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The Meaning of Waiver of Case for Public Interest (Seponeering) in the Criminal Justice System

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Abstract

Article 35, letter C, Law No. 16 of 2004, which regulates the authority of the Attorney General in issuing deponing, where according to the Constitutional Court in its legal considerations (ratio decidendi), there are no clear boundaries between "the interests of the nation and the state and/or the interests of the wider community," which are regulated in the elucidation of Article 35, letter C, Law No. 16 of 2004, so that it can be interpreted broadly by the Attorney General as the seponeering authority holder, Therefore, to avoid abuse of authority by the Attorney General in issuing denials, it is necessary to provide a judicial oversight system to assess whether the Attorney General's decision is in accordance with the principle of due process of law or not. Starting from these considerations, the author is interested in discussing several legal issues related to the meaning of setting aside cases in the public interest (seponeering) in the criminal justice system. This study uses normative research methods with a statutory approach. The results of the study show that the formulation of the Attorney General's authority in overriding a case in the public interest (seponeering) was formally regulated for the first time based on Article 8 of Law Number 15 of 1961 concerning the Main Provisions of the Attorney General's Office of the Republic of Indonesia, which states that "The Attorney General can set aside a case based on the public interest." It is only then that an explanation of the notion of "public interest" is clearly stated in Article 32, letter c, of Law Number 5 of 1991 concerning the Prosecutor's Office of the Republic of Indonesia, which states that "what is meant by "public interest" is the interest of the nation and state and/or the interests of the wider community."

Keywords: *Public Interest; Attorney General; Seponeering*

Introduction

The right of the Attorney General to conduct securities enforcement includes privileges in the prosecution process. This is because the meaning of "public interest," which is a formal requirement for

the application of sepioneering in settling a case, is highly dependent on the point of view of the Attorney General, who has authority (dominus litis) in applying the opportunity principle. This is a logical consequence of the absence of firm, clear, and limitative boundaries regarding public interest criteria that will be used as a policy reason for setting aside cases in the public interest (seponeering). thus causing problems and abuse of authority in its application.

In his position, it is clear that the Attorney General is under the government. Because the Attorney General is appointed by the President as stipulated in Article 19 paragraph (2) of Law Number 16 of 2004 as amended by Law Number 11 of 2021 concerning the Attorney General of the Republic of Indonesia, As a result, the Attorney General is not completely independent or free from the influence of power.In contrast, the Court is independent of the executive (government) through its judicial power.The freedom that exists with the Attorney General is based on his own assessment of whether an order or instruction from the head of state is against the law or not. If the order or instruction is in accordance with applicable law, the problem will not exist.

If examined from a historical perspective, fears of abuse of authority in the case of implementing seponeering actually emerged during the formulation of the main provisions of the Attorney General's Office of the Republic of Indonesia as regulated in Law Number 15 of 1961. Therefore, to anticipate abuse of authority in waiving cases with reasons of public interest, the drafting team of the Law on the Prosecutor's Office formulated the authority to use special prosecuting authority not to be given to all public prosecutors (prosecutors), but only as a monopoly authority of the Attorney General. The results of this formulation are then embodied in Article 8 of RI Law No. 15 of 1961 concerning the Main Provisions of the Attorney General's Office of the Republic of Indonesia, which states: "The Attorney General can set aside a case in the public interest." Then in Article 32, letter C, Law Number 5 of 1991 The first amendment to Law Number 15 of 1961 concerning the Attorney General of the Republic of Indonesia states that "The Attorney General has the duty and authority to set aside cases in the public interest." Likewise, Article 35, letter c, of Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia, which is currently in force, states that "The Attorney General has the duty and authority to set aside cases in the public interest."

In the exclusion of a criminal case (seponeering) by the Attorney General, the value of law and law enforcement is sacrificed for the public interest. Even though a person has been named a suspect based on sufficient initial evidence (two valid pieces of evidence), the criminal case is dismissed or set aside and not forwarded to the court session on the grounds that it is in the public interest. This situation causes the use or application of the sequestering authority by the Attorney General to be perceived as discriminatory and violate equality before the law. because its use protects the perpetrators of criminal acts by using public interest measures.

The deponeering authority of the Attorney General has been used in several cases. During the New Order era, the exclusion of cases in the public interest (seponeering) was applied to the M. Yasin case based on the Decree of the Attorney General of the Republic of Indonesia, Number: KEP-048/JA/5/1981, dated May 5, 1981, with the following considerations: "Because M. Yasin being prosecuted and tried in court will cause widespread political turmoil among the people, including among ABRI and retired ABRI officers, causing disruption of the social security situation, as well as have an impact on economic, social, cultural In addition to these cases, the Attorney General also used his sequestering authority against former KPK leader Chandra M. Hamzah for alleged acts of resistance in a corruption case. The Attorney General set aside this case by issuing a decree setting aside the case in the public interest (TAP-001/A/JA/01/2011). The Attorney General's considerations in setting aside the above case are:

1. That setting aside cases in the public interest is an implementation of the opportunity principle in prosecution which can only be carried out by the Attorney General based on the authority granted by law.
2. That if the case on behalf of the suspect CHANDRA M HAMZAH is transferred to the court it will result in disruption of the performance of the Corruption Eradication Commission in carrying out its duties of authority so that it is detrimental to the public interest, namely the interests of the nation, state or society.
3. That because of this, the Attorney General needs to issue a Decision Letter to Set Away Cases in the Public Interest.

