the method of separating cases has implied that the Public Prosecutor does not yet have sufficient evidence and is the easiest way to win a case.

Keywords: Criminal Procedure, Prosecution, Relational Trichotomy.

1. Introduction

The research in this article aims to dismantle the ideological aspects (interests) of the work pattern of law enforcement officials, specifically the Public Prosecutor, in the prosecution and evidentiary stages in the trial of criminal cases. Because of this, public prosecutors often go through the separation of indictments and prosecutions of criminal cases that contain aspects of the offense of inclusion. This resulted in the mutual giving of witness statements between the Defendants in the evidentiary process before the trial. Meanwhile, it is impossible to deny that there are different legal consequences between the status of the Defendant and the status of a Witness in Indonesian Criminal Procedure Code (CPC).

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Public Prosecutor—as a functional position at the Attorney General's Office of the Republic of Indonesia, is charged with carrying out the function of administering government in the field of law enforcement in Indonesia which is not only regulated through the CPC, but also through Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 regarding the Attorney General of the Republic of Indonesia (UU No. 11/2021 in conjunction with Law No. 16/2004). Thus, the Public Prosecutor is a state institution in the executive power cluster [1] which acts as an extension of the Government in providing certainty, justice and benefits for the interests of every citizen who suffers losses as a result of a crime being committed against him.

The Public Prosecutor—according to the law, not only represents the presence of the state taking over the victim's losses [2] in a criminal manner, but also executors of court decisions that have permanent legal force (inkracht). Therefore, referring to considering letter a of the CPC, there is a legal obligation for every Public Prosecutor in carrying out his functional position must be based on respect for Human Rights, the 1945 Constitution of the Republic of Indonesia (1945 Constitution). Republic of Indonesia), and Pancasila. This is to maintain equal standing before the law between the Public Prosecutor and suspects and/or defendants in the trial process before the court based on the Presumption of Innocence Principle [3]. Therefore, the work pattern of the Public Prosecutor as stipulated in the Preamble Considering letter c of the CPC, in the abstract, must develop attitudes based on statutory regulations. That is, laws and regulations that give authority to the Public Prosecutor in carrying out prosecutions, especially in coaching, are a limitation for the Public Prosecutor in thinking and acting. As stated by Komariah Emong Supardjaja [4], [5] regarding the Legality Principle, the legal principle is to prevent the arbitrariness of law enforcement officials.

However, it has become a common sense - as a result of a provision which confirms that an investigative case file is declared complete by the Public Prosecutor, that the Public Prosecutor who forms the Indictment prepared in the Case Files will maintain that the indictment is based on the legal principle of "who postulates, then he proves" (Actori Incumbit Probatio). Thus, the success of an Indictment and Charge is highly dependent on how the Public Prosecutor conducts evidence in the trial process.

So, it is not surprising, when the CPC provides restrictions for every law enforcement officer by placing a burden on them to comply with the provisions of the existence of legal norms that provide opportunities for suspects or defendants to be able to defend themselves. One of them is Article 66 of the CPC which emphasizes "The suspect or defendant is not burdened with proof" which is a representation of the Presumption of Innocence Principle.

However, the Public Prosecutor through the language of power strategy - Indictment is the result of language activities in written form, in criminal cases with deelneming offenses often carry out separate settlements and prosecutions. Thus giving rise to a discourse (phenomena) of conveying information to the other defendants.

Referring to the research conducted by Muhammad Djaelani Prasetya [6], the discourse on the separation of case files creates a disparity impact (differences in judges' decisions) between one case and another. Meanwhile, the process of separating the case files begins with the submission of the investigator to the public prosecutor. Meanwhile, the three cases are a series of events that are not interrupted. Meanwhile, research conducted by Wisnu Waskitara[7], confirmed that the Public Prosecutor has the authority to separate files based on Article 142 of the CPC to make it easier for the public prosecutor to prove the defendant's guilt where there are factors underlying the separation of case files, namely to prove the defendant's guilt in trials, criminal cases lack witnesses, the status of the accused is different, there are defendants who are underage, cases involving delict offenses, and in cases where some of the perpetrators have not been caught.

Furthermore, according to Wisnu Waskitara [7], the way to prove a crime by using the method of separating case files against inclusion offenses is (1) carrying out the same trial process as criminal cases in general, and (2) the underlying differences are efforts to make the Defendants testify to each other by changing the status—whose symbolic domination based on the Dominis Litis principle, of the Defendant to a Witness Statement through separate cases, and vice versa. With the aim, to comply with the provisions in Article 183 of the CPC, that a judge may not pass a decision on a person unless at least two pieces of evidence are valid.

