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Termination of Prosecution by Public Prosecutor in Corruption Crime in Indonesia: A Comparison with Various Countries

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Abstract

This study seeks to elucidate the methodologies and regulatory frameworks surrounding public prosecutors' cessation of prosecution in corruption within Indonesia. The author subsequently draws comparisons with various nations, specifically the Netherlands, France, and Denmark. This study employs a normative legal framework, utilising a statutory approach, a conceptual approach, and a comparative legal methodology. This study's findings indicate that public prosecutors' cessation of prosecution in corruption in Indonesia is grounded in legal principles, one of which applies to offenders whose actions result in minimal financial detriment to the state. This aligns with the powers granted to public prosecutors in the Netherlands, France, and Denmark. In these jurisdictions, the public prosecutor can exercise prosecutorial discretion when it is deemed that a case lacks merit for court proceedings. For instance, this may occur when the expenses of managing the case exceed the losses incurred, mainly if those losses have already been compensated.

Keywords: *Termination of Prosecution, Corruption, Public Prosecutor.*

Introduction

The act of prosecution involves a determination by the public prosecutor to present a case file to the District Court against the defendant to secure a judicial ruling—the definition as outlined in Article 1, Point 7 of the Criminal Procedure Code. The Public Prosecutor operates as a singular entity, signifying that it is the sole prosecutorial authority, thereby precluding the involvement of any other institution. Consequently, the judge is restricted from adjudicating based solely on the outcomes presented by the public prosecutor's prosecution, without the ability to request the offence's submission independently.

In Indonesia, two fundamental principles govern prosecution: the principle of Legality and the principle of Opportunity. The latter allows for the exercise of discretion by the Attorney General, distinguishing this role from that of other prosecutors, as the Attorney General holds the position of the highest public prosecutor in instances where the Public Prosecutor is not obligated to initiate legal proceedings against an individual, despite the occurrence of a criminal offence that is subject to legal action. Concerning the public interest, the principle of our Unitas was initially exclusive to the Attorney General.

This is governed by Article 35 letter c of Law Number 16 of 2004 regarding the Prosecutor's Office of the Republic of Indonesia, which stipulates that the attorney general possesses the duty and authority to dismiss cases. The public interest in this context indicates that the case cannot be pursued again once the prosecution is terminated. Typically, public prosecution is conducted in the interest of society, and the evidence presented is deemed sufficient, eliminating the necessity for any future prosecution. The singular prerogative of prosecution wielded by public prosecutors has been in practice for an extended period. The cessation of prosecution executed in alignment with the Criminal Procedure Code encompasses two distinct categories—initially, the cessation of legal proceedings due to technical considerations.

Secondly, the cessation of legal proceedings is due to policy considerations. The discretion to refrain from prosecution due to technical considerations. Three specific circumstances may lead the Public Prosecutor to opt against prosecution for technical reasons or to discontinue proceedings by Article 140, paragraph 2

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of the Criminal Procedure Code. These are as follows: 1) In the absence of adequate evidence. 2) If the occurrence does not amount to a criminal offence. 3) If the case is legally concluded.

Moreover, the discretion to refrain from prosecution based on policy considerations, as seen with prosecutors in the Netherlands and Japan, was similarly granted to every prosecutor in Indonesia before 1961, allowing for the option of 'setting aside the case.' Prosecutors were permitted to dismiss a case even when the evidence was adequate to secure a conviction by the judge. The decision to refrain from prosecution stemmed from the Public Prosecutor's approach, which extended beyond merely assessing the criminal act in isolation. Instead, it involved a comprehensive examination of the interplay between the criminal offence and its broader societal implications rather than merely aligning it with a specific criminal law provision. Instead, he endeavours to contextualise the incident accurately and contemplates the most appropriate resolution method by legal provisions. Opportunity has evolved across various nations, each with specific regulations. In the Netherlands, this principle is pertinent to inconsequential matters, matters about advanced age, and damages that have been resolved. Furthermore, this principle may entail the obligation to remit a monetary penalty. In Germany, conditional and unconditional waivers exist; however, their implementation necessitates the approval of the presiding judge.

The aforementioned analysis shows that the primary tenet of the Public Prosecutor's role entails a duty to pursue legal action against individuals who commit criminal offences by the established laws and statutory provisions. Simultaneously, the second principle asserts that the Public Prosecutor may refrain from prosecuting an individual, despite the commission of a legally actionable criminal offence, by taking into account the broader public interest.

