

Limitative Changes in Indictment Letter After Constitutional Court Decision Number 28/PUU-XX/2022 as a From of Legal Certainty Guarantee

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Abstract

In the preparation of the indictment, accuracy and are needed. This is because the indictment is used as the basis for the judge in determining the limits of the examination at trial. Indictments that are not qualified for formal and material will have the status of being voidable and charges that are null and void. This study aims to describe and clearly know what makes the reasons for the cancellation of the indictment letter and the legal certainty of the indictment letter after the Constitutional Court ruling. Normative juridical methods and library research techniques with the introduction of laws and regulations and conceptualls are the choices of researchers in this study. The results showed that non-fulfillment of the formal conditions, namely the conditions relating to the identity of the defendant, resulted in the charges being dropped being dropped. Meanwhile, the material requirements are related to a careful, clear, and complete description of the criminal act charged, which in fulfillment of the material conditions is not met, the charges filed can be null and void. Article 144 of the Criminal Code provides for the provision of changing the letter of indictment once without any limitative arrangement for changing the substance of the indictment. After the 2022 Constitutional Court Decision, the Public Prosecutor has limitations in changing the substance of the indictment as a form of certainty and legal justice as Amar Decision Number 28 / PUU-XX / 2022.

Keywords: Letter of Indictment; Constitutional Court Rulings; Prosecutors; Legal Certainty.

Introduction

The Prosecutor's Office refers to its function being established to play its role as law enforcement. Like one of the many functions of the prosecutorial institution is in the field of prosecution. Prosecution in the criminal justice system that develops in Indonesia is defined as an action from the public prosecutor in order to transfer a case to a court that has the authority as described in the Criminal Procedure Code

(hereinafter referred to as KUHAPidana).¹ The Criminal Code clearly gives the Public Prosecutor the function and authority to prosecute.

Prosecution enters at the stage as in the Criminal Code, in addition to the stages of investigation, prosecution, examination of trials, as well as the implementation and supervision of court decisions. Prosecution can be categorized as the most decisive stage against a court decision. This is because in the prosecution there is an indictment which is a core part of the trial itself, where the main task of the Public Prosecutor in this matter is to maintain and consistently defend his charges. An indictment letter is defined as a letter containing an indictment that contains a person who has committed a case / criminal. The main essence of the indictment itself is the conclusion of the Public Prosecutor regarding what was done by the suspect referring to the results of the investigation as the basis for the public prosecutor in submitting the defendant to the siding of the Court.²

Mr. IA. Nederburgh explained that a defendant is not allowed to be convicted of a crime that is not alleged, and cannot be punished for an act that can only be convicted in certain circumstances, where that particular circumstance is not included in the letter of accusation/ against another principal act with what is alleged to him.³ The explanation can then be concluded that the judge in examining at trial will only be guided by the indictment, the position of the indictment as a limitation for the judge's examination in the trial.

The indictment made by the Public Prosecutor should meet the conditions, both formal and material requirements as we can know from Article 143 (2) of the Criminal Code. The formal requirement is a condition related to the identity of the suspect such as containing the full name, place and date of birth, age, gender, nationality, religion, and occupation.⁴ Identity as a condition of the formil is intended as proof that it is true

¹ Wahyu Donri Tinambunan and Galih Raka Siwi, "Dinamika Kedudukan Hukum Jaksa Sebagai Pengacara Negara Pasca Undang-Undang Kejaksaan," (2022) 6 *AJUDIKASI: Jurnal Ilmu Hukum*.

² Ispandir Hutasoit, "Peranana Jaksa Penuntut Umum Dalam Proses Penyusunan Surat Dakwaan," (2019) 1 *PETITA*.

³ Emron Pangkapi, *Hukuman Mati Untuk Iman Imran Catatan Sebuah Proses Peradilan* (Alumni 1982).

⁴ Melati Theresia Terok, Vonny A. Wongkar, and Herlyanty Y.A Bawole, "Syarat Materiil Surat Dakwaan Menurut Pandangan Doktrin Serta Praktik Peradilan Pidana," (2021) X *Lex Crimen*.

that the suspect tried in the trial is actually a suspect and also in the indictment letter made by the Public Prosecutor in order to avoid any error in indicting and prosecuting a defendant in the trial or an error in confronting the defendant before the trial.⁵ The lack of formal conditions does not result in a null and void indictment, but results in being invalidated as in the Supreme Court Decision No. 41/K/Kr/1973. Furthermore, an indictment that does not meet the material requirements will result in null and void. This is a consequence rather than not being clearly outlined, meticulously, and completely about the criminal act charged and the time and place of the crime.

