Disassemble Absolutism Ratio Praxis Monologue Public Prosecutors In Preparing Alternative Charges

Rocky Marbun, Mahmud Mulyadi

Abstract: The monologal praxis ratio is a procedural action that closes the door of dialogue, so that the truth is presumed as something that is absolutely true from the side of the institution of the Public Prosecutor. The nature of the absoluteness comes up to the public prosecutor's field of uncertainty as a matter of fairness and truth. Alternative indictments are compiled and constructed based on a pattern of reasoning which is called by internal doubt of the Public Prosecutor, both personally and institutionally. Thus, the meaning of the complete case file statement originating from the investigation process becomes meaningless.

Keywords: Public Prosecutors, Alternative Indictments, Human Rights, Monologues.

1. INTRODUCTION

THE logical consequence of the adoption of the rule of law principle, as contained in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (1945 Constitution of the Republic of Indonesia), is the establishment of legislation as a form of limitation from the authority of each governmental organization in the form of authority contained in legal norms that are abstract and general. The implementation of the state's life functions as confirmed by Padmo Wahyono, that the establishment of legislative mechanisms as a continuation of written and unwritten basic laws, investigates the articles, how they are applied, the atmosphere of mysticism, the formulation of legislative texts, the creation of statutory texts the information relating to the process of its formation, all of which are related to the arrangements contained in the constitution concerning state organizations. In this field, it is necessary to note several stages of implementation of provisions concerning state organizations that are affected by circumstances and time (Wahyono, 1986).

So it can be concluded — if the author associates with the Criminal Justice System in Indonesia, that the Law No. 8 of 1981 concerning the Criminal Procedure Code is enacted and enacted [Law No. 8/1981 or the Criminal Procedure Code / KUHAP], is a noble ideal to break away from the paradigm of colonialism which was previously shackled by legal products that are not in accordance with the mystical atmosphere of the Indonesian people. So it is not surprising, when many criminal law experts describe the KUHAP as a masterpiece of the Indonesian nation at that time. However, an important statement when we pay attention to the development of the implementation of the Criminal Procedure Code from time to time, where the Constitutional Court explicitly gave a negative stigma to one of the cases in the pre-adjudication process, namely the determination of suspects as "modified attempts" (See Decision of the Constitutional Court of the Republic of Indonesia Number 021 / PUU- -XII / 2014, p. 104).

- *University of Pancasila, Jakarta Selatan, Daerah Khusus Ibukota Jakarta, Indonesia.*
- *University of North Sumatra, Medan, Sumatera Utara, Indonesia*.

The view of the Constitutional Court is certainly a whip to every Academic and Criminal Law Practitioner to return to deep understanding of the existence of the Criminal Procedure Code in the circle of development in Law and respect for Human Rights. The thing that should be realized is that the development of critical thinking patterns will always develop in line with the occurrence of phenomena of law enforcement in the practice of criminal law. In this case, we will meet in two contradictory conditions, namely the emergence of an attitude of maintaining good behavior in the comfort zone through daily routine so as to blunt the reasoning power which depends only on written legal norms and conditions that want a shift in perspective on the general condition of society when dealing with classical authoritative texts, including the Criminal Procedure Code. Such conditions, according to the author due to the classic paradigm trap in understanding and interpreting reformative legal norms. So that it is precisely what was stated by Barda Nawawi Arief in explaining the issue of criminal law reform. Where he explained that there was no meaning in the criminal law (KUHP) being replaced / renewed, if it was not prepared or not accompanied by changes in criminal law. In other words, criminal law reform or legal substance reform must also be accompanied by renewal of knowledge about its criminal law (science reform criminal / legal). In fact, it must also be accompanied by renewal of the culture of public law (legal culture reform) and renewal of the structure or legal instruments (legal structure reform) (Arief, 1998). When we discuss the Criminal Procedure Code or the Procedure Law, we are essentially reviewing how to implement a power granted by the constitution in the form of authority and authority as stipulated in the laws and regulations. The problem is that the Criminal Procedure Code has only been interpreted as a fixed procedure, as a result of the strict legality principle contained in Article 2 in conjunction with Article 3 of the Criminal Procedure Code. Thus, there is a reduction in the meaning of the Consideration Considering the letter a KUHAP which states "that the state of the Republic of Indonesia is" a state of law based on Pancasila "and the 1945 Constitution which upholds human rights and guarantees all citizens together in law and government and must uphold the law and the government with no exceptions. "Considerations Considering the letter a KUHAP should be a "guiding star" in reading, interpreting and applying the articles in the body of the Criminal Procedure Code. Thus, a consideration is a philosophical basis for a statutory regulation which can be

