International Journal of Multicultural and Multireligious Understanding

http://ijmmu.com
editor@ijmmu.com
ISSN 2364-5369
Volume 6, Issue 6
December, 2019
Pages: 651-665

Legal Certainty of Functional Coordination between Police Investigator and Public Prosecutor in Pre-Prosecution

Aridona Bustari; Ismansyah; Aria Zurnetti

Faculty of Law, University of Andalas, Padang, Indonesia

http://dx.doi.org/10.18415/ijmmu.v6i6.1274

Abstract

Functional coordination is close to Article 138 Sub-section (2) of the Law of the Republic of Indonesia Number 8 of 1981 regarding Code of Criminal Procedure (KUHAP), then this lack must be delivered in the form of case files to the Public Prosecutor no later than 14 (fourteen) days from the receipt by the Investigator. The problem discussed is how the regulation and the form of functional coordination between the Police Investigator and the Public Prosecutor in the Pre-Prosecution and how the legal certainty of the functional coordination is reviewed from Article 138 Sub-section (2) of the Code of Criminal Procedure. This study uses a normative juridical method by examining the legal materials, legislation and relevant theories. Functional coordination arrangement at the Attorney General's Office based on the Attorney General's Regulation of the Republic of Indonesia Number: PER-036/A /JA/09/2011 regarding Standard Operational Procedure for Handling General Crime in the form of coordination in the form of consultation as stipulated in the Minutes according to the letter format which has been regulated in a Circular Attorney General of the Republic of Indonesia Number: SE-004/A/JA/02/2009. It is in contrary to the Police which does not regulate more detail the internal regulation. 2) Article 138 Subsection (2) of the Code of Criminal Procedure explains that there is a legal vacuum that leads to the legal certainty which is not achieved because the time limit for additional investigations in this Article does not have legal force if it is violated by the Investigator; thus, legal certainty is not achieved for the victim or the suspect.

Keywords: *Legal Certainty; Code of Criminal Procedure; Police Investigator; Public Prosecutor*

Introduction

Law enforcement problem is a problem faced by every community. Every community group with its own characteristics provides its own style of problem in law enforcement framework. Every society has the same goal specifically to achieve peace as a result of formal law enforcement. A good legal system is always related to the situation of a particular community (Huijbers, 1995).

The quality condition of such poor law enforcement has a significant effect on the health and the strength of Indonesia's democracy. The corrupt mental of law enforcers in trading the law leads to

harming the justice. Harming justice or acting unfairly is surely a rash act towards the community's willingness. The justice quality is absolutely not only related to the law quality and other sciences, but also related to what is expected by the community which is the quality of "knowledge and attitude about how to uphold justice" itself (Arief, 2010).

In the criminal justice system, due process of law is defined as a legal process which is good, correct and fair. Such a legal process occurs when law enforcement officials, who are associated with the process, not only perform their duties in accordance with existing rules, but also ensure that all the specified suspect/defendant's rights are applied. The fair legal process is also obliged to implement the principles that underlie the fair legal process (although the principles do not constitute the positive legal rule) (Muladi, 1998).

The Police Institution whose one of its duties as an Investigator is obliged to submit the case file of the investigation result to the Prosecutor as a series of criminal justice system in Indonesia. During this time, the coordination between the Police and the Prosecutor is limited to the Police submitting the investigation results file to the Prosecutor, while the Prosecutor only examines the investigation results from the Police. However, in fact, the police's investigation result is sometimes returned by the prosecutor since it is considered weak and it make the prosecutor difficult to prove it later. The case file will not reach the trial process in court without going through another sub-system, specifically the Attorney. The presence of one another is closely related and mutually decisive, because without going through the Attorney, there will never be a prosecution process.

The duties and the authorities of Public Prosecutors in a criminal case are functionally related to the duties and the authorities of the Investigator in handling a criminal case which is commonly referred to as pre-prosecution. Functional coordination between Investigator and Public Prosecutor in handling a criminal case (pre-prosecution process) is regardint to 6 (six) issues (Effendy, 2012) namely:

1. Notification of investigation commencement (Article 109 Sub-section (1) of the Code of Criminal Procedure);
2. Extension of detention for investigation purposes (Article 24 Sub-section (2) of the Code of Criminal Procedure);
3. Termination of investigation (Article 109 Sub-section (2) of the Code of Criminal Procedure), otherwise the Public Prosecutor if stopping the prosecution (Article 140 Sub-section (2) letter c of the Code of Criminal Procedure);
4. Submitting case files of investigation results to the Public Prosecutor (Article 110 Sub-section (1) of the Code of Criminal Procedure);
5. Further investigation based on the instructions of the Public Prosecutor in the case file is stated to be incomplete (Article 110 Sub-section (2), Paragraph (3) of the Code of Criminal Procedure);
6. The Public Prosecutor notifies the derivative of the case transfer letter, the indictment to the Investigator (Article 143 Sub-section (4) of the Code of Criminal Procedure), likewise in the case of the Public Prosecutor changing the indictment letter, he provides a derivative of the changing of the Indictment letter to the Investigator (Article 144 Sub-section (3) of the Code of Criminal Procedure).

The pre-prosecution activity is begun with the activity of the Investigator sending a Notice of Commencement of Investigation (SPDP) to the Attorney no later than 7 (seven) days after the issuance of an investigation warrant. Furthermore, the local Chief Attorney will appoint a Prosecutor through his Order Letter to follow the progress of the Investigation and examine the case file with a letter code of (P-16).[1]

[1] Decision of Attorney General of the Republic of Indonesia Number 518/A/JA/11/20011 regarding the Decision Amendment of Attorney General of the Republic of Indonesia Number 132/JA/11/21994 regarding Crime Administration.

