International Journal of Environmental, Sustainability, and Social Sciences
ISSN 2720-9644 (print); ISSN 2721-0871 (online)
https://journalkeberlanjutan.com/index.php/ijesss

THE URGENCE OF THE CONTROL MECHANISM OF AUTHORITY THE PROSECUTOR GENERAL IN WAITING THE CASE FOR PUBLIC INTEREST (SEPONEERING)

Volume: 3
Number: 2
Page: 464 - 471

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Article History:
Received: 2022-03-29
Revised: 2022-05-25
Accepted: 2022-07-21

Abstract:
The urgency of the control mechanism over the Attorney General's authority in overriding cases in the public interest (seponeering) is a manifestation of obtaining protection of human rights for every citizen harmed by the issuance of seponeering by the Attorney General. Apart from these reasons, the importance of controlling the authority of the Attorney General is also to create the principles of justice and legal certainty. Legal practices often occur in the judicial process show stagnation in realizing these three things, the protection of human rights (HAM), justice and legal certainty. The spirit of forming the Criminal Procedure Code promulgated based on Law Number 8 of 1981 laid the basic foundation for protecting human rights (HAM) as the primary goal, which includes upholding justice and legal certainty. There is stagnation in the effort to control the seponeering issued by the Attorney General because there are juridical limitations in the pretrial object institution as stated in the Elucidation of Article 77 of Law Number 8 of 1981 concerning the Criminal Procedure Code, which states that: with "discontinuation of prosecution" does not include setting aside cases for the public interest which are the authority of the Attorney General.

Keywords: Control, Attorney General, Seponeering.

Cite this as: NUSA, A., NURJAYA, I.N., MADJID. A., SUGIRI, B. (2022) "The Urgence Of The Control Mechanism Of Authority The Prosecutor General In Waiting The Case For Public Interest (Seponeering)." International Journal of Environmental, Sustainability, and Social Sciences, 3 (2), 464 – 471.

INTRODUCTION

Seponeering law instrument is a special right granted to the Attorney General. Although the criminal case being investigated has fulfilled the elements of a criminal act from the article violated by the perpetrator of the crime, the Attorney General, as the highest public prosecutor, is still given the authority to override the case in the public interest.

The decision of the Attorney General to issue a review of a criminal case has a juridical implication that the handling of a criminal case is not continued. Alternatively, the case is permanently or finalized, and no legal instrument is provided to test the authority of the Attorney General.

Regarding the final and permanent nature attached to the authority of the Attorney General in setting aside cases in the public interest (seponeering), it can be explicitly identified in the Prosecution Section Chapter II of the Decree of the Minister of Justice of the Republic of Indonesia Number: M.01.PW.07.03 THN 1982 concerning Guidelines for Implementation The Criminal Procedure Code, which confirms that: "In respect of cases that are set aside for the sake of the public interest, the public prosecutor is not authorized to prosecute the suspect in the future". If the suspect's case is set aside for public interest (Seponeering), the case is closed and cannot be reopened for any reason.

With the unavailability of a control mechanism over seponeering by the Attorney General, it raises anxiety if the application of the Attorney General's authority in issuing seponeering has been judged to be contrary to legal principles and applicable laws and regulations. This aspect is the basis of weakness in efforts to control (control) the implementation of the Attorney General's absolute authority in issuing seponeering so that it becomes a consideration that the seponeering authority is

very vulnerable to be interpreted by the interests of the Attorney General as one of the considerations of the Constitutional Court above.

The basis for the absence of a judicial control mechanism for implementing the Attorney General's authority in overriding a case in the public interest (seponeering). It is because the control arrangements for the exercise of the authority of law enforcement officers (Investigators/Prosecutors) in the process of investigation and prosecution carried out through pretrial institutions do not regulate whether or not the waiver of cases in the public interest is legal (Seponeering).

METHODS

The type of research used in this paper is normative legal research. This normative legal research was conducted to examine the urgency of regulating the control mechanism for waiver of cases in the criminal justice system's public interest (Deponeering). The legal approach used is the Legislative Approach (Statute Approach) with primary and secondary legal materials, which are then analyzed prescriptively using deductive thinking, a way of concluding that departs from general discussions to specific ones.

