



## **Administrative Authority as Common Sense Logic Against Charges That Are Nullified by Law**

### **Asmak UI Hosnah**

Universitas Pakuan, Bogor, Indonesia

Email: [asmak.hosnah@unpak.ac.id](mailto:asmak.hosnah@unpak.ac.id)

### **Sapto Handoyo Djarkasih Putro**

Universitas Pakuan, Bogor, Indonesia

Email: [sapto.handoyo@unpak.ac.id](mailto:sapto.handoyo@unpak.ac.id)

### **Lilik prihatini**

Universitas Pakuan, Bogor, Indonesia

Email: [lilikprihatini62@gmail.com](mailto:lilikprihatini62@gmail.com)

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### **Abstract**

The concept of legal protection for suspects, as stipulated in the Criminal Procedure Code (KUHAP), is based on the objective of enacting the Criminal Procedure Code, namely to foster the attitude of law enforcers based on their respective powers. Therefore, the Criminal Procedure Code provides parameters for every legal action law enforcers take. In the case of a criminal justice process, the power of the Public Prosecutor in making an Indictment is limited to a clear, accurate, and complete indictment as stipulated in Article 142 paragraph (2) letter b of the Criminal Procedure Code. The violation of the authoritative text resulted in the indictment being null and void. The problem in this research is "What is the legal status of a criminal case where the indictment was canceled through an interlocutory decision from the District Court, which was filed again with the same registration number?" This research was conducted using a normative juridical method based on secondary data through library research using a conceptual, case, and philosophical approach. The results of this study indicate that the concept of 'null and void' to the indictment contains the meaning of 'never existed' as a result of the material defects of the indictment. Thus, the prosecution process cannot use the same registration number and the same evidence.

### **Keywords**

Indictment, Null and Void, Criminal Procedure, Logic, Common Sense.

## **1. Introduction**

Recognition of the rule of law principle, as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945), raises the consequence of obedience to the rules outlined in authoritative texts (laws), as a legal norm which is a regulation of every action based on law. However, submission to the authoritative text also implies recognition of the principle of democracy manifested in efforts to establish a procedural mechanism concerning law enforcement as part of administering the state (Suntrup, 2020).

This is a form of function of the policy of implementing state life which is not only how to form legislation with all the factors that influence it - for example, the spiritual atmosphere when forming legislation, but also the organization that will carry out and applies the authoritative text along with self-awareness of the temporality of the authoritative text itself. Thus, an authoritative text is not an 'object' that can be interpreted as something absolute in a totalitarian way (Bayanova et al., 2019).

Understanding the meaning of an authoritative text is important because it will raise self-awareness by interpreting the impact that emerges from it in the form of legal power and authority. Thus, it is a natural thing when the legislators in enacting Law Number 8 of 1981 concerning the Criminal Procedure Code (or known as the Criminal Procedure Code (KUHAP)) contain axiological aspects in the Preamble Considering letter c of the Criminal Procedure Code, which emphasizes "that the development of such a national law in the field of criminal procedural law is for the people to live up to their rights and obligations and to improve the attitude of law enforcers following their respective functions and authorities towards upholding the law, justice and protection of human dignity, order and legal certainty for the sake of the implementation of the rule of law following the 1945 Constitution" (Dijokiené et al., 2021).

To arrive at the goal "...toward the rule of law, justice and protection of human dignity, order and legal certainty for the sake of the establishment of a rule of law state following the 1945 Constitution", then these considerations also contain epistemological aspects, namely (1) Efforts to make people aware of their rights and obligations; and (2) Efforts to foster the attitudes of law enforcers based on their functions and authority. In this second aspect, it is appropriate to examine the influence of authoritative texts on the reasoning ability to emerge legal authorities (Kenedi, 2022).

The reasoning behind authoritative texts that give rise to legal authority and authority is increasingly interesting to study, when Daniel Lev emphasizes that cultural values and myths emphasize ways of regulation and socio-political relations that do not depart from an autonomous jurisdiction; then, as a result, there the legal institutions (judiciary) will be less able to develop their independent powers as they have in European countries and the United States. The emergence of even powerful bureaucratic powers, essential elements for a strong legal system, will not

create a positive public response to the operation of law, especially if patrimonial values remain firmly entrenched. That is, the ability to do legal reasoning will be influenced by many factors outside the law enforcers themselves (Bylund & Packard, 2021).

Thus, every law enforcer will obtain knowledge as truth, making it a joint convention within the auspices of his institution. As seen in the tax crime case, which has been processed through the decision of the Purwokerto District Court. Where the Panel of Judges, through Interlocutory Decision at the District Court Number 31/Pid.B/2020/PN Pwt dated 10 March 2020, which rendered the decision null and void against the Indictment Case Register Number: PDS – 02/Pkrto/Ft.2/01/ 2020 dated 12 February 2020, with legal considerations of a violation of Article 143 paragraph (2) letter b of the Criminal Procedure Code, as emphasized in Article 143 paragraph (3) of the Criminal Procedure Code (Hadjigeorgiou & Kapardis, 2022).

However, the Public Prosecutor in August 2020 (without including the date) again transferred the case to the Purwokerto District Court by attaching an Indictment with the same register number, namely the Indictment Case Register Number: PDS – 02/Pkrto/Ft.2/01/ 2020. This means that the first indictment filed and the second indictment is the same legal product. Meanwhile, the indictment is “null and void” based on the Interlocutory decision at the District Court Number 31/Pid.B/2020/PN Pwt dated 10 March 2020.

As a result of the Public Prosecutor’s ‘insistence’ and based on a common sense logic that the issue of register numbering is the absolute right of the Public Prosecutor, it ended with the emergence of the Purwokerto District Court Decision Number 155/Pid.Sus/2020/PN Pwt dated 27 October 2020, again stating that the Indictment Case Register Number: PDS – 02/Pkrto/Ft.2/01/2020 was ‘null and void’.

Such legal issues certainly become interesting when the researcher submits a problem as a limitation in this study, namely, “What is the legal status of a criminal case if the indictment is canceled through an interlocutory decision from the District Court, which is filed again with the same registration number and does not fulfill a court order?”.

