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## An Effort For Formul Justice Criminal Law Enforcement

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#### **Abstract**

In criminal law enforcement, legally formally it will lead to administrative issues. Where in the exercise of power related to examination matters at the level of the police, prosecutor's office to the judiciary, it must be able to provide certainty that there is no abuse of power. Not infrequently in a criminal incident, many suspects are involved in it and other actions. The contribution of everyone who commits an act in the same event must be rewarded with appropriate sanctions and may not exceed what has been determined in the laws and regulations (lex scripta). Therefore, in the prosecution process, the prosecutor is obliged to understand the construction of a criminal event, so that each perpetrator of the crime gets a reward for their respective contributions. Separation of case files legally has been regulated in article 142 of the Criminal Procedure Code. known as splitsing or a split trial. Doctrinal research using the statue approach was carried out to answer the normative question whether this splitsing could cause a violation of On the other hand, the principle of non-selfincrimination can positive law enforcement be able to achieve justice in law.

#### 1. Introduction

The Criminal Procedure Code (KUHAP), also known as Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Code, is a formal legal framework (criminal procedure law) in Indonesia. This demonstrates that the Criminal Procedure Code's provisions are always the foundation for the implementation of material criminal law (Darmawan, 2017). The most basic reason is for the sake of creating an accountable law enforcement and avoiding any possibility of abuse of power from law enforcement officials (Muhammad, 2018). One of the many articles in the Criminal Procedure Code that is intriguing to study

and examine has to do with the ability of the Public Prosecutor to split, merge, and separate cases when creating charges and charges (Hambali, 2020).

The merging of cases is regulated in Article 141 of the Criminal Procedure Code, while the splitting of cases is regulated in Article 142 of the Criminal Procedure Code (Johari & Agus, 2021). According to Andi Hamzah, splitsing is usually done by making new case files where the suspects become witnesses to each other, so that for this it is necessary to carry out a new examination, both of the suspects and witnesses (Salundik, 2020). If the defendant is more than one person, then the case is separated and then the defendants are used as witnesses and testify to each other for the criminal acts they are accused of or who are often called crown witnesses. Regarding the crown witness, it actually shows the defendant whose status is a witness in the case of the other defendants who are doing the same thing, namely in the case of a splitsing in the examination (Lutfiasandhi, 2014).

The prosecutor who is permitted by law to bring charges and carry out a judge's ruling is known as the public prosecutor (Agustina, 2018). Since the notice of the commencement of the investigation, a cooperative relationship has been established between the Investigator and the Public Prosecutor (Mulyani, 2017). Article 109 of the Criminal Code is the basis of the coordination relationship between investigators and public prosecutors in carrying out the judicial process. As the initial process of this judicial process is an investigation and/or investigation (Vivi Ariyanti, 2019).

Case solving can be carried out by the Public Prosecutor when the Investigator submits the case file officially to the Public Prosecutor (Lubis et al., 2020). On the other hand, Such splitsing practices can result in the trial process being lengthy and convoluted so that it has the potential to conflict with the principle of contante justitie (Taufiqurrsitrohman, 2022).

Bringing up witnesses in a splitsing case also risks violating the basic rights of the accused because they have to testify about the crime they are accused of, so they run the risk of providing incriminating statements against themselves, which is against the principle of non-self-incrimination (Hunter et al., 2021). It is this contradictory matter that is to be tested in its application whether splitsing can create legal justice or vice versa (Haryana, 2022). This research was conducted to answer some of the most basic issues in criminal procedural law relating to: 1. The legal basis for the public prosecutor to split the case (splitsing) and 2. Does splitsing conflict with the principle of non-self-incremination.

#### 2. Methods

The approach employed in this study is normative juridical (Hinton et al., 2018). Quoting the opinion of Soejono Soekamto who argues that normative legal research is research that uses existing norms in legislation (lex scripta, lex certa) (Jupri, 2019). The approach model employed in this study is known as the statute approach model (statutory approach) (Paruki & Ahmad, 2022). Statutory regulations are written rules that, in general, contain binding legal norms and are created or established by state institutions or authorized officials in accordance with the procedures outlined in statutory regulations. Another approach used in this study, in order to answer the problem is a conceptual approach (Yustitianingtyas et al., 2020). That is the opinion of the experts written in the legal dogmas. The data

collection technique uses a literature study approach which is commonly used in normative research (Pratiwi, 2020).