Prior to the Constitutional Court Decision, the Public Prosecutor could make improvements to the indictment that was declared null and void without limitation. A concrete example of this is in the jurisdiction of the Semarang High Court (See MK Decision No. 28/PUU-XX/2022), where in casu the indictment letter that is not made carefully, clearly, and completely results in a null and void indictment, so it must be corrected 3 (three) times, and without ruling out the possibility that further improvements can be made. Such cases are not the first time in law enforcement in Indonesia. This has clearly violated the constitutional rights of the accused and does not provide a sense of legal certainty. In such an issue, the Public Prosecutor appears to have unlimited authority in filing a writ of indictment which has been declared null and void.

Based on the background description of the presentation as above, a formulation of the problem can be drawn, as follows: what makes the reasons for the cancellation of the indictment and what is the legal certainty of the indictment letter after the Constitutional Court decision?.

In answering the problems described in this paper, the author uses doctrinal or literary legal research methods.⁶ Where the author seeks to examine legal materials that are primary, secondary, and tertiary in nature that have relevance to the object of study of the study. The approach in this study is a type of statute approach and conceptual approach.⁷ The statute approach was chosen by the researcher because it will focus on

⁵ Hamzah Andi, *Hukum Acara Pidana Indonesia* (CV Sapta Artha Jaya 1996).

⁶ Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, (Bayumedia Publishing 2012).

⁷ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Rajawali Press 2019).

reviewing and analyzing the regulations related to the indictment itself, while the conceptual approach is used because it will provide an analysis of legal certainty rather than the indictment itself after the Constitutional Court ruling. Primary legal materials in the form of binding state documents, as well as secondary legal materials in the form of legal matters / materials that help explain primary legal materials are used in this study to explain matters of issue. Legal materials both primary and secondary are studied in the method of centering studies, the raw data obtained will be simplified and analyzed using the deductive method.⁸

DISCUSSION

Reasons for the Cancellation of the Letter of Indictment

Law enforcement is directed at improving order and legal certainty in society. This is done, among others, by regulating the functions, duties, and authorities of the institutions in charge of law enforcement according to the upper part of their respective scopes, and is based on a good cooperation system and supports the goals to be achieved. As Hikamahanto Juwanto stated that in Indonesia, it has traditionally had law enforcement, one of which is the prosecutor's office, in addition to the police, judicial bodies, and lawyers.⁹

The position of the Prosecutor's Office as a *dominus litis* in Indonesia is due to the fact that the Prosecutor's Office has the authority in determining whether or not a case can be submitted to the Court in accordance with the evidence recognized in accordance with the instructions in the Criminal Code. In carrying out its duties and authorities, the Prosecutor's Office is in a very strategic position and central to strengthening the nation's resilience.¹⁰ This is because the prosecutor's office is in the middle of the law enforcement axis and acts as a filtering between the investigation process and the examination process at the trial as well as the executor of the court's decision/determination (executive ambtenaar).

⁸ Bambang Sunggono, *Metodologi Penelitian Hukum* (Jakarta: Rajawali Pers, 2015).

⁹ Sanyoto, "Penegakan Hukum Di Indonesia," (2008) 8 *Jurnal Dinamika Hukum*.

¹⁰ Imman Yusuf Sitinjak, "Peran Kejaksaan Dan Peran Jaksa Penuntut Umum Dalam Penegakan Hukum," (2018) 3 *Jurnal Ilmiah Maksitek*.

In the Criminal Code, a description of the definition between the Prosecutor and the Public Prosecutor is given, namely in Article 1 point 6a and b and Article 13 of the Criminal Code. The Criminal Code assigns prosecution duties to the Prosecutor.¹¹ Further in Andi Hamzah, that the Prosecutor is understood in a general sense and the Public Prosecutor on the understanding of the Prosecutor who is temporarily prosecuting in the case. In criminal cases, the Public Prosecutor has the function and duty to represent the state in prosecuting a criminal offender.¹²

The prosecution stage in the criminal procedural law enforcement series is a strategic part of determining court decisions. Based on the indictment letter that has been prepared by the Prosecutor general and which he will later defend before the court, it can be the basis for the judge in the deliberations for the decision to make.¹³