## **2. Literature review**

## **3. Common Sense Logic as Truth in Science**

Knowledge is everything we know about a particular object and raises an understanding of that object. His accumulated knowledge can measure a person’s intelligence. However, knowledge is not the same as science. In science, knowledge has acquired a scientific touch through systematic, coherent, measurable, methodical, and philosophical ways. As a result, every science will surely bring up a flow of reasoning and logic that has been mutually agreed upon by scientists who work in the same field (El-Den & Sriratanaviriyakul, 2019).

In the world of philosophy, speaking of human knowledge, the term "knowledge" is quite broad. The term shows that humans are aware of the things around them; the existence of humans in this world is different from the existence of an inanimate object. And the word "knowledge" includes scientific knowledge, personal experience, seeing and hearing, feelings and intuitions, guesses, and moods. Epistemology is the branch of philosophy that studies knowledge (Kubes & Reinhardt, 2022).

Terminologically, epistemology is defined in Webster's Third New International Dictionary as "The study of method and grounds of knowledge, especially concerning its limits and validity". Therefore, epistemology can also be called "the theory of knowledge". Thus, epistemology takes issue with five main issues, namely (1) What is knowledge?; (2) Where is the source or origin of knowledge?; (3) What is the nature/character of knowledge?; (4) Is our knowledge guaranteed to be true?; and (5) How do we know that our knowledge is correct? Because the truth of knowledge is the main focus of epistemology, this branch of philosophy requires another instrument within humans, namely logic (Aradau & Huysmans, 2019).

Logic is also a branch of philosophy that examines the process of thinking with certain premises to provide justification and legitimacy for knowledge with a truth value. Logic possessed by humans can be seen as input for research activity. Logic is thought in the form of reasoning. The ability to think possessed by humans is a specific human ability. This is because the human thinking ability has been bestowed by Al Khalik (Zyphur & Pierides, 2020). Auguste Rodin has described this situation in the form of a famous statue, a man. He symbolizes humanity, Homo sapiens, 'the thinking man'. Every moment of his life, from when he was born to the grave, he never stopped thinking. There is almost no problem related to life that escapes the reach of his mind, from the most trivial to the most basic questions, from questions concerning breakfast to questions of heaven and hell at the end of the day. Thinking characterizes human nature, and because of thinking, he becomes human (Wu, 2022).

In acquiring knowledge, logic plays a role in the first position, namely as a "way" or a healthy way to acquire correct knowledge. Thus, logic is (or at least provides) formal laws or regulations utilizing which true knowledge can be obtained. It is called "will be obtained" because it is not certain that it will be obtained. That is why, by following its "way", logic "promises" only "correct" knowledge will be obtained. In philosophy, there is an understanding that correct knowledge is not necessarily correct, but correct knowledge is correct. Thus, the accuracy and correctness of the results of logical processing to gain knowledge is a skill continuously honed in various exercises (Deng et al., 2020).

The truth of knowledge is also based on the source or origin of the knowledge itself. Concerning this research, one of the validity of knowledge is based on an approach model, common sense, which is one aspect of the study of philosophy Common Sense Philosophy. This philosophy was first put forward by

Aristotle, who emphasized that knowledge will only occur when there is sense activity, there is no knowledge without going through the senses. Knowledge about something will be absorbed through the senses directly without intermediaries. Thus, the truth of knowledge is if and only if the knowledge of the object is identical or the same as the object absorbed so that the mind is identical to the object (Chen et al., 2020).

However, absorbing knowledge through the mere sense of concrete phenomena without having a deep relationship with observers, without a relationship with ideas, and without a relationship with ideas about the concrete world will be a very dangerous opinion. Therefore, opinions that arise from the logic of common sense are only based on prejudice and passion and without in-depth study. Thus, this knowledge is only based on general habits and is not an idea or notion. As a result, knowledge based on common sense logic is knowledge whose evidence cannot be accounted for (Lukyanenko et al., 2021).

#### **4. Authority and Competence**

Before discussing further 'authority' and 'competence' as legal concepts, it is necessary first to understand that Criminal Law does not have and does not even recognize 'authority' and 'competence' as legal concepts. These two legal concepts are better known and taught to every Law Scholar. Competence is frequently synonymous with authority. In Dutch legal jargon, competency is frequently synonymous with "bevoegheid" (Stopar & Bartol, 2019). According to Philipus M. Hadjon, there is a small distinction between the terms "authority" and "bevoegheid" if one examines the two terms attentively. The distinction resides in the legal nature of the two entities. The notion of public and private law employs the phrase "bevoegheid." In our legal notion, public law should utilize the terms authority or competence (Salet & Terpstra, 2022).

Ateng Syafrudin believes there is a difference between authority (gezag) and competence (bevoegheid). Authority is what is called formal power, the power that comes from the power granted by law, while competence is only about a certain "onderdeel" (part) of authority (Boone & Langbroek, 2019).

According to FPCL, the Tonnaer government authority is the ability to implement positive laws. Doing so can create a legal relationship between the government and citizens. Then according to F.A.M Stroink and J.G Steenbeek, the authority has an important position, namely as a core concept in the study of constitutional law and state administrative law (Kuziemski & Misuraca, 2020). Referring to this, H.D. Stout argues that competence is an understanding that comes from the law of government organizations, which can be explained as a whole of the rules relating to the acquisition and use of government competence by public law in public law relations. At the same time, Harbet A Simon stated that the notion of competence is the power to make a decision that guides the actions of other individuals. Competence is a relationship between two individuals; one

According to S.F. Marbun explained, competence is the ability to carry out a public legal action, or juridically competence is the ability to act following what is given by the applicable law to carry out legal relations. Meanwhile, according to him personally, authority is formalized power both over a certain group of people, as well as power over a sector of government in a unanimous manner that comes from legislative power and government power. So, authority is a collection of competence-competence (Kois et al., 2021).