The case file will be sent by the Investigator to the investigating prosecutor of the case file as a form of the results of his investigation. The case file investigator, counted 14 (fourteen) days after receiving the case file, will study the case file and examine the formal and material completeness of the case file.

The formal completeness here means that whether all forms of Investigator's actions in performing an investigation have been in accordance with the provisions of the Code of Criminal Procedure or not, because this will have fatal consequence for an Investigation in which if it is not done in line with the Code of Criminal Procedure, the Investigation will become invalid. The completeness of the case file material means that everything related to the collection of evidence in order to meet the elements of the alleged article, because if there is no evidence supporting the elements of the alleged article, it is impossible for the suspect's actions to be proven before the trial.

In examining this case file, the investigating prosecutor has 14 (fourteen) days. In this time period, the investigating prosecutor must have determined whether the attitude towards the case file is complete or not. If the case file is complete, then no later than 14 (fourteen) days, the case file prosecutor will send a notification letter stating that the case file is complete (P-21) in order that the Investigator hands in the suspect and the evidence to the Public Prosecutor in order to know whether the prosecution can be conducted or not before the trial (Article 110 Sub-section (4) of the Code of Criminal Procedure).

As for the case file which is incomplete (Article 110 Sub-section (3) of the Code of Criminal Procedure), the investigating Prosecutor of the case file, no later than the seventh day, will send a notification that the case file is incomplete (P-18) to the investigator and no later than the 14th day (fourteen), the case file investigating prosecutor will send to the Investigator the instructions along with the case file to complete the case file (P-19).

Towardsthe case file that has been returned along with the instructions to the Investigator to be re-completed, the Investigator is obliged to complete it in accordance with the instructions that have been given and after the case file is complete, the Investigator will send the case file back to the Prosecutor and the investigator will re-examine the case file to know whether the instructions given have been fulfilled or not and if the case file has been complete, the investigating Prosecutor will issue P-21 (Article 8 Sub-section (3) letter b of the Code of Criminal Procedure).

The activity and the communication between the Investigator and the Public Prosecutor until the submission of the suspect' responsibility and evidence is called pre-prosecution. This communication is done in the context of performing the functions and the authorities of each with the same aim, i.e., leading to the case prosecution in the Court. The purpose of this pre-prosecution activity is to prove it in the trial and in order to carry out formal criminal law, because even if the judge is free to prove a crime, the burden of proof of an offense lies with the Public Prosecutor since the Public Prosecutor has indicted him with an indictment so that the Public Prosecutor must prove it (Bakhri, 2012).

The functional coordination between the Investigator and the Prosecutor in submitting the case file which is the pre-prosecution phase is a form of control of the investigator's performance. If there is a formal law that is violated during the process, it will result in invalidation of the investigation result; it will be even more fatal if during the Investigation process, there is an intimidation or a threat both physically and psychologically on witnesses or defendants which can result in the revocation of the relevant information in the Police interrogation report before the trial.

This prosecution phase, in fact, becomes a problem in practice in the criminal justice system because of the alternation of case files from Investigators to Public Prosecutors and vice versa despite the differences in the substance of the case itself. The absence of a provision in the Code of Criminal Procedure which regulates the number of times of back-and-forth case file between the Investigator and

the Prosecutor in the case according to the Prosecutor's view is incomplete, meaning that the case has not met the requirements to be submitted to the Court. If the case file returns to the Investigator by the Prosecutor after the time limit as in accordance with Article 138 Sub-section (2) of the Code of Criminal Procedure, the Prosecutor cannot request the file to be returned to him. In addition, the legal consequences of the Investigation that have exceeded the specified limit in the Code of Criminal Procedure are also not regulated, therefore, in practice, this back-and forth case exceeding the specified time limit frequently occurs.

This condition is actually not in accordance with the principles of the judicial power implementation which are simple, fast, and low-cost court. The justice principle which is simple, fast, and low-cost is one of the principles in the justice system in Indonesia. The presence of this principle has been existing since the Law of the Republic of Indonesia Number 14 of 1970 regarding the Basic Provision of Judicial Power which is no longer valid. The principle that is now regulated in the Law of the Republic of Indonesia Number 48 of 2009 regarding Judicial Power stipulates "The court helps justice seekers and attempts to overcome all problems and obstacles in order to achieve a simple, fast, and low cost trial". This principle is intended to protect the arbitrary action of law enforcement officials either at the initial examination, prosecution, and court trial. Therefore, we need officers who are reliable, honest, and highly disciplined as well as are not easily tempted by tantalizing promises. If these things are ignored by the officials, deviations, collusion, and manipulation of the law will occur.

This has not yet been fully regulated in the Law of the Republic of Indonesia Number 8 of 1981 regarding the Code of Criminal Procedure, so that justice and legal certainty for a suspect will be difficult to be obtained; thus, the objectives of the integrated Criminal Justice System will be difficult to achieve. In conducting systematic and integrated criminal justice, this function must be carried outn.

Research Method

The type of research conducted is by using a normative juridical approach, i.e., a research focused on examining the regulation of positive legal norms. Normative legal research using the statute approach is conducted by examining the laws and the regulations that are related to to the legal issues being discussed, namely the legal certainty of the functional coordination between the Police Investigator and the Public Prosecutor in the Pre-Prosecution. Normative legal research focuses on an inventory of positive law, principles, and doctrines of law, legal discovery in cases, systematic law, the extent of legal synchronization, comparative law and legal history, so that it is frequently referred to legal study in books.

