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*RESEARCH ARTICLE*

# APPLYING THE ATTORNEY GENERAL'S PRINCIPLE OF OPPORTUNITY IN ECONOMIC CRIMES: A STUDY ON DIGNIFIED JUSTICE THEORY FOR NATIONAL WELFARE

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***Abstract***

The concept of the oportunitas principle, originating from the now-obsolete Article 8 of Law No. 15 of 1961, has endured through subsequent legal frameworks in Indonesia. This principle has evolved to grant the Attorney General, the highest Public Prosecutor, exclusive authority for its implementation, aligning with the current Prosecution Law and the guidelines of the Criminal Procedure Code. The oportunitas principle allows the Attorney General to refrain from prosecuting certain criminal cases to safeguard the public interest, with a formal decision document issued to ensure legal certainty and emphasize the prohibition of future prosecution in cases dismissed in favor of the public, particularly regarding economic crimes that impact the national economy. Harmonizing this principle with the evolving legal landscape reflects a delicate balance between societal needs and legal frameworks, helping to prevent the misuse of power. The dynamic nature of the oportunitas principle underscores its vital role in the Indonesian legal system, providing a nuanced perspective on the intersection of justice, public interest, and prosecutorial discretion.



## Introduction:-

The Center for Policy Strategy of the Indonesian Attorney General's Office advocates "Resolving Economic Criminal Cases by Prioritizing the Fulfillment of Duties for the Benefit of State Revenue." From this theme, the proposed topic for discussion is "Handling Economic Criminal Acts Harming the National Economy through the Use of Settlement Fines (Perspective of Article 35 Paragraph 1 Letter K of the Prosecution Law)." The term "handling" in the proposed topic presented by the FGD Committee above can be found in Law No. 11 of 2021 concerning the Prosecution Article 37, Article 39 of Law No. 11 of 2021 explains that "handling criminal cases" encompasses the complete procedural process under the prosecution's jurisdiction, as specified by laws governing criminal procedural law. Article 1, paragraph (1) of the Prosecution Law defines the prosecution as a government institution related to judicial power, exercising state power in prosecution and other authorities based on the law. This definition of the prosecution demonstrates that, in addition to prosecution, it is also a government institution with other authorities based on the law.

The delineation of the prosecution's functions underscores that, beyond its prosecutorial role, it possesses additional governmental responsibilities as stipulated by the law. This comprehensive definition aligns with the legislative framework outlined in Law No. 11 of 2021, emphasizing that the prosecution is an entity associated with judicial power, executing state authority in the realm of trial and other legally mandated capacities. Therefore, when



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addressing the proposed topic of handling economic criminal acts detrimental to the national economy through the utilization of settlement fines, it is essential to recognize the multifaceted role of the prosecution in upholding justice and fulfilling its broader legal responsibilities.

The formulation of the Explanation of Article 37, Article 39 of Law No. 11 of 2021 refers to the Code of Criminal Procedure (KUHAP) as the basis for the prosecution's authority in handling the entire process of "handling criminal cases." However, a potential exception to the phrase "entire process," as formulated in the Explanation of Article 37, Article 39 of the Prosecution Law, seems to be introduced in the Attachment to the Letter from the Head of the Center for Policy Strategy of Law Enforcement Number: B-796/K.1/Kpp.2/10/2023 dated October 19, 2023:

> The provision regarding the handling of criminal acts that cause economic losses to the state and the potential use of settlement fines in financial criminal cases, based on legislation, implies that the prosecution has the duty and authority to address criminal issues causing economic losses to the state from investigation to execution (own translation)

The duties and authority of the prosecution are specifically related to (1) addressing criminal acts causing state losses and (2) handling criminal acts involving settlement fines in economic offenses causing losses to the national economy, spanning from investigation to execution. The second set of duties and authority appears to be distinct from the prosecutorial role, indicating an additional facet of responsibilities for the prosecution. Perhaps this is why it is emphasized in the FGD TOR that legal experts' and practitioners' opinions are needed to strengthen the prosecution's duties and authority.