View from SF. This Marbun has similarities with Indroharto's view, which explains that within the authority, there is authority-competence (*rechtsbevoegdheden*). Competence is the scope of public legal action, and the scope of government competence includes not only competence in making government decisions (*bestuur*), but also competence in the context of carrying out tasks and providing competence, as well as the distribution of competence, which is primarily prescribed by statute. Legal competence is the authority conferred by statutes and rules to produce legal consequences (Wayenberg et al., 2022). In addition, Philipus M. Hadjon defined competence as a public law term comprising at least three (three) elements: influence, legal basis, and legal conformance. Influence refers to the fact that the use of competence is intended to regulate the conduct of legal subjects. The fundamental principle of the law is that there must always be a legal basis for competence. The compliance component presupposes the existence of competence standards, specifically general standards (applicable to all forms of competence) and particular standards (applicable to specific categories of competence) (Tofan et al., 2020).

Irfan Fachruddin concludes, based on the many definitions of authority discussed previously, that authority and competence have distinct meanings. Competence is a specification of authority, which means that if (legal subject) is granted authority by the law, he is authorized to carry out a specific task within the scope of that authority (Sugiharti et al., 2021).

In the administrative law literature, there are two ways to gain governmental competence: attribution and delegation; sometimes, the mandate is placed as a separate way to gain competence. In simple terms, these three sources of competence can be explained that attributional authority is the authority of government administration bodies or officials obtained directly from laws and regulations, while delegation authority means the authority of government administration bodies or officials obtained from a delegation of other governing administration agencies or officials (Eriksen, 2021). In this case, regulations/decisions on the delegation of competence are needed from the delegation to the recipient because the juridical responsibility will shift to the recipient of the delegation. The mandate is not a transfer of authority, but rather the exercise of authority by government administration ranks in the absence of the decisive official (Kadochnikov, 2020).

The authority possessed by the government is based on three things, attribution, delegation, and mandate. Attribution is the granting of authority by the

legislators themselves to an existing government organ or a completely new one. According to Indroharto, legislators who are competent to provide attribution of competence are distinguished between:

- a. Who is domiciled as the original legislator; in our country, at the central level, it is the MPR as the constitution maker (a constituent) and the DPR together with the government as the one that issues a law, and at the regional level, it is the DPRD and the Regional Government that issues Regional Regulations;
- b. Those who act as delegated legislators: such as the President, who, based on a statutory provision, issues a Government Regulation in which government competencies are created for certain TUN Bodies or Positions (Syafrizal et al., 2019).

J.G. Brouwer argues that attribution is the authority given to an organ (institution) of government or a State institution by an independent legislature. This authority is genuine and is not taken from the previous authority. The legislature creates independent authority, does not extend previous authority, and assigns it to the competent organs" (Syväterä et al., 2022).

Delegation is the authority transferred from attribution authority from an organ (institution) of government to another organ so that the delegator (the organ that has given authority) can test this authority on its behalf. In contrast, in the mandate, there is no transfer of authority. Still, the mandate giver (mandator) gives authority to other organs (mandataris) to make decisions or take action on its behalf (Okada, 2019).

- a. The delegation must be definitive, meaning that the delegate can no longer use the competence that has been delegated;
- b. The delegation must be based on statutory provisions, meaning that delegation is only possible if there are provisions that allow for that in statutory regulations;
- c. Delegation is not to subordinates, meaning that in the staffing hierarchy, no delegation is permitted;
- d. The obligation to provide information (explanation) means that the delegates are authorized to ask for an explanation regarding the implementation of said competence;
- e. Policy regulations (beleidsregel), meaning that delegates provide instructions (instructions) regarding the use of said competence (Gastinger & Dür, 2021).

Authority must be grounded on current legal provisions (the constitution), thus this authority is legitimate. Consequently, this source of authority supports decision-making by officials (organs). F.A.M. Stroink argued that sources of authority for government officials and organs (institutions) include attribution, delegation, and mandates. Positive laws regulating and defending the power of government organs (institutions) bolster their authority. A valid legal ruling cannot be rendered in the absence of authority (Suksi, 2021).

While the mandate, according to Rosjidi Ranggawidjaja following the opinion of Heinrich Tripel, is an opdracht (order) to an instrument (organ) to carry out competence itself or in the form of legal action by the holder of a competence by being given full power to another object to carry out the competence of the person giving the mandate on behalf of the person giving the mandate. So, the mandate is the same as a special power to carry out a certain thing (Sözeri & Altinyelken, 2019).

## **5. Method**

This research will be carried out using a normative legal approach. The type of normative legal research is a literature study that is carried out using secondary data derived from existing laws and official regulations. In its implementation, this research will use legislative and conceptual methodologies. Research data collected by researchers will be processed immediately so that later the results of this study can be found.

## **6. Result and discussion**

### **7. Law enforcement and discretion**

According to Soerjono Soekanto, "law enforcement" is a process that focuses on actions harmonizing the relationship of values stated in solid and embodying principles and attitudes as a succession of final phases of value elaboration in order to build, maintain, and preserve societal harmony of life. Therefore, it is not incorrect for Soerjono Soekanto to claim that the exercise of power and authority in the law enforcement process cannot, in essence, be left to the discretion of law enforcement officials in interpreting and enforcing the established legal standards (Gladun & Zakharova, 2020).

The viewpoint of Soerjono Soekanto was bolstered doctrinally by Sudikno Mertokusumo, who highlighted that law enforcement is the means by which it is actualized. In defending the law, three factors must always be taken into account: legal certainty (*rechtssicherheit*), utility (*zweckmassigkeit*), and fairness (*gerechtigkeith*). Moreover, he asserted that if law enforcement focuses solely on legal certainty, other factors are neglected, and vice versa (Yanto, 2022).

A sociological approach influences Soerjono Soekanto's views regarding law enforcement, not normatively. This is evident from his explanation of the significance of the notion of law enforcement he conveys, namely "harmonizing the link between values in concrete norms." He went on to explain that the pair of values in law enforcement, namely the value of order and the value of peace, must be balanced. This is due to the fact that order value is founded on attachment, but peace is founded on liberty (Trinkner, 2019). However, these values require a more detailed explanation, as values are typically expressed in the form of rules. According to Soerjono Soekanto, these regulations comprise directives,



prohibitions, or permission. Therefore, the rule refers to a legal norm or statute. The word rule is used in a social context, but the word norm is used in normative jurisprudence (Yuliantiningsih & Barkhuizen, 2021).