Legal materials which are reviewed and are analyzed in normative legal research cover primary, secondary, and tertiary legal materials. The technique to study and collect the three legal materials use documentary studg. The documentary study is a study that examines a variety of documents either regarding with applicable laws and regulations or documents. This research collects, studies, and analyzes relevant materials and literature related to the problem being discussed, namely the legal certainty of the functional coordination between the Police Investigator and the Public Prosecutor in the pre-prosecution.

Analysis and Discussion

Arrangement and Form of Functional Coordination between Police Investigator and Public Prosecutor in Pre-Prosecution

Pre-prosecution is regulated in Article 14 of the Law of the Republic of Indonesia Number 8 of 1981 regarding Code of Criminal Procedure which stipulates that the Public Prosecutor's authority can conduct pre-prosecution if there is a lack in the investigation results, then based on the provision of Article 110 Sub-section (3) and Paragraph (4) of the Law of the Republic of Indonesia Number 8 of 1981 regarding Code of Criminal Procedure, the Public Prosecutor gives instructions to the Investigator to perfect the investigation result. Since its authentic definition is not regulated in the Code of Criminal Procedure, it can be concluded that the pre-prosecution is the process of perfecting the case file based on the instructions of the Public Prosecutor to the Investigator (Effendy, 2012).

The enactment of the Law of the Republic of Indonesia Number 8 of 1981 regarding Code of Criminal Procedure has the consequence of limiting the law enforcers' authorities in the settlement of criminal proceedings such as the Prosecutor does not have the authority to investigate cases which are the authority of the Police as the main Investigator. However, it does not mean that law enforcers do not have any correlation with one another. Naturally, it is a series of activities which mutually support one another. Although there is a limitation of authority between the Investigator and the Public Prosecutor in general, it does mean that it does not provide the possibility to establish a coordinating relation in the sense of cooperation in resolving criminal cases. Precisely, with the coordination, in this case, good cooperation between both parties will lead to a good thing so that the criminal proceedings will run well and smoothly.

Investigation activity performed by the Police is for the sake of prosecution or in other words the prosecution cannot be carried out if there is no investigation result conducted by the Police which lead to the examination of case files at the trial. The main function of the criminal justice process is to seek the truth as far as which can be achieved by human without having to sacrifice the suspect's rights (Idries & Tjiptomartono, 2011).

The functional relation between the Investigator and the Public Prosecutor can be identified by the provision stipulated in Article 109 and Article 110 of the Law of the Republic of Indonesia No. 8 of 1981 regarding Code of Criminal Procedure. Article 109 of the Law of the Republic of Indonesia No. 8 of 1981 regarding Code of Criminal Procedure regulates that investigators who have begun their investigation should notify the Prosecutor. Even if the Investigator stops the investigation, it should be also notified to the Public Prosecutor. Article 110 of the Law of the Republic of Indonesia No. 8 of 1981 regarding Code of Criminal Procedure regulates that, in the event that an investigation has been completed, the investigator must immediately submit the case file to the Public Prosecutor. In the event that the Public Prosecutor believes that the investigation result is not yet complete, the Public Prosecutor shall immediately return the file to the Investigator accompanied by instructions to be completed.

Regarding to the authority of the Police and the Attorney, the obligation to coordinate has been mandated in Article 33 of the Law of the Republic of Indonesia No. 16 of 2004 regarding the Republic of Indonesia Attorney, emphasizing that in carrying out its duties and authorities, the Attorney fosters cooperative relation with law enforcement body and justice agency as well as other countries or institutions. Therefore, coordination has become a necessity. Thus, it is necessary for the Attorney and its law enforcement body to look for formats and mechanism as well as model of coordination that are considered appropriate and effective for law enforcement.

The spirit of Article 33 of the Law of the Republic of Indonesia Number 16 of 2004 regarding the Attorney General's Office of the Republic of Indonesia has established an effective coordination and consultation forum among law enforcers. In addition to Article 33, Article 34 of the Law of the Republic of Indonesia Number 16 of 2004 regarding the Attorney General's Office of the Republic of Indonesia also mentions coordination with other agencies in the field of Civil Code, specifically that the attorney's office can give consideration in the legal field to other government institutions. This needs willingness to establish coordination among law enforcement officials.

Besides in the Law of the Republic of Indonesia Number 8 of 1981 regarding Code of Criminal Procedure and in the Law of the Republic of Indonesia Number 16 of 2004 regarding the Republic of Indonesia Attorney's Office, the functional coordination relation is also regulated in the prosecutor's internal regulation namely the Attorney General's Regulation Number: PER-036/A/JA/09/2011 regarding Standard Operating Procedure (SOP) for Handing General Crime. In chapter V part 2 of this provision regulates the coordination of case handling, i.e:

Article 10

1) Coordination with investigators is conducted as early as possible before filing is done;
2) Coordination is performed by providing consultation and/or technical guidance regarding the formal requirements of the case file and the material requirements regarding the implementation of the law, the element of offense, criminal liability and other necessary matters;(3) Coordination will be a reference material in the research of case files or other legal policies related to case handling;
3) Coordination is carried out with due regard to statutory regulation, legal development, a sense of community justice and conscience;
4) Implementation of coordination is stipulated in the Minutes;
5) The Public Prosecutor is responsible for implementing the case handling coordination;
6) Administrative Officers are responsible for the administration of the case handling coordination.

By this provision, it is expected that the coordination in this pre-prosecution phase can run well between two institutions.