The two studies are only descriptive of a discourse in the form of separation of case files. Therefore, both based on Article 142 of the CPC and based on the Circular of the Deputy Attorney General for General Crimes Number: B-69/E/02/1997 concerning the Law of Proof in Criminal Cases dated 19 February 1997. Thus, the two researchers did not critically describe the loss that will be suffered by the Defendant and what interests are hidden by the Public Prosecutor. Meanwhile, in this study, we intend to show that there are hidden interests in a way that violates the law through the language of power strategy.

2. Problems

The pattern of the Public Prosecutor's work on the discourse on the separation of case files which is based on cognitive-interpretive activities on authoritative texts, makes this discourse cover the basic intention of the entire prosecution agenda. Thus, the discourse on separating the indictment will reveal itself as something that is in accordance with the governing legal norms. In fact, the separation activity has resulted in both loss of legal rights and human rights. Therefore, this research is an ideological critique by uncovering the fallacies of the Public Prosecutor.

3. Method

The research uses legal research methods using an interdisciplinary approach—particularly State Administrative Law, and multidisciplinary using secondary data through library research. Meanwhile, apart from secondary data, as a consequence of

using a multidisciplinary approach, we use data that has been published through online mass media. Meanwhile, the analytical method used is qualitative analysis and also uses Critical Discourse Analysis (CDA) to find out ideological elements (interests) hidden by the Public Prosecutor.

4. Discussion

Legal Studies, especially the branch of Criminal Procedure Law, as emphasized by Margarito Kamis [8], lacks the concept to study and analyze a subjective legal phenomenon. For example, how is the technical analysis of the concept of "ATTITUDE" contained in the Preamble to Considerations letter c of the CPC? Where KUHAP has a goal to foster the attitude of law enforcers. The simplest technique is to connect the concept of "ATTITUDE" with the next sentence, namely "...according to each function and authority...". As a result, every legal action taken by law enforcers will hide their ideology (interests) behind normative jargon. Thus, the values of justice are hidden behind the law as a mask.[9]

On the other hand, the arrogance of legal norms is based on the complexity of human life which is generalized into interpretative-cognitive work patterns which, according to Satjipto Rahardjo[10], [11], are only based on language games. As a result, one aspect of the study of Psychology on the concept of "ATTITUDE" is the CONATIVE aspect [12], which gives rise to decisions to act based on the use of language and its articulation in power.

In order to objectify the Conative aspect, hegemonically, the principle of functional differentiation emerges. The principle of functional differentiation is understood as a legal principle that legitimizes separate work patterns and responsibilities between law enforcement institutions.[13] What can be traced, scientifically, for an implementation of the principle of functional differentiation is only limited to the existence of asynchronous and loss of teleology (purpose) of the legal principle—namely the integrated criminal justice system, however, its further meaning is the emergence of authority to "how" interpret norms law in the CPC.

The need to carry out these cognitive-interpretive activities is based on a label against the defeat of the Public Prosecutor in the trial process as a weakness of the Prosecutor's institution.[14]

One of the effects of self-awareness of the possibility of defeat in the evidentiary process before a court is the emergence of interpretations of Article 142 of the CPC. Meanwhile, Article 142 of the CPC emphasizes that the Public Prosecutor can prosecute separately if he receives a case file containing several criminal acts that have been committed jointly. However, the provisions of Article 142 of the CPC contain exceptions, namely if several criminal acts with the participating perpetrators are not included in the qualifications of Article 141 of the CPC. So, we are obliged to first review Article 141 of the CPC which confirms the following:

"The public prosecutor can merge 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:

a. *several criminal acts committed by the same person and the interest of the examination does not constitute an obstacle to their merger;*
b. *several criminal acts related to one another;*

   Explanation of letter b: What is meant by "criminal acts are considered to have something to do with one another" if the crime is committed:

   1) *by more than one person working together and carried out at the same time;*
   2) *by more than one person at different times and places, but it is the implementation of an evil conspiracy made by them before;*
   3) *by one or more persons with the intention of obtaining tools to be used to commit other crimes or to avoid being sentenced for other crimes.*
c. *several criminal acts that are not related to one another, but one is related to one another, in which case the combination is necessary for the purposes of investigation."*

The meaning of the provisions mentioned above, when using a semicolon (;), is a choice of circumstances. Thus, the technique of separating case files is only permissible if there are circumstances that deviate from Article 141 of the CPC. However, the Attorney General's Office has carried out a strategy of language of power, by issuing a Circular from the Junior Attorney General for General Crimes Number: B-69/E/02/1997 concerning the Law of Proof in Criminal Cases dated 19 February 1997 (SE JAMPIDUM No. B-69 /1997).