The Attorney General possesses the responsibility and power to annul cases in the public's interest, as delineated in Article 35 Letter C of Law Number 16 Year 2004 concerning the Attorney General's Office of the Republic of Indonesia. The collective interest encompasses the concerns of the nation, state, and society. Andi Hamzah asserts that the 1945 Constitution of the Republic of Indonesia mandates the Attorney General to be accountable for exercising authority under the principle of opportunities to the president, aligning with the prosecutor's policy regarding the decision to prosecute or not prosecute by the Public Prosecutor. Consequently, the principle of opportunity empowers the Attorney General to act according to established norms. Consequently, matters about the public interest may be deferred, allowing for a more excellent discourse or phenomenon to emerge.

Research Methods

This study represents a normative legal inquiry employing a conceptual framework, a statutory analysis, and a comparative legal methodology. The statutory approach involves a comprehensive inventory of all legal rules correlating with the legal issues under investigation. In the conceptual framework, the author endeavours to thoroughly comprehend the significance of the principle of opportunity and the principle of legality within the criminal justice system, aiming to utilise this understanding as a foundation for argumentation. An examination was undertaken through a comparative law lens, focussing on the regulatory frameworks and practices governing the termination of prosecution by public prosecutors in the Netherlands, France, and Denmark. From these methodologies, the author subsequently derives conclusions.

Discussion

Termination of Prosecution by the Public Prosecutor: Practice from the Netherlands

The Netherlands employs the Dutch Penal Code/Wetboek van Strafrecht (from now on, DPC) as the foundational legal framework to combat corruption. Since 2011, numerous new offences have been incorporated into the DPC, and each one constitutes a crime. The components of forty offences have been modified, alongside an escalation in the associated penalties. The modifications in formulation pertain,

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among other matters, to the offences of corruption, fraud, cybercrime, travel forgery, and additional related issues.

Within the framework of Dutch criminal law, corruption has yet to be delineated as an independent criminal offence. The Dutch Criminal Code delineates the act of bribery as a form of corruption within its legal framework. The DPC delineates the regulations concerning bribery across multiple articles, specifically Article 177. This article delineates the parameters surrounding the active bribery of public officials, an offence subject to a maximum incarceration period of four years and a category-five financial penalty. Article 77 has undergone amendments in its development, which took effect on 1 January 2015. The amendment elevated the prison sentence to six years, accompanied by a category five financial penalty. This legal instrument will additionally serve to prosecute the offence of foreign bribery.

Secondly, Article 178 addresses the issue of active bribery involving judges. This provision, akin to Article 77, serves as a legal foundation for implicating judges in foreign jurisdictions or those recognised under international law as equivalent to judges. Third, Article 363 addresses the issue of passive bribery involving public officials who accept bribes. The penalty for such an offence can include a maximum prison sentence of four years and a category five fine. Fourth, Article 364 This article delineates the regulations governing judges who accept bribes, stipulating a maximum prison sentence of nine years and a category five fine.

Furthermore, the Netherlands establishes regulations concerning bribery, encompassing both active and passive forms directed at non-public officials and commercial bribery, which is addressed in sections 136, 328ter, and 328 quarter of the DPC. The duty of public entities and officials to disclose public offences is delineated in section 162 of the DPC. Thus far, the Netherlands stands out as one of the nations exhibiting a favourable perception index. According to data published by Transparency International, the Netherlands achieved an impressive 8th place among 180 countries in 2020, signifying its status as one of the least corrupt nations globally. This standing was achieved following the Netherlands, which scored 82 points out of 100.

In the Netherlands, notable measures aimed at combating corruption and enhancing integrity have been implemented, including the 2005 White Paper on corruption prevention and various legal and administrative reforms primarily focused on bolstering integrity. In 2006, the Netherlands undertook a significant revision of the Civil Servant Act and the regulations about municipalities, instituting a mandate to establish an integrity policy. Furthermore, in 2013, the Dutch government enacted the Political Party Financing Act, alongside the introduction of the government programme aimed at combating financial and economic crime (FINEC), which emphasises the importance of addressing Fraud, Money Laundering, and Corruption. The emphasis of FINEC lies in prevention, asset recovery, and the enhancement of collaboration among law enforcement entities responsible for detecting and investigating such crimes.

