



# The Position of the Principle of Legality vs the Principle of Opportunity in the Accemination of the Prosecutor's Demands in the Replic Agenda (Valencya Case Study at the Karawang State Attorney)

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## ABSTRACT

Withdrawing criminal charges against Valencya during a trial's replication stage has generated debate, seemingly balancing the principles of legality and opportunity. This issue is significant because the Prosecutor in the Valencya Case has effectively assumed the role of Legal Advisor. This study presents a descriptive analysis of normative research within the criminal procedure system. By detailing the placement of legal charges in the Valencya case, a thorough analysis is conducted regarding the Public Prosecutor's authority in determining the legality and the discretion to discontinue prosecution. The Principle of Opportunity justifies discontinuation efforts in charge acquisition, even when clearance requirements are conducted in the replica agenda. While prioritizing legal interests to achieve justice for victims, the principle of legality can be waived, aligning with the concept of restorative justice in the Prosecutor's Office agenda.

**Keyword:** Position, Legality Principle, Opportunity Principle, Accusation, Prosecutor's Demands

## ABSTRAK

Menarik kembali tuntutan pidana terhadap Valencya dalam sebuah persidangan yang telah memasuki tahap replikasi menimbulkan pro dan kontra, seolah dimulai berdasarkan prinsip-prinsip legalitas dan kesempatan. Hal ini dianggap penting karena fungsi Jaksa Penuntut Umum dalam Kasus Valencya telah mengambil alih posisi Penasihat Hukum. Hasil karya ilmiah ini berupa penelitian deskriptif analisis normatif dalam sistem hukum acara pidana. Dengan menggambarkan penempatan tuntutan pidana dalam kasus Valencya, kami kemudian melakukan analisis mendalam terhadap norma-norma mengenai wewenang Jaksa Penuntut Umum dalam menempatkan kepalanya pada legalitas dan depowering kelalaian penuntutan. Kesimpulan dari ketentuan Prinsip Kesempatan membenarkan upaya depowering dalam perolehan tuntutan, meskipun persyaratan pembersihan dilakukan dalam agenda replika. Sementara posisinya untuk kepentingan hukum dalam mencapai keadilan bagi korban, prinsip legalitas dapat dikesampingkan sebagai bentuk konsep keadilan restoratif dalam agenda Kejaksaan.

**Keyword:** Posisi, Prinsip Legalitas, Prinsip Kesempatan, Tuduhan, Tuntutan Jaksa Penuntut



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## 1. Introduction

The Valencya tragedy, also known as Nengsy Lim, in the alleged case of Domestic Violence reported by her husband, has progressed to a new stage in the Criminal Procedure System. While the filing requirements are considered final, in the Replication agenda, the filing conditions appear as if the prosecution has been terminated with the acquittal of Defendant Valencya.<sup>1</sup> The Valencya case garnered widespread public attention as it became viral across various media platforms. Valencya, a resident of Karawang, became a topic of discussion among different segments of society. The story began in 2000 when Valencya entered into a

<sup>1</sup>Article 140 paragraph (2) letter a, Criminal Procedure Code

relationship and married a foreign man (WNA) from Taiwan, identified by the initials C. Initially, C claimed to be single, but later it was revealed that he was a widower with three children. Moreover, C had no source of income or job to support his family, a fact he concealed due to his status as a foreigner.

As C lacked employment or income, Valencya, as his wife, had to work hard to provide for him and their children. In 2005, Valencya and her family relocated to Karawang to start a business, specifically a building supply store, as a means of livelihood. In 2016, C successfully obtained Indonesian citizenship (WNI).

However, after obtaining Indonesian citizenship, conflicts arose in Valencya's marriage. Particularly in 2018, issues began to surface in their household. C stopped supporting Valencya and the children, and he developed habits of alcohol consumption and gambling. Due to C's behavior, Valencya filed for divorce. In response, C accused Valencya of falsifying vehicle documents. The divorce process progressed slowly until January 2020, when Valencya was officially divorced from C. The court ruling required C to pay 13 million rupiahs per month for the children's expenses, but he failed to fulfill this obligation.