In the police institution, the obligation to coordinate is also mandated in the law. For instance, in Article 14 Sub-section (1) letter j of the Law of the Republic of Indonesia Number 2 of 2002 regarding the Police related to the duties and the authorities of the police, it is confirmed that the National Police of the Republic of Indonesia is in charge of temporarily serving the interests of the community before being handled by the agency and or authorities. More substantial aspect can be seen in Article 42 Sub-section (1), Sub-section (2) and Sub-section (3) of the Law of the Republic of Indonesia Number 2 of 2002 regarding Police, as follows:

(1) the relation and the cooperation of the Indonesian National Police with bodies, agencies, and institutions in the home country and in the abroad are based on the joints of functional relation, mutual respect, mutual assistance, public interest priority, and hierarchy concern.

(2) domestic relation and cooperation are done primarily with elements of local government, law enforcement, agency, institution, other agencies, and the community by developing the principles of participation and subsidiarity.

(3) foreign relation and cooperation are carried out mainly with police and other law enforcement agencies through bilateral or multilateral cooperation and crime prevention agencies either in the context of operational duties, technical cooperation, or education and training.

The coordination between Police Investigators and Prosecutors in the regulation of the Head of the Republic of Indonesia National Police Number 14 of 2012 regarding Management of Criminal Investigation is limited to the submission of Notice of Commencement of Investigation (SPDP) and submission of Case File (phase I). It is in line with the Regulation of the Head of the Republic of Indonesia National Police Number 12 of 2009 regarding Supervision and Control of the Handling of Criminal Cases in the Indonesian National Police Environment. In both internal police regulations, they only discuss the phases of submitting a case file to the prosecutor and the time period for a case file to be declared complete.

The coordination between Investigator and Prosecutor in the regulation of the Head of the Republic of Indonesia National Police Number 12 of 2009 regarding Supervision and Control of Criminal Case Management in the Republic of Indonesia National Police Environment is regulated in the fourth section regarding Case Submission from Article 129 to Article 132. he coordination between Investigator and Prosecutor in the regulation of the Head of the Republic of Indonesia National Police Number 14 of 2012 regarding Management of Criminal Investigation is also limited to sending case files. It is regulated in paragraph 7 regarding the submission of case files and paragraph 8 regarding the submission of suspects and evidence.

Specifically, in the internal police regulations, the wrtier does not meet any regulations regarding coordination between Investigators and Prosecutors in general crimes. It is unfortunate because this coordination is highly necessary considering the case files made by the Investigator without involving the Prosecutor in the process, of course, have lacks. Practically, the Investigator frequently comes to the Attorney's Office to coordinate a crime that occurrs, even the Investigator asks the Prosecutor for advice on what Article will be alleged by the criminal before or after the investigation.

The police should make a Case Handling Standard in which it regulates coordination with the Prosecutor at the Investigation phase because it is regulated in the Code of Criminal Procedure which is called Pre-Prosecution. The Police Agency must be pro-active in this coordination because the product to be tried by the Prosecutor in the form of a case file is from a Police Investigator.

As discussed previously, only the Attorney's Office which regulates the coordination between the Investigator and the Public Prosecutor in detail, while the Police only arranges coordination after submitting the case file to the Attorney's Office so that the handling of criminal cases still finds many criminal cases that have protracted handling, so that it does not provide legal certainty for justice seekers and is contrary to the principles upheld by the Code of Criminal Procedure, namely a fast, simple, and low-cost justice. The handling of protracted cases occurs because the provisions stipulated in the Code of Criminal Procedure have not been conducted consequently.

The form of coordination in the regulation of the Republic of Indonesia's Attorney Number: PER-036/A/JA/09/2011 regarding Standard Operating Procedure (SOP) of Handling General Crime is in the form of providing consultation and or technical guidance on formal requirements from case files or material requirements relating to the implementation of law, elements of offense, criminal liability and other matters needed. This coordination is manifested into Minutes made by Administrative staff signed by the Prosecutors and Investigators. The Minutes shall be in accordance with the format of the letter stipulated in the Circular of the Attorney General of the Republic of Indonesia Number: SE-004/A/JA/02/2009 regarding Minimizing Back-and-Forth Case between Investigators and Public Prosecutors.

SE-004/A/JA/02/2009 regarding Minimizing Back-and-Forth Case between Investigators and Public Prosecutors requires that the Public Prosecutor appointed to handle a criminal case fosters a coordinating and consultating relation with the Investigator in order to resolve the case investigation fast,

simply and affordably, so that protracted cases can be prevented. The implementation of the coordination and consultation results is stipulated in the Minutes of the coordination and consultation implementation between the Public Prosecutor and the Investigator and that every case file submitted by the investigator must be coordinated and consulted in advance.

In the Circular of the Attorney General of the Republic of Indonesia Number: SE-004/A/JA/02/2009 regarding Minimizing Back-and-Forth Case between Investigators and Public Prosecutors, it is explained that in the Minutes of Consultation and Coordination of Case Handling signed by the Prosecutor and Investigator in which in the Official Report discusses the formal and official completeness of a case file that will be transferred to the Attorneys Office later. From the consultation and coordination, conclusion can be maderegarding the agreement by which the Investigator will complete the case file.

These coordination and consultation are possible to be done more than 1 (one) time which in the attachment of SE-004/A/JA/02/2009 regarding Minimizing Back-and-Forth Case between Investigators and Prosecutors, it explains that the consultation and coordination of additional investigations will be resumed before the first phase of case file submission is made. It can optimize the coordination and consultation forum between the Public Prosecutor and the Investigator in conducting the case investigation so that it will minimize the back-and-forth case at the end.