In essence, Soerjono Soekanto criticizes the debate on legal phenomena that has occurred thus far with the position described above. According to Soerjono Soekanto, if you wish to discuss legal phenomena in all of their facets, you must mention the community, which is the legal vessel. Soerjono Soekanto discovered that his viewpoints were not shared by the majority of people because the legal tradition of Indonesia resembled that of Continental Europe. In contrast, the Continental European tradition regards law as a value-free entity. According to Soerjono Soekanto, it is therefore difficult to study legal phenomena as a component of social life. This means that more interdisciplinary approaches will be utilized so that problems that cannot be handled alone by legal science can be examined from the perspective of other social sciences.

According to Soerjono Soekanto, issues regarding the validity and efficacy of legal principles frequently arise in the evolution of legal knowledge and legal practice. This is due to the fact that the formulation of the proper rule of law is a subject of legal dogmatics (normative law), whereas the efficiency of a law is a topic of legal sociology and other social sciences. Due to a distinct paradigm for viewing the law, this is one of the disturbances to the law enforcement process. However, Soerjono Soekanto himself ran the identical distance.

According to Soerjono Soekanto, law enforcement may experience disruption if there is a mismatch between the triad's ideals, rules, and behavior patterns. The disturbance happens when there is a mismatch between matched values, which emerges in contradictory regulations and undirected patterns of conduct that disrupt the social order. What has not been explained by Soerjono Soekanto above is whether the rules containing orders, prohibitions, and permissibility can be directly applied.

However, Soerjono Soekanto underlined that patterns of behavior in law enforcement are not limited to the implementation of the law. So, according to the researcher, this is where the points for normative law science explain the meaning of the rule or legal norm itself.

Researchers attempt to clarify what Soerjono Soekanto meant by referencing the ideas of Bagir Manan and Sudikno Mertokusumo. Whereas, according to Bagir Manan, every statutory regulation has natural defects and artificial defects, where this is a result of the form of written law, which results in these regulations having a limited scope, just taking the moment of the political, economic, social, cultural, and defense elements that were the most influential at the time of formation, because it was so easy to be "out of date" in comparison to changes in society that were getting faster and faster. However, much earlier, Sudikno Mertokusumo also explained, "When we talk about law in general, we only look at legal regulations in the sense of rules or statutory regulations, especially practitioners. The law is not perfect, indeed, it is impossible to regulate all activities of human life completely. Sometimes the law is incomplete, and sometimes the law

is not clear. Even though it is incomplete and unclear, the law must be implemented." So that there is a discrepancy between *das sollen* and *das sein*. Why does the discrepancy appear? Why does Sudikno Metokusumo say a law can be classified as unclear and incomplete? And why did Bagir Manan call the law bringing birth and artificial defects?

Jimly Asshiddiqie explained that norms or rules (rules) are the institutionalizations of good and bad values in the form of rules that contain permissibility, advice, or orders. Both suggestions and orders can contain positive or negative rules, including norms of recommendation to do or advice not to do something and norms of orders to do or not to do something. In addition, he emphasized that general and abstract standards may be differentiated from specific and particular norms. General concepts are always abstract because they apply to all connected topics without identifying or linking them to particular concrete topics, parties, or individuals. Typically, these general and abstract legal principles serve as the basis for legal regulations that apply to everyone or everyone who is subject to the formulation of legal rules contained in the applicable laws and regulations. In this instance, an interpretation becomes crucial. Consequently, the method of legal discovery, such as interpretation, strives to align these abstract and general legal standards with actual problems. Consequently, societal progress always exceeds statutory regulations.

According to the aforementioned opinions, it is true that what Soerjono Soekanto stated in law enforcement regarding discretion (*discretion*) is crucial. Consequently, this discretion entails the behavior patterns of law enforcement agents in interpreting and applying laws to real societal events.

Soerjono Soekanto articulated the same thing as the aforementioned legal professionals, but he did so in social language that adherents of normative legal science struggled to comprehend. According to his explanation, human conduct may be part of a natural movement governed by the rule of cause and effect. Similarly, certain legal acts are referred to as legal conduct. As a component of the natural state, however, human behavior is not the subject of legal analysis. That is, natural reasons do not determine whether a conduct is a legal phenomena or if a behavior deviates or does not deviate from the law. In order to determine all of this, there are so-called norms or rules, particularly legal rules, which provide a framework for interpretation and evaluation. In contrast to the interpretation framework and assessment framework, the researcher believes it is more appropriate to examine Jimly Asshiddiqie's views, which explain that interpretation is a method for deciphering the meaning contained in legal texts in order to resolve cases or make decisions regarding concrete matters. In the context of law enforcement, Polri Investigators are the authority in conducting investigative examinations at the Pre-Adjudication stage and will always conduct legal interpretations and discoveries to determine at least two matters, namely whether an alleged criminal incident occurred and whether it was appropriate to use the articles to ensnare a suspect.

Therefore, according to Johnny Ibrahim, legal discovery (*rechtsvinding*) is not a distinct action, but rather a coherent and continuous activity with evidentiary activities. Polak asserts that the technique of interpretation is governed by the content of the statute in question, the location where the case was brought, and the era. As a process of bringing values, norms, and conduct into harmony, law enforcement cannot be a routine or mechanical task.

In light of the preceding, Soerjono Soekanto asserts that a law enforcement procedure is influenced by the following factors:

- a. The legal factor, namely the law.

According to Soerjono Soekanto, this legal aspect is interpreted as a law in the material sense, i.e., a set of generally acknowledged and enacted by the central government and legitimate regional governments written regulations. Nonetheless, there are occasionally issues within the law (Akyuwen et al., 2021). The issue represented by Soerjono Soekanto is the existence of Criminal Procedure Code Article 284 paragraph 1 which highlights the following:

"For cases that existed before the enactment of this law, as far as possible, the provisions of this law shall apply."