RESULT AND DISCUSSION

The existence of a legal vacuum to control the authority of the Attorney General in overriding a case in the public interest (seponeering) shows that there are imperfections in the system of laws and regulations. Whereas according to the consideration of the Constitutional Court in decision no. 29/PUU-XIV/2016, the Attorney General's authority is vulnerable to being misused for the benefit of the Attorney General. Therefore, to avoid the use of deviant seponeering authority, it is essential to formulate a control mechanism over the authority of the Attorney General. Several considerations are solid reasons for the importance of the control mechanism over the authority of the Attorney General in overriding cases in the public interest (seponeering), including the following:

Protection of Human Rights. The essence of the rule of law is the protection of human rights. Is also stated by Mahfud MD, who stated that the essence of the rule of law is one of them is the recognition of human rights, including the division of power to guarantee human rights. Considering the western concept, Philipus M. Hadjon stated that Human Rights (HAM) are restrictions on the actions of the state and its organs and the laying down of the state's obligations towards its citizens so that the principle contained in the concept of Human Rights is a claim for rights. Towards the state and the obligations that the state must carry out. John Locke himself stated that human rights (HAM) are rights given directly by God the Creator as natural rights. Therefore, no power in the world can revoke it. This right is fundamental to human life and life and is a natural right that cannot be separated from and in human life.

Human rights (HAM) provide an extension of authority for humans to be recognized and protected as beings with dignity. Protection and fulfillment of human rights (HAM) through a democratic regime has excellent potential to realize people's welfare. The Big Indonesian Dictionary states that "right" is the right, belonging, possession, authority, power to do something, good power over something, or to demand a degree of dignity and authority according to the law. By definition, "rights" are normative elements that function as guidelines for behavior, protect freedom and immunity and guarantee opportunities for humans to maintain their dignity. The right itself must have several elements, such as the existence of the right owner, the scope of the application, and the parties willing to implement the right. These three elements are united in the basic understanding of rights. Thus, rights are normative elements inherent in every human being. In its application, they are within the scope of equal rights and freedoms related to their interactions with individuals or agencies.

With some of the explanations of human rights mentioned above, respecting and protecting Human Rights (HAM) is to maintain the safety of human existence, rights and obligations, and the balance between the individual and the public interest. In-laws and regulations, in particular Article

1 of Law Number 39 of 1999 concerning Human Rights, states the definition of human rights as follows: "Human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld, and protected by the State, law and government, and everyone for the sake of honor. as well as the protection of human rights and dignity".

In addition to the special provisions on Human Rights (HAM) above, Pancasila, the state's ideology and philosophy, is the basis for formulating the principles of legal protection and human rights in Indonesia. The conception of legal protection for the people as justice seekers is based on the concepts of recognition and protection of human rights and the concepts of rechtsstaat and the rule of law. According to Muhammad Basri, recognizing the protection of human rights provides its contents. While the concepts of rechtsstaat and the rule of law create the means, thus the recognition and protection of human rights will grow in the forum of rechtsstaat and the rule of law.

At the time of entry into force, HIR Stb. 1941 Number 44 as a guideline for criminal procedural law in general courts, which is a legal product of the colonial period which had multiple aspects in its era, which of course had various problems, both in terms of its shortcomings and weaknesses, which benefited the rulers (colonizers), even the provisions it ignores the protection of human rights, legal certainty and justice. With the enactment of Law Number 8 of 1981, State Gazette Number 3209 dated December 31, 1981, protecting human rights has become a significant concern. It can be seen in the considerations, in particular letters a and c, it is explained that the Republic of Indonesia is a legal state based on Pancasila and the 1945 Constitution of the Republic of Indonesia, which upholds human rights and guarantees that all citizens have the same position under the law. Moreover, the government must uphold the law and government with no exceptions.

The development of a national law that upholds human rights (HAM) in the field of criminal procedural law is for the community to live up to their rights and obligations and to improve the development of the attitude of law enforcement officers by their respective functions and authorities towards upholding the law, justice, and protection. To human dignity, order and legal certainty for implementing the rule of law under the 1945 Constitution of the Republic of Indonesia.