This coordination is conducted before the filing is done because if the coordination is done after the filing, the place for the instruction given is in the form of letters of P-18 and P-19. This coordination is useful for investigators to be made as a reference material in case file research or other legal policies related to handling a criminal case.

In the Standard Operating Procedure (SOP), the Handling of General Crime does not regulate the number of times this coordination is done and this coordination is limited to consultation and does not have binding power between both institutions. The coordination between the Investigator and the Prosecutor is not only limited to the completeness of the case file, but also it can be in the form of an act of force that will be done by the Investigator.

Legal Certainty of Article 138 Sub-section (2) of the Law of the Republic of Indonesia Number 8 of 1981 regarding Code of Criminal Procedure

The entrance to the commencement of prosecution is the notification of the investigation conducted by the investigator to the public prosecutor or referred to as the Notification of Commencement of Investigation (SPDP). In the Law of the Republic of Indonesia Number 8 of 1981 regarding the Code of Criminal Procedure, it is stated that the the Notification of Commencement of Investigation (SPDP) is given immediately after the investigator starts conducting an investigation. After the investigator submits it, the prosecutor will follow up by appointing a Public Prosecutor to follow the progress of the investigation or known as the Investigating Prosecutor.

The Notification of Commencement of Investigation (SPDP) has an essential function in the criminal justice process. Without it, the public prosecutor cannot know the investigation which is done by the investigator and absolutely lead to the condition in which the public prosecutor is not able to follow the progress of the investigation and also make the coordination between the investigator and the Public Prosecutor not optimal. After the investigator considers that he has finished conducting an investigation, the investigation results compiled in the form of a case file are then submitted to the Public Prosecutor to examine whether it is enough for prosecution or not. This phase is referred to as the case file research phase.

The notification of investigation or the delivery of the Notification of Commencement of Investigation (SPDP)from investigators to prosecutors is an administrative procedure that plays an significant role in the criminal justice process, It is because it functions as a means of check and balance, a form of investigation transparency and accountability, and the entrance of the pre-prosecution mechanism. Since the ratification of the Constitutional Court Decision Number 130/PUU-XIII/2015, one of the considerations that discusses the Notification of Commencement of Investigation (SPDP)provides certainty regarding the period of sending SPDP to the Public Prosecutor.

The consideration on the investigator's obligation to submit a Notice of Commencement of Investigation (SPDP), i.e., the petition of the Petitioners regarding to SPDP in Article 109 Sub-section (1) of the Code of Criminal Procedure, the Constitutional Court provides consideration that the prosecution as a coordinating mechanism for investigators and the Public Prosecutor required by the Code of Criminal Procedure indeed frequently experiences constraints specifically related to the frequency of investigators not giving a Notification of Commencement of Investigation (SPDP) or returning files punctually. According to the Constitutional Court, the delay in the submission of a Notice of Commencement of Investigation (SPDP) by the Investigator to the Public Prosecutor not only triggers legal uncertainty but also harms the constitutional rights of the reported party and victim/reporter.

From these considerations, it is important for the Court to state that the Notice of Commencement of Investigation (SPDP) submission is not only obliged to the Public Prosecutor but also to the reported party and victim/reporter. Regarding the period of the Notice of Commencement of Investigation (SPDP) submission, the Constitutional Court considers that the period is no later than 7 (seven) days. The investigators are required to notify and submit SPDP to the prosecutor, reported party, and victim/reporter after the issuance of an investigation warrant. It makes a new norm and is seen as effective for legal certainty for justice seekers.

In Article 138 Sub-section (2) of the Law of the Republic of Indonesia Number 8 of 1981 regarding the Code of Criminal Procedure, it is stated that "In the event that the investigation results are apparently incomplete, the Public Prosecutor returns the case file to the Investigator followed by instructions on what must be done to be completed and within fourteen days from the date of receiving the file, the Investigator must have resubmitted the case file to the Public Prosecutor." This article explains that for a case file sent to the Attorney's Office of the Police Investigator, if there is a lack of formal and material condition from a case file, the lack must be re-submitted in the form of a case file to the Public Prosecutor no later than 14 (fourteen) days from the receipt by the Investigator. Towards this norm, the time limit allowed in this pre-prosecution process is absolutely clear.

Practically, the investigators often return case files after 14 (fourteen) days in accordance with what is mandated by the Law. In Article 138 Sub-section (2) of the Law of the Republic of Indonesia Number 8 of 1981 regarding the Code of Criminal Procedure, it also does not state how the investigation results will be if the return of the case file exceeds a predetermined time limit. It happens in a legal vacuum so that there is no legal certainty regarding the continuation of case files that have exceeded the time limit as stipulated in the Law. It could be used as material for the Legal Counsel to attack the Public Prosecutor in defending his client.

With the many cases file submission exceeding the determined time limit by the Code of Criminal Procedure, it indicated that the integrated criminal justice system is not running well. According to Mardjono Reksodiputro, it has consequences (Reksodiputro, 2007), specifically:

1. Difficulties in assessing the success or failure of each institution, regarding to their shared duties;
2. Difficulties in solving their own main problems in each institution (as a system of the criminal justice system);

3. Because the responsibilities of each institution are commonly unclear in their distribution, each institution does not pay much attention to the overall effectiveness of the criminal justice system implementation.