Simultaneously, the Attorney General ruled out cases with other suspected Corruption Eradication Commission leaders, namely DR. BIBIT SAMAD RIANTO, with the same suspicion of committing acts of corruption. The waiver of this case is based on the Decree on the Waiver of Cases in the Public Interest No. TAP-002/A/JA/01/2011. The basic considerations of the Attorney General in the abovementioned decision are:

1. That setting aside cases in the public interest is an implementation of the opportunity principle in prosecution which can only be carried out by the Attorney General based on the authority granted by law.
2. That if the case is in the name of the suspect DR. BIBIT SAMAD RIANTO being transferred to court will result in disruption of the KPK's performance in carrying out its duties of authority to the detriment of the public interest, namely the interests of the nation, state or society.
3. That because of this, the Attorney General needs to issue a Decision Letter to Set Away Cases in the Public Interest.

The substance of this seponeering decree, the Attorney General is of the view that if the corruption case is prosecuted, it is predicted that it will hamper the duties and powers of the Corruption Eradication Commission (KPK) in eradicating criminal acts of corruption in Indonesia, so that the consequences will be detrimental to the public interest, namely the interests of the nation, the state and/or the general public.

In such a context, it is quite reasonable if various legal opinions and criticisms have been raised; even the law enforcement system in Indonesia is being questioned again, especially by practitioners and legal experts. This question concerns the reasons considered by the Attorney General in determining whether the public interest has met the desired representation or criteria at the level of ideas and concepts of the opportunity or spearheading principle.It will be difficult for these criticisms and questions to get uniform justifications because there is no formal testing facility that can be used as a standard in giving an assessment of this matter.

If the principle of opportunity/seponeering is still required in the future, legislators should immediately take legislative steps to ensure legal certainty and justice for all citizens by reformulating the provisions of criminal procedural law that are used as a means of legal action to carry out formal trials.through judicial oversight of the legality of the Attorney General's actions in setting aside a case in the public interest. The purpose of this formal oversight is intended to ensure that the absolute authority inherent in the Attorney General cannot be misused for personal or group interests and remains in accordance with the conditions stipulated by laws and regulations.

The currently available form of judicial control, as regulated in Law Number 8 of 1981 concerning the Criminal Procedure Code, is horizontal supervision through the institutions of pretrial

institutions. However, this judicial oversight is limited in several ways and does not include the Attorney General's authority to set aside cases in the public interest (seponeering).

Victims of criminal acts suffer losses when the control mechanism over the Attorney General's authority in issuing separables is not regulated.Because the existence of sepioneering does not see and consider the object of the case that occurred, the approach is more on the perpetrators of criminal acts by using the Attorney General's subjective considerations based on public interest reasons.This subjective reason makes the State of Indonesia no longer based on a rule of law (Rechtsstaat) but a state of power (Machtstaat), where the power to prosecute or not is based on the powers possessed by the Attorney General in the field of prosecution. For this reason, in order to protect the rights of citizens who have been harmed by the guidance issued by the Attorney General,

Based on the above considerations, the absence of legal remedies against the Attorney General's authority in issuing seponeering has a negative impact, namely, the concern that the process is not transparent, which has the potential to create abuse of power so that it can harm other citizens as victims of criminal acts.

This form of concern was also outlined by the Constitutional Court in decision no. 29/PUU-XIV/2016, which states in the ratio decidendi that:

> "There is no clear definition of "the interests of the nation and the state and/or the interests of the general public" which is regulated in the elucidation of Article 35 letter C Law Number 16 of 2004, so that it can be interpreted broadly by the Attorney General as the seponeering authority holder. In fact, this authority is very susceptible to being interpreted according to the interests of the Attorney General, even though in implementing the Elucidation of Article 35 letter c of Law Number 16 of 2004 states, "after taking into account suggestions and opinions from state power agencies that have a relationship with the problem ".

With the legal considerations of the Constitutional Court that it is feared that seponeering by the Attorney General could be interpreted in accordance with the interests of the Attorney General, then the legal vacuum problem (Vacuum Norm) over the mechanism of control of the Attorney General's authority in overriding cases in the public interest (seponeering) as described above , it is necessary to formulate a judicial control mechanism so that the seponeering authority by the Attorney General still pays attention to the principles of the two process of law.

