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Legality of the Public Prosecutor's Amendment to the Charges in the Valencya Case in Karawang

Mohamad Hani Anindito¹, Emilia Metta Karunia Wijaya^{2*}
^{1,2} Faculty of Law, Universitas Katolik Soegijapranata, Indonesia

*correspondence email : emiliawijaya96@gmail.com

Abstract

The aim of this study is to analyze the legality of changes to charges by the public prosecutor during the reply stage in the Valencya case in Karawang, focusing on whether such changes are legally valid and their implications for the Indonesian judicial system.

The method of research used is a normative juridical approach, which examines the applicable legal regulations and conducts a case study related to changes in charges at the reply stage. This approach also involves an analysis of relevant legal guidelines and procedures in the context of criminal justice in Indonesia.

The novelty of this research lies in the analysis of the prosecutor's discretion in changing charges at the reply stage, something that is rarely studied in Indonesian law. This research provides new insights into the practice of changing criminal charges based on considerations of justice and legal morality.

The results of the research show that although changing criminal charges to no charges is unusual, it is legally permissible. This provision is regulated in the Attorney General's Office Law and Guideline Book Number 24 of 2021. The amendment of charges was made because the public prosecutor prioritized the principle of justice over legal certainty, taking into consideration truth, conscience, and the values of God Almighty. The Attorney General conducted a special examination of this case because it was considered controversial and had a broad social impact.

The conclusion of this study is that although changes to charges at the reply stage are permitted, clearer legal guidelines are needed to regulate the use of prosecutorial discretion. This aims to maintain a balance between justice and legal certainty, as well as to avoid inconsistencies in the application of the law, so that decisions made remain in line with the principles of fair law.

Keywords: Change of Charges; Replication; Special Examination; Prosecutor's Discretion.

Abstrak

Tujuan penelitian ini untuk menganalisis legalitas perubahan tuntutan oleh penuntut umum pada tahap replik dalam kasus Valencya di Karawang, dengan fokus pada apakah perubahan tuntutan tersebut sah menurut hukum dan implikasi penerapannya dalam sistem peradilan Indonesia.

Metode penelitian yang digunakan adalah pendekatan yuridis normatif, yang mengkaji peraturan hukum yang berlaku, serta melakukan studi kasus terkait perubahan tuntutan pada tahap replik. Pendekatan ini juga melibatkan analisis terhadap pedoman hukum dan prosedur yang relevan dalam konteks peradilan pidana di Indonesia.

Kebaruan dari penelitian ini terletak pada analisis diskresi jaksa dalam mengubah tuntutan

pada tahap replik, sebuah hal yang jarang dikaji dalam hukum Indonesia. Penelitian ini memberikan wawasan baru mengenai praktik perubahan tuntutan pidana yang berlandaskan pada pertimbangan keadilan dan moralitas hukum.

Hasil penelitian menunjukkan bahwa meskipun perubahan tuntutan pidana menjadi tuntutan bebas tidak lazim, hal ini diperbolehkan secara hukum. Ketentuan tersebut diatur dalam Undang-Undang Kejaksaan dan Buku Pedoman Nomor 24 Tahun 2021. Perubahan tuntutan tersebut dilakukan karena penuntut umum lebih mengutamakan asas keadilan daripada kepastian hukum, dengan pertimbangan kebenaran, hati nurani, dan nilai Ketuhanan Yang Maha Esa. Jaksa Agung memberikan eksaminasi khusus terhadap kasus ini, karena dianggap kontroversial dan memiliki dampak sosial yang luas.

Kesimpulan penelitian ini bahwa meskipun perubahan tuntutan pada tahap replik diperbolehkan, diperlukan pedoman hukum yang lebih jelas untuk mengatur penggunaan diskresi jaksa. Hal ini bertujuan untuk menjaga keseimbangan antara keadilan dan kepastian hukum, serta menghindari ketidakkonsistenan dalam penerapan hukum, agar keputusan yang diambil tetap sejalan dengan prinsip-prinsip hukum yang adil.

Kata Kunci: Perubahan Tuntutan; Replik; Eksaminasi Khusus; Diskresi Jaksa.

1. INTRODUCTION

The Valencya case in Karawang attracted public attention because the public prosecutor changed the sentence from one year in prison to acquittal. The public prosecutor's acquittal of the defendant seemed to cause controversy. This controversy arises because the actual circumstances do not comply with the applicable regulations. Article 182 paragraph (1) letter a of Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) states that after the examination is declared complete, the prosecutor shall file criminal charges. However, in the Valencya case in Karawang, the prosecutor filed for acquittal.

Indonesia, as a country based on the rule of law, certainly has its own characteristics and traits. This is confirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. From a constitutional law perspective, the state is an organization of power. This organization of power works to serve the interests of the people in order to achieve the mandate of Pancasila and the national ideals as outlined in Paragraph IV of the Preamble to the 1945 Constitution of the Republic of Indonesia. These national ideals are to protect all Indonesian citizens, promote general welfare, educate the nation, and participate in establishing world order based on freedom, eternal peace, and social justice. In order to achieve these national ideals, the powers of state institutions need to be limited.¹ This is necessary to prevent arbitrariness, overlapping authority, and the concentration of power in a single institution. The division or separation of powers is intended to guarantee the human rights of the Indonesian people so that they are not treated arbitrarily by those in power.