stated as an internal test stone in legislation before it is realized in a law enforcement process. Fatal, the process of law enforcement is only interpreted as the operation of material criminal law norms for criminal acts allegedly committed by someone who is the addressat norm of the written articles. It is often forgotten that the process of law enforcement — in essence, is the implementation of government functions (See Article 2 of Act Number 2 of 2002 concerning the National Police of the Republic of Indonesia and Article 2 paragraph (1) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia) by government organizations that fall within the scope of executive power. At this point, we must realize that the implementation of the Criminal Procedure Code has a connection with the State Administrative Law (HAN). Thus, to understand the problems regarding power and authority can only be accessed through the realm of State Administrative Law (HAN), because the Criminal Procedure Code does not have a study syllabus on both of these matters. This is important, when we understand that it turns out that one of the main principles of KUHAP is the principle of functional differentiation, where the principle of functional differentiation is an affirmation of the assignment of assignments of authority between the ranks of law enforcement officials between institutions. According to M. Yahya Harahap, the Criminal Procedure Code adheres to the principle of functional differentiation seen from the arrangement of each institution. These institutions are still built and mutually correlated and coordinated in the law enforcement process. The clarification of the differentiation of functions and authorities is more emphasized between the Police and the Attorney General's Office (Harahap, 2004). So, it is fairness when the conversation about building a harmonious relationship between law enforcement institutions between the Police and the Prosecutor's Office will never be completed if it is only reviewed through the Criminal Procedure Code. Therefore, the principle is a study of State Administrative Law. The study of the problems of law enforcement is not possible to be released from the two main elements of law enforcement functions, namely how to interpret these powers and authorities in their implementation in the Criminal Justice System in Indonesia. Writing in this study tries to focus on the power and authority possessed by the Public Prosecutor in pre-prosecution and prosecution of someone who has been designated as a suspect by the Investigator. Article 14 letter d of the Criminal Procedure Code affirms that "Public Prosecutors have the authority: make an indictment." So beforehand, it should be understood in advance that authority is only a certain part of authority. Within authority there are authority (rechtsbe voegdheden). Authority is the scope of public legal actions, the scope of government authority, not only includes the authority to make government decisions (bestuur), but includes authority in the context of carrying out duties, and gives authority and distribution of its main authority stipulated in legislation. Juridically, the notion of authority is the ability provided by legislation to cause legal consequences (Lotulung, 1994).The making of the Indictment is a logical consequence of Article 140 paragraph (1) of the Criminal Procedure Code which confirms that "In the case that the prosecutor believes that the prosecution can be prosecuted, he will immediately make an indictment." However, behind the authority granted, the absence further provisions in the Criminal Procedure Code concerning the type and form of the indictment. Thus, by referring to the principle of functional differentiation and the principle of collection of functional, the Attorney General makes a written rule relating to the guidelines for making Indictments, namely the Circular of the Attorney General of the Republic of Indonesia Number: SE-004 / JA / 11/1993 concerning Making Indictments dated 16 November 1993 [SE No. 004/1993]. One type and form of the Indictment that the Researcher wants to examine relates to the development of legal science both theoretically and practically is the Alternative Indictment. For the sake of writing this research, it will present juridical facts in the practice of criminal law relating to several Indictments that use the Alternative Indictment model by also linking to the general principles of respect for Human Rights, as a philosophical basis of the promulgation of the KUHAP. Furthermore, the researcher will try to express the nature of absolutism and tyrannicalism from the use of Alternative Indictments based on SE No. 004/1993, which in essence is not part of the legislation. More systematically, the researcher also tried to show the existence of strong suspicion of the violation of the rights of the Defendant who was put forward in the criminal trial. As well as the emergence of possible implications of misguided judicial practices, which can relatively benefit the Defendant but can also harm the Defendant and the wider community who are victims of legal actions allegedly committed by the Defendant. Finally, research will reveal the essence of binary opposition which dominates the Public Prosecutor in understanding the meaning of power and authority. Thus, the type of Alternative Charges is quite a model of charges that are easily applied in criminal justice practices in Indonesia today. Making such an indictment, as if presumed just as a truth covered with power and authority so that the door closes the door to the activities of cognitive reason and is monologal.