In addition to the juridical problems (Vacuum Norm) above, there are also several philosophical problems, namely as follows:

On an ontological level, the absence of a judicial control mechanism arrangement for sequestering in Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) does not guarantee the protection of the rights of justice seekers or victims of criminal acts who are harmed by the prosecutor's dismissal of cases under the pretext of public interest. Agung (seponeering).

From the epistemological aspect, there is no regulatory control mechanism for the Attorney General's authority in overriding cases in the public interest (seponeering), which can reflect the value of legal uncertainty and does not provide a sense of justice for citizens whose human rights have been violated by the actions of the Attorney General who issued seponeering.

The axiological aspect of setting up a control mechanism over the Attorney General's authority in setting aside cases in the public interest (seponeering) is a demand in the future reform of criminal

procedural law so that citizens can defend their human rights against the actions of the Attorney General who issues seponeering. The reform of criminal procedural law is carried out by reformulating the horizontal control mechanism regulated in the provisions of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP).

Theoretically, there is a vulnerability to abuse of the Attorney General's duties and powers in setting aside cases under the pretext of being in the public interest (seponeering), as well as the unavailability of a judicial control mechanism over this authority. This creates inconsistency with the rule of law theory, the theory of the public interest, the theory of justice, the theory of legal objectives, the theory of the criminal justice system, the theory of criminal law policy, and of course using the due process of law concept approach.

Problem Statement

As previously explained that seponeering is part of the freedom of judges with the aim of accommodating the public interest, therefore it is important to understand this meaning. As for the identification of the problem, what is the meaning of setting aside cases in the public interest (seponeering) in the criminal justice system?

Research Methods

This research is categorized into the type of normative legal research, this is based on the issues and or themes raised as research topics. The research approach used is philosophical and analytical, namely research that focuses on rational views, critical analysis and philosophy, and ends with conclusions that aim to produce new findings as answers to the main problems that have been determined. It will also be analyzed using descriptive analytical methods, namely by describing the applicable laws and regulations related to legal theory and positive law enforcement practices related to the problem.

Discussion

Wirjono Prodjodikoro regarding the opportunity principle concluded that the public interest is synonymous with the interests of the State. Meanwhile JMvan Bemmelen stated about this public interest as follows: "An important question arises what is meant by public interest" in the application of the opportunity principle. In the article or in the explanatory memory, this definition is not further elaborated.

According to PJ.P No, there are three categories in which the Attorney General's Office may not prosecute on the basis of the public interest, namely;

a. The category in matters where the interests of the state (staatsbelang) require that no prosecution be carried out. This can happen, for example, if the prosecution will result in an unwanted announcement (openbaring) of state secrets or if with a prosecution the name of an official official will be gossiped about or become bad, so that because of that a scandal (shameful event) will be more detrimental from not prosecuting the offense.

Another example can be obtained in terms of not prosecuting crimes on the basis of beliefs (overtuigingsdelicten) that have occurred, (for example not being willing to take part in mental counts), with the aim of preventing the escalation of an ongoing conflict between the Government and some of the people.

More generally it can be said that the interests of the state do not require a prosecution if there is a possibility that certain aspects of a case will receive disproportionate pressure in publicity, so that the suspicions that can arise in the people of this situation cause great losses to the state.

b. The category of matters in which the public interest does not require a prosecution (maatshappelijk belang).

An example can be seen in a ruling regarding a complaint under article 12 which was filed with the Court of Appeal's Gravenhage dated 12 april 1956 NJ 1956 No.593. The high court in this decision can agree with the opinion of the prosecutor, that the answer to the question whether embezzlement of goods purchased in installments can be prosecuted on the basis of Article 321 Sr - also depends on the answer to another question, namely whether the seller has been given credit too easily and lacking consideration. A good credit policy according to the Court of Appeal can help to oppose the easy granting of credit on the purchase of goods on installments and to reduce the social harms that can arise from the installment sale regime.

In general, an acceptable conclusion can be drawn from this, that not prosecuting criminal acts, which can be blamed on an act that is socially irresponsible on the part of the victim, can be considered to have been based on a prosecution policy that complies with legal requirements. However, according to the consideration of the High Court in the case concerned there is no such irresponsible situation.

Furthermore, it was also stated matters in which from the point of view of interests and partly also the interests of individuals wished not to be prosecuted: not prosecuting first-offenders and children who were not yet adults according to criminal law, which also taking into account the nature and extent of the offense they committed could have been prevented Don't mess with the Judge. The community's interest in this matter by not holding a prosecution lies in the condition that the adjustment back to society of the offender will be better guaranteed, for example, only with a warning from the prosecutor than by going through a legal procedure.

Finally included in this category, do not sue on the basis of ideas that have or are changing in society about actions that were previously considered punishable. In this case it should be remembered, for example, that opinions have changed a lot or are currently changing about the deserving of punishment for some moral offenses.

