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## RE-EXAMINATION OF THE SUSPECT IN THE PROCESS OF SUBMITTING EVIDENCE AT THE CIREBON CITY DISTRICT ATTORNEY'S OFFICE

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### Abstract:

**Background.** A good law enforcement process is the highest hope for the community, especially for justice seekers entangled in legal problems. Problems in the law enforcement process often occur at the pre-prosecution level.

**Aims.** This study aims to analyze the process of re-examination by the Public Prosecutor against the suspect when handing over evidence at the Cirebon City District Attorney's Office. In Indonesian criminal procedure law, this process is regulated by Law No. 8 of 1981 concerning the Criminal Procedure Code and Law No.11 of 2021 concerning Amendments to Law No.16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.

**Methods.** This research identifies two main problems: (1) the juridical review of the re-examination by the public prosecutor, and (2) whether the process falls under the category of additional examination. The research method used in this research is empirical juridical. The legal research approach is conducted through literature study and interviews.

**Result.** The results of this study indicate that the re-examination conducted by the Public Prosecutor is not part of the additional examination as stipulated in Article 30 paragraph (1) letter e of Law No. 16 of 2004.

**Implementation.** Therefore, the actions of the Public Prosecutor in the process of handing over evidence are categorized as administrative and substantive research in the standard procedure before the case submission to the prosecution stage.

**Keywords:** Re-examination, Additional Examination, Submission of Suspects and Evidence

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## INTRODUCTION

Criminal procedure law regulates all facets of the criminal investigative process, encompassing actions by law enforcement, prosecutors, and the judiciary. Law No. 8 of 1981 concerning the Criminal Procedure Code, better known as the Criminal Procedure Code, is a criminal procedural law in Indonesia. Law enforcement frequently encounters obstacles in implementing criminal procedure.

An effective law enforcement procedure represents the paramount aspiration for the community, particularly for those pursuing justice among legal challenges. Issues in the law enforcement procedure frequently arise at the pre-prosecution stage. The Pre-Prosecution Mechanism in Indonesia is governed in a general sense by Article 14 letter b of the Criminal Procedure Code, which indirectly elucidates pre-prosecution: "The public prosecutor possesses the authority to conduct a pre-prosecution if deficiencies in the investigation are identified, while considering Article 10 paragraphs (3) and (4), by offering guidance to enhance the investigation process undertaken by investigators."

The pre-prosecution mechanism is referenced explicitly in the elucidation of Article 30, paragraph (1), letters a and e of Law No. 16 of 2004 regarding the Prosecutor's Office, which states: "In executing the prosecution, the Prosecutor may undertake a pre-prosecution to oversee the investigation's advancement after obtaining the Warrant for the commencement of the investigation, receiving and reviewing the case file from the investigator, and issuing directives to ensure its completion by the investigator to ascertain whether it can be forwarded to the prosecution stage." The Prosecutor's Office is obligated and authorized to finalize specific cases and to do supplementary investigations, considering the following rights;

1. It was not done to the suspect;
2. Only certain cases are challenging to prove, disturb the community, or state security, or threaten;

3. It must be completed within 14 days after the implementation of the provisions of articles 110 and 138 paragraph (2) of Law Number 8 of 1981 concerning the Criminal Procedure Code; and
4. In its implementation, it is coordinated with investigators.

Based on the content of the above provisions, it can be concluded that the Public Prosecutor carried out the pre-prosecution. Suppose there are deficiencies in the investigation process. In that case, the public prosecutor is given the authority to provide instructions in order to improve the investigation file at the pre-prosecution stage, and if, in the implementation of a particular case, the prosecutor can conduct additional examinations with the provisions as in the explanation of article 30 paragraph (1) letter e. However, if the case file is complete, investigators will hand over the suspect and evidence to the public prosecutor.

Then Andi Hamzah explained that to complete the case file, additional examination was carried out by paying attention to several things, such as the examination was not carried out on the suspect, only for certain cases, and it must be completed within 14 days in accordance with articles 110 and 138 paragraph 2 of the Criminal Code and the principles of coordination and cooperation with investigators.<sup>1</sup>

In its implementation, when handing over suspects and evidence at the Cirebon City prosecutor's office, the public prosecutor continues to research suspects and evidence. As was the case at the time of the submission of the suspect and evidence in the narcotics/drug case on behalf of defendant R, several things were again asked about the Examination Report, which the public prosecutor had previously examined. This indicates whether the research conducted by the public prosecutor can be considered an additional examination.

