

# Legal Reconstruction of the Authority of *Deponering* Implementation by the Prosecution Office Based on Justice Value

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DOI: [10.36348/sijlci.2023.v06i03.006](https://doi.org/10.36348/sijlci.2023.v06i03.006)

| Received: 07.02.2023 | Accepted: 23.03.2023 | Published: 27.03.2023

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## Abstract

The objectives of this research are to analyze and find out the weaknesses in the legal construction of the authority to implement *Deponering* (the authority of the attorney general not to prosecute a case for policy reasons) in relation to the principle of opportunity by the prosecutor's office and how to reconstruct the law based on justice value. The method used in this study uses an empirical approach and a normative juridical approach with the paradigm used by the constructivism paradigm. The results of the research show that the Weaknesses in the legal construction of the implementation of *Deponering* by the Attorney General in relation to the application of the opportunity principle, one of which, is the basis for consideration of the public interest which does not yet have clear and measurable indicators. In addition, minimal supervision of the implementation of the Attorney General's authority. In order to tackle this, a legal reconstruction of the authority to implement *Deponering* in relation to the principle of opportunity based on the value of justice is needed to determine the indicators and conditions for the Attorney General in making decisions overriding cases in Government Regulations, so that the implementation of the Attorney General's sole authority does not escape supervision and fulfills justice for society. As a counterweight to *Deponering* authority, the public prosecutor must be given the authority to stop prosecution based on restorative justice which is based on the discretionary authority of the Attorney General's Office as a response to the development of society that wants misdemeanor crimes and crimes with low economic value not to be continued with the prosecution process, by prioritizing the principle of restorative justice. Termination of prosecution based on restorative justice by the public prosecutor, which in practice is very beneficial for the wider community, especially for victims and perpetrators of crimes.

**Keywords:** Legal Reconstruction, *Deponering*, Prosecution Office, Justice Value.

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## INTRODUCTION

The Prosecutor's Office is a government institution that functions and is related to the judicial power that exercises state power in the field of prosecution and other authorities based on law. Apart from having the authority to carry out prosecutions, the Prosecutor's Office also has the authority to set aside cases in the public interest. However, this authority does not belong to all Public Prosecutors and/or other Officials in the Prosecutor's Office, but only a special authority that belongs to the Attorney General.

What is meant by "*public interest*" are the interests of the nation and state and/or the interests of the general public (Windi, 2022). In exercising his authority to set aside cases in the public interest, the Attorney General must pay attention to suggestions and

opinions from state power agencies that have a relationship with the matter.

The authority to set aside cases given to the Attorney General is a form of implementation of the opportunity principle which only belongs to the Attorney General. The elucidation of Article 77 of the Criminal Procedure Code, explains that what is meant by the termination of prosecution does not include the exclusion of cases in the public interest which become the authority and that is the Attorney General. This means that the authority to set aside cases lies only with the Attorney General, and this authority does not belong to prosecutors who are under the Attorney General (Toebagus, 2022). With the elucidation of Article 77 of the Criminal Procedure Code, it shows that the Criminal Procedure Code recognizes the authority of the

Attorney General in setting aside cases in the public interest.

UU no. 11/2021 concerning the Indonesian Attorney General's Office does not mention and explain what is meant by the Opportunity principle. According to Article 35 paragraph (1) letter c along with its explanation, it can be understood that the implementation of the Opportunity principle can only be carried out by the Attorney General after taking into account suggestions and opinions from state agencies that have a relationship with the problem (Widodo, 2018). A case that has been delegated and/or is in the process of filing charges and/or charges by the Prosecutor's office may be set aside, even though the evidence against the criminal act charged against the defendant is sufficient to file criminal charges against the defendant before the trial.

According to the Opportunity principle, the public prosecutor is not obligated to prosecute someone who has committed a delict or criminal act, if in his opinion it will harm the public interest. So it is in the public interest of someone who commits an offense not to be prosecuted. In this case, Lemaire, in Yudha (2020) said that today the principle of opportunity is commonly regarded as something that applies in this country, even though unwritten laws apply.