Data comes from books, conference papers, research reports, technical reports, magazines, dissertations and theses/patents. Data obtained by using a documentation study. The data analysis technique used is a qualitative approach. Which qualitative analysis is also generally used in normative legal research. Analysis of the materials that have been collected must of course be carried out according to known legal methods of analysis or interpretation, such as authentic interpretation.

# 3. Findings and Discussions

The principle of non-self-incrimination is a principle formed through the practice of state justice with the Common Law legal system. To find out the real meaning behind this principle, we can only refer to the roots of the theory that forms it, namely the philosophy of punishment that grows and develops in countries with an Anglo Saxon legal culture.

## 3.1 Findings

To understand how to apply this principle and the beginning of its birth, we can listen to the following studies:

"A right to non-self-incrimination exists in many jurisdictions. In the United States, this is called the right to remain silent. The court recognizes this right in several ways. First, the court has recognized the right to non-self-incrimination when it fashions common law privileges such as the attorney-client privilege, marital confidences and spousal testimony privileges, and the priest-penitent privilege. In the United States a defendant is notified of this right by police through Miranda Warnings." (Dian Ratu Ayu Uswatun Khasanah & Chairunnisa, 2021).

From this explanation, we will find the meaning of non-self-incrimination. The principle of non-self-incrimination in legal punishment in the United States, is the principle of not criminalizing oneself contained in The Fifth Amendment to the United States Constitution (United States Constitution).

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentation or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject to the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." (Alwaton et al., 2022).

From the explanation above, we can find that non-self-incrimination, especially in America, is known as the right of a suspect or defendant to remain silent as practiced in criminal law in the United States as "Miranda Rules" (you have the right to remain silent...). Where a suspect is asked to remain silent, because every utterance that comes out can be used as evidence to harm himself.

Prior to any "questioning conducted by law enforcement agents after a person has been taken into custody or otherwise significantly deprived of his freedom of action" Miranda warnings must be issued. Prior to questioning, suspects must be

informed that they have the right to stay silent, that everything they say can be used against them in court, that they are entitled to an attorney during questioning, and that if they are unable to pay for one, one will be appointed. Furthermore, a person may only intentionally waive such notices and consent to answer questions or make statements after they have received and understood them (Sugita, 2022).

However, the "Miranda Rule" limits the applicability of the principle of "non-self-incrimination", whereby when a suspect has been reminded that everything said by him can be used as evidence to incriminate the accusations against him, but continues to chatter which will corner himself, then the principle non-self-incrimination can no longer be enforced. Thus, even in countries with an anglo-Saxon legal system such as the United States, the principle of non-self-incrimination is enforced in a limited manner, that is, it will stop immediately after the "Miranda Warning" is read by an authority against a suspect who has been arrested (Firdauz, 2019).

In Indonesia, the rights of a defendant are only limited to the principle of "presumption of innocence", the system of criminal proof law in Indonesia adopts the validity of "conviction in time/conviction in rasson" Who examines the case, whether such confession can be verified (Irfani & Maerani, 2019). Therefore, punishment can only be imposed, if there are at least two pieces of evidence. Evidence in the form of the defendant's confession is not sufficient without the support of other evidence. Non-self-incrimination in our criminal law system has not been regulated, it does not even give a suspect the right to remain silent, because if this is done it could be considered against the order of the law enforcement apparatus. However, this does not mean that law enforcement officials can arbitrarily gather information, because normatively, evidentiary law in Indonesia is based on evidence and evidence. With regard to this evidence and evidence, it must be obtained in a legal way in accordance with the laws and regulations governing this matter. Dogmatically, non-self-incrimination provides an option for the suspect to remain silent, with the aim of not criminalizing himself. In the practice of criminal procedural law in Indonesia.

Suspects are impliedly protected from severe treatment, violence, and/or torture by the Criminal Procedure Code. A suspect or defendant has the right to freely provide information to investigators or judges during an investigation at the investigative or judicial levels, according to Criminal Procedure Code Article 52. In order for an examination to yield results that do not depart from the truth, the suspect or defendant must be kept out of fear, according to the Explanatory Memorandum of Article 52 of the Criminal Procedure Code. Therefore, it is essential to stop using pressure or coercion to suspects or defendants (Lasmadi et al., 2020).

Furthermore, Article 117 of the Criminal Procedure Code states that the testimony of the suspect and/or witness to the investigator is given without pressure from anyone or in any form. Therefore Article 52 and Article 117 must be seen as an effort to realize the universal principle of non-self-incremination. Therefore, in practice, even though the norms have not been regulated, non-self-incrimination already exists in the Criminal Procedure Code, so there is no conflict in solving cases (Sukardi & Purnama, 2022).