In July 2012, the Netherlands unveiled a series of legislative reforms to address corruption. The reforms encompass heightened penalties for corruption, featuring fines that may ascend to 10% of an organisation's annual turnover. An assessment by the Council of Europe Group of States against Corruption (GRECO) commended the Netherlands for its initiatives to foster public trust. While a dedicated institution for formulating prevention and counter-corruption policies is absent, the significance of anti-corruption and integrity resonates deeply within the Dutch populace, both at the national and local tiers, emphasising a pronounced commitment to preventive measures. The Office for the Promotion of Public Sector Integrity (BIOS) is tasked with the critical responsibility of aiding public administrations in formulating and implementing anti-corruption policies.

The responsibility for enforcing domestic and international corruption offences is assigned to the Dutch Public Prosecution Service/Openbaar Ministerie (hereafter PPS) by the Judiciary (Organisation) Act. The PPS undertakes the investigation and prosecution of criminal offences and the enforcement of fines and prison sentences mandated by criminal courts. In executing its responsibilities, the PPS collaborates with the Dutch Police, Intelligence, and various investigative bodies, including the National Police Internal Investigations Department (Rijksrecherche), in alignment with the Dutch Code of Criminal Procedure/Wetboek van Strafvordering (from now on, DCCP).

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Within the framework of the Dutch Code of Criminal Procedure, investigations may be undertaken by three distinct entities: the police, the Dutch Public Prosecution Service (Openbaar Ministerie), or the Public Prosecution Service (hereafter referred to as PPS), along with the examining magistrate. Nevertheless, in practical terms, the ProsecutorProsecutor, as the case master, exerts significant influence over the management of legal matters, particularly in investigations and prosecutions. The substantial responsibilities assigned to the public ProsecutorProsecutor in the Netherlands position this role as akin to that of a semi-judicial authority. In cases of corruption, whether perpetrated domestically or internationally, the inquiry is entrusted to the PPS by the Judiciary (Organisation) Act. The PPS holds the duty of investigating and prosecuting criminal offences and enforcing fines and prison sentences imposed by criminal courts. The PPS possesses the authority to conduct investigations and initiate prosecutions for criminal offences within the jurisdiction of the Dutch authorities accordingly. In the execution of its responsibilities, the PPS collaborates with the Dutch Police, Intelligence, and various investigative bodies, including the Police Internal Investigations Department (Rijksrecherche).

In combating corruption, it is noteworthy that the Dutch police possess a specialised investigative entity known as the National Police Internal Investigations Department (Rijksrecherche), which has been operational since its establishment in 1996. Nonetheless, this department remains obligated to report to the Board of Procurators-General. The Rijksrecherche is responsible for probing corruption cases that implicate high-ranking Officers, Police personnel, Members of the Judiciary, and Public Officials. Recently, it has been assigned to examine instances of foreign bribery. Consequently, in concluding investigations into corruption offences, the influence of the PPS (Prosecutor) is paramount. The DCCP does not explicitly address the termination of investigations, as both the investigation and prosecution are under the purview of the ProsecutorProsecutor. Consequently, the formulation regarding the termination of an investigation is inherently linked to the formulation concerning the termination of prosecution. The cessation of legal proceedings can be deduced from Section 167 of the DCCP, which articulates:

- If the Public Prosecution Service considers on the basis of the results of the criminal investigation instituted that prosecution is required by the issuance of a punishment order or otherwise, it shall proceed to do so as soon as possible;

- A decision not to prosecute may be taken on grounds of public interest. The Public Prosecution Service may, subject to specific conditions to be set, postpone the decision on prosecution for a period of time to be set in said decision."

This article articulates the foundation for the cessation of prosecution; however, should the investigation encompass the Public Prosecution Service, this stipulation regarding prosecution may likewise be relevant. The legal frameworks in the Netherlands concerning eradicating corruption need a precise delineation of the conditions under which an investigation may be concluded. Nevertheless, upon examining the responsibilities and roles of the entities tasked with the inquiry into corruption offences, namely the Police and the Public Prosecutor's Office, one can infer that the authority to conclude investigations is also encompassed within their functions.