Article 284 paragraph (1) of the Criminal Procedure Code is elucidated as "Sufficiently Clear." According to Soerjono Soekanto, Article 284, subsection (1) of the Criminal Procedure Code allows for exceptions to the rule that laws do not apply retrospectively. Another concern raised by Soerjono Soekanto is that many laws are mandated to have implementing regulations but do not yet have them.

The third issue identified by Soerjono Soekanto is the vagueness of certain formulations of articles. This may be the result of words whose meanings are open to a wide range of interpretations or translation issues from foreign languages.

- 1). Thus, the legal factor here is an obstacle to the law enforcement process, if:
- 2). Disobedience to legal principles;
- 3). The absence of implementing regulations; and
- 4). Editorial ambiguity.

- b. Law enforcement factors, namely the parties that form and apply the law.

The explanation provided by Soerjono Soekanto regarding the aforementioned factors of law enforcement is fascinating to explore. Therefore, He separated those who drafted the law from those who enforced it. Using police as an example, he categorizes law enforcement elements as those who administer the law.

According to him, the average citizen has faith that the police can promptly address the difficulties they confront, regardless of whether the police have recently graduated from police training or are seasoned officers. The honor is distributed to the police, from lowest to highest level. People who interact with the police do not have time to consider the level of education the officer with the lowest rank has attained. Some of these situations require immediate response, but others require action only if they cannot be stopped (Engel et al., 2022).

- 1). So, according to Soerjono Soekanto, examining the decision to take immediate action or delay action is a question of discretionary roles.

Therefore, discretion involves making decisions that are not strictly governed by the law and in which individual judgment plays a role. In the field of law enforcement, discretion is crucial because:

- 2). There is no legislation that is so comprehensive as to regulate all human behavior;
- 3). There are obstacles to adapting legislation to developments in society, thus creating uncertainty;
- 4). Lack of funds to implement legislation as desired by legislators; and
- 5). There are individual cases that require special handling.

Soerjono Soekanto also proposed the concept of "mainstreaming material values." Even while, in his opinion, grammatically-lexically, it is addressed at the community, historically, it is also connected to the mentality of law enforcement officers. Soerjono Soekanto said that the emphasis on monetary values considerably hinders effective law enforcement since, when dealing with procedures governed by law, there is typically a desire to deviate by offering money as a form of assistance. Providing funds for facilitation is not an independent act, and there must be a reciprocal relationship with investigators. If a competent Police Investigator receives a facilitation payment, he or she will refuse it so that it does not impede effective law enforcement. On this topic, a hermeneutical cycle between comprehending discretion well and the job of law enforcement officials emerges.

As long as episodes do not upset order and tranquillity and do not involve acts of coercion, one of the outcomes of the hermeneutical circle described above is the use of discretion out of deference. It is typically carried out against groups of youths that disrupt order by utilizing dissolution actions or on complaint offenses where crimes occur within the family, and arrests are typically not made.

In relation to the dialectical relationship between the use of discretion and the role perspective, Soerjono Soekanto argues that, from a juridico-philosophical standpoint, healthy and appropriate legal relations within the police function should adhere to a number of fundamental norms. These fundamental principles are always paired and must constantly be reconciled as they are antinomies. These fundamental values exist in pairs; one value cannot be substituted for another since it must always be in harmony with the values that become its partner. Therefore, if one value increases, the value of its counterpart drops, and vice versa.

c. Facility factors and facilities that support law enforcement.

According to Soerjono Soekanto, law enforcement can't proceed smoothly without certain means or facilities. These facilities and facilities include, among other things, educated and skilled human resources, good organization, adequate equipment, adequate finances, and so on. If these things are not fulfilled, law enforcement can't achieve its goals (Laufs & Waseem, 2020).

According to Soerjono Soekanto, the restricted resources and facilities will necessitate the application of judgement in order to circumvent these constraints. Nonetheless, Soerjono Soekanto outlines the following restrictions:

- 1). This discretion must always be returned to the role of the police officer in dealing with actual occurrences, where he must fulfill either his role as a law enforcement officer or as a peace officer;
- 2). The police must consider whether the incidents they are facing are proportionally disturbing public order and personal peace or not; and
- 3). It is vital to assess the attitude of the public to the function of the police, especially whether the discretionary use has a positive or negative image.
- d. Factors pertaining to the community, especially the context in which the law applies or is applied.

In actuality, there are a variety of legal behaviors or attitudes. Regarding the behavior of other parties, an attitude of action or lawful conduct typically has a considerable degree of influence. A stance of the opposing party toward the intended objective, i.e., whether or not the opposing party follows the law. However, there is a significant inclination in society to comply with the law out of fear of receiving unfavorable consequences for lawbreaking (Handriana et al., 2020). If no one strictly controls the law's application, it will not be respected, which is one of the negative outcomes. When rules are not strictly enforced, there is an opportunity to circumvent them. Consequently, disobedience to the law might be considered one of the repercussions of the law. Thus, the problem of the law's influence is not restricted to the establishment of legal obedience or compliance, but also encompasses the law's complete effect on behavior, both good and bad (meaning the form of compliance or non-compliance).

- e. Cultural factors result from creative works and feelings based on human initiative in social life.

Soerjono Soekanto intentionally defined cultural components that combine with societal influences because, according to him, in his discussion, the value system, which is the core of spiritual or non-material culture, is brought up. Following Lawrence M. Freidman's separation of the elements of the legal system, Soerjono Soekanto explains that the legal culture (system) contains the values that underlay the applicable law, which are abstract ideas of what is deemed good (and so accepted) and what is deemed evil (so it is avoided). These values are typically a pair that represents two extreme circumstances that must be balanced (Zabaniotou et al., 2020).