In late December 2020, C reported Valencya to the police for domestic violence (KDRT). He alleged psychological abuse, citing instances of verbal abuse when he was intoxicated. On January 11, 2021, Valencya was named a suspect in the domestic violence case and was sentenced to one year in prison by the Karawang District Court.<sup>2</sup>

Valencia also felt confused because the demands did not match the facts and thought he had been criminalized. Finally, the Valencia case went viral on social media, until the Attorney General came forward directly.<sup>3</sup> The Deputy Attorney General for General Crimes, St. Baharuddin, conducted an examination of the Valencian domestic violence case at the Karawang District Prosecutor's Office. Subsequently, the Attorney General's Office took over the case and reviewed the prosecutor handling it. As a result, the West Java High Prosecutor's Assistant General Crimes was dismissed from his position. The Panel of Judges at the Karawang District Court acquitted Valencia of the charges of psychological domestic violence against her husband. The verdict stated, "With this verdict, the defendant Valencia has not been legally and convincingly proven guilty of committing a criminal act as charged by the public prosecutor."<sup>4</sup>

From the background provided, it is important to analyze the rationale behind the position of the Claims Examination in Valencya's case, particularly in relation to the concept of the Principle of Opportunity in the Attorney General's authority regarding the prosecution of criminal charges.<sup>5</sup> Apart from that, it will be linked to the concept of the principle of legality as the position of the prosecutor who is obliged to carry out prosecution in every criminal case.

## 2. Method

This academic study involves descriptive research within the criminal procedure system, focusing on the placement of legal charges in Valencya's case and analyzing the authority of the Public Prosecutor. It will conduct a detailed examination by applying the principles of legality and opportunity to scrutinize the acquittal claim against Defendant Valencya. The study will conclude with findings based on the application of established norms.

## 3. Result and Discussion

### 3.1 Position of the Examination of the Claims against the Defendant Valencya

The request for examination in the criminal justice system represents a significant event. "Examination" here refers to the review of an indictment by a prosecutor or an assessment of a court decision by a judge. It also involves legal annotation, which entails providing feedback on a judge's decision and the prosecutor's indictment.<sup>6</sup>

<sup>2</sup>Kompas.com, "Case Chronology of Wife Sentenced to 1 Year in Prison for Angering Drunken Husband, accessed from <https://www.kompas.com/tren/read/2021/11/17/113500465/kronologi-kas-istri-dituntut-1-tahun-penjara-cepat-marahi-suami-mabuk?page=all>, December 1 2023, at 20.00 WIB

<sup>3</sup>Detik.News, "Attorney General Saol Finally Claims Free Valencya: Puts Conscience First, Tuesday, November 23 2021, accessed from <https://news.detik.com/berita/d-5823841/jaksa-agung-soal-akhirnya-tuntut-bebas-valencya-kedepankan-nurani>, December 1, 2023 at 20.00 WIB

<sup>4</sup>Coverage 6.com. "The Judge's Reason for acquitting Valencya in the Case of Angering Her Husband for Being Drunk, accessed from <https://www.liputan6.com/news/read/4727247/alasan-hakim-vonis-bebas-valencya-dalam-kas-marahi-suami-because-mabuk>, December 1 2023, at 20.00 WIB

<sup>5</sup>Article 35 c Law no. 16 of 2004 concerning the Prosecutor's Office

<sup>6</sup>Online Law, "Subject and Object of Case Examination" accessed from <https://www.Hukumonline.com/klinik/a/subject-dan-object-eksamination-perkara-lt6144aa713beda>, on December 1 2023, at 21.00 WIB.