Law has a strategic and dominant position in the life of the nation and state. Law enforcement can be carried out if it is equipped with law enforcement instruments. Good law enforcement instruments must be systematic and implemented in accordance with the laws

¹ Refo Rivaldo Fransiscus Pangaribuan, Toar Neman Palilingan, and Feiby S. Wewengkang, "Pembagian Kekuasaan Dalam Sistem Pemerintahan Di Indonesia," *Lex Administratum* 7, no. 5 (August 2023): 2.

and regulations. The system in question is the criminal justice system. According to Remington and Ohlin, the criminal justice system is a system of approaches to the administration of criminal justice, and criminal justice as a system is the result of interaction between legislation, administrative practices, and social attitudes or behavior.²

The criminal justice system aims to promote public welfare so that social policies can be achieved within a short period of time, reducing crime and recidivism. Achieving this goal means that the criminal justice system is functioning properly.³ The role of law enforcement agencies in supporting the realization of a prosperous, just, and prosperous society is also important. This is in order to achieve balanced legal certainty and the realization of order in society.⁴

One of the law enforcement institutions is the Attorney General's Office of the Republic of Indonesia. Ideally, the Attorney General's Office of the Republic of Indonesia should be a modern, independent, and dignified law enforcement institution. Article 2 paragraph (1) of Law Number 11 of 2021 concerning amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia explains that the Attorney General's Office, in carrying out its functions related to judicial power, shall be independent. Prosecutors, as one of the instruments of law enforcement, must be able to carry out their prosecutorial functions while still paying attention to human rights values. Prosecutors, as law enforcers, have an obligation to uphold the authority of the government and the state and to protect the interests of the Indonesian people.⁵ A prosecutor must have binding behavior such as living in accordance with the norms that apply in society, paying attention to justice, benefit, and legal certainty, paying attention to human values, and being professional in thinking, attitude, and behavior.⁶

The Attorney General's Office is specifically responsible for prosecutorial authority, meaning that a public prosecutor cannot change charges arbitrarily. There are procedures and approvals from superiors that must be followed before changing charges. Examination is one of the procedures for changing charges. Examination in the context of the Attorney General's Office means testing or examining the prosecution's case.⁷ These prosecution products range from all administrative requirements for case handling, investigation processes, letters of instruction to investigators, termination of prosecution, indictments, responses to defendant objections, letters of indictment, replies, legal memoranda, and other prosecution products.⁸ Testing or examination in the examination is carried out by a higher authority or higher

² Ali Zaidan, *Menuju Pembaruan Hukum Pidana*, 1st ed. (Jakarta: Sinar Grafika, 2015).

³ *Ibid.*

⁴ Herman Indra Sakti, "Kebijakan Hukum Pidana Mengenai Kriteria Penyimpangan Perkara Tindak Pidana Oleh Jaksa Agung," *Badamai Law Journal* 6, no. 2 (2021): 240.

⁵ Imam Rahmaddani, "Pengawasan Kode Etik Jaksa Oleh Komisi Kejaksaan Guna Terwujudnya Jaksa Yang Profesional Dan Berintegritas," *Presumption of Law* 5, no. 1 (April 2023): 18–30, <https://doi.org/10.31949/jpl.v5i1.4403>.

⁶ *Ibid.*

⁷ Muh. Ibnu Fajar Rahim, *Jaksa Dr. Ibnu: Catatan 3 Tahun Menuntut (Kejaksaan Negeri Kabupaten Bekasi)*, ed. Abd. Kahar Muzzakir, 1st ed. (Makassar: Humanities genius, 2022).

⁸ *Ibid.*

leadership. The Attorney General, as the highest leader of the Attorney General's Office, conducted a special examination of the Valencya Case in Karawang, which was raised by the author. The special examination was carried out because the Valencya Case was considered to have violated the sense of justice, order, public interest, and public response to the case being handled. Article 35 letter c of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia regulates the special authority of the Attorney General, namely the authority to set aside cases in the public interest or based on the principle of opportunity. As a law enforcement agency, the Attorney General's Office not only has the authority to prosecute according to the Attorney General's Office Law, but also has the authority not to prosecute based on the principle of expediency.⁹

Previous studies have discussed the authority of prosecutors in changing criminal charges and examining controversial cases. Sudirdja (2023) examined five forms of prosecutorial discretion in Europe in the termination of cases but did not discuss changes in charges at the reply stage in Indonesian law.¹⁰ Lusia (2021) examined the validity of dismissal in the Valencya case but focused more on the chronology and factors that led to the dismissal of charges; the validity of the dismissal in the Valencya case; and the implications of legal discoveries and updates in Dominus Litis regarding the dismissal, compared to the legality of changes to the charges by the public prosecutor and the factors causing changes to the public prosecutor's charges in the Valencya case in Karawang.¹¹ Tantri, Rina (2024) discusses the Reconstruction of Criminal Law Politics regarding the examination of acquittals in the Valencya case, but does not examine changes in charges in general criminal cases.¹²

Unlike previous studies, this study specifically analyzes the legality of changes to charges during the reply stage and the role of special examination by the Attorney General in the Valencya case. This study is expected to fill a gap in the literature and make an academic and practical contribution regarding the discretion of prosecutors in the prosecution process in Indonesia. Based on the above background, the author is interested in further examining the "Legality of Changes to Public Prosecutors' Charges at the Replication Stage in the Valencya Case in Karawang." This article will discuss the legality of changes to public prosecutors' charges in the replication of the Valencya case in Karawang and the factors that led to these changes. This article concludes with the findings and recommendations of this study.

2. METHOD

Scientific truth is important in science because it forms the foundation for scientific progress.¹³ Scientific research methods arise with the use of precise language used in specific

⁹Mohamad Hani Anindito, "Mr. Ibnu Fajar Arif as Prosecutor Kejaksaan Agung Republik Indonesia Biro Hukum Dan Hubungan Luar Negeri," March 2023.

¹⁰Rudi Pradisetia Sudirdja, "5 Bentuk Diskresi Jaksa: Solusi Mengatasi Kepadatan Lapas Indonesia," *The Prosecutor Law Review* 1, no. 2 (Agustus 2023): 88–117.

¹¹Lusia Sulastris, "Keabsahan Penuntutan Bebas Dalam Kasus Valencya," *Krtha Bhayangkara* 15, no. 2 (2021): 351–68, <https://doi.org/10.31599/krtha.v15i2.1126>.