The Criminal Procedure Code, which was promulgated based on Law Number 8 of 1981, has laid the basic foundation for the protection of human rights (HAM), one of which is the rights possessed by a person, including the victim, in an attempt to seek protection for himself before the court. That the concept of pretrial emerged that could not be separated from the long history of the need for strict judicial security against all acts of depriving a person of civil liberties, so the Magna Charta was created in 1215, which was born as a criticism of the arbitrariness of the king (ruler) at that time.

However, even though the pretrial concept was designed in Law Number 8 of 1981 concerning the Criminal Procedure Code, which historically stems from the Magna Charta concept, which aims to limit the king's power, with the idea that human rights are more important than the king's power. So that no citizen can be detained, have their assets confiscated, exiled, or in any way, have their rights castrated except with legal considerations. However, the pretrial concept is still considered imperfect. It tends to be half-hearted in protecting the rights of citizens as justice seekers against the exercise of authority by law enforcement officials.

This reason is illustrated by the formulation of the pretrial concept, which is the authority of the District Court as regulated in the provisions of Article 77 of Law Number 8 of 1981 concerning the Criminal Procedure Code, which in the formulation of the explanation of the article still provides legal exceptions to pretrial objects.

Article 77 of Law Number 8 of 1981 concerning the Criminal Procedure Code states that:

The district court has the authority to examine and decide, under the provisions stipulated in this law, Whether or not the arrest, detention, termination of investigation or termination of prosecution is legal; Compensation or rehabilitation for a person whose criminal case is terminated at the level of investigation or prosecution.

It was added that based on the Constitutional Court Number 21/PUU-XII/2014, it includes the determination of suspects, searches, and confiscations. In the formulation of the Elucidation of Article 77 of Law Number 8 of 1981 concerning the Criminal Procedure Code, it is stated as follows: What is meant by "discontinuation of prosecution" does not include setting aside cases for the public interest which are the authority of the Attorney General.

The affirmation of exceptions in the explanation of the article shows that the Criminal Procedure Code (KUHAP), whose spirit of formation is intended as a form of protection of human rights, has not been able to provide complete legal protection for justice seekers who feel that their rights have been harmed by the Attorney General's decision to overrule justice. A case with reasons in the public interest (seponeering).

Reduction of the rights of citizens to submit pretrial legal remedies to the District Court, which collides with the formulation in the explanation of Article 77 of the Criminal Procedure Code as described above, in practice has occurred, one of which is as in the application submitted by Boyamin as the coordinator of the Anti-Corruption Community NGO Indonesia (MAKI) which conducted a pretrial on the seponeering issued by the Attorney General on the case of alleged criminal acts of corruption committed by members of the DPRD Sukoharjo Regency. I Ketut, as a judge at the South Jakarta District Court who examined and decided on the pretrial application filed by Boyamin, in his brief consideration, stated the following: "The waiver of cases in the public interest is the absolute right of the Attorney General whom the court cannot try. Although in the form it can be categorized as SP3, if viewed from its contents, it is a waiver of a case in the public interest, which is an authority or a policy, not a legal action. Hence, the court has no right to judge it".

This decision illustrates that the right of citizens to apply for control over the authority of law enforcement officers, in this case, the Attorney General, has not been fully protected by the applicable laws and regulations, especially the Criminal Procedure Code itself. So that to realize this, in order to provide future legal protection for the rights of citizens who are harmed by the decision of the Attorney General in setting aside cases in the public interest (seponeering), it is necessary to formulate control over the termination of prosecution without exception, including against seponeering which is the authority of the Attorney General.

The constitution of our country formulates in the provisions of Article 28I of the 1945 Constitution of the Republic of Indonesia that: "To uphold and protect human rights under the principles of a democratic rule of law, the implementation of human rights is guaranteed, regulated, and outlined in-laws and regulations. ". With the affirmation in the formulation of this constitution, the control mechanism aimed at protecting the human rights of citizens harmed by the publication of seponeering by the Attorney General needs to be fully stated in-laws and regulations, especially the Law on Criminal Procedure.

Justice. The law gives constitutional rights to everyone to be free from degrading treatment of honor and dignity, which cannot be taken over arbitrarily by anyone. Implementing Indonesian state law at the state level that the highest law is the constitution. Therefore, every act of state administration, including law enforcement officers, must be based on the applicable law to create social order, legal certainty, and justice.