## METHOD

This study employs an empirical juridical method, a legal research strategy involving literature reviews and interviews. This technique analyzes relevant legal provisions and law enforcement methods, particularly with transferring suspects and evidence from investigators to the public prosecutor at the Cirebon City District Attorney's Office.

The analysis involved scrutinizing the legal standards that regulate the public prosecutor's jurisdiction in re-examining suspects and evidence. This research juxtaposes normative regulations with actual practices in the field, utilizing a case study from the Cirebon

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<sup>1</sup> Andi Hamzah, 2008, *Indonesian Criminal Procedure Law*, Jakarta Sinar Grafika, p. 160  
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City District Attorney's Office. The analytical results determine if the prosecutor's re-examination action is encompassed within the supplementary examination or falls under the administrative jurisdiction during the transfer of suspects and evidence.

## **DISCUSSION**

### **Legal rules for additional examinations conducted by the Public Prosecutor**

An additional examination by the prosecutor's office is a review undertaken by the prosecutor to address a particular case file submitted by a police investigator, prompted by the prosecutor's belief that the file is incomplete or flawed. Initially, it is essential to understand how the case file can be transmitted to the prosecutor's system. Prosecutors and investigators maintain an institutional and functional interaction within criminal procedures. The Criminal Code governs functional relationships, whereas each organization's technical specifications or implementation instructions oversee institutional relationships. The relationship between the investigator and the prosecutor commences when the investigator informs the prosecutor of initiating the inquiry (SPDP). The SPDP facilitates coordination between investigators and public prosecutors following the initiation of investigative operations after the investigation procedure has been completed. This aligns with Article 109, paragraph (1) of the Criminal Code stipulates that "when the investigator has commenced an investigation into a criminal act, the investigator must inform the public prosecutor."

Alongside the SPDP, the interaction between investigators and public prosecutors regarding arrests and detentions encompasses the prolongation of detention, confiscation, and the submission of case files. The prosecutor must be notified once the investigation is concluded. Stage I submission is the procedure wherein investigators submit case files to the prosecutor or public prosecutor. The submission of phase I is governed by Article 8, paragraph (2) of the Criminal Code, which stipulates that "the investigator submits the case file to the public prosecutor," followed by Article 8, paragraph (3), letter a, which provides "in the initial stage of the case investigator." The public prosecutor possesses the authority to get investigation case files from investigators. Article 14 of the Criminal Code delineates the jurisdiction of the public prosecutor. Obtain and scrutinize investigative case files from investigators or assistant investigators. Conduct a pre-prosecution if there are inadequacies in the investigative process, adhering to the stipulations in Article 110, paragraphs (3) and (4), and guide the enhancement of the investigation. Authorize an extension of detention, execute detention or additional custody, and/or modify the status of the prisoner after the case being

assigned to the investigator. Issue an indictment. Assign the case to the court. Serve the defendant with a notice detailing the date and time of the trial, along with a summons for both the defendant and witnesses to attend the scheduled hearing. Initiate legal proceedings. Concluding the matter under legal principles. To execute further activities within the parameters of duties and responsibilities as public prosecutors under the stipulations of this law. Conduct the assessment of judges.

Upon receipt of the file, the prosecutor will scrutinize the case documentation submitted by the investigator. According to the Criminal Code, the examination of this file solely assesses the completeness of the case file submitted by the investigator. The formal and material requirements constitute the completeness of the case file. In compliance with the Attachment to the Technical Instructions of the Deputy Attorney General for General Crimes Number B-401/E/9/1993 regarding the Execution of Pre-Prosecution Responsibilities, including the Suspect's Identity, Notice of Commencement of Investigation (SPDP), Investigation Warrant, Arrest Warrant, Detention Warrant, Examination Minutes, Witness Examination Minutes, Suspect Examination Minutes, Detention Minutes, and additional documents. It must be entirely finalized to satisfy the formal criteria. Simultaneously, the material's comprehensiveness encompasses the purported criminal act, components of delicacy, *tempus delicti*, *location delicti*, evidence, the suspect's positional part, among others. If incomplete, the prosecutor issues directives and returns the file for the investigator to finalize, pursuant to articles 110 and 138, paragraph (2) of the Criminal Code. In summary, the Criminal Procedure Code stipulates that the prosecutor may only provide guidance to investigators regarding deficiencies in the case file and is not permitted to amend or supplement the file submitted by the investigator. Article 30, paragraph (1), letter E of Law No. 16 of 2004 of the Republic of Indonesia grants prosecutors the ability to finalize case files. The article asserts that the prosecutor's office possesses the responsibility and authority to "complete specific case files and may conduct supplementary examinations prior to referral to the court, which is coordinated with investigators during this process." Consequently, additional examinations encompass all measures undertaken to finalize the case file, including but not limited to the summoning and interrogation of witnesses, experts, and suspects, the review of documents, searches, confiscation, and other actions to gather evidence to complete the case file. The Criminal Procedure Code differs from Law No. 16 of 2004 regarding the Prosecutor's Office of the Republic of Indonesia. These discrepancies are conflicting concerning the prosecutor's authority to perform supplementary examinations. This situation arises from the rising