¹²Tantri Naratama and Rina Melati Sitompul, "Rekonstruksi Politik Hukum Pidana terhadap Eksaminasi Tuntutan Bebas dalam Kasus Valencya," *Law Jurnal* 4, no. 2 (2024): 115–22, <https://doi.org/10.46576/lj.v4i2.4810>.

¹³Jonaedi Efendi and Johnny Ibrahim, *Metode Penelitian Hukum Normatif Dan Empiris* (Depok: Prenada Media

fields of study. Research in the field of law will certainly use legal methods and language that are understood by legal experts and every developer of legal science.¹⁴ The research methods used in this study were normative legal and empirical legal methods. The normative legal approach refers to legal norms contained in legislation and court decisions, as well as legal norms that exist in society.¹⁵ This study also uses empirical legal methods by examining legal realities in society.¹⁶ This method uses court decision legal materials and employs interview techniques between researchers and data sources, namely prosecutors at the Attorney General's Office of the Republic of Indonesia, Legal and Foreign Affairs Bureau.

The approach used is an analytical one. The main purpose of analyzing legal materials is to conduct a conceptual examination of the meaning of the terms used in legislation, as well as how they are applied in practice and in legal decisions.¹⁷ An analytical approach was used to analyze the legality of the public prosecutor's amended charges in the Valencya case in Karawang. The research object used by the author was all information related to "The Legality of the Public Prosecutor's Change of Charges in the Valencya Case Replica in Karawang." In this study, the research object was Decision Number 256/Pid.Sus/2021/PN Kwg.

3. DISCUSSION

3.1. Legality of the Public Prosecutor's Change of Charges in the Valencya Case Replica in Karawang

Law enforcement is essential and substantial in the concept of the rule of law. Law enforcement is part of legal development that leads to efforts to implement, apply, and concretize the law. Law in real life is useful for restoring or reestablishing balance in the order of social, national, and state life.¹⁸ Changes to the charges made by the Public Prosecutor in the reply are not explicitly regulated in the Criminal Procedure Code. Prosecution is regulated in Article 1 point 7 of the Criminal Procedure Code, which states: "The action of the public prosecutor to transfer a criminal case to the competent district court in the manner and according to the procedures stipulated in this law with a request for it to be examined and decided by a judge in a court hearing". Article 182(1)(a) of the Criminal Procedure Code explains that the charges filed are criminal charges by the public prosecutor.

Changes to the charges in the reply are uncommon. Changes to the charges in the reply may occur if new facts are revealed during the examination of the main case. This is in line with the statement made by the Attorney General of the Republic of Indonesia at the Legal and Foreign Affairs Bureau, Muh. Ibnu Fajar Rahim, who argued that:¹⁹

Group, 2018).

¹⁴ *Ibid.*

¹⁵ Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2022).

¹⁶ *Ibid.*

¹⁷ Jonaedi Efendi and Prasetijo Rijadi, *Metode Penelitian Hukum Normatif dan Empiris*, 2nd ed. (Jakarta: Kencana, n.d.).

¹⁸ Edi Setiadi and Kristian, *Sistem Peradilan Pidana Terpadu Dan Sistem Penegakan Hukum Di Indonesia*, 1st ed. (Jakarta: Prenadamedia Group, 2017).

¹⁹ Mohamad Hani Anindito, "Mr. Ibnu Fajar Arif as Prosecutor Kejaksaan Agung Republik Indonesia Biro Hukum Dan Hubungan Luar Negeri."

Ideally changes to the indictment in the reply should be based on new facts that were not revealed during the examination of the main case. Such changes should occur after the prosecutor has read the indictment and before the reply is submitted. Usually, there are new facts that can be used as a basis for the public prosecutor to change the indictment.

The case of Domestic Violence Case Number 256/Pid. Sus/2021/PN Kwg, committed by the defendant named Valencya, is as follows:²⁰ The defendant, Valencya alias Nengsy Lim, is the wife of Chan Yung Ching, the husband (plaintiff/victim) in this case. In 2017, the victim, Chan Yung Ching, became suspicious of the defendant because she often left the house early in the morning and returned late at night, was often angry, the house was messy, and their child was constantly playing with a cell phone. On September 9, 2017, the victim, Chan Yung Ching, accidentally saw an intimate conversation between the victim and a man named Heri on WhatsApp. This incident caused the victim and the defendant's household to become disharmonious. In 2018, the defendant often got angry with the victim for no apparent reason, saying, "Hey dog, hey pig, get out of the house and divorce me." In early February 2019, the defendant again became angry with the victim and kicked her out of the house. On February 19, 2019, the victim left the house without taking any belongings or clothes to avoid the defendant. The victim lost her self-confidence, felt helpless, suffered from depression, and experienced psychosomatic symptoms as a result of being frequently scolded by the defendant.

The Karawang Public Prosecutor stated that the defendant Valencya committed psychological violence within the scope of domestic relations as stipulated in Article 45 paragraph (1) in conjunction with Article 5 letter b of Law Number 23 of 2004 concerning the Elimination of Domestic Violence and was sentenced to 1 year imprisonment. In his reply, the public prosecutor acquitted the defendant Valencya or at least released the defendant from all legal charges, restored the defendant's rights, and imposed the costs of the case on the state.

Based on the above decision, it is known that there was a change in the charges in the reply. Article 182 paragraph (1) letter a of the Criminal Procedure Code states: "After the examination is declared complete, the public prosecutor shall file criminal charges." In the Valencya case in Karawang, the public prosecutor filed charges of acquittal. Here, there was a difference between the applicable law and the actual circumstances. The discrepancy in question is that the public prosecutor sought acquittal in the Valencya case, whereas the Criminal Procedure Code stipulates that after the examination is completed, the public prosecutor shall file criminal charges.