The shift in the criminal prosecution agenda towards an acquittal prosecution in the Valencya case, as per the Criminal Procedure Law, occurred during the Replik agenda. This appears to contradict the provisions of Article 140, paragraph (2), point a of the Criminal Procedure Code. This article grants the Prosecutor the authority to forego prosecution in line with the principle of opportunity. As AS Abidin Farid puts it, this principle grants the Public Prosecutor the authority to prosecute or not prosecute an individual or corporation that has committed an offense in the public interest, with or without conditions.<sup>7</sup>

The rationale behind the changes to Valencya's demands has led to strong criticism of the Attorney General. This criticism has been voiced through social media, which has highlighted the perceived injustice faced by Valencya. It is crucial that the initial opportunity on the part of the Public Prosecutor should have started during the pre-prosecution filing process. Research opportunities to uphold a sense of humanity towards Defendant Valencya depend on the thoroughness of the Public Prosecutor's research filing.<sup>8</sup>

Due to the viral nature of the case, where Valencya, who should have been the victim, garnered widespread attention, the Attorney General's Office directed the Attorney General to take charge of Valencya's case, also known as Nengsy Lim. The decision to withdraw charges was made following a specialized examination conducted by the Deputy Attorney General for General Crimes, acting on the directive of Attorney General ST Baharuddin, who paid special attention to this case.<sup>9</sup>

The Attorney General's decision to withdraw the Valencya case was due to a perceived lack of sensitivity or crisis awareness regarding the case, indicating a failure to handle it in accordance with established guidelines. Prosecutors are expected to approach cases with a sense of crisis, empathizing with the victim's experience to ensure a fair prosecution, highlighting the importance of prioritizing justice over legal certainty.<sup>10</sup>

Following perceived shortcomings in the handling of charges, which were seen as neglecting the interests of justice, the Attorney General's Office initiated an examination of the prosecutors involved in the Valencya Liem case. Subsequently, the Assistant for General Crimes at the West Java High Prosecutor's Office was reassigned to a functional prosecutor role at the Attorney General's Office. As a result, the Public Prosecutor at the Attorney General's Office withdrew the charges against Valencya, requesting an acquittal during the Replik agenda of the trial, reversing the previous charges.<sup>11</sup>

The concept of Claims Plan Policy, aimed at fulfilling the demands for justice, has long been regulated in the Attorney General's Circular Letter (SEJA) Number: 009/A/JA/12/1985, providing guidelines for criminal prosecution. This policy harmonizes cases, streamlining the public prosecutor's performance by establishing criteria for aggravating and mitigating factors.<sup>12</sup> However, problems were identified during the examination of demands, particularly in the investigation, pre-prosecution, and prosecution stages, where both the Karawang District Prosecutor's Office and the West Java High Prosecutor's Office were deemed lacking in a sense of crisis or sensitivity.<sup>13</sup>

The exclusion of cases based on public interest falls under the authority of the Attorney General, as stipulated in Article 35 letter c of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. The Attorney General serves as the leader and highest-ranking official responsible for overseeing and controlling the implementation of the duties and authority of the Prosecutor's Office. However, the authority to pursue cases, as indicated by the principle of opportunity or deponering, is not consistently applied during the prosecution stage.<sup>14</sup>

The actions taken by the Prosecutor's Office in the Valencya Liem case have faced widespread scrutiny concerning the legality and decisions made by the Attorney General. Following the domestic violence experienced by Valencya, it led to public outrage, with the prosecutor charging Valencya under Article 54

<sup>7</sup>Ibid, p. 17

<sup>8</sup>See Article 140 paragraph (2) point a of the Criminal Procedure Code, "In the event that the public prosecutor decides to stop the prosecution because there is not enough evidence or the incident turns out not to be a criminal act or the case is closed by law, the public prosecutor will state this in a decision letter."

<sup>9</sup>Kompas.com, "Viral on social media: Wife sentenced to 1 year for being angry with drunken husband, AGO carries out special examination", accessed from <https://www.kompas.tv/nasional/232312/viral-di-medsos-istri-dituntut-1-tahun-dengan-marahi-suami-mabuk-keagung-laksana-eksamination-besar>, December 3 2023, at 10.00 WIB.