Where, in SE JAMPIDUM No. B-69/1997, which was based on concerns that the Judge would reject the use of the concept of 'Crown Witness' (Kroongetuige), and in order to avoid provisions regarding the testimony of the accused only applicable to himself—as stipulated in Article 189 paragraph (3) of the CPC , then with reference to Article 142 of the CPC, the case file must be split. Read more SE JAMPIDUM No. B-69/1997 emphasized that this separation is necessary so that one defendant can be a witness against the other defendant.

The discourse mentioned above shows the validity of the opinion of J.A. Pontier [15] that the act of interpreting is an act of public authority which can be imposed with power and violence. However, on the other hand, the holder of power—in this case the Attorney General's Office, will carry out objectification—as an effort to establish a regime of truth, which hides normatively through the principle of Functional Differentiation, to justify and legitimize legal action in the form of separating case files. That is, SE JAMPIDUM No. B-69/1997 is an attempt to lay the rites of truth [16] that the separation of case files is a legitimate thing.

Existence of SE JAMPIDUM No. B-69/1997, in Foucault's view, is part of the legitimacy of power, which is based on the Defendant-State Relations—often

expressed by the jargon "The State Cannot Disappear", which in the end, is a form of domination (repressive through instruments of power) of the Defendant. So, SE JAMPIDUM No. B-69/1997 became a game of truth to present symbolic domination [17] which had played a role for decades, until it finally turned into naturalistic common sense.

Thus, SE JAMPIDUM No. B-69/1997 is a discourse that cannot possibly stand neutral without any interest, because, as a discourse SE JAMPIDUM No. The B-69/1997 was constructed through unnatural reasons. However, deliberately constructing it that way in order to save its interests, at least, is an effort to avoid being labeled as having the possibility of losing in court.

Self-awareness of this legitimate domination process was also constructed on an awareness of the absence of legal remedies for the Defendant to resist, both from the CPC and from the judge's neutrality side—which is based on the view that the formation of an Indictment is a representation of the dominis litis principle.[7].

One aspect of hidden interest is the separation of the case files, indicating the existence of a situation where the Public Prosecutor does not have sufficient witness testimony to substantiate the indictment [7]. Thus, SE JAMPIDUM No. B-69/1997 became a naturalistic History of Influence (wirkungsgesichte)—functioning as a symbolic dominance, for many years to confront the Defendants by changing each other's status.

Therefore, the separation of case files has been turned into a grand narrative, which has resulted in closing the opportunity for scientific study of the impact on the Defendants. Where, as we have described above, that Article 66 of the CPC in conjunction with Article 189 paragraph (3) of the CPC has guaranteed equality between the Defendant and the Public Prosecutor. However, it is different when one of the Defendants' status is changed to a Witness Statement.

When a Defendant's legal status is changed to Witness Statement, he (the Defendant) no longer has the previllage as a Defendant. However, he will be overshadowed by Article 174 paragraph (1) of the CPC in conjunction with Article 242 of the Criminal Code, namely the threat of criminal sanctions against him.

An interesting fact, related to the impossibility for the Defendant to immediately release himself from the nuances of kebatinan to give Witness Statements, is the speech act used by the Judge—as Chairman of the Panel, in the case of Ferdy Sambo—when giving testimony at the examination of Defendant Eliezer, with said “I often say I don't need a confession, but since you are here under an oath, please tell me what it is.”[18] This means that the Defendant is aware of his legal position, when he is about to tell the truth, it will only aggravate his criminal conviction.

Another uniqueness is in the criminal case in the jurisdiction of the Sumber District Court, Cirebon Regency, where there are 3 (three) defendants who were charged and prosecuted and examined at the same time, however, the three case files are separated by distinguishing the registration number, but do not use Article 55 paragraph (1) 1st Criminal Code. At (1). Indictment No. Reg. Perk:

PDM-II-33/M.2.29/Eku.2/05/2022—as stated in the District Court Decision Number 121/Pid.B/2022/PN.Sbr in the name of Defendant Mulya Bin (late) H. Solekh, there is a description as follows:

> *"It started when witness Wahyudin needed money, then witness Wahyudin tried to contact witness Jaya to borrow money, after meeting with witness Jaya then an agreement was made between witness Wahyudin and witness Jaya in which Witness Wahyudin would guarantee one AJB No. 298 dated 14 November 2006 with an area of 814 m2 located in the lurah village of Plumbon sub-district, Cirebon Regency owned by witness Farcha who is the biological mother of witness Wahyudin, and witness Jaya requested that the AJB be reversed in name first, That AJB No 298 had previously been pawned by witness Wahyudin at the KSP and witness Wahyudin himself obtained the AJB No. 298 by taking it without the knowledge of the witness Farcha who is his biological mother."*