According to Soekarno Aburaera et al., Law and Justice are two interrelated elements: "condotio sine qua non". Law is the external manifestation of justice, and justice is the internal and essence of the spirit of the being of law. So the rule of law (supremacy of law) is the supremacy of justice (supremacy of justice) and vice versa. Both are commutative things. The law is not in the absolute dimension of justice. The law will not be able to survive if the spirit of justice has been lost. As a result, the distortion of legal thought with the loss of legal integrity causes the law to feel that it has not been able to become a means of justice products. The components of the legal apparatus have not been able to become justice producers. In terms of stating something is fair, one primary school can be used as a reference, namely the deontological school. According to deontologicalism, the commitment to realizing justice is seen in the way or mechanism to realize justice. Something

can be considered fair if its implementation is based on a good or standard mechanism or procedure. If the mechanism is fair, the result will automatically be fair. A good mechanism will encourage the creation of justice. The phrase that followers of this school often use is: "the rule of law to achieve justice even though the sky will fall".

According to deontologicalism, a method or procedure is declared fair if the procedure fulfills at least 3 (three) elements, namely eligibility, freedom, and Equality of position. Eligibility means that the procedure has given reasonable treatment to everyone. Fair or proper treatment is analogous to someone who treats others as he treats himself. If a treatment that is supposed to be directed at him will be painful or detrimental, then that treatment should not be used on other people.

Freedom means that the procedure must give everyone freedom to choose to follow the procedures established by law or those established by other norms to realize their interests. The existence of coercion to follow specific procedures has led to an unfair mechanism, so the results are certainly not fair.

Meanwhile, Equality means that the procedure for distributing resources has placed everyone in the same position and access to justice. If certain people are given more position and access than others in the procedure, then the procedure must be declared unfair, and the result will automatically be unfair. The Attorney General, in the matter of issuing seponeering is given more substantial legal access because the assessment of whether to issue seponeering or not is very subjective. However, on the other hand, citizens/NGOs as justice seekers are not given legal freedom to exercise control over the seponeering authority. This situation, of course, when judged in deontologicalism, is a procedure that does not provide justice.

Legal justice is the right of every citizen that must be guaranteed and protected by the state. The state must guarantee and protect legal justice for people's rights. The right to legal justice is the same as the community's right to social, political and economic justice. However, in practice, it is still difficult for the poor, or people who do not have access to power, to get legal justice. Legal justice is a path taken by the community to achieve justice outside and inside the court.

Sudikno Mertokusumo stated that justice is an assessment of one person's treatment of another by using certain norms as a measure. Regarding the application of seponeering, which is the absolute authority of the Attorney General based on Law Number 16 of 2004 as amended by Law Number 11 of 2021 concerning the Attorney General of the Republic of Indonesia, its application can be felt to be discriminatory, because the public interest referred to in the provision is the size/criteria is not clear which in the end the treatment is not evenly distributed for all cases, and depends on the subjective judgment of the Attorney General himself.

It can be seen in several cases, for example, in the cases of Abraham Samad and Bambang Widjayanto. The Attorney General ruled out their criminal cases by using absolute authority to override cases in the public interest (Seponeering). Furthermore, it is also included in the corruption case committed by members of the DPRD of Sukoharjo Regency in connection with the irregularities of the Sukoharjo Regional Government APBD funds for the Fiscal Year 2001 regarding the Project for the Procurement of Motorcycle Transportation Facilities for Members of the Sukoharjo DPRD which deviates from Regional Regulation No. 01 of 2001 which states that the procurement of motorcycles as referred to in Article 2 is as an inventory item for the Sukoharjo Regency Government Unit Secretariat of the Council. However, in practice, the motorcycle is in the personal name of each member of the Sukoharjo Regency DPRD.

The case was seponeering by Attorney General MA Rachman on the pretext of the following considerations: The relationship between the DPRD of Sukoharjo Regency as the legislature and the Sukoharjo Regency government as the executive is not harmonious and creates a reasonably heavy psychological burden so that the implementation of government duties and services to the community is not optimal, the process of discussing the 2002 RAPBD is not timely and has an impact on the stability of regional government; that the existence of such unfavorable conditions, the executive and legislative leaders of Sukoharjo Regency as well as from community leaders submitted a request so that the case could be dismissed (deposited) with considerations in the public interest.