The indictment letter as a legal construction arrangement of the facts of the defendant's actions to be tried as part of the investigation by means of a combination of all facts of the act with all elements of the criminal act in accordance with applicable criminal regulations. In Article 143 (2) of the Criminal Procedure Code, the indictment must meet the requirements of the formil and materill, that the making of a letter of indictment dated and signed and contains: first, the formal requirements with regard to all matters of identity of the suspect and secondly, contains a carefully, clearly, and complete description of the criminal act charged accompanied by the time and place of the crime. The urgency of this tempus delicti relates to the class regarding the accuracy in the conduct of the proceedings which the defendant has done. Then also as stipulated in Article 78 of the Criminal Code regarding the right to death of prosecution due to exceeding the time limit (decade). Meanwhile, in the aspect of locus delicti, the relevance is to the relative authority to adjudicate from the District Court.

In the preparation of an indictment, it is required that there will be accuracy and accuracy in the decipherment of criminal acts because it is the indictment that will be the basis for the judge in determining the boundaries of the judge's examination. The

¹¹ M Iqbal, "Implementasi Efektifitas Asas Oportunitas Di Indonesia Dengan Landasan Kepentingan Umum," (2018) 9 *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan*.

¹² A Ramdan, "Kewenangan Penuntut Umum Mengajukan Peninjauan Kembali Pasca Putusan Mahkamah Konstitusi No. 33/PUU-XIV/2016," (2017) 11 *Jurnal Ilmiah Kebijakan Hukum*.

¹³ Nova Aulia Pagar Alam, La Ode Husen, and Kamri Ahmad, "Efektivitas Penyusunan Surat Dakwaan Oleh Penuntut Umum," (2020) 1 *Journal of Lex Generalis (JLS)*.

public prosecutor in making an indictment must at least master and pay attention to what are the basic skills of making an indictment letter such as, the ability to master the case material and mastery of the material of the legal provisions of related laws and regulations.

Referring to the doctrine, that scrutiny is interpreted by the making of a letter of indictment should be made with great care and indiscretion and hat-hati accompanied by discernment and a constancy.¹⁴ The indictment letter is carefully made, especially with regard to the application of applicable legal regulations so that there are no deficiencies / errors that result in the cancellation of the indictment or the elements contained in the indictment cannot be proven. It is clearly interpreted that the indictment was made without hesitation and does not require any more interpretation.¹⁵ The letter of indictment made must be clear in the sense of the formulation of each element of the criminal act must be able to be combined and explained in the form of an explanation of the facts of the act committed by the defendant. While complete, interpreted as complete or sufficient, nothing is left behind and intact.¹⁶

Then, further when studied in understanding grammatically with reference to the General Dictionary of Indonesian, carefully interpreted as careful and attentive, clearly interpreted as real and light, and completely interpreted as nothing lacking.¹⁷ For this grammatical understanding, it is hoped that it can provide understanding and understanding as well as views carried out easily, both for judges and defendants.

Referring to the customs of judicial practice in Indonesia and jurisprudence, even if the charges made are not careful, clear, and complete so that they do not meet the requirements of the material requirements of the indictment letter, meaning that: first, the indictment letter is not clear and clear. The indictment letter is made unclearly and clearly in describing all the elements of the criminal act, so by itself the indictment letter charged to the defendant is not a criminal offense. Another consequence of this is that the indictment also harms the interests of the defendant (subject to attorneys) especially on the issue of drafting a memorandum of defense. Then, furthermore, the

¹⁴ A Soetomo, *Pedoman Dasar Pembuatan Surat Dakwaan Dan Suplemen* (Pradnya Paramita 989).

¹⁵ *Ibid.*

¹⁶ Lilik Mulyadi, *Hukum Acara Pidana Indonesia* (Citra Aditya Bakti 2012).

W.J.S Poerwadarminta, *Kamus Umum Bahasa Indonesia* (PN Balai Pustaka 1966).

result of vagueness and inaccuracy results in *obscurumlibellum*, making it null and void.¹⁸ Secondly, in the indictment there is a conflict. This relates to the later losses to be obtained by the defendant/his attorney in relation to the defense. An indictment letter that has a conflict between the contents of the formulation, for example, between one another, will result in doubts in the person of the defendant/his attorney regarding the charges against him.

Legal Certainty of Indictment After Contingency Court Decision

The position of the Constitutional Court (MK) in the dynamics of Indonesia's constitutional structure is one of which functions as a special court that tests legal products, namely the Law to be tested by the Basic Law.¹⁹ One of the tangible forms of the Constitutional Court's activities is as the Constitutional Court conducts tests on the Criminal Code, especially material related to the indictment letter, namely Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAPidana).