In this case, it becomes the scope of the Government's task Cq the Ministry of Law and Human Rights to compile and propose a certain draft law which, based on real conditions, is necessary to meet the demands of community legal developments.

c. Category of matters in which personal interests do not require prosecution (particulier belang).

That legislators interpret this notion of "public interest" broadly, and in it also include personal interests, can be inferred from the Minister's response to questions from the Preparatory Commission and Parliament, which states as follows:

The term "public interest" is often found in which it is also meant to mean things if as a result of a prosecution personal interests will be too heavily affected. it is acceptable. If because of the prosecution of an individual his personal interests are too heavily affected when compared to the possible outcome of the criminal process, then this will not be beneficial to the public interest, because the unequal loss of a prosecution violates the requirements for consideration of interests

which must be balanced. In other words: the profits derived from prosecution are not balanced with the losses incurred against the accused and society.

This can be imagined in the circumstances, if the criminal has for example compensated for the losses incurred due to his actions, or if it is done it may or may not be a violation of the law even though it is not serious.

In this situation (the community) does not have enough interest in prosecution or punishment, prosecution is not beneficial to society in such circumstances it will not only waste energy, but can also lose authority.

Precisely in the prosecution of petty cases, the benefits obtained are in some cases not balanced with the losses suffered by individuals and society. Of course, you have to pay attention to the severity of an act. That the public interest would require that a murder not be prosecuted is impossible, but if we examine the crimes, then over time, and more and more it can happen that there will be found crimes that do not need to be prosecuted in the public interest). The same meaning is the reason that has been recognized in the doctrine for not prosecuting on the basis of opportunity considerations if this will cause injustice and dishonesty to the person being prosecuted, compared to other people against whom the same investigation has been carried out (Noyon).

It must be certain that concrete prosecution due to the circumstances that arise in carrying out the act, even though it is formally allowed or required, in practice will result in injustice and dishonesty, or cause bad conditions.

In the jurisprudence of article 12 there are several examples of the above categories. The High Court in Arnhem (8 September 1931, NJ 1932 p.309) once refused to order a prosecution when in an accident an aggrieved person requested that no minutes of investigation be held, but after that has submitted an objection to the High Court on the grounds that there was no prosecution of the accused so that the official report must be made again after that on the basis of these considerations.

“That can be agreed. Minutes are not required for any criminal act, no matter how small, as in this case from the start it was doubtful whether a crime had been committed, and the person who feels aggrieved has requested that no minutes be made.

"Considering that after the case has been resolved in this way, it cannot be permitted, as in this case that an agenda will be made after this, because it will open the possibility to obtain compensation by means of threats with the minutes.

"Considering that this is already a reason based on public interest, do not approve the request.

Also, the High Court considered it contrary to the public interest, an order to prosecute someone other than the complainant, while the complainant himself was not prosecuted, while in fact the two of them (the complainant and the accused) jointly endangered traffic safety (the Court Arnhem High 29 Sept. 1931, NJ1932. p.310).

Compared to the implementation in Indonesia, there are several differences from the implementation in the Netherlands, as follows:

1) The application of authority in Indonesia is only in the hands of the Attorney General and is not authorized by other prosecutorial officials.

2) From the examples given by JM van Bemmelen, what is usually applied is the category in which the public interest requires that no prosecution be carried out, and not in their own interests.

In practice experienced by several Prosecutors, the application of this opportunity principle in matters of:

1) Fight between tribes

Fights between tribes never happened in Tanjung Priok. In the beginning the fights were only between individuals but whether intentional or not, these fights eventually spread to become between tribes, so that on both sides there were people who died. Formally this issue is to be resolved according to the criminal process. However, because there were many parties who had to be prosecuted and the number of defendants, the Attorney General finally considered that there was sufficient reason not to prosecute the parties concerned in the public interest on the basis of the following reasons:

a) Prosecution which results in punishment of both parties can result in sharpening hostilities, so that at one time riots will be able to arise again by other parties consisting of people supporting each party, so that the problem will not go away.
b) Putting dozens of people on trial in court which will last for days in which both parties and their supporters are present, will easily erupt into even more violent fights.
c) Settlement outside the Court, by custom it is considered that it will be easier to reconcile the two parties.

In the end, the case was set aside on the basis of public interest, and the two parties met after the preliminary investigation was completed, and the case was resolved amicably. Parties and ceremonies are held according to their respective customs, in which law enforcers are present. These methods have brought good effects. Now the two tribes that used to be enemies live in peace and security, and there have never been clashes between them.

The application of opportunity rights in the example above can be based on the interests of society.

2) Crimes committed by children under the age of 16

If the crime is not too serious, and is being committed for the first time, the case is often dismissed on the basis of the public interest. The public interest in this case is the interest of the community, which wants to prevent the child from having anything to do with the Judge, but it is sufficient to resolve this with a stern warning from the Prosecutor's Office. The consequences of the losses that will arise from the trial of the child are heavier than the benefits for the public interest that are obtained as a result of trying the case.