The exclusion of cases in the public interest which is the authority of the Attorney General, also known as *Deponering* in relation to criminal law enforcement, has in fact become a legal polemic because the decision to set aside cases stipulated by the Attorney General often creates controversy from various points of view. This is because the decision to set aside a case in the public interest is only the sole authority of the Attorney General.

Even though the elucidation of Article 35 paragraph (1) letter c of Law no. 11/2021 concerning the Attorney General's Office of the Republic of Indonesia states that: "*The Attorney General in exercising his authority to set aside a case pays attention to suggestions and opinions from agencies that have a relationship with the matter, but this provision is not binding and is mandatory*". Another problem that arises regarding the Attorney General's authority in setting aside cases in the public interest is that the precedent for the Attorney General's authority is often used in major cases and given to the perpetrators who in fact are state officials or parties within the circle of power. So, that in its application it creates controversy and is even considered contrary to society's sense of justice.

The implementation of the Attorney General's authority in setting aside cases that tend to be applied in major cases and involving state officials, if connected with the existence of the principle of equality before the

law, it is clear that the implementation of the Attorney General's authority which is not objective and discriminatory in nature is contrary to the principle of equality before the law which is a very basic principle in efforts to provide protection for the interests of the wider community and achieve justice in society because, in reality, the implementation of this Deponering has a legal impact, especially in the criminal justice process, especially for those who carry out Deponering this process has an impact on a judicial process that is not transparent which can create abuse of authority. Prosecution carried out by the public prosecutor must have two very basic principles, namely the principle of legality and the principle of opportunity, which must exist in all prosecutions.

Based on the principle of legality, the public prosecutor is obliged to prosecute someone who has been charged with committing a crime, while according to the principle of opportunity, the public prosecutor is not obliged to prosecute someone who has committed a crime if, in the public prosecutor's opinion, the person being prosecuted will harm the public interest. So for the sake of the public interest, even if someone commits a crime, if it is detrimental to the public interest, then the perpetrator of the crime cannot be prosecuted. Therefore, based on this description, the author is interested in conducting research and examining the problem in a scientific paper titled "*Legal Reconstruction of the Authority of Deponering Implementation by the Prosecution Office Based on Justice Value*" where the main problem discussed in this article is as follows:

1. What Are the Weaknesses of the Regulation regarding the Authority of Deponering Implementation by the Prosecution Office?
2. How is the Legal Reconstruction of Regulation regarding the Authority of Deponering Implementation by the Prosecution Office Based on Justice Value?

## **METHOD OF RESEARCH**

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to

study and examine the interrelationships associated in real with other social variables (Toebagus, 2020).

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.
2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

## RESEARCH RESULT AND DISCUSSION

### 1. Weaknesses of the Regulation Regarding the Authority of *Deponering* Implementation by the Prosecution Office

In Indonesia, *Deponering* cases, even though it has been regulated in Article 35 letter c of Law no. 11/2021 concerning the Attorney General's Office of the Republic of Indonesia which is an implementation of the Opportunity principle owned by the Attorney General is very rarely used for the "*public interest*". The act of not prosecuting for reasons of the policy of the Attorney General is allowed to set aside the case even though the evidence is sufficient and can be delegated in court hearings, but cases that are ready to be tried are not carried out in court.

The *Deponering* of cases has its own pros and cons in society and among academics, because *Deponering* itself is considered discriminatory against legal principles such as legal certainty, and contrary to equality before the law (equality before the law) mandated by Article 27 Paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that "*all citizens have the same position before law and government and are obliged to uphold law and government without exception*".

The implementation of *Deponering* cases is based on the public interest, and public interest can be seen in the elucidation of Article 35 letter c of Law no. 11/2021 Concerning the Attorney General's Office of the Republic of Indonesia, states that: What is meant by "*public interest*" are the interests of the nation and/or

the interests of the wider community. Setting aside a case as referred to in this provision constitutes an implementation of the Opportunity principle, which can only be carried out by the Attorney General after taking into account suggestions and opinions from state power agencies that have a relationship with the problem.