The inconsistency between the law and the actual circumstances requires prosecutors to consider other applicable regulations. In carrying out their duties, prosecutors must also refer to Law No. 11 of 2021 on the Attorney General's Office of the Republic of Indonesia (Attorney General's Office Law) and the Attorney General's Office of the Republic of Indonesia Guidelines

²⁰ Pengadilan Negeri Karawang, "Kekerasan Dalam Rumah Tangga," *Putusan No. 256/Pid.Sus/2021/PN Kwg*, August 2021, https://sipp.pn-karawang.go.id/list_perkara/search.

2
12 Book No. 24 of 2021 on the Handling of General Criminal Cases. This is reinforced by the results of the author's interview with Prosecutor Shanty S. Sagala, from the Legal and Foreign Affairs Bureau of the Attorney General's Office of the Republic of Indonesia. It was found that:²¹

In prosecuting a case, the public prosecutor must consider not only one law but various aspects of existing laws. Terms or words based on the law do not necessarily refer only to procedural law or the Criminal Procedure Code, but must also consider the laws that give the prosecutor the authority to do so and the policies that will be related to the handling of the case.

10 Based on the interview results, it can be concluded that public prosecutors need to pay attention to various regulations. Article 8 paragraph (4) of Law Number 11 of 2021 concerning amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia states that: "In carrying out their duties and authorities, prosecutors shall always act in accordance with the law and their conscience, respecting religious norms, decency, and morality, and shall be obliged to explore and uphold the human values that exist in society, as well as always maintaining the honor and dignity of their profession." Guideline Book Number 24 of 2021 concerning the Handling of General Criminal Cases states that "a motion for acquittal may be filed if the alleged criminal act is not proven legally and convincingly due to the absence of the elements of a criminal act."

2 Chapter II Article 6E paragraph 3 letter I regarding criminal charges in Manual Number 24 of 2021 on the Handling of General Criminal Cases explains that:²²

Taking into account the legal facts presented at trial, in cases where there is a conflict between legal certainty and justice or public interest, the public prosecutor shall file charges based on justice or public interest.

2 Based on legal facts, there is a conflict between the Criminal Procedure Code and the Attorney General's Office Law and Attorney General's Office Manual Number 24 of 2021 concerning the Handling of General Criminal Cases. In filing charges, the public prosecutor prioritizes justice and the benefits of the law. The public prosecutor filed a motion for acquittal in his reply as stipulated in the Attorney General's Office Law and the Attorney General's Office Manual on the Handling of Criminal Cases. This was because the public prosecutor felt that Valencya, as a wife, did not deserve to be criminally punished for scolding her husband.

2
30 Chapter II Article 6 E paragraph 7 of Manual Number 24 of 2021 concerning the Handling of General Criminal Cases contains a plan for acquittal, which explains that:²³ (a) basically, the public prosecutor is not permitted to request acquittal in a case because this is contrary to the duty and authority to prosecute criminal cases as referred to in Article 182 paragraph (1) letter a of the Criminal Procedure Code; (b) However, because witness testimony and expert testimony as evidence are statements made in court as referred to in Article 185 of the Criminal

²¹ Mohamad Hani Anindito, "Mrs. Shanty S Sagala as Prossecutor in Kejaksaan Agung Republik Indonesia Biro Hukum Dan Hubungan Luar Negeri," March 2023.

²² Kejaksaan Republik Indonesia, *Buku Pedoman Penanganan Perkara Tindak Pidum Tahun 2022* (Jakarta: Kejaksaan Republik Indonesia, 2022).

²³ *Ibid.*

Procedure Code, if there is a change in testimony before the court and there is no other evidence, so that a case that was previously considered to have sufficient evidence becomes completely unproven, or if new evidence is revealed during the trial and with this evidence the defendant's guilt is not proven, in the interests of justice and truth, the public prosecutor must propose to file an acquittal.

The above explanation shows that, in principle, the Public Prosecutor is not permitted to waive charges because this would violate Article 182(1)(a) of the Criminal Procedure Code. An exception to the waiver of charges may be made if there are provisions in Manual No. 24 of 2021 concerning the Handling of General Criminal Cases. These provisions include the discovery of new evidence during the trial, so that a case that was previously considered to have sufficient evidence becomes completely unproven. The Valencia case is one such case where new evidence was found during the trial, so that the defendant Valencia, who previously fulfilled all the elements (sufficient evidence) of a criminal offense, was found not guilty. Psychological violence within the household was not proven as stipulated in Article 45 paragraph (1) in conjunction with Article 5 letter b of Law No. 23 of 2004 concerning the Elimination of Domestic Violence. Another reason is that the facts of the trial revealed that a wife who scolded her husband over household matters was charged with a criminal offense, which violated the sense of justice in the community. This led the public prosecutor to change the criminal charges to acquittal, thereby prioritizing the principle of justice over the principle of legal certainty.

Chapter II Article 6 letter e number 13 of Manual Number 24 of 2021 concerning the Handling of General Criminal Cases explains that:²⁴ "Taking into account the legal facts in the trial, in cases where there is a conflict between legal certainty and justice or benefit, the public prosecutor shall file charges based on justice or benefit." With his new findings in the Valencia case trial, the public prosecutor broke the principle of legal certainty by prioritizing the principle of justice. Breaking the principle means changing the criminal charges to acquittal, which is contrary to Article 182 paragraph (1) letter a of the Criminal Procedure Code.

The permissibility of changing criminal charges to non-criminal charges is confirmed by the author's interview with Prosecutor Shanty S. Sagala, from the Attorney General's Office of the Republic of Indonesia, Legal and Foreign Affairs Bureau:²⁵

From a legal and philosophical perspective, prosecutors should not be trapped and constrained by the case handling process or by facts that are not actually true. Prosecutors need to be given the space to express their final opinion, if they know the true opinion, including by providing free prosecution.