So if the researcher formulates the problems that arise related to the Alternative Charges, the following are:

1. What is the legal position of the Indictment with the Alternative Indictment model based on the perspective of Human Rights?
2. What is the legal position of the Indonesian Attorney General Circular Number: SE-004 / J.A / 11/1993 in the Criminal Justice System based on the teachings of the RET Open Het van system?
3. What are the negative implications of the Indictment with the Alternative Indictment model in the criminal justice process?

2 RESULT AND DISCUSSION

2.1 Theoretical Framework

2.1.1 Theory of Human Rights

Talks about human rights are in fact impossible to be released from the genus, namely the principle of the rule of law. As Montesquieu began — which had a lot of influence from John Locke in formulating the concept of rechtsstaat, which opposed absolutism in the ancient regime and was continued by J. J, Rousseau (Moeljatno, 2002). The thoughts of John Locke and Montesquiue gave rise to a wave of resistance to absolute power. With the mark of the French revolution (1789) as a child the movement to oppose absolutism succeeded in overthrowing absolute power which was subsequently accepted as a limitation of state power in a pluralism-liberal system on the basis of constitutional democracy and formal

legal state (Mahfud MD, 1993). The liberal law state or often referred to as the rule of law in the strict sense is the conception given by Immanuel Kant (1724 - 1804 BC), whose emergence coincided with the birth of the ideology of liberalism which opposed the absolute power of the kings at that time (Koesnardi & Ibrahim, 1998). According to the liberalism of the state, it must release itself from interference in matters of the interests of its people, which means that the attitude of the state must be passive (staatsonthouding) The principle of staatonthounding or limiting the role of the state and government in the field of politics that rests on the argument "The least government is the best government", and there are principles of "laissez faire, laissez aller" in the economic field that prohibits the state and government from interfering in economic life (staatsbemoeienis) (Ridwan, 2014). This has an effect on the shape of the state and the form of government which later becomes a constitutional monarchy, namely the limitation of the king's power by the constitution as a result of agreements made with his people which determine both parties in the same position (Koesnardi & Ibrahim, 1998). The type of country at that time was the State of Liberal Law (nachwachtersstaat). In this State of Liberal Law there is a guarantee that every citizen has the same legal position and may not be mistreated by the authorities. So, to achieve this goal, the state must hold a separation of powers, each of which has an equal and low position, must not influence each other and may not interfere with each other so that it can be called a legal state in this type 2 (two) main elements, namely (Koesnardi & Saragih, 1988): (1) Protection of human rights; and (2) Separation of powers within the state. Starting from these two basic formulations, it was later developed by Immanuel Kant and J.F. Stahl added two more elements, namely: (3). Government based on law / law and (4). If in the protection of human rights based on the law there are still violations of human rights, it is necessary to have an administrative court (Wahyono, 1991). Whereas through the hand of Anselm von Feuerbach it was the first element and the third element to get thought processing which gave rise to the Principle of Legality through his theory Psychologische zwang Theorie namely to suggest that in determining the prohibited actions not only about the types of actions that must be written clearly, also about the types of criminal sanctions. In this way, the person who will commit a prohibited act is already aware of what crime will be imposed upon him if the act is carried out later. Thus in his heart, then pressures were taken not to act. And if someone continues to do an act that has been banned, then the matter of being sentenced to him can be seen as being approved by himself (Moeljatno, 2002). Thus, the study of the principle of legality is the crystallization of respect for human rights. As confirmed by Komariah Emong Sapardjaja, that the principle of legality is a principle of protection which has historically been a reaction to the arbitrariness of rulers in the ancient regime as well as answers to the functional needs of legal certainty which are imperative in a Liberal State at that time (Sapardjaja, 2002).