Reinforcing the prosecution's duties and authority pertains to its role in addressing criminal offenses, potentially encompassing prosecutorial powers and other authorities beyond prosecution. This is particularly relevant in cases involving causes of economic losses to the state, notably economic criminal offenses regulated by Emergency Law No. 7 of 1955 concerning the Investigation, Prosecution, and Adjudication of Economic Crimes, including but not limited to Taxation, Customs, and Excise.

It is important to note here that, as formulated in Article 284 paragraph (1) of Law No. 8 of 1981, concerning cases that existed before the enactment of the Criminal Procedure Code (KUHAP), the application of KUHAP is to be extended as much as possible. Thus, the purpose and intent behind Article 284 paragraph (1) of KUHAP are such that its enforcement comprehensively regulates the entire legal process without exception. KUHAP is the foundation for the prosecution's authority to handle all criminal cases, as elucidated in the Explanation of Article 37, Article 39 of Law No. 11 of 2021. The Explanation of Article 37, Article 39 specifies that KUHAP is the legal basis governing the entire process falling under the prosecution's jurisdiction to "handle criminal cases," encompassing both prosecution and other responsibilities, as stipulated by the laws governing criminal procedural law.

It should have been those two years after the enactment of the Criminal Procedure Code (KUHAP) on December 31, 1981; it would be the sole criminal procedural law applicable to all cases, as promised in Article 284 paragraph (2) of KUHAP. However, an exception is also provided within the same article (Article 284 paragraph (2)). It is stated there that for the time being (it is not specified when and for how long this temporary period will last), regarding specific provisions on criminal procedure as stipulated in certain laws, until there are changes or it is declared no longer valid, the particular conditions on criminal procedure regulated in those specific laws will still be used. The Explanation of Article 284 paragraph (2) letter (a) of KUHAP formulates that all cases refer to those transferred to the court. However, in the formulation of the provisions of the Prosecution Law, there is a possibility of issues that have not been transferred to the court. Settlement fines involve case resolution outside the court, wherein the cessation of proceedings outside the court can be achieved by paying a fine approved by the Attorney General.

The expectation that KUHAP would be the exclusive criminal procedural law for all cases was, however, accompanied by a provision allowing the continued use of specific criminal procedure provisions governed by certain rules. This exception, outlined in Article 284 paragraph (2) of KUHAP, stipulates a temporary period during which particular conditions on the criminal procedure from specific laws will persist until changes are made, or their invalidation is declared. The interpretation of "all cases" in Article 284 paragraph (2) letter (a) of KUHAP, defined as cases already transferred to the court, contrasts with the possibility, as indicated in the Prosecution Law, of cases yet to be brought before the court. Furthermore, the utilization of settlement fines to handle cases outside the court introduces an additional dimension to the legal landscape, where the termination of proceedings beyond the court is achieved through the payment of fines approved by the Attorney General.

The description or depiction above appears to suggest a legal issue or a legal problem in the form of overlap in the regulation of criminal procedural law according to Law No. 8 of 1981 concerning Criminal Procedure or the Criminal Procedure Code (KUHAP) as the generally applicable criminal procedural law (legigenerali) with specific provisions on criminal procedural law regulated in certain laws. In the Terms of Reference (TOR), it is mentioned that there are duties and authorities of the prosecution in addressing criminal offenses (both trial and non-prosecution) causing economic losses to the state, especially economic criminal offenses regulated by Emergency Law No. 7 of 1955 concerning the Investigation, Prosecution, and Adjudication of Economic Crimes, including, among others, Taxation, Fisheries, and Customs.

There is currently no up-to-date legislation explicitly regulating the duties and authority of the prosecution in addressing criminal offenses causing economic losses to the state, particularly economic criminal offenses, to support the principles outlined in Emergency Law No. 7 of 1955 concerning the Investigation, Prosecution, and Adjudication of Economic Crimes, including, among others, Taxation, Fisheries, and Customs. This legal gap extends beyond prosecution, involving the potential use of settlement fines.

In other words, there exists a legal vacuum or gap in regulations governing the duties and authority of the prosecution in addressing criminal offenses causing economic losses to the state, especially economic criminal offenses as stipulated in Emergency Law No. 7 of 1955 concerning the Investigation, Prosecution, and Adjudication of Economic Crimes, including matters related to Taxation, Fisheries, and Customs, beyond the scope of prosecution, notably through settlement fines. This gap is highlighted by Law No. 11 of 2021, which specifies economic criminal offenses, including those in Taxation, Fisheries, and Customs. It outlines the possibility of the prosecution seeking resolution through "settlement fines."