The concept of public interest in the implementation of waiver of cases when it is applied in a case, the question arises for each individual how the Attorney General interprets the public interest to be applied in a case while the criteria for public interest are not clear (Agustalita, 2023). What is the formal requirement in implementing this Opportunity principle, because the notion of public interest itself has no similarities or can be said to be very diverse in terms of doctrine and in-laws and regulations on the definition of public interest has multiple interpretations.

The issuance of a *Deponering* decision has become a debate in Indonesia, both among academics and among state institutions. Debates occur because of various opinions or it can be said that for multiple interpretations of the notion of "*public interest*" to be applied in a case. So that there is a need for clearer regulation of the extent to which the boundaries of the public interest include the interests of the nation, the interests of the state and/or the interests of the community so that justice, benefit and especially legal certainty can be created.

The Attorney General, in setting aside a case, must be careful in interpreting the public interest after seeking advice and opinions from state authorities. To prevent abuse of authority. Good norms contain three principles including the principle of legal certainty, the principle of expediency, and the principle of justice.

The principle of legal compliance according to Sudikno (2007) is justifiable protection against arbitrary actions, which means that someone will get something that is expected in certain circumstances. Then the principle of expediency is the optimization of the social goals of the law, every law besides being intended to create order and regularity as the ultimate goal, also has certain social goals, namely the interests that society wants to realize from the state. Sudikno defines justice as an assessment of one's treatment of others by using certain norms as a measure.

Setting aside cases or in other terms, *Deponering* is different from stopping prosecution because *Deponering* is the authority of the Attorney General to set aside cases where there is sufficient evidence. The author is of the opinion that the concept of public interest in Article 35 letter c of Law no. 11/2021 concerning the Attorney General's Office of the Republic of Indonesia is abstract and not concrete so it is the full authority of the Attorney General to interpret the notion of public interest to be applied in a case.

Set aside cases or *Deponering* should also be carried out in minor cases, because the concept of public interest itself does not explain which cases can be set aside, but this is not done. If Indonesia had guidelines like the Netherlands, it would be clearer what kinds of cases could be waived, one of which was cases carried out by the elderly. So the waiver of cases will not harm the law itself, especially against the legal principle of equality before the law (Kurniawan, 2022).

The Netherlands may decide whether or not to prosecute a case with or without conditions. This authority is based on three things. First, the indictment was withdrawn for policy reasons (among other things, the crime was insignificant, the perpetrator was old, and the loss had been compensated. Second, the case was set aside for technical reasons (usually more than 50 percent because there was insufficient evidence). Third, through consolidation, namely combining the suspect's cases. With cases that have been submitted to the court.

Deponering is an authority granted by Article 35 letter c of Law no. 16/2004 concerning the Attorney General's Office of the Republic of Indonesia to the Attorney General and there are no arrangements that can be made to re-examine cases that have been ruled out by the Attorney General, which is different from the termination of prosecution which can be carried out by pretrial efforts at a later date.

Even so, there is an implication that regulation of public interest as a condition for implementing Deponering by the Attorney General for the general public is discriminatory towards equality before the law contained in Article 27 Paragraph (1) of the 1945 Constitution which states that: "*all citizens having the same position before law and government and is obliged to uphold that law and government without exception*" and can lead to misinterpretations by the Attorney General and the emergence of various interpretations which can be detrimental to justice seekers. This is because in practice it has the potential to become discriminatory because the decision to set aside a case depends heavily on the perception of the Attorney General.