2.1.2 Open System het van Recht (Law as an Open System)

Understanding the teachings of Paul Scholten, you should first refer to the explanation from E. Utrecht which confirms that there is a relationship between each of these legal regulations. A legal regulation does not stand alone. Every legal regulation has its place in the legal field. This place is a particular place, this is the result or consequence of the interdependence (interconnected) of each social phenomenon. Some legal regulations that contain several similarities in the form of elements that are the same or aim to achieve a common object, are a set of certain rules, known as "an internal interconnection" (innerlijke samenhang) (Utrecht & Djindang, 1989). This paradigm was pioneered by Paul Scholten of the Netherlands, which began with his opposition to the notion that Law was not Science, through his book "de Structuur der Rechtswetenschap". According to Paul Scholten that law is an overall rule and authority that is arranged logically - but constantly changes and is never closed - in a particular society in a certain time (Scholten, 2011). Thus, it can be said that law is an open system. One reason for the emergence of this paradigm, as described by Satjipto Rahardjo who commented on Paul Scholten's view is that the Open Paradigm of the van het recht system is a reaction to the positivism view which argues that law is a logically closed entity (Austin) (Rahardjo, 2014; Ali, 2015). Based on this view, Paul Scholten explained in explaining the problems in relation to law as an open system, an interpreter not only looks at the historical background of legislation, but also predicts the future using parameters in the form of consequences of a legal proposition above the impact on society by not breaking away to the ultimate goal of the law is justice. Later, Paul Scholten formulated the process as "giving equal treatment to the same things".Paul Scholten, in relation to the reasons mentioned above, explained the operation of the Law. Legal studies interpret the rules of law. That is, the Law seeks to summarize the rules not written in a particular formula, Law also explains the rules set by the authority, determines the range (meaning) contained in it through historical interpretation and teleological interpretation, by placing the rule into a the system that shelves it. Then, Legal Studies analyzes these rules in such a way that they are ready to be applied to the concrete events they face or in (futuristic) interpretations of concrete events that will emerge. The working pattern of these interpretations will always occur based on certain perspectives and ways of thinking, legal history, legal logic, a sense of justice, and leads to certain goals, namely the application and transformation of law into real life. The legal science framework, simultaneously also constructs the law. Law places the abstraction of certain social relations in authoritative texts, these authoritative texts are rules that are under authoritative texts that have a more general and broad range, and in this way will build a whole (Scholten, 2011). The construction and interpretation model carried out by Paul Scholten, borrowing the term from Gustav Radbruch, called Zu-Ende-Denken eines Gedachten, means that the legal reasoning pattern desired by Paul Scholten is a far-reaching perspective and way of thinking to the end of thought itself.

2.1.3 Authority theory

Since 2014, when we return to Paulus E. Lotulung's view that authority is an act in the realm of Public Law and brings legal consequences, the position of the terms authority and authority which were originally in the theoretical domain but have now been normalized or have become the norm written law, as contained in Law No. 30/2014. Article 1 number 6 of Act Number 30 of 2014 concerning Government Administration which explains the meaning of authority is the authority of the Agency and / or Government Officials or other state administrators to act in the realm of public law. Whereas,

the meaning of authority, explained in Article 1 number 5 of Law No. 30/2014 are rights owned by the Agency and / or Government Officials or other state administrators to make decisions and / or actions in the administration of government. If we compare it with the doctrine of legal experts in the realm of State Administrative Law (HAN), for example, the view from Bagir Manan which provides an explanation that "power" only describes the right to do or not act, while "authority" means rights and obligations (Ridwan, 2014). Bagir Manan further explained that power describes the right to do or not act. Authority means rights and obligations. Rights contain the freedom to do or not take certain actions or demand other parties to take certain actions. The obligation to include the obligation to do or not take certain actions (Manan, 2000). If we compare the legal norms with doctrine, then there seems to be a difference between them. However, if carefully examined, the whole series of articles per article in Law No. 30/2014, the authority which is defined as power and authority which is defined as rights, has obtained its limitation in its derivative articles in the form of obligations for each Government Official before taking or making its decision. Lawmaker No. 30/2014 focuses on its normative arrangements on Government Authority, regulated in Chapter V, Article 8 up to Article 39 of Law No. 30/2014. Agency and / or Government Officials and other state administrators in issuing Government Administration Decrees (K.TUN) and in the case of Government Officials performing (or not carrying out) Government Administration Actions based on their authority (= Bevoegdheden). Authority (= bevoegdheden) attached to Position (het ambt). No Position will not have Authority. Position (het ambt) is the body (= organization) of public law, is the source of the existence of the Authority. In functioning of the authority attached to it, the position (het ambt) is represented by a personal human (natuurlijke persoon), commonly called an official (ambtsdrager) or a government official. Government Body is a form of government body (= bestuursorgaan) in institutional format, such as a ministry, agency / agency which in the functioning of its authority, is also represented by an Official (ambtsdrager). Only Agencies and / or Government Officials (or state administrators) have Authority, who can issue a Decision (KTUN), and only Government Officials who are authorized can do (or not do) a Concrete / Factual Action (Marzuki, 2017). Thus, the implementation of the authority and authority of the Public Prosecutor - which is a functional office of the prosecutor, as an inseparable part of the Indonesian Prosecutor's Office as an executive power institution, through the Open Systems van het Recht Paradigm has the same / identical object of study, namely authority and authority. Thus, the Attorney General's Office cannot deny the submission of its institutions not only to the Criminal Procedure Code and Law No. 16/2004 only but also subject to Law No. 30/2014 when relating to how to make and issue government factual decisions and actions.