Furthermore, within the framework of prosecution, it is within the purview of prosecutors to terminate proceedings, one such instance being when a resolution is reached through an agreement between the Prosecutor and the accused. The Police are similarly endowed with this authority. Since 1993, law enforcement could provide agreements for specific classifications of offences. Shoplifting and driving under the influence have been classified as offences for which law enforcement may extend plea agreements. The upper limit for police transactions concerning criminal offences is set at €350 (sect. 74c PC). Conversely, the upper limit for a prosecution transaction stands at €450,000.

The description indicates that the legal instruments of the Dutch efforts against corruption need to explicitly articulate the process for terminating an investigation into corruption offences. Nevertheless, in discussing the responsibilities and authorities of the Police Institution, it is understood that the power to conclude the investigation is inherent in executing the criminal law enforcement role. The instruments of investigation

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and prosecution in the Netherlands are designed to function closely, where the distinctions between the terms of termination for investigation and prosecution are minimal.

The preceding description affirms that in the struggle against corruption in the Netherlands, the exclusive authority for prosecution resides with the Prosecutor, particularly concerning corruption offences, where a National Public Prosecutor for Combating Corruption (Landelijke et al.) is designated within the PPS. The findings of the investigation by the Police provide the Prosecutor with the basis to determine whether to initiate prosecution or refrain from doing so in a particular case. This information is located in Chapter Five of the DCCP, specifically within the Decisions on Prosecution Section, as articulated in Section 167, which states:

- If the Public Prosecution Service considers on the basis of the results of the criminal investigation instituted that prosecution is required by the issuance of a punishment order or otherwise, it shall proceed to do so as soon as possible;

- A decision not to prosecute may be taken on grounds of public interest. The Public Prosecution Service may, subject to specific conditions to be set, postpone the decision on prosecution for a period of time to be set in said decision.

Based on the articulation of Article 167 above, there are various actions that the Prosecutor may undertake in light of the findings derived from the investigation carried out by the Police specifically: Initially, the decision to proceed with prosecution is made when the Prosecutor deems the findings of the investigation conducted by the investigative body (Police) to be adequate, necessitating immediate action in the form of prosecution. Secondly, the decision to refrain from prosecution is made considering the public interest. c. The decision regarding the postponement of prosecution is made contingent upon the fulfilment of specific conditions and adherence to designated timeframes. In practical application, the public Prosecutor enforces stipulations akin to those associated with probationary measures.

The absence of sufficient evidence influences the decision to discontinue prosecution or may arise from technical considerations, including procedural negligence. The prosecution might also opt against pursuing charges, guided by the principle of expediency. The principle of expediency articulated in Section 167 of the DCCP empowers the Prosecutor to forgo (additional) prosecution based on public interest considerations. The Prosecutor's assessment that the act does not amount to a criminal offence is a valid rationale for the decision not to pursue prosecution. Alternative avenues for resolving the case include the possibility of the Prosecutor issuing a punishment order or settling the matter through a transactional mechanism.

Before the late 1960s, the exercise of discretionary powers to refrain from further prosecution was conducted on a notably restricted basis. Subsequently, a notable transformation emerged in the approach to prosecutorial policy. The examination of the impact of law enforcement, alongside the constraints faced by law enforcement agencies, has rendered the policy of prosecuting all investigated criminal offences, under certain conditions, ineffective. Over time, exercising discretionary powers to refrain from prosecution on policy grounds became increasingly prevalent.

In order to ensure a cohesive application of this discretionary authority, the chief Prosecutor promulgated national prosecution guidelines. Public prosecutors are instructed to adhere to these guidelines unless specific circumstances in particular cases are explicitly articulated. By these stipulations, the Public Prosecutor possesses the discretion to forgo prosecution on the grounds of public interest, taking into account various considerations:

- Alternative measures to criminal sanctions are favoured, as they may be more effective, such as disciplinary, administrative, or civil actions.

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- The pursuit of prosecution may be deemed excessive, unjust, or ineffectual when considered against the characteristics of the offence, particularly in instances where the offence has resulted in no harm and imposing a penalty would be inappropriate.

- The pursuit of prosecution may be deemed disproportionate, unjust, or ineffective due to factors about the offender, such as age, health status, potential for rehabilitation, or being a first-time offender.

- Initiating prosecution would be inconsistent with the state's interests, particularly considering security, peace, and order or introducing a new applicable law.