Prosecutor Sandhy Handika from the Attorney General's Office of the Republic of Indonesia, Legal and Foreign Affairs Bureau, believes that:²⁶

Prosecutors are not rigid when they see injustice in a legal case, even if there are

²⁴ *Ibid*, hlm.57

²⁵ Mohamad Hani Anindito, "Mrs. Shanty S Sagala as Prossecutor in Kejaksaan Agung Republik Indonesia Biro Hukum Dan Hubungan Luar Negeri."

²⁶ *Ibid*.

regulations that restrict them. Prosecutors can override these rules with Article 8 of Law Number 11 of 2021 and the Indonesian Attorney General's Office Handbook Number 24 of 2021. Prosecutors prosecute based on truth, justice, and the obligation to explore and uphold human values (meaning they are not bound by rules if they see injustice).

A similar sentiment was expressed by Prosecutor Muh. Ibnu Fajar Rahim, from the Attorney General's Office of the Republic of Indonesia, Legal and Foreign Affairs Bureau:²⁷

Prosecutors essentially prosecute based on justice and truth, in accordance with the teachings of God Almighty, so prosecutors do not prosecute based solely on applicable laws and regulations. Legal certainty can be set aside in the name of justice and truth based on God Almighty.

In relation to the Valencya case discussed by the author, there has been a conflict between the principles of justice and legal certainty. The conflict in question is that a wife who scolds her husband over household matters should not be criminally prosecuted, even if she has fulfilled the elements of the applicable regulations. Gustav Radbruch stated that: "the purpose of law is to fulfill justice, benefit, and certainty in social life."²⁸ Gustav Radbruch believed that the principle of justice should be placed first, followed by the principle of utility, and finally the principle of certainty.²⁹ This theory is called the theory of legal priority. This theory was also presented by Prosecutor Sandhy Handika, from the Attorney General's Office of the Republic of Indonesia, Legal and Foreign Relations Bureau:³⁰

According to Gustav Radbruch, in order to achieve a legal objective, there is a theory of legal priority, whereby the first principle is justice, the second is utility, and the third is legal certainty. If these three principles conflict, the highest principle prevails (for example, if there is a conflict between justice and certainty, justice is chosen even though there is no norm for justice in legislation).

The Valencya case attracted public attention because, in addition to the change in criminal charges to non-criminal charges, the timing of the change in charges in the reply also raised questions. Prosecutors usually make changes to charges after the prosecutor has read out the charges until the time of filing the reply. The legal basis for the reply is written in Article 182 paragraph (1) letter b of the Criminal Procedure Code, which reads as follows: "Furthermore, the defendant and/or legal counsel shall submit their defense, which may be answered by the public prosecutor, with the provision that the defendant or legal counsel shall always have the last turn." The explanation of this article only explains the term "may be answered" by the Public Prosecutor. It does not explicitly explain changes to the charges in the reply.

Referring to the progressive approach, changes to the charges in the reply can be made.

²⁷ Mohamad Hani Anindito, "Mr. Ibnu Fajar Arif as Prosecutor Kejaksaan Agung Republik Indonesia Biro Hukum Dan Hubungan Luar Negeri."

²⁸ Tata Wijayanta, "Asas Kepastian Hukum, Keadilan Dan Kemanfaatan Dalam Kaitannya Dengan Putusan Kepailitan Pengadilan Niaga," *Jurnal Dinamika Hukum* 14, no. 2 (May 2014): 219–219, <https://doi.org/10.20884/1.jdh.2014.14.2.291>.

²⁹ *Ibid.*

³⁰ Mohamad Hani Anindito, "Mr. Sandhy as Prossecutor in Kejaksaan Agung Republik Indonesia Biro Hukum Dan Hubungan Luar Negeri," March 2023.

1 This is because Article 182 paragraph (1) letter b of the Criminal Procedure Code states: "furthermore, the defendant and/or legal counsel shall submit their defense, which can be answered by the public prosecutor, with the provision that the defendant or legal counsel always has the last turn." The meaning of "may be responded to" does not necessarily refer to Article 182 paragraph (1) letter a of the Criminal Procedure Code, which states: "After the examination is declared complete, the public prosecutor shall submit criminal charges." In line with the progressive approach, the public prosecutor is not obliged to file criminal charges (it could be an acquittal, dismissal, or inadmissible charges) and may also change or differ because it is only explained as "may be answered." The author would like to emphasize that "may be answered" does not necessarily correspond to the previous article, which explains that after the examination is complete, criminal charges are filed.

1 The reply should actually be a space or a place for evaluating the charges that have been brought. Before the case is decided, there is always room to change the charges or the stance of the public prosecutor or the defendant, as in the Valencia case in Karawang. Prosecutor Shanty S. Sagala, from the Attorney General's Office of the Republic of Indonesia, Legal and Foreign Affairs Bureau, stated that:³¹

If the prosecutor's indictment cannot be changed, then the plea becomes irrelevant. The essence of the plea becomes questionable: what is the point of a plea? If the purpose of the plea is only for the judge, then it is better to send a letter to the judge rather than read it out in court. The purpose of reading out the indictment and plea is to accommodate changes in attitude in the reply and to provide space for response.

1 A reply is a space for changing demands before a case is decided. The public prosecutor is given another opportunity to express their opinion. The public prosecutor can use the reply to provide another perspective or to reaffirm their demands. The public prosecutor considers the values of justice in the reply to the Valencia case in order to seek material truth. The hope is that the court can find and decide on the case in accordance with the expected material truth.³²

3.2. Factors Causing Changes in the Public Prosecutor's Demands in the Valencia Case Replica in Karawang

5 The Public Prosecutor in carrying out his duties or handling cases must be based on applicable laws and cannot refer to only one regulation. The Public Prosecutor's demands must be based on existing legal principles (the principle of legal certainty, the principle of justice, and the principle of benefit). The Public Prosecutor in carrying out his duties must also comply with the orders of his superiors, in this case the Attorney General. The Attorney General, as the highest authority in the Attorney General's Office and the highest leader in terms of prosecution, must be able to regulate the implementation of the duties and authorities of the Attorney General's Office in Indonesia. The Attorney General, as the highest public prosecutor,

³¹ Mohamad Hani Anindito, "Mrs. Shanty S Sagala as Prossecutor in Kejaksaan Agung Republik Indonesia Biro Hukum Dan Hubungan Luar Negeri."