<sup>10</sup>Subject and Object of Case Examination. (2021, September 28). Retrieved from Hukumonline.com: <https://www.hukumonline.com/klinik/a/subject-dan-object-eksamination-perkara-lt6144aa713beda/>

<sup>11</sup>Lusia Sulastri, "The Validity of Free Prosecution in the Valencya Case", KRTA BHAYANGKARA Journal, Vol. 15, no. 2 (2021), pp. 351-368

<sup>12</sup>Adam Ilyas, "Independence of the Public Prosecutor in the Tiered Prosecution Planning Policy for Determining Criminal Charges", Pandecta Journal, Volume 16. Number 1. June 2021 Page 120-129.

<sup>13</sup>Tempo.com "The prosecutor in the Valencya case was questioned by the Attorney General's Office. Accessed from <https://nasional.tempo.co/read/1528950/jaksa-kas-valencya-diperiksa-kejaksaan-agung>;; December 4, 2023.

<sup>14</sup>Op cit, Lusia Sulastri

point (1) in conjunction with Article 5 of Law No. 23 of 2004 concerning the elimination of domestic violence, carrying a sentence of 1 year in prison.

Community response indicated Considering the Prosecutor's authority, as stated in Article 35 sub c of Law no. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, and its explanation, the principle of opportunity is not explicitly defined. The law mentions that "The Attorney General can set aside a case based on public interest." The Attorney General's act of setting aside a case based on public interest is often referred to as *deponering*, defined in the Dutch-Indonesian Law Dictionary by H. Van Der Tas as not demanding, setting aside. Similarly, *seponeren* is used with the same meaning, indicating not demanding or setting aside.

The exclusion of cases based on public interest falls under the authority of the Attorney General, as stipulated in Article 35 letter c of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. The Attorney General serves as the leader and highest-ranking official responsible for overseeing and controlling the implementation of the duties and authority of the Prosecutor's Office. However, the authority to pursue cases, as indicated by the principle of opportunity or *deponering*, is not consistently applied during the prosecution stage.

The actions taken by the Prosecutor's Office in the Valencya Liem case have faced widespread scrutiny concerning the legality and decisions made by the Attorney General. Following the domestic violence experienced by Valencya, it led to public outrage, with the prosecutor charging Valencya under Article 54 point (1) in conjunction with Article 5 of Law No. 23 of 2004 concerning the elimination of domestic violence, carrying a sentence of 1 year in prison.

Community response indicated a perceived lack of alignment with their sense of justice, primarily because the accusation was based on psychological violence against the husband. In patriarchal cultures, the power dynamic often leads to acts of psychological and physical violence by a man against his wife. It appears contradictory that the Head of the Legal Information Center at the Attorney General's Office acknowledges irregularities from the pre-prosecution process to the prosecution process at the Karawang District Prosecutor's Office and the West Java High Prosecutor's Office, attributing it to a lack of sense of crisis or sensitivity.

It is imperative for a Public Prosecutor to consider factors such as the power dynamics within the relationship, possibly leading to psychological impact on the husband. Sensitivity to such issues is crucial, aligning with the restorative justice goals outlined in the Attorney General's main program, particularly in addressing domestic violence matters.

### *3.2 The Concept of the Principle of Legality as the Position of the Prosecutor who is Obligated to Carry Out Prosecution in Every Criminal Case*

Article 1 Number 6 letter a of the Criminal Procedure Code underscores that the Prosecutor holds the authority, as granted by law, to fulfill the duties of a public prosecutor. The Prosecutor is entrusted with implementing court decisions that carry permanent legal force, determining whether a case will proceed after an investigation, and cannot delegate the trial to the district court, as per the stipulations in Article 139 of the Criminal Procedure Code.

The criminal procedure system upholds the principle of legality, as articulated in Article 3 of the Criminal Procedure Code, which states, "Trial shall be conducted according to the method regulated in this Law." In connection with the public prosecutor's exclusive authority in the prosecution position (*dominitis litis*)<sup>15</sup>, this aligns with the provisions outlined in Article 137 of the Criminal Procedure Code. The principle of legality mandates that the public prosecutor brings charges against individuals who violate criminal law regulations, embodying the principle of equality before the law.