One of the cases which is made as a sample by the writer of which the case is handled directly by the author in which the writer is a Prosecutor in Solok District Attorney, i.e., the case on behalf of the suspect namely Arifin Kamaroeddin Dt. Panduko Sati called Arifin. The chronology of this case is the Notice of Commencement of Investigation (SPDP) on behalf of the suspect namely Arifin Kamaroeddin Dt. Panduko Sati called Arifin Number SPDP/13.A/VII/ 2019-Reskrim dated July 3, 2019 was sent from Solok Sub-regional Police Office to Solok District Attorney on July 5, 2019 and by the Head of Solok District Attorney, a Letter of Appointment for the Public Prosecutor to Follow the Development of Solok District Attorney at Solok Criminal Case Investigation (letter code of P-16) dated July 10, 2019. The delivery of this SPDP is along with the delivery of the case file with the Letter Number is: R/402/VII/2019/Reskrim on July 5, 2019 and received by the Public Prosecutor on July 5, 2019. The Public Prosecutor made a position within 7 (seven) days in which on this case there is a lack of formal and material requirement. Then, the Public Prosecutor issued a P-18 letter regarding the Investigation Result on behalf of Arifin Kamaroeddin Dt. Panduko Sati called Arifin who was suspected of violating Article 385 of the Code of Criminal Procedure was incomplete on July 12, 2019. Furthermore, on July 19, 2019, the Public Prosecutor issued instruction with a letter code of P-19, namely the return of Case Files on behalf of Arifin Kamaroeddin Dt. Panduko Sati called Arifin which was suspected of violating Article 385 of the Code of Criminal Procedure to be completed. Then on August 2, 2019, the Investigator sent back the case file and after reading the file, the Public Prosecutor found that there were still some instructions that had not been completed and the Public Prosecutor issued a letter returning the case file back to the Investigator (second P-19) on August 9, 2019. Moreover, on August 24, 2019, in which additional investigations had exceeded the time limit determined by the Code of Criminal Procedure (vide Article 138 Sub-section (2) of the Code of Criminal Procedure), the Public Prosecutor issued a letter in the form of notification that the extra time of investigation on behalf of Arifin Kamaroeddin Dt. Panduko Sati called Arifin has run out (P-20).

From the chronology of the case file aforementioned, it can be concluded that the resubmission of the case file in the second time was not in line with what is mandated by the Code of Criminal Procedure. The case example illustrates that there is no legal certainty of the suspect due to the back-and-forth cases alleged on him.

In the internal regulation of Attorney, there is no SOP regulating that after a letter in the form of notification providing that nothing to do with the additional investigation time that has expired with the case status (P-20). If it is returned, there is no legal basis regulating it. If it is left behind, it will violate legal certainty and it will not achieve the principle of justice, namely simple, fast, and low cost principle. Furthermore, if the investigation is stopped because it violates the legal certainty, the Public Prosecutor does not have the authority to do so.

The meaning of ".... notifying" in Article 12 Sub-section (5) of the Regulation of the Attorney General of the Republic of Indonesia Number: PER-036/A/JA/09/2011 regarding Standard Operating Procedure (SOP) of the Handling of General Crime shall not be interpreted as a termination of the investigation. The termination of the investigation itself is regulated in Article 109 Sub-section (2) of the Code of Criminal Procedure which explains that in the event that the investigator stops the investigation because there is insufficient evidence or it is not a crime or the investigation is terminated by law, the investigator notifies the prosecutor, the suspect, or the family.

The prosecution will not succeed if the case file from the investigation phase cannot be accounted for its truth. The space available for public prosecutors to examine the investigation results is the Pre-

prosecution phase. However, the effectiveness of the Pre-prosecution phase as a basis for the Public Prosecutor to know a case thoroughly is doubtful because the Public Prosecutor is only limited to examining the file provided by the investigator without knowing whether the file is in line with the actual facts or not.

It cannot be denied that a prosecutor is the main figure in the criminal justice conduct because he plays an important role in the decision-making process by the judge. Even, in other countries, the prosecutors do not conduct investigations themselves; they also have extensive prosecution discretion. In other words, the prosecutors have the power to determine whether or not to sue in almost all criminal cases (Surachman & Hamzah, 1996).

The facts reveal that many of the free decisions caused by the evidence contained in the case file do not match the actual facts. It can be seen from the case that end to the decision of being released from the Panel of Judges because the defendant revoked Interrogation Report (BAP) in the Fraud on behalf of Nopida called Pida whose case was adjudicated at Solok District Court with case number 16/Pid.B/ 2015/PN.Slk in which the decision of the Supreme Court Number 1248 K/Pid/2015 in 2015 also upheld the first-level decision. In the pre-prosecution phase, the Prosecutor whose task only to examine the case file was in line with the provision of article 183 of the Code of Criminal Procedure, namely the examination of the case file based on the witness's testimony and Defendant's evidence as well as the directive evidence. The witness's testimony is in accordance with the defendant's testimony who acknowledged his actions so that he could obtain directive evidence according to the evidence proposed in this case.

The revocation of the Interrogation Report of the Defendant at trial is caused by the pressure or the case manipulation at the investigation phase conducted by the Police as the Investigator. One of the relevant factors of this condition is because the Public Prosecutor does not have enough space to know whether an evidence at the investigation phase was obtained illegally or not because the Public Prosecutor cannot be actively involved at the investigation phase. Even though the Public Prosecutor has stated a complete case file or P-21, it does not mean that the Public Prosecutor absolutely knows the truth of the evidence obtained during the investigation phase, because again, the Public Prosecutor only relies on the formal truth in the case file. Howeve,r the investigation and the prosecution shall not be separated explicitly. The prosecutors must follow the investigation process for their interests in dealing with court proceedings and to conduct control on the ongoing investigation process (Santoso, 2000).