Setting aside cases in the public interest (seponeering) carried out by the Attorney General above is very political. It is because the existence of inharmonious conditions between the DPRD of Sukoharjo Regency and the Regional Government of Sukoharjo Regency has been used as a basis by the Attorney General to rule out cases of corruption in the procurement of motorbikes on the grounds of being in the public interest (seponeering). Suppose it is related to Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia in its formulation. In that case, it states, "All citizens have the same position in law and government and are obliged to uphold the law and government with no exceptions".

With the formulation in this constitution, both Abraham Samad and Bambang Widjayanto, as well as members of the Sukoharjo Regency DPRD in allegations of committing a criminal act of corruption as described above, a law enforcement process should be carried out against them so that what the state aspires to is that every people at the same time their position before the law can be achieved. Thus the purpose of justice is adequately realized. Regarding the waiver of cases in the public interest (Seponeering) carried out by Attorney General MA Rachman against several members of the Sukoharjo Regency DPRD above, Boyamin has carried out control through pretrial institutions at the South Jakarta District Court. However, the pretrial application was not accepted by the South Jakarta District Court with the consideration that Boyamin's application conflicted with the principle of absolute competence (absolute authority of the court to adjudicate) because setting aside cases in the public interest was not included in the scope of pretrial.

Boyamin as the NGO Indonesian Anti-Corruption Society (MAKI) coordinator, did not accept the application for waiver of cases in the public interest (Seponeering). It creates a situation where there is stagnation in the efforts of citizens to fight for justice through the media control of pretrial institutions. Such legal conditions ensure the realization of the principles of justice in the law enforcement process, especially for victims who feel firsthand the crime committed by the suspect. As well as experiencing and directly assessing the deviant processes and procedures carried out by the Attorney General in setting aside a case in the public interest (Seponeering), then it becomes a legal requirement in future arrangements against seponeering, which is the authority of the Attorney General, is part of judicial control, such as pretrial so that the authority cannot be misused for specific interests that deviate from the granting of the seponeering authority itself.

Legal certainty. Legal certainty is the central pillar of the rule of law. It is because it has several dimensions as follows:

1. Everyone as a citizen must be free from arbitrary actions by the government and its apparatus and avoid provisions whose legal basis cannot be predicted.
2. State administrators, including elements of the judiciary, must comply with and bind themselves to the applicable laws; and
3. All actions of the government and its apparatus must be based on the applicable law.

With this formulation, it is clear that the measures of the exercise of authority by both the authorities and law enforcement officers are all based on regulations that apply positive law. It can be said that legal certainty is a product of law, or more specifically, it is a product of legislation. Based on the above principles, it also shows that legal certainty functions as legal protection against the implementation of authority or actions by the authorities so that it can be used as a guide for everyone's behavior and a guarantee that the law is carried out correctly. Maria Farida Indarti stated that several aspects must be considered to create legal certainty: 1. Legislation or other legal products must be formulated clearly and thoroughly so that the public knows what can and cannot be done, and 2. Existing laws and regulations may not be changed without considering the interests of the intended party (the community) and adequate transitional provisions.

Because the value of legal certainty is a legal product or, more specifically, a product of legislation, when the law comes, certainty comes. It is like the philosophical view of positivism, especially regarding legal certainty, which states that something prioritized is only apparent and definite (positive) because that can be used as a measure of truth. Achmad Ruslan said that the

condition is that the formulation is precise (unambiguous), there is consistency in the formulation both internally and externally, and the use of language that is easy to understand to measure Legislation guarantees certainty.

An explanation of legal certainty is based on a clear and definite formulation to become the standard of what may or may not be done. If it is related to the control mechanism for the authority to override cases in the public interest by the Attorney General (Seponeering), this is necessary to regulate. It has been acknowledged that control over seponeering, the absolute authority of the Attorney General, is challenging because the control procedures are not regulated in as much detail as possible. Even pretrial institutions which are expected to serve as a forum to protect human rights against the exercise of authority by law enforcement officers (investigators/public prosecutors) do not recognize seponeering as part of the authority for examination by the District Court (not the object of pretrial).