3) A high official in a raid was caught red-handed in a brothel.

After the preliminary examination is completed, there is sufficient reason to sue the person concerned to the court. However, in this case the consideration arose that if a prosecution was carried out, then the official's name, especially if it was in the newspapers, would be gossiped about and discussed everywhere so that it could result in undermining the authority of the Government.

Since the crime he committed was not that serious, it was considered that giving a strong warning had been adequately resolved. The profit derived from the prosecution is for the public interest, compared to the fall in the authority of the Government and the fall of the person's name personally, is unequal.

In addition to warnings, administrative sanctions may also be imposed on said person by reducing his rank or transferring him to another place.

4) An example is the exclusion of cases in the public interest by the Attorney General on behalf of 4 defendants accused of violating Article 170 paragraph (1), Article 406 paragraph (1) jo. Article 55 of the Criminal Code in North Sulawesi with the following reasons:

a) Even though there are sufficient grounds for prosecution against the defendants, it would be unwise for the prosecution to continue, given the current regional situation and conditions.
b) Cases that have been in arrears for more than 10 years for unknown reasons.
c) Meanwhile, in this period, there have been many efforts by the Government with the participation of the people in North Sulawesi, which have focused, among other things, on the spiritual life.
d) These activities were directed at the realization and consolidation of harmony between religions and between people, where MTQ was held successively in 1979. followed by the DGI general assembly in 1980 in the city of Manado.
e) That the two activities held in the city of Manado have a national scope, so that if the case in question is filed and resolved through the Court, it is feared that it will constitute a disturbance to the fostering and development of harmony between religions and the people themselves.

In fact, an orderly and stable atmosphere is needed ahead of the upcoming General Election.

f) Whereas the criminal acts committed by the suspects, bearing in mind their nature based on reasons of public interest, do not need to be prosecuted before a court hearing, therefore there is no objection to setting aside the case.

It is clear from the above considerations that it can be concluded that the public interest which forms the basis for the exclusion of the case is the interests of the nation and state and/or the interests of the general public.

Until now the application of the opportunity principle by the Attorney General has been very incidental. In general, all criminal cases are prosecuted before the Court, if there is sufficient evidence. Moreover, with this authority only in the hands of the Attorney General can guarantee that this authority will not be abused.

Regarding the notion of public interest which is not explained in more detail in Article 35 paragraph (1) letter c of Law Number 11 of 2021 or its explanatory memory, perhaps it is wiser. There are many concrete situations of various kinds that could not have been imagined beforehand, which could occur in the practice of carrying out criminal proceedings. It is understandable that a delusion predicting that it will be possible to enumerate things and circumstances that can be included in the public interest is impossible. Likewise, it is very difficult to try to establish general rules about what is meant by the public interest in the opportunity principle.

Indeed, regarding the public interest in a rule of law, there are two important roles to the law, namely the active role and the passive role. In its active role, the public interest demands the existence of law and serves as a basis for determining the content of law so that legal objectives can be achieved. So the active role of the public interest in this case is regarding legal ideals (rechtside). For the Indonesian nation, its legal ideals are embodied by the main ideas which are the radiance of the Pancasila which animates the 1945 Constitution.

The public interest has a passive role when it is made the object of regulation rather than legal regulation. In this regard, the public interest can be seen from the point of view of laws and regulations and according to customary law. The difference in conception of the public interest does not solely lie in differences regarding the written and unwritten nature of legal rules that regulate, protect and maintain the

public interest itself, namely the conception of law according to Western law and according to customary law.

The two differences mentioned above are not always in line because they do not always have the same meaning between written legal rules and western law. What always has the same meaning is between unwritten law and customary law. The definition of law according to customary law contains a broader meaning than the understanding of law according to western law seen from the point of view of the fields of relations that are regulated and protected.

In the western literature, what is usually used as a basis for distinguishing between public law and private law is the kinds of interests regulated in law. Laws governing public interest are public laws and those governing special interests are private interests. In customary law there is no such distinction, but it is known that there is a difference between public interest and individual interest, which difference can be seen in customary law associations, where customary law applies as the law of life.

The implementation of the opportunity principle based on the public interest must be seen from the two sides of the role of the public interest, both active and passive. If the public interest is regulated in a legal regulation (especially written ones), it cannot be used as the basis for the principle of opportunity to set aside a criminal case, because it is precisely the public interest that demands that a prosecution be held before a criminal judge to be sentenced to a penalty commensurate with the mistake of committing an act that is detrimental to the public interest. . For this reason, the public interest which can be used as a basis for setting aside a criminal case must be found in other legal regulations governing the public interest which must be protected and maintained. If the intended public interest is not found in other legal regulations,

The public interest as an interest that is regulated, protected and maintained in positive law must be found in a society where the rule of law applies, starting from small partnerships to the state as an organization. In this regard, the public interest can also be seen as the interests of the state, regional interests and the interests of the association both based on statutory regulations and based on customary law, all of which are included in one sense, namely the national interest. The definition of national interest for the Indonesian nation can be used as an interest that is regulated, protected and maintained in Indonesian national law to distinguish it from other interests, for example international interests, colonial interests and so on.