Although there is already a prosecution, in fact, both the Investigator and the Attorney's Office respectively blame each other when a problem comes in the law enforcement process. The investigator will easily state that he had conducted the maximum investigation, but the file was still returned by the Public Prosecutor. Meanwhile, the Public Prosecutor also complained that the Investigator frequently did not follow the instructions given by the Public Prosecutor, even the Investigator often did not return the file. The investigator also argued that the file was not returned because the instructions given by the Public Prosecutor were often difficult to fulfill. Meanwhile, the Public Prosecutor, on the contrary, stated that the instructions were absolutely clear to understand. The number of back-and-forth files is also caused by the unwillingness of the Investigator to follow the instructions of the Public Prosecutor because of the investigator presumption that by following the instructions, it will position the Investigator as if he were under the Public Prosecutor *(hulp magistraat)*.

Based on this view, Andi Hamzah reveals a mistake if the *hulp magistraat* is understood as an assistant to the prosecutor (Hamzah, 2019). An interpretation that is inconvenient for the Police and is a mistake if the *hulp magistraat* is translated as a Prosecutor's assistant.

The viewpoint difference between the investigators and the public prosecutor is further worsened by the presence of extra legal factors in their relation. According to Daniel S. Lev, the relation between the investigator and the public Prosecutor is as a competition for fortune (Daniel, 1990). The disharmony between the investigator and the public prosecutor in a case is caused by a dispute on legal power and authority. It is about the desire of both parties for greater power and prestige in the country.

The repeated file returns to the investigator will slow down the resolution of the case. In addition, it is regarding to the detention period of a suspect, because the Law of the Republic of Indonesia Number 8 of 1981 regarding Code of Criminal Procedure recognizes the time limit of detention which can be imposed. If it is exceeding the time limit for detention, the suspect must be released by law from detention. Besides, stopping prosecution by the reason of insufficient evidence will also bring bad consequences because the cessation of prosecution solely for procedural reasons will clearly bring a bad image for law enforcement.

Without the presence of limit on the number of times of the submission or re-submission of case files reciprocally from the Investigator to the Public Prosecutor or vice versa, it is always possible that on the basis of the Public Prosecutor's opinion, the investigation result of the investigator's addition is considered incomplete; the case files may be protracted from the Investigator to the Public Prosecutor or vice versa. That kind of situation is clearly not beneficial for the suspect, based on Article 50 Sub-section (2) of the Law of the Republic of Indonesia Number 8 of 1981 regarding the Criminal Procedure, the suspect's case has the right to be brought to court immediately by the Public Prosecutor, who then has the right to be tried immediately by the Court (Article 50 Sub-section (3) of the Law of the Republic of Indonesia Number 8 of 1981 regarding Criminal Procedure).

In the formal and judicial aspect, the above situation can indeed occur, because there is no provision that limits how many times it can be returned, but if it is related to legal purpose, namely in the context of providing protection and legal guarantee to the individual right as regulated in Article 50 of the Law of the Republic of Indonesia Number 8 of 1981 regarding Criminal Procedure Law, and for the sake of legal certainty for justice seekers, then the return of the investigation results or the additional investigations results done by the Public Prosecutor to the Investigator, there must be a limitation criterion, for example, if the instructions of the Public Prosecutor that must be completed involve requirements for the evidence element of the alleged crime or whether they have met the requirements of evidence or not. Thus, legally and on the basis of legal protection and guarantees for human rights, the return can be justified (Nusantara, 1986).

Regarding to the time limit of 14 (fourteen) days, the obligation of the Police to conduct additional investigation and to return the case file to the Public Prosecutor is stated in the Guidelines for the Implementation of the Law of the Republic of Indonesia Number 8 of 1981 regarding the Code of Criminal Procedure as follows, subsequently if related to the time limit as specified in Article 138 Sub-section (2) within 14 (fourteen) days from the date of receiving the Investigator's file, it must have completed the investigation results in accordance with the instructions of the Public Prosecutor. The problem is, what if within 14 (fourteen) days, the Investigator has not succeeded in completing the investigation results or additional investigations in accordance with the instructions of the Public Prosecutor? Should the Investigator immediately submit the file back in an incomplete condition as expected by the Public Prosecutor or should he still attempt to complete it even though the time limit has been exceeded?.

As a solution, if due to a particular situation, where the instruction of the Public Prosecutor completing the investigation results or additional investigation cannot be fulfilled within 14 (fourteen) days, the results must be immediately informed and the case file shall be returned to the Public

Prosecutor. Furthermore, the Public Prosecutor can be willing to return or stop the prosecution with all legal consequences that may arise (Nusantara, 1986).

The information given in the Guidelines for the Implementation of the Law of the Republic of Indonesia Number 8 of 1981 regarding Code of Criminal Procedure aforementioned reveals the complexity of the process of back-and-forth case files between the Police and the Prosecutor. The example is given in the Guidelines for the Implementation of the Law of the Republic of Indonesia Number 8 of 1981 regarding Code of Criminal Procedure that if the Police cannot complete an additional examination within 14 (fourteen) days, the Police must return the file to the Prosecutor in line with the provision of the Law. The return of files to the Prosecutor is in order that Article 138 Sub-section (2) of the Law of the Republic of Indonesia Number 8 of 1981 regarding Code of Criminal Procedure is not violated, because the possibility is there that the Prosecutor will return it to the Police to continue additional investigation. In practice, many case files that have exceeded 14 (fourteen) days are returned to the Public Prosecutor and they are still accepted.