## **2. Legal Reconstruction of Regulation Regarding the Authority of *Deponering* Implementation by the Prosecution Office Based on Justice Value**

By paying attention to the development of criminal law reform, namely the desire of law enforcement agencies who are members of the justice system to prioritize the settlement of criminal cases based on restorative justice in the settlement of criminal cases, including the wishes of the Prosecutor's office, then of course in carrying out legal reconstruction of *Deponering* authority by the Attorney General in relation to the implementation of the opportunity principle, it is necessary to consider developments and

legal changes that are currently taking place in society, especially the desire of the community and law enforcers to resolve certain cases that have been stipulated in Perja No. 15/2020 concerning PPKBR. Therefore, the basis for stopping prosecution by the Attorney General is also based on consideration of the principle of "*public interest*" as the basis for the Attorney General in setting aside a case (*Deponering*) as a consequence of the application of the opportunity principle.

Furthermore, in reconstructing the legal provisions regarding the authority to set aside a case by the Attorney General in relation to setting aside the application of the opportunity principle, it is also necessary to consider the practice of applying case exclusion in various countries, so that an appropriate legal construction is found in carrying out the legal reconstruction of the authority to set aside cases (*Deponering*) by the Attorney General, who is felt to be more just.

Referring to the implementation of the set aside of cases by the Prosecutor in the Philippines, where one of the reasons for the implementation of the set aside of cases by the Prosecutor is because of the negotiations between the suspect and the victim or payment of compensation to the victim are often sought as an alternative to prosecution (Widodo, 2019).

The implementation of case waiver by the Prosecutor's Office can be seen from the implementation in the Philippines for example, if it is connected with criminal law reform, especially in the practice of settling criminal cases by the Prosecutor's Office which opens loopholes for stopping prosecution based on restorative justice, it can be said that the concept of case waiver carried out by the prosecutor's office in the Philippines in accordance with the concept of stopping the prosecution carried out by the Public Prosecutor Based on Restorative Justice as stipulated in Perja No. 15/2020 concerning PPBKR. When paying attention to the provisions in Perja No. 15/2020, then one of the conditions specified in Perja No. 15/2020 concerning PPBKR to be able to terminate prosecution based on restorative justice, namely that there is peace between the perpetrator and the victim which is made in the form of a deed (letter) of peace and signed by both the perpetrator and the victim and/or the victim's family. In addition to the conditions for peace, other conditions that must be met are compensation for the victims' rights and restoration of the victim's condition.

Comparing the reasons for the exclusion of cases in the Philippines with the reasons for stopping prosecution as stipulated in Perja No. 15/2020 concerning PPBKR, it can be said that the reasons used as the basis for setting aside cases in the Philippines are basically the same as the reasons for stopping investigations by the Public Prosecutor, in terms of

prosecuting cases based on restorative justice as stipulated in Perja No. 15/2020 concerning PPBKR.

Based on the description above, in carrying out legal reconstruction of the implementation of *Deponering* authority by the Attorney General in relation to the application of the opportunity principle, the reasons which form the basis for the termination of prosecution in Perja No. 15/2020 concerning PPBKR can be accommodated as a basis for reconstructing the Attorney General's authority in setting aside a case "*based on the public interest*". So that the legal reconstruction referred to is in the provisions of Article 34 A and Article 35 letter c of Law No. 11/2021 concerning the Indonesian Attorney General's Office, by adding the word "*based on restorative justice*" as a basis for consideration of the case's waiver by the Public Prosecutor. Where the authority to waive cases rests not only with the Attorney General, but also with public prosecutors at every level of the Prosecutor's Office, both at the District Attorney, High Court, and the Attorney General's Office. However, the waiver of cases by the public prosecutor is in the form of terminating the prosecution of cases that are deemed inappropriate or more beneficial to be terminated based on restorative justice.

There is an additional basis for consideration in setting aside cases, namely "*based on restorative justice*", in addition to considerations based on "*in the public interest*", then the implementation of the termination of prosecution by public prosecutors based on restorative justice is included in the category of case waiver because the termination of investigations based on restorative justice in its implementation is based on discretionary powers possessed by the Public Prosecutor as stipulated in Article 34A of Law no. 11/2021 concerning the Attorney General's Office of the Republic of Indonesia.