- Pursuing prosecution would be inconsistent with the victim's interests (e.g., compensation has already been provided).

This description affirms that the approach to addressing corruption offences in the Netherlands acknowledges the procedure for discontinuing prosecution. Nonetheless, research indicates that in nine out of ten instances, the prosecution of a suspect culminates in a criminal conviction, with the majority of individuals found guilty of corruption offences receiving sentences of probation or fines.

Termination of Prosecution by the Public Prosecutor: Practice from the France

Since the inception of the French Revolution in 1789, prosecutors in France have been granted the authority to dismiss cases referred to as classer sans suit or to refrain from prosecution when it is deemed not to serve the public interest. Indeed, the Napoleonic Code of Criminal Procedure (1808) had not yet established provisions for prosecutorial discretion. Like the Netherlands and Indonesia, the principle of opportunism is a commendable practice within the prosecutorial policy of the French Public Prosecution Service (Ministere Publique) despite the absence of formal written regulations. Ultimately, in 1926, the principle of opportunity was codified within the Dutch Criminal Procedure Code, followed by its incorporation into the French Criminal Procedure Code in 1958. In Indonesia, this principle was codified in 1961 within the Basic Law of the Prosecutor's Office, yet it remains solely under the purview of the Attorney General.

The cessation of legal proceedings based on policy considerations within English literature is called a public interest drop. The cessation of legal proceedings under this policy implemented in France occurs when the evidence is adequate. However, prosecution is deemed unnecessary due to the trivial nature of the offence, such as minor theft or the possession of limited quantities of cannabis intended for personal consumption. The individual in question is not a repeat offender, having never faced conviction; thus, resources would be more judiciously allocated to prosecuting more significant cases. The prosecutor may resolve a case without judicial involvement, provided the statute of limitations has not lapsed. This resolution can be revisited, particularly if new evidence comes to light or if the offender engages in analogous criminal behaviour. The predominant rationale for implementing this principle of opportunism is that the detriment or disruption instigated by the suspect is minimal. Furthermore, the individual in question has already provided restitution to the affected party.

Furthermore, alongside the prosecutorial discretion previously discussed, since 1990, prosecutors in France have had the authority to issue warnings to suspects, referred to as rappel à la loi (translated as 'call to order'). The caution may be integrated with a particular directive, for instance, to execute a specific obligation, such as the disbursement of alimony to a partner or offspring, the remuneration of damages to the aggrieved party, or the enhancement of one's professional standing. Should the order be executed following the prosecutor's warning, without necessitating the judge's awareness, the prosecution is consequently dismissed. This discretion is referred to as condition disposal.

Termination of Prosecution by the Public Prosecutor: Practice from the Denmark

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The exclusive authority to prosecute cases in this nation resides with the prosecutor. The Organisation of Justice Act of 1919, akin to KUHAP, has undergone revisions through partial amendments in 1972, 1984, and 1992. Nevertheless, it needs to clearly articulate whether the prosecutorial principle in this nation is one of obligation to prosecute (principle of legality) or discretion to prosecute (principle of opportunism). In practice, prosecutors in Denmark wield their prosecutorial discretion through various prosecutorial choices and alternative measures. Prosecution operates on three distinct tiers: the local prosecutor, who functions within the district police framework; the regional prosecutor, who oversees matters beyond the confines of the police organisation; and, at the apex, the Attorney General. District prosecutors in Indonesia possess the authority to terminate prosecution based on prosecutorial discretion under certain circumstances.

- Criminal offences punishable by a fine shall be combined with a formal/informal warning, for example in the event that the suspect for the first time possesses a quantity of drugs for his/her own use.

- Procedures outside the criminal process are applied to minor offenders (under 18 years old) with or without a combination of conditions, e.g. paying a fine with forfeiture of goods.

- The suspect is found to have been convicted by a foreign court.

- It is anticipated that prosecution and additional investigations will be costly, disproportionate to the alleged offence due to its minority and insignificance.

- Even though it is likely that the suspect's guilt will be proven, additional evidence is required which, if further investigation is carried out, will be costly.

- A specific law allows for the discontinuation of prosecution.