2.1.4 Mono Praxis Ratio

The term 'monologal praxis ratio' certainly sounds foreign to the Law Scholar, because, the term indeed grows and develops in the realm of philosophy of science, social philosophy, and political philosophy. The word 'praxis' itself is often equated with the word 'practical' and even sometimes equated with the word 'practice' in Indonesian. However, this difference is reasonable because even among philosophers there is something like that. At least, if it is associated with the word 'ratio', we are reminded of some philosophers' names, Immanuel Kant, Hegel, Marx, Freud, Weber, and philosophers who are members of the Frankfrut Mahzab, including Adorno, Horkheimer, Gramsci, Marcuse and Habermas. The word "praxis" has always been associated with theory since Marx's time. But the problem is how knowledge about society and history is not only a contemplation, but encourages 'praxis of social change'. This praxis is not blind behavior for mere instincts, but basic human actions as social beings. Thus, praxis is illuminated by 'rational consciousness', hence it is emancipatory (Sudrajat, 2014). In essence, the word 'praxis' in the hands of Habermas, refers to a very different meaning from the early philosophers based on the meaning of praxis as instrumental action. Habermas, as the Second Generation of the Critical Theory of the Frankfurt School, takes a different position in interpreting the word 'praxis'. However, in explaining the meaning of 'praxis', Habermas also criticized the problem of rationalization as a general humanitarian problem and reformed its manifestation in social life praxis. In general, it can be said that Habermas left the proletariat and addressed his theory to something very general, namely the human ratio. Through the activities of shifting the 'work paradigm' from the Marxists, the ratio gets a new understanding, namely as things related to human linguistic abilities. That is, praxis as a 'work paradigm' is shifted into a 'communication paradigm'. As a result, in understanding emancipatory praxis as a communicative dialogue and communicative action that produces enlightenment (Hardiman, 2009). Based on this, Habermas has not only improved the First Generation Critical Theory, but has also criticized the practical ratios of Immanuel Kant and also the praxis ratio of Marx which is intrumental and monologically (without dialogue). Habermas is present in the attitude of the contemporary philosopher, but on the other hand, aims to save the emancipatory elements carried by the concept of modern rationality. The strategy of Jürgen Habermas is to try to break the deadlock of its predecessors (the Frankfurt Mahzab) and overcome the deficit in the concept of practical ratios of Immanuel Kant's version through a procedural ratio concept (Hardiman, 2013). Habermas argues that a person's statement or action is rational in so far as the reason can be explained or acknowledged intersubjectively. Explanation (Erklaurung) and reasoning (Bergrundung) are the basic characteristics of rational validity claims (Gora, 2019). The absence of these two elements makes a praxis form instrumental and controlling meaning. Jürgen Habermas further explained that the old paradigm contained a certain understanding of subjectivity, namely the subject that recognizes and controls the object monologically. In the influence of this philosophy of consciousness, the Human Sciences formulates laws that underlie human behavior and the mechanisms of social life in a way that is done by the Natural Sciences, namely objectifying humans, taking a neutral attitude towards the object of research (humans) and manipulating research objects experimentally. In this philosophy of consciousness, humans as social actors are not equal friends, but are merely objects of research (Hardiman, 2013).

2.2 Analysis

Before entering into the analysis, the researcher considered it was an undeniable scientific truth about what was revealed by Bagir Manan. Where, he said that in legislation always