Splitsing as an effort to realize justice can generally be understood in two categories, namely: reward and distribution. Justice in the category of rewards in formal legal language is known as retributive justice, which has to do with the punishment that is imposed on someone for breaking the law. This is the realm of study by legal scholars; Second, justice that is distributional or commonly known as distributive justice, which talks about the mechanism or procedure for distributing or distributing something, both tangible (such as food) and intangible (such as authority).

In an intangible setting, the law's definition of justice is legal justice, or justice that is created by the law in the form of rights and obligations, and wherein a legal procedure will be used to confirm any violations of this justice (Wirajaya et al., 2022). Law enforcement in order to realize justice requires facilities and infrastructure that can guarantee that the enforcement process can be accounted for. Regarding punishment, even in terms of law enforcement, it cannot be justified for violations of the law to create legal justice. For example, the occurrence of violations of human rights, where there are rights of suspects or defendants who are seized by way of against the law. With regard to splitsing, the human rights in question are when a person has to provide testimony as a witness that has the potential to incriminate himself. In the Criminal Code (KUHP) if we examine it more closely, there are actually provisions that protect a person from the obligation to do things that will incriminate himself.

We can find these provisions in Article 166 in relation to Articles 164 and 165 of the Criminal Code. In Article 164 of the Criminal Code it is determined that whoever knows there is an agreement to commit a crime based on Articles 104, 106, 107 and 108, 113, 115, 124, 187 or 187bis, while there is still time to prevent the crime, and deliberately does not immediately notify the judicial or police officials or the person threatened by the crime, shall be punished if the crime is actually committed (Kusumawati et al., 2020).

Furthermore, Article 165 paragraph (1) stipulates that whoever knows there is an intention to commit a crime based on Articles 104, 106. 107 and 108. 110-113, 115-129 and 131 or an intention to flee from the army in times of war, to kidnap or rape or to know that there is an intention to commit the crimes mentioned in chapter VII of this code of conduct, to commit one of the crimes under Articles 124-228, 250 or one of the crimes under Articles 264 and 275 (Rinaldi, 2022).

Furthermore, Article 166 of the Criminal Code provides a provision that, The provisions in Articles 164 and 165 do not apply to people who by notifying them may pose a danger of criminal prosecution for themselves, for a family member of blood or semenda in a straight line or deviating line of the second or third degree, for husband/or ex-husband, or for another person who, if prosecuted, in connection with his position or search, may be released as a witness against that person (Arfiani et al., 2022).

Guarantees for the fulfillment of the suspect's rights (Human Rights) are positively regulated in the Criminal Procedure Code:

1. The right to an immediate examination by an investigator (see Criminal Procedure Code, Article 50, paragraph 1);

- 2. The right to plain disclosure of the allegations against him in a language he can comprehend (see Criminal Procedure Code, Article 51, Paragraph 1);
- 3. The freedom to openly submit information to investigators (as per Criminal Procedure Code Article 52);
- 4. The right to use an interpreter (see Article 53 paragraph (1) and Article 177 paragraph (1) together;
- 5. The right to legal assistance (as stated in Criminal Procedure Code Article 54); The right to choose their own law (Article 55 of the Criminal Procedure Code);
- 6. The right to visit and be visited by his personal doctor (Article 58 of the Criminal Procedure Code):
- 7. The right to be notified to his family or people at home regarding his detention (Article 59 of the Criminal Procedure Code);
- 8. The right to family visits (Article 60 of the Criminal Procedure Code);
- 9. The right to communicate whenever he needs it (Article 61 of the Criminal Procedure Code);
- 10. The right not to be censored in the event that he sends or receives letters (Article 62 paragraph (1) of the Criminal Procedure Code);
- 11. The freedom from having to provide evidence (as stated in Criminal Procedure Code Article 66);
- 12. The right to ask for restitution and treatment (Article 68 of the Criminal Procedure Code).

From the explanation above, we can see that substantively efforts to achieve justice in the context of implementing splitsing have been regulated normatively. So that retributive justice is pursued through the protection of human rights. So that in essence, all forms of efforts to implement human rights into laws and regulations are efforts to place distributive justice as its basic value or norm (lex certa).