³² Wahab Aznul Hidayat et al., "Realizing Restitution Justice for Child Victims of Sexual Assault Regulated Child Protection," *Jurnal USM Law Review* 7, no. 2 (2024): 26–37, <https://doi.org/https://doi.org/10.26623/julr.v7i3.9697>.

has the authority to formulate and control the direction and policy of case handling in order to achieve the prosecution of criminal cases in Indonesia.³³ It's explained in the replica that:³⁴

With the enactment of Law No. 16 of 2004 on the Attorney General's Office, the authority of the Attorney General as the highest public prosecutor remains as stipulated in Article 18 paragraph (1). This means that the Attorney General is not only the highest leader in the Attorney General's Office but also the highest leader in the field of prosecution in any institution authorized by law.

The change in the demands in the Valencya case was due to a special examination conducted by the Attorney General as the highest authority in the Attorney General's Office. The definition of examination based on the Explanation of Article 3 of the Attorney General's Decree Number 33 of 1993 is a means for leaders to assess the competence and technical capabilities of prosecutors or public prosecutors in carrying out their duties or resolving criminal cases, both from a technical legal and administrative perspective.³⁵ The purpose of the examination is to improve professionalism in terms of both case administration and legal technicalities.³⁶ Another purpose of the examination is to investigate and assess the activities carried out by prosecutors. This is to identify any technical, legal, or administrative shortcomings or weaknesses. Such shortcomings can cause cases to not proceed as originally intended.

Article 2 of Attorney General Decree No. 33 of 1993 Examinations are divided into two types, namely: 1) General Examination: A general examination is an investigation and examination of case files that have been completed by the prosecutor or public prosecutor and have obtained permanent legal force; 2) Special Examination: Special examination is the investigation and examination of specific case files that attract public attention or other cases that, in the opinion of the leadership, require examination. The Attorney General's Office has the authority to select and take case files that have been examined for re-examination. Examinations are conducted on cases that are being handled or have been completed by prosecutors or public prosecutors and have obtained permanent legal force.

The examination of a case is based on three criteria, namely:³⁷ 1) Controversial means that there are legal flaws or irregularities in the judicial process. This means that there are errors in the determination of formal and substantive law, such as the determination of law that is contrary to the principles of law enforcement and the sense of justice of the community. The prosecution process in the Valencya case in Karawang caused controversy because it was contrary to the sense of justice that exists in society; 2) It has a social influence or impact on society, both communities that can feel the direct or indirect impact of the case at the national

³³ Ani Triwati, "Pengesampingan Perkara Demi Kepentingan Umum Pascaputusan Mahkamah Konstitusi," *Jurnal Ius Constituendum* /6, no. 1 (2021): 32–54, <https://doi.org/10.26623/jic.v6i1.2092>.

³⁴ Pengadilan Negeri Karawang, "Kekerasan Dalam Rumah Tangga."

³⁵ Titin Apriani, "Penerapan Eksaminasi Terhadap Kasus Hukum Di Lingkungan Kejaksaan," *Jurnal Ganec Swara* 17, no. 1 (March 2023): 67–67.

³⁶ *Ibid.*

³⁷ Erizka Permatasari, "Subjek Dan Objek Eksaminasi Perkara," *Hukum Online*, September 2021, <https://www.hukumonline.com/klinik/a/subjek-dan-objek-eksaminasi-perkara-lt6144aa713beda/>.

and international levels; 3) An examination may also be conducted if there are indications of judicial corruption, such as corruption, abuse of authority, or other forms of criminal violations and offenses. An examination is conducted if law enforcement officials feel that the law is not being properly and correctly applied.

The Valencya case is quite controversial, prompting the Attorney General to conduct a special examination. It is controversial because the Valencya case went viral on social media. The media reported that a wife who scolded her husband over domestic issues was charged with one year of imprisonment by the public prosecutor. This reporting sparked controversy over the Valencya case in Karawang. The public is concerned that they will face criminal charges if they have domestic problems similar to those in the Valencya case.

44 Gustav Radbruch's standard priority theory applies to the Valencya case, whereby the principle of justice can override the principle of legal certainty. This is explained in the Valencya case reply as follows:³⁸

In Valencya's case, the public prosecutor's demands violated the public's sense of justice because the victim was a housewife with two children who should have been protected by her husband. Valencya did not receive this protection and was instead reported by her husband. In order to satisfy the public's sense of justice, particularly towards the defendant Valencya, the Attorney General of the Republic of Indonesia took over the handling of the case on behalf of the defendant Valencya.

24 There are several factors underlying the change in demands from the results of a special examination conducted by the Attorney General, namely: the lack of a *sense of crisis* on the part of the Public Prosecutor. Public prosecutors do not adhere to Guideline Number 1 of 2021 concerning Access to Justice for Women and Children in Criminal Cases, and public prosecutors do not adhere to the "Seven Daily Orders of the Attorney General" in the performance of their duties.

12 The lack of sensitivity or *sense of crisis* on the part of prosecutors during the pre-trial and trial processes, carried out by the Karawang District Attorney's Office and the West Java High Court. Prosecutors should be able to better understand the feelings of both the victims and the perpetrators. This lack of sensitivity or sense of crisis is due to the principle of functional differentiation adopted by Indonesia. In an interview with the author, Prosecutor Muh. Ibnu Fajar Rahim, from the Legal and Foreign Affairs Bureau of the Attorney General's Office of the Republic of Indonesia, stated that:³⁹

Indonesia adheres to the principle of functional differentiation, placing investigators and prosecutors in separate roles. Prosecutors prove a case with a piece of paper from investigators, which then forces prosecutors to delve into the anatomy of a case. Prosecutors are forced to delve into the feelings and inner state of the victim through case files (to know these feelings, they should conduct a direct examination).