Then Soerjono Soekanto provided a basis in the form of a philosophical basis for the process of harmonizing the pair of values, namely

- 1). Pair the value of freedom with the value of the order.
- 2). Couple the value of legal flexibility with the value of legal obedience.
- 3). Couple the value of legal comparability with the value of legal certainty.
- 4). Pair the value of difference with the value of similarity.
- 5). Pair the value of career interests with the value of service interests.
- 6). Pair material values with moral values.

A factor's imbalance may have a negative effect on the overall system. According to Soerjono Soekanto, if the written law governing an area of life is

excessively stiff or inflexible, the entire system of that field (and associated fields) will be out of balance. Consequently, all levels of society will experience negative effects. Thus, according to Soerjono Soekanto, the aforementioned qualities are innate to humans, who can occupy a variety of social places and play a variety of roles.

One of the arguments for tracing why a law requires interpretation is the emergence of the “principle of discretion” in the concept of a Welfare Law State. As explained by Hotma P. Sibuea, as a result of the inability of the Legality Principle to fulfill the demands of the idea of a material legal state to realize public welfare, a new principle has been born in the field of state administrative law. This principle is called the principle of discretion or *freies ermessen*. The *freies ermessen* principle can be seen as a principle aimed at filling the gap or completing the legality principle so that the ideals of a material rule of law state can be realized because *freies ermessen* gives the government the freedom to act to carry out its duties without being bound by law. Because the goal to be achieved is the welfare of all the country’s people. Under such conditions, and with the growing needs of society following the needs of the times, the government’s function as a public servant takes precedence over its function as a ruler.

Of course, implementing discretion as a way of making decisions is not an easy way. Therefore, it is necessary first to understand the concept of “discretion”. As explained by Rocky Marbun and Armilius, in the deduction step—as a general inference model used in the Science of Law, the statutory approach is different from the precedent approach in the civil law system. With an authoritative text approach in dealing with legal facts, it is traced to the relevant legal provisions in the articles, which contain norms. Norms in logic are propositions (normative). Explaining norms must begin with a conceptual approach because norms are a proposition composed of concepts. Thus, misconceptions lead to misguided lines of reasoning and misleading conclusions.

Discretion is the discretion of the government to take actions and decisions in responding to a problem that has no legal basis yet but is of an emergency nature. Many legal experts define the principle of discretion. According to Saut P. Panjaitan, discretion (*pouvoir discretionnaire*, France) or *Freies Ermessen* (Germany) is a form of deviation from the principle of legality in the sense of *wet matigheid van bestuur*, so it is an “exception” from the principle of legality. According to Benyamin, discretion is the freedom of officials to make decisions according to their considerations. Thus, according to him, every public official has discretionary authority.

S. Prajudi Atmosudirjo defines discretion, discretion (English), *discretionair* (French), *freies ermessen* (Germany) as the freedom to act or make decisions from state administration officials who are authorized and obliged according to their own opinion. Furthermore, it is explained that discretion is needed as a complement to the principle of legality, namely the legal principle, which states that every legal action states that every act or action of the State administration must be based on the provisions of the law.

According to JCT Simorangkir, discretion is the freedom to decide in every situation he faces according to his opinion. According to Alvina Treut Burrow, that discretion is the ability to choose wisely or to judge for oneself, namely the ability to choose wisely or consider for oneself. Meanwhile, Sjachran Basah gives the notion of *freies ermesen* as freedom in determining policies through the attitude of state administration that must be accountable. Thus *freies ermesen* is the freedom to act on their initiative to resolve important and urgent issues that arise suddenly, where the law does not regulate them and can be accounted for legally and morally.

Normatively, the debate about the meaning of 'discretion' competence seems to have stopped through legislative action in Law Number 30 of 2014 concerning Government Administration (UU No. 30 of 2014), where Article 1 paragraph 9 of Law No. 30 of 2014 confirms "Discretion is Decisions and Actions determined and carried out by Government Officials to address concrete problems faced in the administration of government in terms of laws and regulations that provide choices, do not regulate, are incomplete or unclear, and there is government stagnation".

Based on the concept of discretion has a very firm connection with the concept of law enforcement put forward by Soerjono Soekanto, where a conclusion can be drawn that every legal decision made by law enforcers is a legal behavior within the framework of interpreting legal norms dealing with concrete facts or social problems. Even though a legal norm can be said to be a concrete legal norm, every law enforcer will always interpret it either because it is influenced by their scientific abilities or because of external factors.

## **1. Analysis**

In the District Court Interlocutory Decision No. 31/Pid.B/2020/PN Pwt dated 10 March 2020 which stated that the First Indictment was null and void (*nietigheid van rechtswege*). Where one of the considerations in the District Court Interlocutory Decision No. 31/Pid.B/2020/PN Pwt dated 10 March 2020 is as follows:

"Considering, that after reading and scrutinizing the indictment Case Register Number: PDS-02/Pkrto/Ft.2/01/2020 dated 12 February 2020, the Panel of Judges did not see in the description of the indictment what steps or efforts had been taken/conducted by tax office prior to conducting an investigation into the Defendant (PT. Karya Jaya Satria), because according to the Panel of Judges by outlining the steps or efforts before the investigation is a very important stage that has been determined by law which can describe and determine what course of action is appropriate to be imposed on tax issues that befell the Defendant (PT. Karya Jaya Satria), whether law enforcement in the field of administration or criminal law enforcement, of course accompanied by legal reasons; Considering, that because the indictment Case Register Number: PDS-02/Pkrto/Ft.2/01/2020 dated 12 February 2020, does not include what steps or efforts have been taken/carried out by the tax office prior to conducting an investigation of the

Defendant (PT. Karya Jaya Satria), then this makes the indictment incomplete and unclear”.

Thus, based on Article 143 paragraph (3) of the Criminal Procedure Code, the Panel of Judges handed down a ruling that the Indictment Number Case Register: PDS-02/Pkrto/Ft.2/01/2020 dated 12 February 2020 (First Indictment) was declared “null by law”. However, the Purwokerto District Attorney, through the Public Prosecutor, again submitted an indictment with the same register number, namely the Indictment Case Register Number: PDS-02/Pkrto/Ft.2/01/2020 dated 31 August 2020 (Second indictment). Regarding the second indictment, the Panel of Judges at the Purwokerto District Court, as stated in the District Court Decision Number 155/Pid.Sus/2020/PN Pwt, dated 27 October 2020, also issued the same decision, declaring the second indictment “null and void”.