## Methodology:-

It is essential to note that the research, presentation, and brief discussion in this paper are grounded in the theory of Dignified Justice. The Dignified Justice theory postulates that Pancasila is the source of all legal principles[1]. This implies that only from Pancasila, as the highest law of the Indonesian nation, can all norms and legal principles governing every aspect of human life, including those discusssed in this paper, be derived [2].

This study uses normative juridical research.[3]The data collection method was collected through literature studies.[4][5]The library materials used are secondary data[6] supported by primary, secondary and tertiary legal materials. Primary legal materials consist of basic norms or rules, basic provisions or regulations, and laws and regulations. Secondary legal materials are books, research journal articles, previous research reports, mass media related to personal data protection; as well as tertiary legal materials such as the Black Law Dictionary, the Great Dictionary of Indonesian Language, and so on.

The Dignified Justice theory also asserts that no law, including philosophy, ideas, views, or legal principles addressed in this paper, can be sourced from outside the Pancasila Legal System. All legal regulations within the Pancasila Legal System, including legally binding court decisions and well-maintained state administration practices, constitute the essence of the nation's spirit (Indonesian Volkgeist) . Pancasila is the legal source from which rules, regulations, and legal principles are derived to humanize individuals (nguwongkeuwong). The Dignified Justice theory is not opposed to ideas from outside the Pancasila Legal System, including from the

[1]Prasetyo and Barakatullah, *Filsafat, Teori & Ilmu Hukum, Pemikiran Menuju Masyarakat Yang Berkeadilan Dan Bermartabat*; Prasetyo, *Keadilan Bermartabat Perspektif Teori Hukum*.

[2]Prasetyo, *Hukum Dan Teori Hukum: Perspektif Teori Keadilan Bermartabat*; Prasetyo et al., *Hukum Dan Keadilan Bermartabat: Orientasi Pemikiran Filsafat, Teori Dan Praktik Hukum*.

[3]Soekanto, Soerjono and Sri Mamudji, 1994, *Normative Legal Research, A Brief Review*, Jakarta, Raja GrafindoPersada, p. 13.

[4]Nazir, M, 2005, *Research Methods*. Jakarta, Ghalia Indonesia.

[5]Indriyanto, "HAWAII'S ECOLOGICAL IMPERIALISM: POSTCOLONIAL ECOCRITICISM READING ON KIANA DAVENPORT'S SHARK DIALOGUES."

[6] Hadikusuma, H, 1995, *Method of MakingWorking Papers or Thesis in Law*, Bandung, Mandar Maju.

Western legal tradition. However, all norms, legal principles, and the like from civilized nations and legal systems must be filtered through the lens of Pancasila .

Referring to the above Dignified Justice theory, as previously stated, the formulation in the Explanation of Article 37, Article 39 of Law No. 11 of 2021 concerning the Prosecution stipulates that "handling criminal cases" encompasses the entire process within the prosecution's jurisdiction, as regulated by laws governing criminal procedural law. In other words, the concept of "handling," according to the Prosecution Law, includes the entire process within the prosecution's general jurisdiction in dealing with criminal cases (both trial and non-prosecution). According to the Prosecution Law, the prosecution's public authority is reduced by the entire process falling under the prosecution's specific jurisdiction, as regulated by separate laws. The prosecution's authority further diminishes it held explicitly in Law No. 8 of 1981 concerning Criminal Procedure.