Prosecution, in this context, involves any action taken to transfer a criminal case to a district court with jurisdiction, following the conditions and methods prescribed by law. This includes submitting a request for a judge to consider and decide on the case during a court hearing.

Investigators operate under the functional control of the prosecutor, placing the investigative function under the jurisdiction of the prosecutor's office. This arrangement offers advantages, such as ensuring a smoother prosecution process, as the prosecutor, in the role of controller (*Dominus Litis*), can guide the investigation process according to the evidentiary needs.

The Prosecutor holds a governmental position exercising state power in the realm of prosecution and must remain free from the influence of any external entity. In fulfilling its role, the prosecutor's office plays a

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<sup>15</sup>Andi Hamzah, "Indonesian Criminal Procedure Law" (Jakarta: Sinar Graphics, 2014), p. 16

crucial part in overseeing the criminal investigation process, particularly in controlling the case process (*dominus litis*). The prosecutor's office occupies a central and strategic position in the enforcement of the law.<sup>16</sup>

In carrying out prosecutorial authority, starting with the issuance of an Investigation/Investigation Commencement Order (SPDP), the Prosecutor's Office has determined who the Prosecutor will be to carry out file research, in order to carry out the pre-prosecution process in the case file.<sup>17</sup> With the appointment of a Prosecutor who has the authority to conduct research, shortly after the investigator sends a notification to the Prosecutor known as P16. Next, the prosecutor appoints a prosecutor who is responsible for filing and prosecution, known as P16-A.<sup>18</sup>

With regard to the application of charges, the Prosecutor will first carry out the process of submitting a letter of charge as stated in prosecution guidelines Number 24 of 2021, as in a case, whether the results of the investigation are complete or not, will be transferred to the district court for trial as regulated in Article 19 of the Criminal Procedure Code.

In essence, before handing over the case files to the court, the Public Prosecutor in general in the prosecution must:<sup>19</sup>

- a) Study and examine the case files submitted by investigators to see whether they are strong enough and there is sufficient evidence that the defendant has committed a criminal act.
- b) If there is not enough evidence, and it is not a criminal offense or in the public interest, then the prosecution will be terminated.
- c) After obtaining a clear and definite picture of the defendant's criminal act, based on this, the Public Prosecutor draws up an indictment.

Before initiating legal proceedings, the Public Prosecutor (JPU) is required to submit a prosecution plan (*rentut*) to their superiors in a series of stages. This practice of utilizing a prosecution plan has been officially recognized and applied by the Prosecutor's Office since 1985, as per the Attorney General's Circular Letter (SEJA) Number 9 of 1985 dated 14 December 1985, titled "Criminal Charges Guidelines." The official term for criminal charges based on SEJA is Criminal Charges Guidelines. Historically, the Prosecutor's Office has adhered to criminal prosecution guidelines, which outline the procedures for filing criminal charges. As per the guidelines issued in 1985, prosecutors are obligated to submit a prosecution plan before formally filing charges.<sup>20</sup>

The prosecution stage is crucial and integral to the law enforcement process. In the criminal justice system, the various processes should be clearly defined within legal frameworks to ensure the consistent application of the principle of legality in criminal procedural law. However, the concept of implementing a prosecution plan is not explicitly mentioned in the provisions of the Criminal Procedure Code, either explicitly or implicitly.<sup>21</sup>

In practice, the sequence of proceedings begins with the opinion of the Public Prosecutor, who is directly involved in the field and understands the dynamics of the trial. The case progresses through various stages and ultimately reaches the Attorney General after passing through the Head of the Technical Field Section, whether in the general criminal field or specifically at the District Attorney's Office and Prosecutor's Office. At this point, when in the hands of the Attorney General, considerations extend beyond just juridical aspects to encompass sociological, cultural, and even economic dimensions.<sup>22</sup>