An interesting thing to observe—as the basis of this research, is the description of the Public Prosecutor’s explanation in the Public Prosecutor’s Opinion of the Legal Counsel’s Objection Note (Exception) dated 15 October 2020, on page 5, which emphasizes the following: “In our opinion, this is too much, and the Defendant’s Legal Counsel only intends to clash the Panel of Judges with the public prosecutor because the inclusion of the case register number in the Indictment is not a requirement for the validity of an Indictment as stipulated in Article 143 of Law Number 8 of 1981 concerning Criminal Procedure Law and besides that the case register number is an administration within the internal institution of the Purwokerto District Attorney and the case register numbering is the same as the previous indictment because the indictment was prepared based on the same case file so that the subject matter is the same”.

Based on these answers, a conclusion can be drawn that the Public Prosecutor has common sense where the issue of register numbers (1) is an internal administrative matter for the Purwokerto District Attorney’s Office, and (2) as long as the subject matter is the same, the register number is still the same. Thus, the Public Prosecutor uses common sense logic in giving meaning to his authority based on the legal culture of the institution. The overall arrest of something is generally considered dangerous when a reasoning process for the emergence of a new fact does not accompany it. Thus, the common sense logic will be absolute without criticism. Thus, Rocky Marbun, in his research, explains that situations that have never been at the level of external criticism will turn into a single narrative (grand narrative) and even turn into ideology at the praxis level of the criminal justice process.

So, in this research, it is interesting to study related to the phrase “null and void” in the decision, both based on its concept and function. Where the meaning of the concept of “null and void” - when referring to legal doctrine, has never existed (never existed) since its inception. Thus, as a result, the first indictment was deemed to have never existed in the criminal case examination process at the pre-adjudication stage. This refers to the teaching of the nature of ‘null and void’ (nietigheid van rechtswege), which results in an act in part or whole for the law



being deemed to have never existed (abolished) without the need for a judge's decision or decision of a government agency to cancel part or all of the consequences of that decision. However, for the sake of praxis, it is necessary to obtain a stipulation from a higher institution, namely a court decision.

The Public Prosecutor has also carried out a misguided mindset, namely, first, the Public Prosecutor has been trapped in the argumentum ad verecundiam fallacy, using the authority that is not in place. Where the ruling confirms that the indictment Case Register Number: PDS-02/Pkrto/Ft.2/01/2020 dated 12 February 2020 and the Indictment Case Register Number: PDS-02/Pkrto/Ft.2/01/ 2020 dated 31 August 2020 is null and void, which means that the indictment is deemed to have never existed (never existed). However, the Public Prosecutor argued that making the Second indictment with the same case register number was based on authority or administrative authority. The concept of null and void, namely never existing, cannot be compared with administrative authority; secondly, the Public Prosecutor has also been trapped in the form of thinking error, namely the fallacy of circular reasoning. Where the Public Prosecutor argues by not including Article 43 paragraph (1) based on an order from the District Court Interlocutory Decision No. 31/Pid.B/2020/PN Pwt dated 10 March 2020, in essence, only fulfilled one of the orders in the decision, and ignored the other orders. That is, the Public Prosecutor believes that with the fulfillment of only one of the orders, the Public Prosecutor has concluded that the Second Indictment has followed the order of the District Court Interlocutory Decision No. 31/Pid.B/2020/PN Pwt dated 10 March 2020.

The thing that needs to be understood is the process of forming the "indictment" it self this is important to measure the extent to which the nature of "null and void" itself is enforceable, referring to Article 14 of the Criminal Procedure Code, which is a series of competences of the Public Prosecutor in the process of examining criminal cases, that is:

- a. Receive and examine the investigation case files from investigators or assistant investigators;
- b. Holding a pre-prosecution if there are deficiencies in the investigation by taking into account the provisions of Article 110 paragraph (3) and paragraph (4), by giving instructions in the framework of completing the investigation from the investigator;
- c. Granting an extension of detention, carrying out a detention or further detention, and changing the status of detainees after the investigator has transferred the case;
- d. Make an indictment;
- e. Submit cases to court;
- f. Delivering notification to the defendant regarding the day and time the case is being tried, which is accompanied by a summons, both to the defendant and to the witness, to come to the hearing that has been determined;
- g. Conduct prosecution;
- h. Closing cases for the sake of law;

- i. Carry out other actions within the scope of duties and responsibilities as a public prosecutor according to the provisions of this law;

If properly studied and examined, from Article 14a to Article 14c is a description of the interconnection between the investigative and prosecution processes in the pre-adjudication stage. Article 14d is a separation point between the competence of the Public Prosecutor in the realm of investigation and prosecution. Thus, when the Panel of Judges at the District Court questioned the stages in the process before entering into the investigation, the Panel of Judges wanted to dispute Article 14b concerning the competence of the Public Prosecutor in giving instructions to the investigator.

Thus, the mandate contained in Article 139 of the Criminal Procedure Code confirms, "After the public prosecutor receives or receives back the results of a complete investigation from the investigator, he immediately determines whether the case file meets the requirements to be transferred to court or not." Article 139 of the Criminal Procedure Code is often referred to as a distillation of the principle of opportunity, but on the other hand, it clearly describes the existence of absolute authority for the Public Prosecutor to reject or criticize the case files resulting from the investigation.

So, ontologically, the legal considerations in the Purwokerto District Court Decision Number 31/Pid.B/2020/PN Pwt dated 10 March 2020 and District Court Decision Number 155/Pid.Sus/2020/PN Pwt dated 27 October 2020 is a criticism of the performance of the Director General of Taxes, especially Tax Civil Servants who arbitrarily read criminal provisions in a grammatical manner in tax legislation, which the Public Prosecutor failed to identify.