The prosecutor in Valencya's case should have been able to better understand and empathize with Valencya's feelings as a wife. The prosecutor was viewed as unfair by the public

³⁸ Pengadilan Negeri Karawang, "Kekerasan Dalam Rumah Tangga."

³⁹ Mohamad Hani Anindito, "Mr Ibnu as Prosecutor in Kejaksaan Agung Republik Indonesia Biro Hukum Dan Hubungan Luar Negeri," March 2023.

for demanding a one-year prison sentence for a wife who reprimanded her husband for his drinking problem. The results of the author's interview with Prosecutor Ibnu Fadjar, who was the prosecutor in the case, are as follows:⁴⁰

After being tried and re-examined (investigated), this valenciya case turned out to be a case involving a relationship between a husband and wife. The Public Prosecutor assessed that in the valenciya case, there was an imbalance between the reporter and the seeker of justice, so the Public Prosecutor exercised his rights as a prosecutor. The Attorney General stated that the prosecutor is one and the prosecutor is the owner of the case or dominus litis.

The Public Prosecutor should take note of such values and norms. The Public Prosecutor should demonstrate this sensitivity or sense of crisis from the investigation stage onwards, in order to minimize the occurrence of such cases.

The Public Prosecutor has also not yet adhered to Guideline Number 1 of 2021 concerning Access to Justice for Women and Children in Criminal Cases. The guideline explains that its scope covers the handling of criminal cases involving women and children who are facing legal proceedings at the stages of investigation, examination, pre-prosecution, prosecution, examination in court, and the implementation of court decisions that have obtained permanent legal force.

Evidence in Criminal Cases in General according to Chapter VI letter D number 1 letter c and letter d of Guideline Number 1 of 2021 concerning Access to Justice for Women and Children in Criminal Cases states that:⁴¹ For female perpetrators and/or children who commit criminal acts but there are circumstances such as: 1) A history of violence experienced at the time of committing or when the crime occurred; 2) Psychological/mental state at the time of committing or as a result of the crime; 3) Gender stereotypical conditions that bind them to a certain position or status in the family and/or society; 4) Dominant relationships that place them in a subordinate position; and/or 5) Other circumstances that led to the commission of the crime or reaction to the crime.

The Public Prosecutor establishes causality between the circumstances referred to in points 1) to 5) supported by statements, expert reports, social worker statements and/or social reports, as well as the consistency of evidence in accordance with the legal facts related to the criminal act.

In the event that causality as referred to in letter c exists, the criminal acts committed by the Female Perpetrator and/or Child may constitute grounds for justification or grounds for negating guilt. The above explanation shows that the Public Prosecutor has not considered Valenciya's role as a wife in bringing charges or during the pre-trial stage. The fact that Valenciya, as a wife, scolded her husband for one reason or another, and the marital dispute between husband and wife, should be grounds for justification and prevent Valenciya from being prosecuted.

⁴⁰ *Ibid.*

⁴¹ Maria I Tarigan et al., *Buku Saku Akses Keadilan Bagi Perempuan Dan Anak Dalam Perkara Pidana Pedoman Kejaksaan No.1 Tahun 2021*, ed. Nisa Istiani (Kejaksaan Republik Indonesia, 2021).

The evidence of domestic violence crimes is regulated in Chapter I, letter D, number 3, letter i of Guideline Number 1 of 2021 concerning Access to Justice for Women and Children in Criminal Cases, which states that:⁴²

Psychological violence is proven by the emergence of fear, loss of self-confidence, loss of ability to act, feelings of helplessness without having to prove the emergence of illness or obstacles to carrying out work duties or livelihoods or daily activities, except in cases where it is committed by a husband against his wife or vice versa.

It is explained in Decision Number 256/Pid.Sus/2021/PN Kwg that the victim already had evidence of psychological abuse committed by Valencya, but this evidence was excluded in Guideline Number 1 of 2021 concerning Access to Justice for Women and Children in Criminal Cases. This should be taken into consideration by the Public Prosecutor during the pre-trial process and during the prosecution. The Public Prosecutor may disregard this evidence due to the scope of the husband and wife relationship in Valencya's case, so that Valencya's actions can be considered a justifiable or excusable reason.

The next factor is that prosecutors at the Karawang District Attorney's Office and the West Java High Court did not follow the "Seven Daily Orders of the Attorney General." These Seven Daily Orders of the Attorney General serve as norms or rules in the handling of cases, which include:⁴³ Enhance capabilities, capacity, and integrity in exercising authority based on the law; prioritize conscience in every task, function, and authority; realize law enforcement that is oriented towards the protection of basic human rights; improve the handling of cases that concern the interests of the community; accelerate law enforcement that supports national economic recovery; maintain the neutrality of the prosecutorial apparatus in order to preserve national unity and integrity; and improve the transparency and accountability of the performance of the prosecutor's office.

Prosecutors and public prosecutors must comply with the Attorney General's Daily Orders. Points 2, 3, and 4, which explain the "Seven Daily Orders of the Attorney General," are very influential in Valencya's case. Public prosecutors should not be rigid when they see injustice in a legal case, even if there are regulations that restrict them. Public prosecutors can break these rules based on their conscience. From a legal and philosophical perspective, public prosecutors should not be trapped and constrained by the case handling process or facts that are not actually true. Public prosecutors need to be given the space to express their true opinions (their conscience).

Attorney General ST Burhanuddin has actually established a policy that prosecutions must always be based on law and conscience. The use of conscience is necessary to realize a more humane legal system. Conscience exists to bring benefits to legal justice for all parties. The Attorney General stated: "Conscience is not found in books, it only exists in the hearts of every human being, and for that reason, the sensitivity of law enforcement is very much

⁴² Mohamad Hani Anindito, "Mr Ibnu as Prosecutor in Kejaksaan Agung Republik Indonesia Biro Hukum Dan Hubungan Luar Negeri."