incidence of criminal activities in Indonesia and the obsolescence of the Criminal Code, a remnant of the colonial period, which fails to address modern offenses as it is not encompassed under its provisions. The Prosecutor or Public Prosecutor is permitted to perform supplementary examinations according to Article 30 paragraph (1) letter E of Law No. 16 of 2004 regarding the Prosecutor's Office of the Republic of Indonesia. Consequently, the prosecutor is empowered to perform supplementary exams. The prosecutor is permitted to conduct further examinations to avert disappointment and unfairness for the crime victim, as well as to prevent the release of the suspect or defendant from charges, so ensuring the objectives of criminal law are fulfilled. Nonetheless, the Public Prosecutor is permitted to perform supplementary examinations solely under specific circumstances, and such examinations cannot be executed in every instance. The elucidation of Article 30, paragraph (1), letter E of Law No. 16 of 2004 regarding the Prosecutor's Office of the Republic of Indonesia indicates that, for the prosecutor to finalize the case file, supplementary examinations must be conducted, taking into account the following considerations: The suspect was not subjected to it. Applicable solely to matters that are challenging to substantiate, may disrupt the community, or threaten state safety. It must be finalized within fourteen (14) days following the enactment of the stipulations in articles 110 and 138, paragraph (2) of the Criminal Code; The notion of collaboration and coordination with investigators. Consequently, it may be inferred from the elucidation of Article 30, paragraph (1), letter E of Law No. 16 of 2004, which governs the Prosecutor's Office of the Republic of Indonesia, that the prosecutor is permitted to perform supplementary examinations solely concerning evidence. Incidents are distressing the community. Factors that may jeopardize national security. The Public Prosecutor may refrain from conducting further exams in situations not covered by the aforementioned three articles; nonetheless, the investigator may perform additional examinations at the request or direction of the Public Prosecutor. The investigators' failure to finalize the case file and/or present at least two pieces of evidence to prosecute the criminal, as mandated by the Public Prosecutor, indicates a challenging case to substantiate. According to Article 183 of the Criminal Procedure Code, a minimum of two (2) valid pieces of evidence is required. Nonetheless, there remains an absence of clarification regarding the phrase "that can disturb the community." Essentially, every criminal case possesses the capacity to disrupt the community; however, this is evidently not the intended implication of the phrase, as it would permit further investigations in each instance. Consequently, establishing criteria or

measurements "that may be concerning to the public" is somewhat challenging; yet, one criterion is how the media reports a case.

In the Letter of the Deputy Attorney General for General Crimes No., the third provision clarifies. B-466/E/VI/1991, subsequently rendered invalid by the Letter of the Deputy Attorney General for General Crimes No. B-536/E/11/1993, that "endangering the state's safety" refers to offenses distinct from subversion. The letter need not reference the crime of subversion as delineated in statute No. 11/PNPS/1963 about the Eradication of Subversion Activities, since this offense is governed by a specific procedural statute, granting the prosecutor the authority to initiate an inquiry. Law No. 26 of 1999, on the Repeal of Law No. 11/PNPS/1963, has annulled the aforementioned legislation. This aligns with the execution observed in the Corruption Crime case regarding Article 30, paragraph (1), letter D of Law No. 16 of 2004, which grants the Prosecutor's Office the authority to investigate corruption offenses. This authority is further delineated in the Attorney General's Regulation No. PERJA 039/A/JA/10/2010, as amended by Attorney General's Regulation No. PER 017/A/JA/07/2014. For clarity, the prosecutor's power to undertake an investigation need not be stated in this classification. The state's safety is jeopardized by criminal activities delineated in the Criminal Code, particularly those specified in Book II, Chapters I to V, which pertain to Crimes against the State. Crimes Against the Dignity of the President and Vice President. Offenses Against Allied Nations and Allied Heads of State and Their Representatives. Offenses Against the Execution of State Responsibilities and Rights. Offenses against the community. The Public Prosecutor has a timeframe that must be adhered to while performing extra examinations. The Attorney General's Circular Letter No. SE-003/J.A/12/1991 stipulates in sub A point 9 that additional examinations must be conducted within 14 days following the Public Prosecutor's receipt of the case file, suspects, and evidence. The Attorney General's Circular states that a Decree of Termination of Prosecution (SKP), as outlined in Article 140 of the Criminal Code, will be issued if the supplementary examination is not concluded within fourteen days, particularly if the required evidentiary threshold is not satisfied.