The setting aside of cases based on restorative justice aims to accommodate demands for legal and societal development which in some cases requires a wise and prudent settlement of cases (deliberation) by prioritizing restorative justice, namely a settlement of criminal cases carried out involving perpetrators and victims, as well as all parties involved. Related to the crimes that has been committed. Where the settlement with a restorative justice approach is felt to provide more justice for all parties, especially for victims and perpetrators.

## CONCLUSION

Based on the results of the research, the following conclusions can be drawn:

1. The Weakness in the legal construction of the implementation of *Deponering* by the Attorney General is in relation to the application of the opportunity principle, one of which is the basis for consideration of the public interest which

does not yet have clear and measurable indicators. In addition, minimal supervision of the implementation of the Attorney General's authority.

2. The legal reconstruction of the authority to implement *Deponering* in relation to the principle of opportunity based on the value of justice, is to determine the indicators and conditions for the Attorney General in making decisions overriding cases in Government Regulations so that the implementation of the Attorney General's sole authority does not escape supervision and fulfills justice for society. As a balance of the authority of *Deponering*, the public prosecutor is given the authority to stop prosecution based on restorative justice based on the discretionary authority of the Attorney General's Office as a response to the development of a society that wants misdemeanor crimes and crimes with low economic value not to be continued with the prosecution process, by prioritizing the principle of restorative justice. Termination of prosecution based on restorative justice by the public prosecutor, which in practice is very beneficial for the wider community, especially for the victims and the perpetrators of crimes.

## REFERENCES

- Agustalita, D., & Yuherawan, D. (2023). Makna Kepentingan Umum Pada Kewenangan Deponering Dalam Perspektif Kepastian Hukum. *Jurnal Suara Hukum*, 4, 160-189. 10.26740/jsh.v4n1.p160-189.
- Faisal. (2010). *Menerobos Positivisme Hukum*. Rangkang Education, Yogyakarta, p.56.
- Kurniawan, D., Siswanto, H., & Chairani, D. (2022). Principle of Prosecutors Independency in Deponering Criminal Cases for Public Interest in Indonesia. *Scholars International Journal of Law, Crime and Justice*, 5, 161-168. 10.36348/sijlcj.2022.v05i04.002.
- Sudikno Mertokusumo. (2007). *Mengenal Hukum Suatu Pengantar*, Liberty, Yogyakarta, p. 71.
- Toebagus, G. W. P. (2020). The Urgency for Implementing Crytomnesia on Indonesian Copyright Law. *Saudi Journal of Humanities and Social Sciences*, 5(10), 508-514, DOI:10.36348/sjhss.2020.v05i10.001
- Toebagus, G. W. P. (2022). Peran Integrasi Teknologi dalam Sistem Manajemen Peradilan. *Widya Pranata Hukum: Jurnal Kajian Dan Penelitian Hukum*, 4(1). DOI: <https://doi.org/10.37631/widyapranata.v4i1.583>
- Wahyu, W., & Toebagus, G. (2019). Poverty, Evictions and Development: Efforts to Build Social Welfare through the Concept of Welfare State in Indonesia. *3rd International Conference on Globalization of Law and Local Wisdom* (Icglow 2019). Dx.Doi.Org/10.2991/Icglow-19.2019.65.

- Wahyu, W., Sapto, B., & Toebagus, G. W. P. (2018). The Role of Law Politics on Creating Good Governance and Clean Governance for a Free-Corruption Indonesia in 2030. *The Social Sciences*, 13, 1307-1311.
- Windi, M. A. S., & Simangunsong, F. (2022). Makna Kepentingan Umum Didalam Deponering. *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, 2, 235-245. 10.53363/bureau.v2i2.32.
- Yudha, G. (2020). Lembaga Deponering Sebagai Implementasi Asas Oportunitas Perkara Pidana Di Indonesia. *UNES Law Review*, 2, 331-345. 10.31933/unesrev.v2i3.126.