- Based on the instructions of the Minister of Justice or the instructions of the Attorney General e.g. for simple offences, minor acts of violence, offences (not crimes) of the Drug Act (narcotics) and asylum seekers who first entered Denmark using false documents

Prosecutors at the Regional Prosecutor's Office, which corresponds to the High Prosecutor's Office in Indonesia, may exercise their discretion to discontinue prosecution in various cases, including:

- The suspect in the previous case has been subjected to psychiatric treatment and the new case is expected to be subjected to the same treatment;

- The suspect is slightly mentally disturbed, but not so severely that treatment in a psychiatric hospital is not required;

- In a traffic accident, the suspect due to his/her negligence has caused the death/ serious injury of his/her next of kin or has caused himself/herself serious injury (exempted from operating the vehicle under the influence of alcohol);

- Having consensual sex with a minor (male offender under 18 years old against a female offender at least 15 years old sometimes 14 years old);

- The suspect is a foreigner, but has left Denmark, so the prosecution of the foreigner would face difficulties.

The Rigsadvokat, also known as advocate Raja, serves as the state's representative within the Supreme Court, akin to the role of the Attorney General in Indonesia. All prosecutors consistently uphold the

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circulars they signed and various oral and written instructions in executing their daily responsibilities. Similarly, the Minister of Justice can disseminate directives via circulars. In essence, these two senior officials might introduce several criminal offences for which prosecution could be halted for the greater good. In various nations, it pertains to the 'public interest', the 'interests of the state', or the 'interests of the individual'. In this context, the Minister of Justice serves as the paramount authority and overseer of the prosecution. In practical terms, the Attorney General is the paramount authority in investigation and prosecution, as the position is not formally subordinate to the Minister of Justice. From the aforementioned explanation, it follows that prosecutors in Denmark possess the capacity to not only execute a straightforward dismissal but also to halt prosecution for policy considerations (principle of opportunity) or in the interest of the public good.

The author posits that a comparative analysis of the legal frameworks governing the termination of prosecution for criminal offences in the Netherlands, France, and Denmark is essential. Such a study would serve as a valuable reference in reconstructing the processes surrounding the termination of prosecution for corruption crimes involving minor state financial losses. In these three nations, the public prosecutor's role as the controller of criminal cases is significantly pronounced, evident through their prosecutorial discretion. Public prosecutors possess the authority to halt prosecutions not solely on technical grounds but also for non-technical reasons, with or without stipulations. For instance, the costs associated with prosecution may outweigh the severity of the offence committed by the suspect, particularly in cases involving minor crimes where restitution has been made to the victim. Thus, should the prosecution proceed based on the public prosecutor's assessment, it is unlikely that such actions will yield any advantages for the state.

Lessons for Indonesia on the termination of prosecution by public prosecutors

According to Article 1, paragraph (3) of the 1945 Constitution, Indonesia is defined as a state governed by the rule of law. This provision indicates that within the State of Indonesia, the law serves as the fundamental axis around which the governance and societal order of the nation revolve. In a different context, the law is the authoritative force, indicating that all governmental and communal endeavours must adhere to legal stipulations. The realisation of the rule of law is unattainable if state power remains absolute or unbounded, as a lawful state necessitates the assurance that principles of fairness and justice wield such power. Consequently, the connection between those who govern and those who are governed within a community adhering to the rule of law is founded not on sheer authority but rather on an objective standard that constrains the governing entity. The term objective norms refers to a legal framework that is not merely formal in its application but is also upheld in the context of legal concepts.

The Attorney General's Office of the Republic of Indonesia serves as a pivotal state institution responsible for the execution of prosecutorial duties within the framework of law enforcement. According to Soerjono Soekanto, as referenced by Marwan Effendi, law and law enforcement constitute essential components of the law enforcement framework that must be considered; neglecting them may hinder attaining the desired outcomes in law enforcement. Consistent with this perspective, the presence of the Indonesian Attorney as a pivotal institution within the law enforcement framework holds a crucial position and plays a significant role in a legal state. The Indonesian Attorney's Office is the final juncture between the investigative phase and the trial examination process.

This strategic role within the framework of community life should effectively execute law enforcement responsibilities to enhance the welfare and advantage of the community. Given its central and strategic position, the Attorney General's Office, as a public prosecuting agency, must effectively influence law enforcement in Indonesia, ensuring that it guides the foundations of legal enforcement towards a more favourable trajectory. Ultimately, it has the potential to foster a harmonious society, free from the spectre of capricious law enforcement that undermines public justice.