This situation is evidenced by the efforts made by several Community Organizations that carry out efforts to control the authority of the Attorney General through an application to the District Court in the Pretrial process. All of these efforts met legal obstacles. With consideration that: "The waiver of cases in the public interest is the absolute right of the Attorney General which the Court cannot try". It is as the author has described previously in the application submitted by Boyamin as the coordinator of the Indonesian Anti-Corruption Community NGO (MAKI) in the case of alleged corruption crimes committed by members of the Sukoharjo Regency DPRD, where the case was terminated by the Attorney General using considerations in the public interest (Seponeering).

Regarding the legal considerations of the South Jakarta District Court above, which did not accept the pretrial application, Boyamin as coordinator of the Indonesian Anti-Corruption NGO (MAKI), objected to the Attorney General's policy of setting aside the case for reasons of public interest (seponeering) against corruption carried out by members of the DPRD Sukoharjo Regency. The legal considerations of the judge who examined the pretrial application submitted by Boyamin, in the author's judgment, the legal considerations can be justified if we assess them from the perspective of legal certainty.

It is because the juridical basis of the object of the Pretrial application, as referred to in Article 77 of Law Number 8 of 1981 concerning the Criminal Procedure Code, which regulates the authority to examine whether or not the termination of prosecution is legal, is clearly stated in the explanation of the article. Moreover, it is inevitable that: "what is meant by the termination of prosecution does not include setting aside cases for the public interest which are the authority of the Attorney General". It means that seponeering by the Attorney General is not an object of pretrial.

Based on these facts, in order to provide legal certainty over the control efforts carried out by citizens as justice seekers, including by Community Associations (NGOs), on the authority of the Attorney General in overriding cases in the public interest (Seponeering), it is essential to clearly and definitively formulate the rights of citizens. The country has applicable laws and regulations, especially in the Criminal Procedure Code. So that in this way, every effort to control the authority of the seponeering by the Attorney General gets a solid and clear measure and legitimacy in the provisions of the applicable laws and regulations.

To provide legal certainty to efforts to control the attorney general's authority in overriding cases in the public interest (seponeering), it also contains the value of legal protection for citizens harmed by the attorney general's policy of setting aside cases. It includes providing justice to the citizens themselves if it is felt that this authority has been misused for the political interests of the Attorney General.

However, before making seponeering by the Attorney General a part of the pretrial control or the authority of the preliminary examining judge, the most important thing to formulate is certainty about the criteria/criteria for the public interest. So in applying for control over the authority of the Attorney General, there are definite indicators as a measure that the use of seponeering is not under the criteria set by the applicable laws and regulations.

Until now, the basis of "public interest," which is the reason for the issuance of seponeering by the Attorney General, does not have a definite indicator/measurement. Article 35 paragraph (1) letter c of Law Number 11 of 2021 amendments to Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia, as the juridical basis for the Attorney General to issue seponeering, only mentions in the explanation of the article that: "What is meant by public interest is are the interests of the nation and the state and the interests of the wider community". The measure of public interest in the explanation of this article is still abstract without clear and definite criteria so that the meaning of public interest itself is still a subjective assessment of the Attorney General, which according to the Consideration of the Constitutional Court Decision Number 29/PUU-XIV/2016 itself, can be interpreted broadly. By the Attorney General as the soldering power holder, even that authority is vulnerable to be interpreted under the interests of the Attorney General.

CONCLUSION

The urgency of the control mechanism for waiving cases in the public interest (seponeering) is the embodiment of the rule of law that guarantees the protection of human rights (HAM), justice and legal certainty. Law Number 8 of 1981 concerning the Code of Criminal Procedure Code currently in force, whose spirit is to protect human rights (HAM), is still felt to have not provided the intended protection optimally. It is because the seponeering, which is the authority of the Attorney General, cannot be controlled through the pretrial institution because there are exceptions to the provisions of the elucidation of Article 77 of Law Number 8 of 1981 concerning criminal procedural law, which states that what is meant by the termination of prosecution does not include setting aside cases for the benefit of which is under the jurisdiction of the Attorney General.

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