## Result and Discussions:-

This paper focuses on the prosecution's authority or the duties and authority of the Attorney General as regulated in Law No. 11 of 2021. The broad scope of the prosecution's authority outside the jurisdiction of prosecutors and public prosecutors, as stipulated in Law No. 8 of 1981 concerning Criminal Procedure, does not cover the procedural jurisdiction of the Attorney General related to "settlement fines." This is stated because the concept of "settlement fines" is only known in Law No. 11 of 2021 concerning the Prosecution of the Republic of Indonesia, precisely in the legal formulation of the Explanation of Article 35 paragraph (1) letter (k) of Law No. 11 of 2021. There is no concept of "settlement fines," nor is there a procedural authority of the prosecution related to "settlement fines" formulated or regulated in Law No. 8 of 1981 concerning Criminal Procedure or the Criminal Procedure Code (KUHAP)[7]. The regulation of "settlement fines" in Law No. 11 of 2021 must be connected to the formulation of Article 35 (1) letter (c). In this legal provision, the duties and authority of the Attorney General are specified. It is stipulated therein that the Attorney General has the responsibility and authority to set aside cases for the public interest. This duty and authority of the Attorney General cannot be found at all in Law No. 8 of 1981 concerning Criminal Procedure.

In line with the above title and description, it is necessary to discuss the duties and authority of the Attorney General in setting aside economic criminal cases that harm the national economy for the public interest, using "settlement fines." As mentioned above, this duty or authority is not prosecutorial. Therefore, it can be stated here that the procedure governing the authority of the Attorney General to set aside economic criminal cases that harm the economy for the public interest, as known in the Prosecution Law, is a specific provision of criminal procedure (lex specialis) outside the Criminal Procedure Code (KUHAP). As mentioned above, these duties and authorities of the prosecution, when scrutinized within the KUHAP, are said to be regulated by specific laws until changes are made or declared no longer valid.

The Prosecution Law recognizes the principle of opportunity. This principle is mentioned explicitly in the formulation of provisions related to Article 35, paragraph (1) letter (k) of the Prosecution Law. The dimension that explains the meaning of the opportunity principle that needs to be presented here is the formulation: considering that economic policies are executed by certain officials such as the Minister of Finance, etc., including the President, mentioned both in the Guidelines for the Implementation of the Criminal Procedure Code and the Prosecution Law, the Attorney General should consult them in implementing the opportunity principle. This is the essence of implementing the opportunity principle by the Attorney General in handling economic criminal offenses that harm the state's finances, namely considering the "public interest." The meaning of entertaining the public interest here is to consider what is presented by (opinions preceded by in-depth studies) officials whose duties and authorities are related to issues that harm state finances.

Furthermore, Article 35 (1) of the Prosecution Law states that the Attorney General has the duty and authority to handle criminal acts causing economic losses to the state and can use settlement fines in financial criminal cases based on legislation. In the Explanation of Article 35 paragraph (1) letter (k), it is stated: "The State's economy is an economic life organized as a joint effort based on the principles of kinship or independent community efforts based on government policies, both at the central and regional levels following the provisions of legislation aimed at providing benefits, prosperity, and welfare to the entire life of the people.In connection with that, "settlement fines" refer to the cessation of proceedings outside the court by paying a fine approved by the Attorney General. It is

[7]Prasetyo, Handayani, and Karo Karo, *Hukum Acara Pidana Reorientasi Pemikiran Teori Keadilan Bermartabat*.

explicitly formulated in the law that the use of settlement fines in cases of economic criminal offenses is one form of implementing the opportunity principle possessed by the Attorney General in (1) Tax crimes, (2) Customs crimes, or (3) Other economic crimes based on the Law.

The common understanding is that the settlement of cases outside the court is also recognized in the Indonesian Criminal Code (KUHP) through the right to drop prosecution. As a widely accepted understanding, this can only be done in cases classified as criminal offenses[8]. In this context, Economic Criminal Offenses, especially under Article 29 of the RechtenOrdonnantie (Customs Ordinance), are known by the term "schikking" or "settlement fine." Schikking is carried out by paying a certain maximum fine as an agreement between the Attorney General and the defendant. With the payment of the settlement fine, the case does not need to be referred to the court.

The common understanding is that settling cases outside the court is also recognized in the Indonesian Criminal Code (KUHP) through the right to drop prosecution. This shared understanding has been and can only be done in cases classified as criminal offenses. In this context, Economic Criminal Offenses, especially under Article 29 of the RechtenOrdonnantie (Customs Ordinance), are known by the term "schikking" or "settlement fine." Schikking is carried out by paying a certain maximum fine as an agreement between the Attorney General and the defendant. With the payment of the settlement fine, the case does not need to be referred to the court.