There are several opinions that may arise in connection with the definition of Indonesian national law, namely:

a. which applies solely based on the transitional provisions of the 1945 Constitution, so that there is no legal vacuum;
b. which applies because it does not conflict with Pancasila and animates the 1945 Constitution;
c. which was formed based on the 1945 Constitution as the basic law and source of law imbued with Pancasila.

If viewed from the point of view of development in the field of law or the development of national law which is currently being intensified, then the class C national law should be used as a basis, because if it is based on the conceptions of groups a and b legal development as legal renewal does not need to be carried out in the development of national law.

The interests of the state, regional interests and the interests of the association which are regulated and protected in laws and regulations where the state, region and alliance are seen as state administration organizations, the public interest is always in relation to the interests of the organization and the common

interests of citizens as members of the organization to achieve or realize the ideals national ideals as national goals, as stated in the preamble of the 1945 Constitution.

The interests of the State are reflected in the implementation of the duties and powers of state institutions. Particularly for administrators of government authority and duties, this will be reflected in ministries and non-ministerial institutions, so that it can be said that there are educational and cultural interests, national economic interests and so on.

Talking about violations of the public interest which in essence cannot be separated from talking about the public interest, so if you want to know what a violation of the public interest is, it is necessary to know in advance what the public interest is. What is the public interest? regarding this term there is no clear and satisfactory definition in the legislation.

Since the Dutch East Indies era, the notion of public interest has been known by the terms "algemeen belang" (among others, article 37 of the Criminal Code), "openbaaar belang" (among other things, in S 1906 no.348), "ten algemeeene nutte" (among other things, article 570 of the Criminal Code) or "public striped" (among others in S 1920 no.574). In the Age of Independence, the public interest was regulated in various laws and regulations, the formulation of which was different from one another.

In the Law Dictionary, the notion of public interest is interpreted from the translation of striped algemene and public interest. Seta refers to the Indonesian dictionary, what is meant by public interest is something about the whole or everything, as a whole, not only about specific or certain matters. The same understanding is also equated for the benefit of many people, for anyone.

Several doctrines and theories also provide an overview of the notion of public interest. Franz Magnis Suseno said that the public interest is a task that must be endeavored by the state, to support the achievement of the welfare of community members. Alex Lanur argues that the public interest can be explained as a good that is actually the least good for most citizens. Justice, prosperity, peace are also included in the category of public interest. Kuncoro Purbopranoto stated that the public interest includes national interests in the sense of the interests of the nation, society and the state which includes individual, group and regional interests. Meanwhile, according to Sudarto Gautama, that the public interest is the same as the general welfare.

According to Nicolas Simanjuntak, that the embodiment of the public interest can be in the form of, among others:

a. Position in a position that is intended as a delegation of state government power (public office).
b. Service to the needs of the general public (public service).
c. Use of facilities for the needs and convenience of many people (public use).
d. Service to commodities and services by using public facilities (public utility).
e. Implementation of general welfare (public welfare) by the power of government, which also includes basic social needs (primary social interest); and
f. Work done based on compassion for the benefit and good of the public (public interest law or pro bono public).

Prajudi Atmosudirjo, stated that there are four (4) basic theories regarding what is meant by the public interest which is a combination of one another, namely:

a. Security theory, which basically states that the most important public interest is a safe and secure life.

b. Welfare theory, which teaches that the main interest of society is welfare. Prosperity itself means that the main needs of human life in society can be met as cheaply as possible and as quickly as possible. The basic needs consist of: a) food, b) health, and c) employment opportunities.
c. The theory of efficiency of life, which basically states that the main interest of society is so that society can live efficiently, so that prosperity and productivity continue to increase.
d. The theory of common wealth, which states that the main interests of society are shared happiness and prosperity. Social tensions must be controlled properly, so that the gap between the rich and the poor does not widen dangerously.

Meanwhile, according to The Liang Gie, what is meant by the public interest are all things that encourage the achievement of peace, economic stability and progress in people's lives in addition to matters involving the state and the people as a whole.

In Presidential Instruction number 9 of 1973 concerning the implementation of the revocation of rights over land and objects on it, it is determined in Article 1 that activities within the context of carrying out development have the nature of public interest if these activities involve:

a. National and State Interests and/or
b. Public interest, and/or
c. The interests of the many/together people, and/or
d. Development Interests

From these provisions it can be concluded that there are activities within the framework of implementing Development that are in the public interest and those that are not. Then development activities that have the nature of public interest are further broken down into 13 fields, including defence, public works, public services, religion, health, cemeteries/graves, economic endeavors that benefit the general welfare. It seems that the legislature wants to make a detailed formulation of the public interest.