Then, (2). Indictment No. Reg. Perk: PDM-II-33/M.2.29/Eku.2/05/2022—as stated in the District Court Decision Number 122/Pid.B/2022/PN.Sbr on behalf of the Defendant Wahyudin Als Ade Bin Saefudin, there is a description as following:

> *"Starting when the defendant needed money, then the defendant tried to contact witness Jaya to borrow money, after meeting with witness Jaya then an agreement was made between the defendant and witness Jaya in which the defendant would guarantee one AJB Number 298 dated 14 November 2006 with an area of 814 m2 which located in the lurah village, Plumbon sub-district, Cirebon Regency, owned by witness Farcha who is the biological mother of the defendant, and witness Jaya asked that the AJB be reversed first, that AJB No. 298 had previously been mortgaged by the defendant at KSP and the defendant himself obtained AJB No. 298 by how to take it without the knowledge of the witness Farcha who is her biological mother."*

And, that (3). Indictment No. Reg. Perk: PDM-II-34/M.2.29/Eku.2/05/2022—as stated in the District Court Decision Number 123/Pid.B/2022/PN.Sbr in the name of Defendant Muhammad Yahya Jaya Bin H. Sholekh, there is description as follows:

> *"It started when witness Wahyudin came to the defendant with the intention of borrowing money, after meeting with the defendant then an agreement was made between the defendant and witness Wahyudin in which witness Wahyudin would guarantee one AJB Number 298 dated 14 November 2006 with a section of 814 m2 which was cracked in the rurah village, sub-district prumbon Cirebon Regency owned by witness Farcha who is the biological mother of witness Wahyudin, witness Wahyudin explained that the AJB no 298 was obtained by taking it without the knowledge of witness Farcha and the AJB had been pawned at the KSP, then the defendant explained that he would provide a loan provided that AJB was collateralized the name must be reversed first, then witness Wahyudin agreed to reverse the name first, because the AJB No. 298 was still pawned at the KSP witness Wahyudin asked to redeem it first, then witness Wahyudin and the defendant went to the KSP to collect or redeem the AJB, after obtaining the AJB No. 298, the witness Wahyudin handed over the AJB to the defendant."*

If we observe how the Public Prosecutor carries out the language of power strategy against Wahyudin, Jaya and Mulya and the appearance of the name Farcha, then it is clear that there is a series of events that are the same and shared between the three. The Public Prosecutor tried to trick it—as a language strategy which is an instrument in dominating which functions as truth-games, by disguising the name Muhammad Yahya Jaya—in his Indictment, and changing him to Witness Jaya—in two other Indictments. Where, the three sentences carried out Article 266 paragraph (1) of the Criminal Code without using Article 55 paragraph (1) 1st of the Criminal Code.

Then, in the District Court Decision Number 123/Pid.B/2022/PN.Sbr on behalf of the Defendant Muhammad Yahya Jaya Bin H. Sholekh, there is a description as follows:

> *"Considering, that there was no doubt about the ability of* ***the defendants*** *to be responsible for their actions of committing an offense, this can be proven that both in the preliminary examination before the National Police investigators and in this trial the defendant has been smooth, clear and firm in giving answers - answers submitted by the Panel of Judges and the Public Prosecutor."*

In this case, it seems that there is a strategy of the language of power, where the self-awareness of Public Prosecutors and Judges who are aware of ownership of capital and habitus correlates with mastery of the field[19], where others are positioned as the Opposition Binary Inferior ("the Other"). As a result, starting from the splitsing discourse, new knowledge emerges that in Article 266 paragraph (1) of the Criminal Code which is carried out by more than one person, it does not require Article 55 paragraph (1) 1st of the Criminal Code. And, by clashing statements between the Defendants through the mechanism of changing their status to Witness Statements, the three of them were convicted.

The application of power language strategies, as found in the Indictment, constitutes a form of communication from the perspective of Critical Discourse Analysis (CDA) [20]. This approach acknowledges the influence of context [21], power, and ideology (interests) as key paradigms in thinking, particularly when pursuing a successful outcome in a criminal trial.

5. Conclusion

Referring to the description of the data and studies above, the self-awareness that arises in a Public Prosecutor is based on a History of Influence which was legitimized through a Circular Letter from the Junior Attorney General for General Crimes Number: B-69/E/02/1997 concerning the Law of Evidence in The Criminal Case dated 19 February 1997, has made the discourse (practice) of separating the Indictments into a naturalistic common sense and as a grand narrative. As a result, it became very easy for the Public Prosecutor to dominate the Defendants in order to keep from losing the trial. Therefore, at this point, the State *cq* the Prosecutor's Office of the Republic of Indonesia has committed a violation of the Preamble Considering

letter a of the Criminal Procedure Code, namely causing legal losses and human rights losses for the Defendants.

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