Article 1 point 7 of KUHAP delineates that prosecution constitutes the action undertaken by a public prosecutor to present a criminal case before the appropriate district court by the procedures established by this law, accompanied by a request for judicial examination and resolution. The public prosecutor performs

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the prosecutiProsecutorineated in Article 1 point 6 letter b of the Criminal Procedure Code, specifying that the public prosecutor isProsecutordual empowered by law to carry out prosecutions and implement judicial decisions.

Article 139 of the Criminal Procedure Code stipulates that the Public Prosecutor's Office is not merely tasked with transferring the case from the investigation phase to the court. Nonetheless, it should be imbued with profound insight and consider the elements of justice and legal advantages without compromising legal certainty. The public prosecutor is the prosecutor who examines the specific circumstances and context surrounding the criminal offence. In this instance, engaging in contemplation that emphasises the communal sense of justice is essential, which ultimately serves the state's interests. As the case process controller, The prosecutor's office process occupies a pivotal role in law enforcement. Normatively, as outlined in Article 139 of the Criminal Procedure Code, and in judicial practice, it is solely the prosecutor's office that possesses the authority to decide the admissibility of a case in court, contingent upon valid evidence by criminal procedure law.

The role of the dominus litis, as outlined in Article 139 of the Criminal Procedure Code, serves as a mechanism to ascertain the appropriateness of a case's submission to the court. This scenario undoubtedly influences the evolution of law within society, particularly when considering the elements of justice and legal expediency. Thus, even if the case file is deemed complete in both formal and material respects, it may still be halted by issuing a Decree on Termination of Prosecution (SKPP / SKP2). The role of the Prosecutor asProsecutoritis, as delineated in Article 139 of the Criminal Procedure Code, serves as a foundational aspect for an advanced and advantageous prosecution process, ensuring that the prosecution transcends the mere act of presenting the case to the court. Presenting cases to the court represents the final reacourse and should not be regarded as the primary endeavour.

From a philosophical standpoint, prosecution occurs when it serves the community's interests or, conversely, when the community deems a case unworthy of prosecution due to the economic, social, and legal ignorance that informs the perpetrator's actions. Furthermore, managing these cases expends excessive resources, which could be more effectively allocated to addressing issues that pose a genuine threat to the broader community. This phenomenon can indeed be observed in an individual engaging in malevolent behaviour due to his autonomy; however, external circumstances compel him towards such wrongdoing. This phenomenon, for instance, manifests in individuals who engage in criminal activities driven by hunger or pressing necessities. Prosecutors are required to investigate external factors that may contribute to human criminal behaviour.

The public prosecutor has thoroughly investigated or has entirely neglected to investigate, the context surrounding the commission of corruption offences involving minimal state financial losses. This is exemplified in the case concerning the defendant Nengah Londen, who was legally and convincingly found guilty of violating Article 3 of the Law Against Corruption. During the trial, it was revealed that the defendant, serving as the treasurer of the Community Based Development (CBD) fund manager, consistently asserted that he had no intention of engaging in corrupt practices. He claimed that he merely borrowed funds from the CBD, which were sourced from the Bali Provincial APBD, to cover medical expenses for his seriously ill mother, amounting to Rp. 6,000,000. 6,534,000 - (Six million five hundred thirty-four thousand rupiah) and in addition to the reimbursement of the utilised CBD funds, the defendant also remitted interest amounting to Rp.2,175,090 - (Two million one hundred seventy-five thousand ninety rupiah). The total amount of money returned by the defendant to the Head of the CBD is Rp—8,709,090 (Eight million seven hundred nine thousand ninety rupiah).

The Public Prosecutor ought to evaluate the suspect through profiling upon receipt of the Investigator's SPDP (Notice of Commencement of InvestigaInvestigatorprofiling should encompass the suspect's community life, including an assessment of whether the individual is genuinely experiencing economic hardship, which may lead to the utilisation of community assistance funds for the treatment of a seriously ill mother. Consequently, when the investigators investigate the suspect and the evidence, the public prosecutor will possess comprehensive information concerning the suspect's circumstances and the

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corruption case in which they are implicated. Armed with this comprehensive information, the public prosecutor prosecutors ascertain the appropriateness of advancing the case to the court.