The following are several provisions of the Laws and Regulations which state and define the notion of public interest, which include:

a. Explanation of Law Number 7 of 1983 concerning Income Tax {Article 4 paragraph (3) stipulates that businesses solely for the public interest must meet the following requirements:

    1. purely social in the fields of religion, education, health and culture
    2. solely aims to help improve the welfare of the general public and
    3. does not have the aim of making profit

b. The elucidation of Article 49 b of Law Number 51 of 2009 concerning State Administrative Courts says that the public interest is "the interests of the Nation and the State and/or the interests of the common people and/or the interests of development, in accordance with the applicable laws and regulations.

c. elucidation of Article 35 letter c Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, it says that the public interest is the interest of the Nation and State and/or the interests of the wider community.
d. Article 5 letter d of the Law of the Republic of Indonesia Number 30 of 2002 concerning the Corruption Eradication Commission, emphasizes that the public interest is the principle that prioritizes the general welfare in an aspirational, accommodative and selective manner.
e. Article 1 number 7 of the Law of the Republic of Indonesia Number 2 of 2002 concerning the Police of the Republic of Indonesia, emphasizes that what is meant by the public interest is the

public interest/or the interests of the nation and the state for the sake of ensuring domestic security.

f. Chapter II Field of Prosecution Government Regulation of the Republic of Indonesia Number 27 of 1983 concerning Implementation of the Criminal Procedure Code, provides an explanation that, thus the criteria for public interest in applying the principle of opportunity in our country are based on the interests of the state and society and not the interests of society.
g. Article 1 Law Number 20 of 1961 concerning Revocation of Rights over land and objects on it, confirms that: for the public interest, including the interests of the nation and the state and the common interests of the people, as well as the interests of development, the President in forceful circumstances after hearing the Minister of Agrarian Affairs, the Minister of Justice and the Minister concerned may revoke the rights to the land and the objects on it.
h. Article 1 point 3 of Presidential Decree Number 55 of 1993 states explicitly that the public interest is the interest of all levels of society.
i. Article 18 of the Law of the Republic of Indonesia Number 5 of 1960 concerning the Basic Agrarian Law, it is formulated that: public interest is a trait that is linked to activities for the benefit of the people, the common interests of the nation and state, and the interests of development.
j. Article 49 of the Law of the Republic of Indonesia Number 5 of 1986 concerning the State Administrative Court, states that the public interest is connected with an urgent situation for the public interest, such as a natural disaster, an extraordinary situation which is dangerous.
k. Articles 27 and 35 of the Law of the Republic of Indonesia Number 74 of 1957 concerning Conditions of Danger, that public interest is designated for religious interests, land use, and the term public service interest.

Those are some of the doctrines, theories and statutory provisions regarding the public interest. These are words that have multiple interpretations, so that they have the potential for clashes between values that are different from one another, perhaps even hiding basic choices, making it difficult for efforts to determine clear and limitative benchmarks and criteria. Such a situation can be understood because it is faced with the dynamics of needs and cultural developments that are continuously occurring in the context of national and state life. Apart from that, interest in general seems to be an abstract term, easy to understand theoretically, but when it enters the realm of implementation it becomes complicated and creates quite complex problems.

What a broad understanding is contained in the public interest. If the public interest is the public interest, how wide is it? If the public interest is the interest of the people, how many? If the public interest is the interest of the nation and the state, is that public interest the same as the government's interest and is every government's interest the public interest? So broad is the definition of public interest that all kinds of activities can be included in activities for the public interest.

Interests are individual or group demands that are expected to be fulfilled and in essence contain powers that are guaranteed and protected by law in carrying them out. In society, there are countless interests, both individuals and groups, which must be respected and protected. at the same time, bearing in mind that those interests, unless many are different, are also in conflict with one another.

It cannot be denied that the Government's actions must be aimed at public services, paying attention to and protecting the interests of the people (public interest). Indeed, that is the duty of the Government, so that the public interest is the government's interests or affairs. If the public interest is the same as the government's interest, is each government's interest a public interest?

Bearing in mind as described above that the Government's actions must be aimed at public services and pay attention to and protect the public interest, while in society there are many interests, then

of the many interests that must take precedence or take precedence over other interests. So there are interests that are considered more important or primary than other interests. How do you determine which interests are more important than others? These various interests must be considered, weighed proportionally (balanced) while respecting the respective interests and the interests that stand out are the public interests.

So the public interest is an interest that must take precedence over other interests while still paying attention to the proportion of importance and respecting other interests. In this case it does not mean that there is a fixed hierarchy or independence between interests which include public interests and other interests. In view of the development of society or law, what is in the public interest at one time is not in the public interest at other times. So that which is a field of public interest (Inpred No. 9 of 1973) can one day be evicted for other public interests.