contained the presence of natural defects and artificial defects as a consequence of written law. Which resulted in the regulation having a limited reach - just taking the moment from the most influential political, economic, social, cultural and defense elements at the time of formation, because it was very easy to "out of date" when compared to the increasingly rapid change of society and accelerated (Ridwan, 2014). Therefore, the assumption that the KUHAP is a standard regulation as an Procedure Law that must be interpreted strictly because it is a Standard Operating Procedure (SOP) in the Criminal Justice System, is not justified. In addition to containing the legal norms that are summed up, the Criminal Procedure Code also contains several legal vacancies. This shows that the KUHAP is as appropriate for other laws which contain general and abstract rules. The real evidence is that since the Constitutional Court has emerged as the constitutional guardian, the Criminal Procedure Code has experienced a barrage of 'judicial' attacks. One of the most logical reasons is such a massive Law Enforcement Apparatus to ignore the Considerations Considering the letter a KUHAP which contains Pancasila and the 1945 Constitution of the Republic of Indonesia as the source of the formation of the KUHAP itself. This is what later as explained by Bagir Manan that there are artificial defects in which the language of thought in writing language has been reduced and distorted meaning, with the emergence of Article 2 in conjunction with Article 3 of the Criminal Procedure Code. Thus, the process of examining criminal cases runs based on kelentian and austian teachings with closed logic systems. As a result, the meaning of authority and authority exchange positions with the meaning of power. In carrying out the authority to make Indictments, the Public Prosecutor experienced a paradigm trap especially related to the adoption of functional differentiation principles and Article 2 paragraph (3) of Law No. 16/2004, so, an authority is assumed to be an absolute power or an absolute domain of the Public Prosecutor. Issuance of SE No. 004/1993 which provides guidance for Public Prosecutors to compile Indictments with various models / forms of indictments. Existence of SE No. 004/1993 is a written rule that applies internally to the Prosecutor's Office as a result of a legal vacuum in the KUHAP — if it is believed to be an SOP. One form of the Indictment that is the object of this research is the Alternative Indictment. An alternative form of indictment is to exclude one another from one another, or one that subtitutes for another (Purnama, et.al., 2016). It is also confirmed in SE No. 004/1993 which confirms that in the Indictment there are several charges arranged in layers, one layer is an alternative and excludes charges on the other layers (Circular of the Attorney General of the Republic of Indonesia Number: SE-004 / J.A / 11/1993 concerning the Making of Indictments). Thus, one of the distinctive features of Alternative Indictments is the use of conjunctions, namely "or".According to Van Bemmelen, that the form of Alternative Indictment was made because the Public Prosecutor did not know which actions whether one or the other would be released later in the trial (Hamzah, 2004). The application and acceptance of this form of alternative indictment shows the existence of injustices and contradictions in criminal law and criminal procedural law because only to provide legal protection for the Public Prosecutor's inability to ascertain the accused's fault and place the defendant's position as an object to blame. Meanwhile, according to M. Yahya Harahap, which emphasizes more on the use of Alternative Indictments, that Alternative Indictments can be used on condition that each indictment is clearly and clearly formulated. According to the Researchers, this is precisely the basis of the problem of using Alternative Indictments. Where when the requirements for the use of Alternative Charges are clear and clear, then this has been determined in Article 143 paragraph (2) letter b of the Criminal Procedure Code which confirms "The public prosecutor makes an indictment dated and signed and contains: a careful, clear and complete description of the criminal act charged by stating the time and place of the crime." If, the Public Prosecutor's hesitation or ignorance in formulating an indictment of what was done by the Defendant was confronted with Article 143 paragraph (2) letter b of the Criminal Procedure Code, it is not surprising that the Judge will hold that this matter has been submitted to the principal examination. In connection with the formulation of an alternative form of indictment, the Public Prosecutor, besides being unable to ascertain in his indictment of what crime was alleged, has also made an effort to entrap the Defendant from escaping from the law that the Public Prosecutor does not know for sure. Thus, the simplest thing to be questioned is how is it possible when the Public Prosecutor who has the power and authority to make an Indictment - in fact as a basis for criminal proceedings, does not know which criminal act the Defendant committed. Legal logic will then question where is the urgency of Article 140 paragraph (1) in conjunction with Article 110 paragraph (2) of the Criminal Procedure Code which gives the Public Prosecutor the right to assess whether the investigation process is complete and completed or not. This means that the provision instructs the Public Prosecutor to interpret the results of the investigations carried out by the Investigator. In the General Explanation of the Criminal Procedure Code which confirms the following: "The 1945 Constitution clearly states that the State of Indonesia is based on law (rechtsstaat), not based on mere power (machtsstaat). This means that the Republic of Indonesia is a democratic legal state based on Pancasila and the 1945 Constitution, upholds human rights and guarantees all citizens together in law and government, and is obliged to uphold the law and the Government with no exceptions. It is clear that appreciation, practice and implementation of human rights as well as the rights and obligations of citizens to uphold justice should not be abandoned by every citizen, every state administrator, every state institution and social institution both at the center and in the region that needs to be realized in and with the law this criminal event. "Based on this general explanation, the legal principle was stated, which stated "To a suspect, from the time of arrest and / or detention other than the obligation to be notified of what charges and legal basis, he must also be informed of his rights including the right to contact and seek legal counsel."A concrete example is the Indictment Number Reg. Case: PDM - 22 / Mgr / Ep.1 / 06/2017 dated 27 July 2017 and Indictment Number Reg. Case: PDM - 23 / Mgr / Ep. 1/06 / 2017 dated July 27, 2017 the charges are arranged alternatively as follows:

FIRST INVITATION:
Article 3 of Law Number 8 of 2010 concerning Prevention and Eradication of Money Laundering in conjunction with Article 55 paragraph (1) 1st Criminal Code

Or

SECRET TWO:
Article 46 paragraph (1) jo Article 16 of Act Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning

Banking in conjunction with Article 55 paragraph (1) of the First Criminal Code

Or

THIRD DEVOTION:

Article 372 of the Criminal Code in conjunction with Article 55 paragraph (1) 1st of the Criminal Code

Or

FOUND FOURTH:

Article 378 of the Criminal Code in conjunction with Article 55 paragraph (1) 1st of the Criminal Code

If we go back to the meaning of the Alternative Charges, that is, between the charges one and the other exclude each other, or one that subtitutes for another. So the question is whether the First Charges exclude the Second Charges? Does the Second Charges Exclude the Third Indictment? And does the Third Charges exclude the Fourth Indictment? Whereas an Alternative Indictment can only be applied to a similar legal act. Another problem is the blind defense of SE No. 004/1993 as part of the regulations that complement the Criminal Procedure Code, as seen in the Public Prosecutor's Response as follows (Intermediate Decision of Tanjungpandan District Court Number 119 / Pid.Sus / 2017 / PN.TDN, p. 58 .; The Public Prosecutor's inability is more clearly seen, because, the response is a copy paste from the initial description in the circular letter): "Making an indictment is the domain of the Public Prosecutor. The Criminal Procedure Code itself does not explicitly regulate the form of indictments. The Public Prosecutor realizes that the Indictment is a crown for him that must be maintained and maintained in a steady manner. "So, the legal problems continue. When the Criminal Procedure Code explicitly stipulates that in Article 2 of the Criminal Procedure Code which confirms that the criminal justice process can only be carried out based on the Criminal Procedure Code and Article 3 of the Criminal Procedure Code affirms that the judiciary is carried out according to the KUHAP, then SE No. The 004/1993 cannot be used or at least the assumption is closed that SE No. 004/1993 is a complement to the legal vacuum. In the world of law, there are three forms of pouring legal norms, namely regulating decisions that produce products in the form of regulations (regels), Legal Decisions that determine or determine administratively which produce state administrative decisions (beshikking), and decisions that judgmental as a result of adjudication to produce verdicts (vonnis). In addition, there are also other terms known as beleidsregel or policy rules that are usually referred to as quasi regulations, such as implementation instructions, circulars, instructions, etc. which cannot be categorized as regulations but their contents are also regulating. (Asshiddiqie, 2008). Jimly Asshiddiqie further explained that the type of quasi legislations in the legal system in Indonesia was better known as the "Wisdom Regulation" (Asshiddiqie, 2006). Then, what is the intrinsic meaning of the Circular itself? At least there are 2 (two) arrangements explaining Circular Letter, namely the Republic of Indonesia Minister of Home Affairs Regulation Number 42 of 2016 concerning Service Manuscripts within the Ministry of Home Affairs [PERMENDAGRI No. 42/2016] and the Republic of Indonesia Minister of Administrative Reform and Bureaucratic Reform Regulation Number 80 of 2012 concerning Guidelines for Managing Government Agency Services [PERMENPAN No. 80/2012]. Where the two regulations explain that Circular is an official text that contains notices about certain matters that are considered important and urgent. Furthermore, the meaning of Circular which is classified as a Policy of Wisdom, according to Bagir Manan has an understanding that the birth of a policy of wisdom is based on freedom of action (freies ermessen), so that the policy rules fall into the general category of decisions (besluit). Therefore, theoretically, besluit is not generally binding and is basically directed towards an agency or administrative official (Manan & Magnar, 1997). According to Bagir Manan that Policy Regulations - in this case are SE No. 004/1993, is not a statutory regulation so that it cannot be tested based on wetmatigheid (Law) but must be tested with the General Principles of Good Governance (AAUPB). This is because, Policy Regulations are legal products made based on ermessen's ass freies (discretionary principle) (Sardjijono, 2007). As also confirmed by Van Kreveld that the Regulation, directly or indirectly, is not based on the provisions of wet or grape forms which provide the authority to regulate, in other words it does not have a firm legal basis (Sibuea, 2010). Thus, it can be concluded that Circular is not included in laws and regulations and does not have general binding power, therefore, only applies to officials who are sheltered by the agency. Of course, in making legal reasoning in the criminal justice process becomes a dilemma when Article 182 paragraph (3) of the Criminal Procedure Code, which is considered in the process of deliberation of judges is the Indictment — although not only that, the Alternative Indictment has lost the basis of normative juridical enforcement. On the other hand, the design, formulation and preparation of the Alternative Indictment, shows the existence of a communication model that is 'minus' explanation (erklaurung) and giving reasons (bergrundung). Therefore, the Public Prosecutor in the prosecution stage does not provide a broad space for the Public Prosecutor to conduct a re-examination of the Suspect / Defendant - even in a special criminal act (vide Article 30 paragraph (1) letter e of Law Number 16 Year 2004 concerning the Republican Prosecutor's Office Indonesia). The only form of communication that appears in criminal justice practices at the pre-prosecution stage is between the Attorney Researcher / Public Prosecutor and Investigators conducting filing, through instructions in the first stage. Readers of this article can then refute the arguments of the Researchers, that communication between Investigators and Attorney Researchers / Public Prosecutors in the pre-prosecution stage, is also a model of communication, because it is based on linguistic interrogation.However, the verbal communication model becomes a tool or instrument to fulfill the objectives of the compilation of questions that are not free of interests. The situation in the instrumental interrogation model actually arises from the technique taught by the International Criminal Investigative Training Assistance Program (ICITAP) which emphasizes the aspect of self-awareness of the Examiner who is in control of the questioner, and even the conversation model is controlled by the questioner. Control of this communication model is a reference for making the Checker as a source of information (Waljinah, 2016). Based on this, the application of the ratio of communicative actions is only established between the Investigator and the Prosecutor / Public Prosecutor in relation to the interests of the Public Prosecutor in the process of verification in the examination before the trial. Whereas, the monologal praxis ratio arises when the transfer of the indictment file to the court is based on ignorance of the alleged crime which will be proven, by relying on the judge's conviction.