The Constitutional Court on January 11, 2017 has issued a decision in case Number 130/PUU-XIII/2015 and on legal certainty Article 138 Sub-section (2) of the Law of the Republic of Indonesia Number 8 of 1981 regarding Code of Criminal Procedure which has also been discussed in this decision Regarding to the process of back-and-forth cases without limit, it finally does not have certainty because of the Article 138 Sub-section (1) and Sub-section (2) and the Article 139 of the Code of Criminal Procedure. The Constitutional Court provides consideration that it is very difficult to provide a definite number of the times the case file could be back and forth from the investigator to the public prosecutor, considering that it is highly dependent on the quality and dimension of the different cases and also the different levels of difficulty of evidence between one and other cases.

Conclusion

1. The arrangement of functional coordination to minimize the back-and-forth case file in the Attorney General's institution has been guided by the Regulation of the Attorney General of the Republic of Indonesia Number: PER-036/A/JA/09/2011 regarding Standard Operating Procedure (SOP) of the Handling of General Crime in which the form of the coordination is consultation and is manifested into Minutes in accordance with the letter format which has been stipulated in the Circular Attorney General of the Republic of Indonesia Number: SE-004/ A/JA/02/2009 regarding Minimizing Back-and-Forth Case between Investigators and Public Prosecutors. In addition, the Police Institution also regulates coordination with other institutions, especially with the Attorney's Office, but the Police Department does not specify this matter in more detail in the internal regulation of this institution. It makes the coordination not running well because there is no clear arrangement for coordination between both institutions. The police institution must be pro-active in this coordination because the product to be tried by the Prosecutor in the form of a case file comes from the Police Investigator.

2. The functional coordination between the Police Investigator and the Public Prosecutor in the prosecution begins from the SPDP submission phase by the Investigator which leads to sending the case file to the Public Prosecutor. The relation between Investigators and Public Prosecutors in the Law of the Republic of Indonesia Number 8 of 1981 regarding Code of Criminal Procedure is principally based on the principle of functional differentiation. With the principle of functional differentiation, it results in the separation of authority between the Investigator and the Public Prosecutor in coordination between them. This separation that prevents Investigators and Prosecutors from collaborating from the beginning of the investigation. The lack of collaboration from the

beginning makes both institutions often have different views in dealing with a case that results in a lot of back-and-forth case files and hanging case files. In addition, in Article 138 Sub-section (2) of the Law of the Republic of Indonesia Number 8 of 1981 regarding Code of Criminal Procedure, there is a legal vacuum that results in legal certainty which is not achieved because of the lack of clarity in the pre-prosecution regulation stipulated in Law of the Republic of Indonesia Number 8 of 1981 regarding Code of Criminal Procedure. One of the inclarities of the pre-prosecution arrangement is that there is no limit regulation of back-and-forth cases between Investigators and Public Prosecutors. The inclarity of this regulation has an impact on the lengthy process of the investigation and certainly has the potential to violate the suspect's right to be tried according to the principles of fast justice upheld by the Code of Criminal Procedure. The suspect should get a certainty when the case will soon be tried (undue delay), as well as the victim who needs a certainty of the clarity of the crime that he experiences. The absence of norms formally juridically raises the number of hanging case files at this pre-prosecution phase.

References

Books

Nusantara, A. H. G. 1986. *Code of Criminal Procedure and Implementing Regulations,* Djambatan, Jakarta.

Idries, A. M., & Tjiptomartono, A. L. (2011). *The Implementation of Forensic Medicine in Investigation Process,* CV. Sugeng Seto, Jakarta.

Arief, B. N. (2010). *Problem of Law Enforcement and Criminal Code Policy in Tackling a Crime,* Kencana Prenada Media Grup, Jakarta.

Daniel, L. (1990). *Law and politics in Indonesia, continuity and change,* LP3ES, Jakarta.

Reksodiputro, M. (2007). *Human Rights in Criminal Justice System,* Criminology Institute, University of Indonesia, Jakarta.

Effendy, M. (2012). *Criminal Justice System: A Review of Several Developments in Criminal Code,* Reference, Jakarta Selatan.

Muladi. (1998). *Capita Selecta of Criminal Justice System,* UNDIP, Semarang.

Hamzah, A. (2019). *Criminal Procedure Code Ed 2*. Sinar Grafika.

Surachman & Hamzah, A. (1996). *Prosecutors in various countries: their role and position,* Sinar Grafika, Jakarta.

Bakhri, S. (2012). *Burden of Proof in Some Judicial Practices,* Gramata Publishing, Jakarta.

Huijbers, T. (1995). *Philosophy of Law,* Kanisius, Yogyakarta, 1995.

Santoso, T. (2000). *Police and Prosecutor: Alignment or Struggle,* Indonesian Center for Criminal Justice Studies, Jakarta.

Regulations

Law of the Republic of Indonesia Number 8 of 1981 regarding Code of Criminal Procedure.

Law of the Republic of Indonesia Number 2 of 2002 regarding Indonesian National Police.

Law of the Republic of Indonesia Number 16 of 2004 regarding Attorney General's Office of the Republic of Indonesia.

Decision of Constitutional Court in Case Number 130/PUU-XIII/2015.

Decision of Attorney General of the Republic of Indonesia Number 518/A/JA/11/20011 regarding Decision Amendment Attorney General of the Republic of Indonesia Number 132/JA/11/21994 regarding Crime Administration.

Regulation of Attorney General of the Republic of Indonesia Number: PER-036/A/JA/09/2011 regarding Standard Operating Procedure (SOP) of Handling General Crime.

Regulation of the Indonesian National Police Number 12 of 2009 regarding Supervision and Control of Criminal Case Handling in the Indonesian National Police Environment.

Regulation of Criminal Investigation Agency Head of the Indonesian National Police Number 3 of 2014 regarding Standard Operating Procedure of Crime Investigation Implementation.