If the public interest is the government's interest (affairs), then from the description above it can be concluded that the government's interest is not necessarily or not always the public interest. Government interests (affairs) sometimes have to give in to other interests (public interests).

Theoretically it is said that the public interest is the resultant result of considering the many interests in society by applying the main interest to become the public interest. Practically and concretely it is finally up to the judge to consider which interests are more important than other interests in a proportional (balanced) manner while respecting other interests. It is not easy, but on the other hand it is not appropriate to provide absolute and strict concrete boundaries or definitions regarding the public interest, because human interests develop and so do public interests. However, it is necessary to have a general formula as a guideline regarding the notion of public interest which can be used primarily by judges in deciding disputes related to public interest, which are dynamic and do not depend on time and place. Each case must be viewed casuistically. Never mind that it is appropriate that in the end it is judges or laws that decide what constitutes the notion of public interest based on the general formulation.

RM Sudikno Mertokusumo stated that, in general, the general interest should still be formulated in laws and regulations broadly. If it is formulated in detail or casuistically in statutory regulations, its application will be rigid, because the judge is then bound by the formulation of the law. The general formulation by legislators will be more flexible because the application or interpretation by judges is based on their freedom, casuistry can be adapted to developments in society and circumstances.

However, RM Sudikno Mertokusumo's view above, should not be understood as a form of limitation that the Attorney General may not regulate public interest criteria in issuing seponeering. The policy of formulating public interest criteria as a formal requirement in setting aside criminal cases for the sake of the public interest as an implementation of the opportunity principle must still be formulated in a clear, clear and limited manner in laws and regulations.

Allowing the elastic nature of the notion of public interest as formulated in the law, seriously injures the principle of legal certainty which is one of the main pillars of the Indonesian criminal justice system. In the concept of a rule of law, the principle of legal certainty is a filter as well as a protector for citizens from arbitrary actions by the government and its apparatus whose basis for their actions cannot be predicted. The state and all its instruments (executive, judicial, legislative), in carrying out their duties and authorities must obey, obey and bind themselves to the rules of positive law which form the basis of their law.

In addition to damaging the consistency of upholding the principle of legal certainty, it also has the potential for abuse of power in order to escape perpetrators of criminal acts from legal snares with the modus operandi of using a legal facility called seponeering as a manifestation or implementation of the opportunity principle. In addition, at the level of implementation, the Attorney General and other state

power agencies which are consulting partners in the application of the opportunity principle (law in action), may make mistakes or mistakes in interpreting the public interest criteria. In such conditions, errors and mistakes in applying the opportunity principle will enter into the records of experts and legal practitioners who often question the failure to uphold justice (miscarriage of justice). usually,

Nicolas noted four things that need to be listened to carefully related to efforts to fight for justice for the 2,539 victims of miscarriage of justice released by Forejustice up to 2008 spread across 70 countries, as follows:

a. most cases of miscarriage of justice occur in developed countries which have an established criminal justice system and are very concerned with law enforcement issues and human rights issues.
b. The criminal justice system in these countries also shows a failure in upholding justice.
c. This failure demonstrates the fact that miscarriage of justice is a serious and universal problem.
d. Strengthening the awareness of the international community about the seriousness of the problem of miscarriage of justice.

It is no exception, whether a mistake is intentional or a mistake due to a mistake in analogying the public interest as a formal requirement in the application of the opportunity or seponeering principle, will result in the emergence of victims, namely justice and legal certainty which are the main pillars of the rule of law concept.

With the reasons mentioned above, the effort to formalize the public interest criteria as a formal requirement for the determination of seponeering by the Attorney General is a necessity that needs to be clearly realized in Laws and Regulations, this is none other than to maintain consistency with the principle of legal certainty and avoid the use of seponeering which motivated by personal or group interests.

Attempts to formalize the public interest criteria above, can be carried out by using public interest criteria in the opportunity principle in the Netherlands originating from France, which formulates public interest criteria which are formal requirements for setting aside cases (Seponeering) with fairly clear and simple criteria. namely: it only covers minor cases, the age of the suspect is old, and the damage and/or losses incurred due to criminal acts have been repaired and/or replaced (trivial offense, old age, and damage settled).

Conclusion

Regarding the meaning of public interest, it is not explained in detail, the elucidation of the article only states that: "……, in setting aside cases involving public interest, the Attorney General always consults with the highest officials who are involved in the case, for example, among others: Minister/ The Head of the National Police, the Minister of National Security, and often even go directly to the President/Prime Minister. It is only then that an explanation of the notion of public interest is clearly stated in Article 32 letter c of Law Number 5 of 1991 concerning the Prosecutor's Office of the Republic of Indonesia, which states that: what is meant by "public interest" is the interests of the nation and state and/or the interests of the wider community.

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