⁴³ Kejaksaan Negeri Batu, "7 Perintah Harian Jaksa Agung RI," November 2024, <https://kejari-batu.kejaksaan.go.id/program-jaksa-menyapa/>.

needed in handling every case."⁴⁴

Other factors are the principle of *dominus litis* and the principle of *nolle prosequi*. The Attorney General's Office is a law enforcement agency that has the principle of *dominus litis* and waits for charges from the Public Prosecutor.⁴⁵ Other factors are the principle of *dominus litis* and the principle of *nolle prosequi*. The Attorney General's Office is a law enforcement agency that has the principle of *dominus litis* and waits for charges from the Public Prosecutor.⁴⁶

Dominus Litis means that only prosecutors have the right to prosecute; no other body or institution has this right. Etymologically, "*dominus*" comes from Latin, meaning "owner," while "*litis*" means "case." When translated, "*dominus litis*" means "owner or controller of the case," implying that control over prosecution policy in a country must be exercised by a single entity, namely the Attorney General as the highest public prosecutor, who leads and supervises prosecutors in the performance of their duties.

Regarding the principle of *dominus litis*, the author also interviewed Prosecutor Sandhy Handika from the Legal and Foreign Affairs Bureau of the Attorney General's Office of the Republic of Indonesia, who said that:⁴⁷

In Valencya's case, the principle of *dominus litis* was applied because the prosecutor, as the controller of the case, had the authority to file or not file charges and could withdraw the case. Basically, the Public Prosecutor adheres to the principle of prosecuting based on justice and truth, even if it is unfair and untrue, as long as there is certainty that the case will be withdrawn. This is not regulated in the Criminal Procedure Code but is returned to the principle, so that the *dominus litis* principle, if confronted with the law, will not be met.

The same thing regarding the principle of *dominus litis* was explained by Prosecutor Fadjar, who was the Public Prosecutor during the Valencya case, namely:⁴⁸

The prosecutor handles the case and, as the owner of the case, has the authority to determine whether or not the case is suitable for trial. Before being transferred to court, an investigation is conducted to determine suitability, as the prosecutor assesses whether the requirements for a particular act have been met. The principle of *dominus litis* is the guideline for public prosecutors in seeking justice. The authority to amend charges was used by the public prosecutor in amending the reply in the Valencya case.

The next principle used is the principle of *nolle prosequi*, which is held by the Attorney General and the Public Prosecutor. The principle of *nolle prosequi* is derived from Latin and

⁴⁴ Tsarina Maharani and Bayu Galih, "Jaksa Agung: Penerapan Hukum Dengan Hati Nurani Merupakan Kebutuhan," *Kompas.Com*, n.d., <https://nasional.kompas.com/read/2021/09/02/09222561/jaksa-agung-penerapan-hukum-dengan-hati-nurani-merupakan-kebutuhan>.

⁴⁵ Gede Putera Perbawa, "Kebijakan Hukum Pidana Terhadap Eksistensi Asas Dominus Litis Dalam Perspektif Profesionalisme Dan Proporsionalisme Jaksa Penuntut Umum," *Arena Hukum* 7, no. 3 (December 2014): 335-335, <https://doi.org/10.21776/ub.arenahukum.2014.00703.2>.

⁴⁶ Pengadilan Negeri Karawang, "Kekerasan Dalam Rumah Tangga."

⁴⁷ Mohamad Hani Anindito, "Mr. Sandhy as Prossecutor in Kejaksaan Agung Republik Indonesia Biro Hukum Dan Hubungan Luar Negeri."

⁴⁸ Mohamad Hani Anindito, "Mr Ibnu as Prosecutor in Kejaksaan Agung Republik Indonesia Biro Hukum Dan Hubungan Luar Negeri."

1 can be interpreted as "we will not prosecute any further."⁴⁹ It is explained in the Valencia case reply that in the public interest, based on the principle of "nolle prosequi," the Attorney General can determine the direction of a criminal prosecution both before and during the trial. The public prosecutor also has the authority to refuse to continue criminal proceedings against the defendant. The factors that the author has outlined in the article above are the causes of the change in the Public Prosecutor's indictment in the Valencia case reply in Karawang.

4. CONCLUSION

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Based on the results of research on the legality of changes to the public prosecutor's charges in the Valencia case above. First, Article 182 paragraph (1) letter a of the Criminal Procedure Code states that after the examination is declared complete, the public prosecutor submits criminal charges that are set aside in the Valencia case. The change from criminal charges to acquittal is regulated in the Attorney General's Office Law and Guideline Book Number 24 of 2021 concerning the Handling of General Criminal Cases. This shows that changing criminal charges to acquittal is permitted (legal) with certain conditions. The change in charges in the Valencia case in Karawang was because the public prosecutor prioritized the principle of justice over the principle of legal certainty. The public prosecutor also considered truth, conscience, and the One Almighty God. Second, the change in the charges in Valencia's case was made due to a special examination conducted by the Attorney General. The Attorney General considered Valencia's case to be controversial and to have a social influence or impact on society. The results of the special examination found several factors that led to the change in charges. These factors were the public prosecutor's lack of a sense of crisis; the public prosecutor's failure to adhere to Guideline No. 1 of 2021 on Access to Justice for Women and Children in Criminal Cases; and the public prosecutor's failure to adhere to the "Seven Daily Orders of the Attorney General" in the performance of their duties.

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⁴⁹ Bakhrul Amal, "Nolle Prosequi Sebagai Inovasi Baru Di Bidang Hukum Acara Pidana," *Al-Jinayah: Jurnal Hukum Pidana Islam* 8, no. 2 (December 2022): 109–109, <https://doi.org/10.15642/aj.2022.8.2.102-116>.

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