3 CONCLUSION

Based on the descriptions above, a conclusion can be drawn, first, that the Prosecutor in carrying out his function as a Public Prosecutor in the realm of the Criminal Justice System, cannot be separated from the mandate of the Criminal Procedure Code itself, that all public prosecutors must be based on the principle state law and respect for human rights (HAM). Therefore, a Public Prosecutor must first appear in his conviction, what criminal actions have been committed by the suspect / defendant. The potential for alleged violations of Human Rights from the Suspect / Defendant begins with the decision to declare a complete file (P-21) by the Public Prosecutor on the issue of the investigation area. That is, the Public Prosecutor has a presupposition to the case file, where the suspect has the right to carry the Defendant's status. So, the main task of the Public Prosecutor is to prove it during the examination process before the trial; second, based on the open systems van het recht paradigm, it can be known that a Public Prosecutor cannot be interpreted mechanically-linearly with a closed logical system, where he is not only a component of the Criminal Justice System but also as a Government Official. Therefore, having an obligation to make a decision and / or action is also made aware of Law Number 30 of 2014 concerning Government Administration. However, in terms of designing and compiling an Alternative Charges, Public Prosecutors interpret it as a closed logical system with a monologue nature. Thus, the Public Prosecutor seems to impose his will and at the same time behave "nothing to lose" to the indictment he made; and third, as a legal product that is not a statutory regulation, the Circular of the Attorney General of the Republic of Indonesia Number: SE-004 / JA / 11/1993 concerning the Making of Indictments dated November 16, 1993, must be seen as a form of the Prosecutor's internal rules which may not bring legal consequences to others. The alternative nature of the articles charged is very possible, the emergence of negative excesses in the form of bargaining behavior of articles that will be prosecuted, even though the Judge can have different beliefs than the demands of the Public Prosecutor. In this case, the meaning of the Alternative Indictment is monologically controlled by the Public Prosecutor over the Suspect / Defendant.

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