### **Re-examination by the Public Prosecutor on the Process of Submission of Evidence.**

As outlined above, additional examinations conducted by the public prosecutor are performed solely in specific circumstances where the evidence is deemed uncomplicated. The narcotics case is not categorized as a complex evidentiary matter, as scientific methods, such as laboratory analysis of the chemicals involved, can be employed to elucidate the situation.

Corruption cases lack a direct scientific methodology for investigation, as they often involve individuals in positions of authority who misuse their power. Consequently, these cases necessitate extensive research or prolonged examinations for substantiation, rendering them particularly challenging to resolve. Narcotics and substances are excluded from challenging evidence. Nonetheless, should a criminal incident arise in a narcotics case involving a novel substance not delineated in the Regulation of the Minister of Health Number 30 of 2023 regarding the Reclassification of Narcotics, it suggests the potential for a case that may be challenging to substantiate. According to the aforementioned statement, the narcotics case is not deemed complex, provided that no novel narcotic substances have been identified. Consequently, the inquiry undertaken by the prosecutor at the Cirebon city prosecutor's office, upon the transfer of the suspect and evidence, is categorized as a re-investigation rather than an additional examination, aimed at elucidation. The suspect's research seeks to ascertain numerous factors, including identifying the suspect (mitigating inaccuracies in identity). Status of the suspect's detention (held, arrested, or not detained). One hundred convictions of suspects (recidivists and non-recidivists). The suspect's psychiatric status will determine accountability (whether mentally ill or not). The minutes of the investigation and the information are thus valid. Additional information is necessary for verification purposes. Subsequently, the suspect's investigation reveals a receipt report that evaluates the necessity of custody and establishes the appropriate type of detention for the suspect. The public prosecutor's assessment influences the decision to refer the case to court if the suspect contests the investigation's findings or the prosecutor's determination to cease prosecution based on restorative justice principles.

Letter evidence if at the investigation and pre-prosecution stage the suspect frankly admits his actions while in front of the trial he reneges or retracts his statement, or at least as an indication of the defendant's guilt under the provisions of article 188 of the Criminal Code and jurisprudence or as information given outside the trial under the provisions of article 189 paragraph (2) of the Criminal Code.

Point three refers to the transfer of responsibility for the suspect and the evidence from the investigator to the prosecutor. The submission indicates that the minutes of the suspect's receipt and examination are completed in writing by the suspect, rather than by the public prosecutor. If the suspect declines to answer the questions and/or sign the minutes of acceptance and investigation, the minutes will be signed by the public prosecutor and two witnesses who observed the alleged actions, along with a statement indicating the suspect's refusal to respond or sign, detailing the reason for their refusal. The role of a public prosecutor in pursuing

material truth within the due process of law, integral to the Indonesian Judicial System, necessitates prudence in case management to prevent maladministration. Consequently, the collection of legal evidence by the investigator must be both valid and legally obtained. To enable the public prosecutor to conduct legal discovery for the purpose of reinforcing the prosecution's success at trial.

Based on the above statement, the purpose is only to adjust and re-ensure that the case file is appropriate both materially and formally. Then Andi Hamzah in his book stated firmly that additional examinations by the prosecutor were only exceptions. This means that additional examinations can only be carried out in certain cases where proof is considered difficult.<sup>2</sup>

## CONCLUSION

1. The Public Prosecutor's re-examination of the suspect does not constitute an additional examination as delineated in Article 30 paragraph (1) letter e of Law Number 16 of 2004 about the Prosecutor's Office of the Republic of Indonesia. This study was conducted to verify the suspect's identity, ensure the accuracy of the case file, and clarify the evidence before the prosecution procedure.
2. Additional investigations can only be carried out in some instances that are difficult to prove, disturb the public, or endanger state safety, and their implementation is time-limited and must be carried out in coordination with investigators. Based on the information of the functional prosecutor, the case of narcotics/drugs is not included in cases that are difficult to prove because of the support of scientific evidence (such as laboratory tests), so they are not eligible for additional examinations by prosecutors.

Therefore, instead of additional examination as required by law, the actions taken by the Cirebon City Public Prosecutor in narcotics cases at handing over suspects and evidence are an administrative and substantive research as part of the standard procedure before transferring the case to the prosecution stage.

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