This aligns with ST. Burhanuddin's perspective is that law enforcers should not be constrained by routine, as such constraints would render law enforcement superficial. The role of the prosecutor isProsecutor legal action, regardless of the acceptance of the charges; the essential task is to engage in prosecution. However, when the prosecutor steps beyond his usual practices and ventures into unfamiliar territory, he fosters a sense of empathy and connection with the community. Law enforcement officers have evolved beyond the traditional role of mere night guards. In safeguarding society's well-being, the prosecutor is an agent of the welfare state. He engages with the community, seeking to understand its challenges and identifying the underlying issues. He must ensure that the state addresses every social concern, positioning himself as a state representative dedicated to fostering community welfare.

ST Burhanudin's reasoning aligns with Jeremy Bentham's perspective on legal expediency, which posits that individuals will strive to achieve maximum happiness while minimising suffering. Evaluating a human action's morality hinges on its capacity to yield benefits or detriments. Moreover, Jeremy Bentham asserted that to establish a rule of law, the legislator must consider and embody justice for every individual, ensuring that all legislative outcomes contribute significantly to the community's happiness.

Through the lens of restorative justice informed by progressive thought, prosecuting corruption offences resulting in minimal state financial losses may be halted. Furthermore, when state financial losses have been reimbursed, the situation can be restored to its previous state. Even in cases where the suspect has not made restitution, the public prosecutor, a prosecutor half of the state, diligently pursues the recovery of the financial losses incurred by the state. The public prosecutor considers not merely the act of prosecution but also the implications for the state, the potential advantages for the perpetrator and their family, and the overall impact on the community should a prison sentence be imposed.

The provision that reinforces the authority of the Prosecutor asProsecutorcontroller is Article 34A, which articulates that 'In the interests of law enforcement, the Prosecutor and/or Public Prosecutor, in executing their duties and authorities, may act according to their judgement while considering the relevant laws, regulations, and codes of ethics'. The principle of discretion, as articulated in Article 139 of Law No. 8 of 1981 regarding Criminal Procedure Law, stipulates that "Upon receiving the comprehensive results of the investigation from the investigator, the Public Prosecutor promptly assesses whether the case file fulfils the criteria for submission to the court or not." The oversight of this authority is conducted with a steadfast commitment to the foundational principles of law enforcement objectives, which encompass the attainment of legal certainty, the promotion of a sense of justice, and the realisation of benefits aligned with the tenets of restorative justice and diversion, thereby fostering the evolution of criminal law in Indonesia. This aligns with the principles of prosecutorial discretion and the policy of leniency.

The author posits that the cessation of prosecution in corruption offences may be applicable in cases where the state incurs minimal losses. This is grounded in Article 34A of Law Number 11 of 2021, which delineates prosecutorial discretion or policy, thereby allowing for the cessation of prosecution as articulated in Article 140 paragraph (2) of the letter of Law Number 8 of 1981 regarding the Criminal Procedure Code, which stipulates that the public prosecutor authority terminate prosecution in a criminal matter. This indicates that should the Public Prosecutor choose to halt the prosecution due to a lack of sufficient evidence, a determination that the event does not constitute a criminal offence, or the closure of the case for legal reasons, the Public Prosecutor is required to articulate this in a formal decree. As the article outlines, this provision has developed to the point where the public prosecutor does not prosecute on technical grounds. Instead, the public prosecutor has no noProsecutorauthority to discontinue the prosecution of a criminal offence based on personal judgement (public prosecutor's discretion) if it is deemed that proceeding with the prosecution is impractical or incurs high costs relative to the nominal financial loss to the state.

This aligns with the powers granted to public prosecutors in the Netherlands, France, and Denmark, where such officials may exercise prosecutorial discretion. If a public prosecutor deems a case unworthy of court

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prosecution—perhaps due to the costs of handling the case exceeding the incurred loss or if the loss has already been compensated—they may choose not to proceed.

Concluison

The research findings indicate that public prosecutors' cessation of prosecution in corruption within Indonesia is grounded in legal principles, particularly applicable to offenders whose actions result in minimal financial detriment to the state. This aligns with the powers granted to public prosecutors in the Netherlands, France, and Denmark. In these nations, public prosecutors can exercise prosecutorial discretion when they determine that a case lacks merit for prosecution in court. For instance, this may occur when the expenses associated with managing the case exceed the losses incurred or have already been compensated.

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