In the Valencia case, upon examining the provisions from the initial stages of pre-prosecution in the context of the principle of legality, an error is evident that led to the withdrawal of the prosecution, raising doubts about its validity.<sup>23</sup> From various definitions of charges in the Criminal Procedure Code, it can be inferred that when charges originate from the prosecutor, Article 197, point (e), refers to criminal charges, not

<sup>16</sup>Ragil Listiyaningrum, "Public Prosecutor's Right to Independence and Prosecution Planning in Criminal Law Enforcement", *Verstek, Journal of Procedural Law*, Volume 10 Issue 3, 2023.

<sup>17</sup>See Article 14 point b of the Criminal Procedure Code "conduct pre-prosecution if there are deficiencies in the investigation by taking into account the provisions of Article 110 paragraph (3) and paragraph (4), by providing instructions in order to perfect the investigation from the investigator"

<sup>18</sup>Op Cit, Ragil Listiyaningrum

<sup>19</sup>Zulkarnain, 2013, "Criminal Justice Practice:", (Malang: Setara Presss, 2013), p. 69

<sup>20</sup>Vivi Arfiani Siregar, "Policy Analysis of Prosecution Plans (*Rentut*) in the Indonesian Prosecutor's Office", *Das Solen Law Journal*, Vol 4 No. 2 (2020).

<sup>21</sup>Op cit, Ragil Listiyaningrum

<sup>22</sup>Op cit, Vivi Arfiani Siregar

<sup>23</sup>Op cit, Lusiana Sulastri.

demands. Therefore, according to the law, the prosecutor's role is limited to attempting to implement the judge's decision.

In standard criminal cases, acquittal is typically not an option. However, in the Valencya case, the Attorney General withdrew the case file and sought acquittal. This action essentially equates the prosecutor's function in the Valencya case to that of a legal advisor, deviating from the expected role as a public prosecutor.

The decision of the prosecutor to withdraw the demand for a one-year prison sentence, resulting in Valencya's release, was noted by criminal law expert Professor Hibnu Nugroho. Some perceive it as an application of restorative justice grounded in reflective justice, testing the sensitivity of the prosecutor. Professor Hibnu also noted that while withdrawing a charge after it has been read and substituting it with an acquittal is a serious violation of the Criminal Procedure Code, it remains permissible under the provisions of legal sciences in the Criminal Procedure Code (KUHP).<sup>24</sup>

#### 4. Conclusion

The examination of charges against Defendant Valencya is not explicitly defined in criminal procedural law. While Article 14 of the Criminal Procedure Code outlines the prosecutor's authority to receive and examine investigative case files, the principle of opportunity justifies ignoring claims and opportunities in depowering efforts for free claims. The acquittal claim, presented during the Replik agenda, signifies a legal reform allowing prosecutors to withdraw charges. The application of the principle of opportunity, as the authority of the Attorney General, underscores the importance of considering public interest, particularly through justifications based on a sense of crisis or sensitivity that prosecutors must possess. This approach enables prosecutors to empathize with the victim's emotions and thoughts, ensuring a fair prosecution. Prosecutors prioritize the principle of justice over legal certainty. The Valencya case, with its gratuitous prosecution, establishes a connection between the discovery and legal reform in the Dominus Litis case and the prosecution of gratuitous claims in the Valencya case.

The concept of the Principle of Legality defines the Prosecutor's position, obliging them to conduct prosecutions in every criminal case, implement court decisions with permanent legal force, and determine case resolution after investigation, without delegation to the district court. To ensure the optimal implementation of charges as part of the principle of legality, the Prosecutor initiates the process by submitting a letter of demand, as outlined in internal prosecution guidelines (Number 24 of 2021). This practice involves the flow of opinions from the Public Prosecutor, who must engage with the parties directly involved in the field, understanding the trial dynamics. This anticipates negligence in assuming sensitivity without the need for accusations in prosecution, addressing challenges experienced by Valencya.

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