Therefore, the legal considerations in the Purwokerto District Court Decision Number 31/Pid.B/2020/PN Pwt dated 10 March 2020 are, in essence, an application of the legal principle of "hulprecht" as the main legal principle in the process of examining criminal cases that occurs when there is an intersection between statutory law like state administrative law and criminal law. The legal principle of "hulprecht" implies an administrative settlement effort before entering the criminal examination process.

This is, of course, interesting to examine in an academic scientific manner regarding the Indictment Case Register Number: PDS-02/Pkrto/Ft.2/01/2020 dated 31 August 2020, which is as follows:

- a. The Public Prosecutor uses the same Case Register Number as the first indictment that was canceled.

Two rulings need to be observed, namely:

- 1). Declare the Indictment Case Register Number: PDS - 02 /Pkrto/Ft.2/01/2020 in the name of the Defendant: Ali Rofi dated 12 February 2020 null and void; and
- 2). Ordered the return of this case file and all evidence to the Public Prosecutor.

Referring to Article 14e of the Criminal Procedure Code, the public prosecutor has the competence to transfer the case to court after drafting an indictment.

If we refer to the concept of “prosecution” in Article 1 point 7 of the Criminal Procedure Code, which states, “Prosecution is the act of the public prosecutor to transfer a criminal case to the competent district court in matters and according to the manner stipulated in this law with a request that it be examined and decided by a judge in court.” So, the act of delegating as a competence-based on Article 14e of the Criminal Procedure Code—in essence, is an act of prosecution.

So, suppose we return to the doctrine of the nature of ‘null and void’ (nietigheid van rechtswege). In that case, it is not logical when the Public Prosecutor reuses the indictment with the same Case Register Number as the indictment, which has been declared null and void or has never existed. The Public Prosecutor should have used the new case register number because the old case register number had never been declared existed by the Court”.

b. Loss of Right to Prosecute Conditionally

Whereas based on legal considerations in the Decision of the Purwokerto District Court Number 31/Pid.B/2020/PN Pwt dated 10 March 2020, there are two suggestions and criticisms of the Public Prosecutor, namely:

- 1). The Panel of Judges disagreed with using the Single Indictment model based on Article 64 paragraph (1) of the Criminal Code, and it has been suggested that it is better to use the Cumulative Indictment model or the Mixed Indictment model. Thus, the Public Prosecutor in Indictment II has changed it to the Cumulative Indictment model;
- 2). Whereas, as contained in the legal considerations on page 41 of the Decision of the Purwokerto District Court Number 31/Pid.B/2020/PN Pwt dated 10 March 2020, where the Panel of Judges focused on discussing the law enforcement process – related to tax law enforcement procedures; in the realm of pre-adjudication carried out by the Tax PPNS, it does not even discuss the description of Article 143 paragraph (2) letter b of the Criminal Procedure Code, which is a strict order from the Panel of Judges to the Public Prosecutor to first carry out his obligations under Article 14b of the Criminal Procedure Code by giving instructions to PPNS Tax to fulfill the correct investigation procedure first.

However, unlike the suggestions and criticisms on point, which the Public Prosecutor carried out, the criticisms and suggestions on this point were not implemented at all. It is an order from the Purwokerto District Court Decision Number 31/Pid.B/2020/PN Pwt dated 10 March 2020.

- 3). Indictment Case Register Number: PDS-02/Pkrto/Ft.2/01/2020 dated 31 August 2020 has the potential to violate the principle of ne bis in idem in Criminal law.

Philosophically, the idea that gave birth to the principle of ne bis in idem in criminal law is related to the guarantee of legal certainty for someone in a crime. Legal certainty means that with the existence of law, everyone knows what rights and obligations they have. Therefore, the principle of ne bis in idem is useful to create order and peace in people’s lives because of the existence of orderly law

(rechtsorde). As for justice, it is intended that everyone will not feel that their interests have been harmed within reasonable limits.

The application of creating legal certainty (rechtszekerheid) in a criminal case and to create a sense of peace in society for a defendant will not be disturbed by continuous demands by the state in the same case, and also the state is not continuously preoccupied with prosecuting and trying the same person with the same case, then this has fulfilled the elements of the ne bis in idem principle, which are related to (1) the same crime; (2) the same person; (3) same scene and place (locus delicti and tempus).

Although it should be admitted that the use of the ne bis in idem principle is generally used for final decisions and not interlocutory decisions. In this case, the Public Prosecutor in the Indictment Number Case Register: PDS-02/Pkrto/Ft.2/01/2020 dated 31 August 2020, concerning the advice of the Panel of Judges on page 40 of the Purwokerto District Court Decision Number 31/Pid.B/2020/PN Pwt dated 10 March 2020, thereby changing the Single Indictment model to the Cumulative Indictment model.

However, suppose the philosophical rationale for the ne bis in idem principle is legalistic-positivistic. In that case, the Public Prosecutor should think not only based on legal considerations on page 40 an sich but should also refer to legal considerations on page 41 as a single 'crown' from a court decision. The Public Prosecutor only takes part and leaves the other part of the legal considerations.

Therefore, the Panel of Judges in constructing Article 143 paragraph (2) letter b of the Criminal Procedure Code moved from formal law (procedure) to the pre-adjudication process carried out by the Tax PPNS. So, based on Article 14b of the Criminal Procedure Code, the Public Prosecutor should return the investigation file to the Tax PPNS by providing instructions to carry out administrative and billing sanctions based on the hulprecht legal principle.

The Public Prosecutor in the Indictment Number Case Register: PDS-02/Pkrto/Ft.2/01/2020 dated 31 August 2020, only made changes to using an Indictment model that was different from Indictment I, but the essence of the act being constructed and the object in question remained same.

## **1. Conclusion**

If the concept of "law enforcement" is seen as a process of interpretation by law enforcers of legal norms based on free authority (discretion) on concrete facts. Thus, every law enforcer in interpreting a legal norm and legal concept cannot only be based on common sense logic alone. Where a concept of "null and void" contains consequences for the nature of cancellation of the material or subject matter. Thus, submission to these legal norms brings consequences for submission to the legal principles that accompany every legal norm.

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