#### 3.2 Discussions

Splitsing in criminal procedural law, there are two principles of prosecution, namely: Legality Principle it is intended that the public prosecutor is obliged to prosecute all persons who are considered to have sufficient grounds that the person concerned has committed an unlawful act. Ruslam Saleh explained that it is precisely this principle of legality that is the basis of "criminal acts", because without prior regulation regarding what actions are prohibited, we do not know of any criminal acts (Nullum delictum nulla poena sine praevia lege poenalli; which means more or less is that there is no offense, there is no crime without prior regulation; Article 1 paragraph (1) of the Criminal Code). This legality principle contains 3 (three) meanings, that is: (1) There is no action that is prohibited and punishable by criminal if it has not been previously stated in a rule of law; (2) To determine the existence of a criminal act, no analogy (kiyas) may be used; and (3) Criminal law rules cannot be retroactive, Opportunity Principle and in the public interest, the public prosecutor is not obliged to prosecute a person who has/is deemed to have sufficient grounds that the person concerned has committed an unlawful act, deponeering.

Criminal Case Solving Process (Splitsing) in solving criminal cases as referred to in Article 142 of the Criminal Procedure Code is carried out by making

new files. The consequence of this was that a re-examination of the accused and witnesses was carried out and each of the accused was made a charge letter. By solving independent cases between one defendant and another, the defendants can serve as witnesses reciprocally, in a different trial. In the first stage of handing over, the investigator actually and physically submits the case file to the public prosecutor, and the public prosecutor actually and physically receives it from the hands of the investigator. In the event that an investigator sends a file containing criminal acts committed by several people to the public prosecutor which, after being examined and examined by the public prosecutor, is found to be incomplete, the public prosecutor may take discretion in accordance with Article 142 of the Criminal Procedure Code to split the case dossier into two or more according to with need. If a case file is split independently, a re-examination of both the suspect and the witness is carried out.

Consideration of splitsing what the public prosecutor considers in splitting the case are what factors are taken into consideration by the Public Prosecutor, so that the case file is broken up by the investigator. The factors that form the basis of consideration can be detailed as follows:

- a. Actions carried out without witnesses and not supported by other valid evidence, namely testimony from the patient himself and not supported by other valid evidence resulted in the defendant being acquitted by the judge. Therefore, the testimony of a witness alone will not be enough to prove that the defendant is guilty of the act he was charged with, because based on Article 183 of the Criminal Procedure Code, a judge may not sentence a person unless he obtains at least two valid pieces of evidence and the judge also obtain conviction that a crime has actually occurred and that the accused is guilty of committing it.
- b. The perpetrators of criminal acts consist of several people. One of the reasons for the need for a split case is that the perpetrators of the crime consist of several people.

Facilitate the Public Prosecutor in compiling charges. By dividing a case, a perfect case file will be obtained, the case file must have formal completeness (Article 75 of the Criminal Procedure Code) and material equipment. Material completeness must contain at least two valid pieces of evidence, to obtain the judge's belief in the guilt of the defendant and so that the defendant is not acquitted or not released from lawsuits. So the resolution of the case is intended to ease the task of the Public Prosecutor in terms of compiling charges, as an effort to prove the truth of the indictment or the guilt of the defendant.

### 4. Conclusion

Splitsing can only be carried out by the Public Prosecutor based on article 142 of the Criminal Procedure Code, namely: 1) The Public Prosecutor receives one case file containing several criminal acts; 2) Some of the crimes committed by several suspects; and 3) Which is not included in the provisions of Article 141 regarding the merger of cases. Article 117 of the Criminal Procedure Code states that the testimony of the suspect and/or witness to the investigator is given without pressure from anyone or in any form. Therefore Article 52 and Article 117 must be seen as an effort to realize the universal principle of non-self-incremination. Therefore, in practice, although norms have not been regulated, guarantees for human rights already exist in the Criminal Procedure Code, so there are no

conflicting norms in solving cases. Implementation of splitsing must be within the framework of protecting human rights, and not solely for the sake of prosecution.

The provisions in the splitsing requirements as stipulated in Article 142 of the Criminal Procedure Code should be regulated more thoroughly in the Attorney General's (administrative) Regulations taking into account that splitting a case may not result in a person becoming a witness in one case and becoming a defendant in another case, while the two cases are unrelated. with the others. Protection of human rights, related to splitsing, should be carried out by prioritizing preassumption of innocence, namely the fulfillment of the suspect's rights as conveyed by the investigator. Retributive justice must be upheld through the means of distributive justice in the form of authorization (authority) which can be audited periodically.

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