Constitutional Court Decision No. 28/PUU-XX/2022 (MK Decision 2022) was filed by Umar Husni who was represented by his attorney. In its judgment, it was stated that the petitioner had suffered losses of a special nature due to Article 143 (3) of the Penal Code. It is learnt that the petitioner is a defendant to whom 3 (three) charges have been filed by the Purwakerto Prosecutor's Office. Of the three indictments, there were 6 (six) verdicts, 3 PN Purwakerto rulings that declared null and void, and PT Semarang's ruling that upheld PN Purwakerto's decision. Apart from such cases, there are many other cases of Umar Husni, described in the form of the following table.

Table 1.
Case Table

No.	Name	The Number of Verdicts	Information
1.	Umar Husni	6 (six) times. 3 Decisions of the Purwokerto District Court and 3 Decisions of the Semarang High Court.	The charges are null and void.

¹⁸ *Op. Cit.*

¹⁹ Johansyah, "Kedudukan Mahkamah Konstitusi Sebagai Lembaga Negara Berdasarkan Undang-Undang Dasar 1945," (2019) 17 *SOLUSI: Jurnal Unpal*.

2.	Ali Rofi	6 (six) times. 3 Decisions of the Purwokerto District Court and 3 Decisions of the Semarang High Court.	The charges are null and void.
3.	Ratna Budhiwati	2 (times). 2 Times the Decision of the West Jakarta District Court.	The charges are null and void.

On the basis as has been presented in the judgment, it can be said that the Public Prosecutor has been deadlocked in making improvements to the writ of indictment. Then, the public prosecutor seems to have no Limit on how many times it is permissible to apply for rectification of the indictment which is declared null and void. The concrete result is that the Public Prosecutor has unlimited authority to file remedies for an indictment that is declared null and void.

Improvements to the letter of indictment that have been declared null and void are carried out many times should be given explanations and regulations that can provide clear and unequivocal Boundaries, so that the concept of human rights and legal certainty of the defendant as an uncertain position in justice (the principle of *aquisatoir*) can remain protected and still be guaranteed for his rights. To overcome this, it is necessary to play the role of the Constitutional Court as a Court with the authority to propose/create a new interpretation of the phrase "null and void" as stipulated in Article 143 (3) of the Criminal Code.

In the 2022 Constitutional Court Decision, the Constitutional Court unequivocally stated that

"Granting the Petitioner's application in part. Stating that the phrase 'null and void' in the norm provisions of Article 143 paragraph (3) of the Criminal Procedure Code is contrary to the 1945 Constitution of the Republic of Indonesia and does not have conditionally binding legal force as long as it is not interpreted 'against the public prosecutor's indictment that has been declared null or void by the judge can be corrected and re-filed in the trial once, and if an objection is still raised by the defendant/counsel, the judge immediately examines, considers and decides it Together with the subject matter of the case in the final judgment".

The Constitutional Court is of the view that the phrase "null and void" is interpreted as

"the filing of a writ of rectification of an indictment can only be made once after the indictment has been declared null or void by a judge".

That is, if the Public Prosecutor files a second indictment but still denies meeting the requirements of form and substance, in this new interpretation, the judge must review the letter of indictment as well as the subject matter of the case. The joint decision, the final decision is the same. The existence of this decision is expected to create the concept of fair legal certainty as expected by law enforcement itself.

Conclusion

The position of the Prosecutor's Office as an institution mandated by the state to prosecute in advance of the trial shows that the public prosecutor is a profession that requires accuracy, accuracy, and clarity in the preparation of his indictment. The position of the indictment, which can be said to be the crown of the judiciary, increasingly makes the necessity of thoroughness, scrutiny, and clarity non-negotiable. The legal consequence of an indictment that does not meet the requirements of the indictment is that it can be overturned, while the non-fulfillment of the material element results in the indictment being null and void.

The public prosecutor seems to have no limitations in proposing a change in the indictment which ultimately boils down to the non-fulfillment of the rights of legal certainty of the accused. After testing the phrase "null and void" as in Article 143 paragraph (3) of the Criminal Code, the Public Prosecutor may only file a remedial charge 1 (one) time and will be examined and decided in the subject matter. Thus, making legal certainty for defendants experiencing similar cases and jurisprudence for similar issues.

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