Similar to what is known in the current Prosecution Law, in the provisions mentioned above, the principle of opportunity is the legal basis for settling outside the procedure with a settlement fine. In other words, only the Attorney General is entitled or has the duty and authority to settle a case outside the procedure unless he delegates or transfers this authority to the Prosecutor General or the Head of the District Prosecution Office. The issue arises from the meaning of the term "schikking" mentioned above, which is already very different from the importance of the settlement fine known in the current Prosecution Law. In the past, "settlement fines" did not apply if the criminal act was considered a crime [9]. Currently, especially with the enactment of Law No. 1 of 2023, which only recognizes the concept of criminal acts without distinguishing between crimes and offenses, the difference in the meaning of settlement fines known in the past and in the current Prosecution Law is complete.

Settlement fines relate to resolving cases outside the court or what is known in the Prosecution Law as penal mediation. In this regard, it is essential to present the perspective of Mudzakkir, who proposes several categorizations or criteria to determine whether a case can be settled outside the court through penal mediation. The criteria include that the case is a criminal offense that does not fall under actionable, absolute, or relative offenses. Cases can also be resolved outside the court if the criminal offense is punishable by a fine and the offender has paid that fine. This is regulated in Article 82 of the Indonesian Criminal Code (Law No. 1 of 1946 concerning Criminal Law) and is known as the concept of afdoeningbuiten process. Furthermore, the resolution of criminal cases through penal mediation can be applied to criminal offenses falling under non-criminal violations, which are only punishable by a fine. Additionally, out-of-court settlements can be pursued for criminal offenses in administrative law that impose criminal sanctions as a last resort.

Similarly, resolutions outside the court can be employed for criminal offenses falling under the light/minor categories. In this context, law enforcement officials can exercise discretionary authority. Cases can also be settled outside the court if ordinary criminal offenses are stopped or not processed in court (dismissed) by the Attorney General following his legal authority. Criminal cases involving violations of customary criminal law can also be resolved outside the court through customary institutions[10]. Criminal acts or economic delicts are offenses that spread beyond the Criminal Code (Law No. 1 of 1946 concerning Criminal Law Regulations). As stated by Andi Hamzah, it is a fact that with each passing day, more and more delicts are spreading beyond the Criminal Code. Furthermore, Hamzah presents several reasons for the proliferation of delicts beyond the Criminal Code, including rapid social changes.

These changes need to be accompanied and followed by legal regulations with criminal sanctions, serving as what is quoted from Western thought and has been filtered through the values of Pancasila as the source of all legal sources

[8]Tresna, *Asas-Asas Hukum Pidana: Disertai Pembahasan Beberapa Perbuatan Pidana Yang Penting*, 193–94.
[9]Marpaung, *Tindak Pidana Penyelundupan Masalah Dan Pemecahannya*, 21.
[10]Mudzakkir, “Alternatif Dispute Resolution (ADR) Penyelesaian Perkara Pidana Dalam Sistem Peradilan Pidana Indonesia.”

in the form of "social engineering" and "social control." With modern life becoming increasingly complex, according to Hamzah, in addition to having enduring legal regulations (criminal) in the form of unification, such as the Criminal Code (KUHP), there is also a need for temporary criminal regulations. The emergence of delicts spreading beyond the Criminal Code is also due to many legal regulations in civil law, state administration, and especially public administration. The rules in the fields above must be linked to criminal sanctions. This linkage is intended to supervise and thus ensure compliance with these regulations. Various regulations in these fields, according to Hamzah, include regulations on labor relations, which are now more commonly known in the fields of industrial relations, agrarian affairs, forestry, banking, trade, industry, agriculture, marriage, general elections, fisheries, transportation, maritime affairs, cooperatives, and so on [11]. Hamzah also argues that in the past, the Attorney General resolved cases outside of the judicial process. It's not entirely clear, but what is meant by "outside the judicial process" here is outside the Criminal Procedure Code (KUHAP). The resolution of cases "outside the judicial process" is intended for offenses that are crimes and not limited to violations of rechtenordonnantie alone. However, according to Hamzah, the Attorney General also resolved cases of violations of the foreign exchange ordonnantie.

It is interesting to note here that, contrary to the earlier understanding, in Hamzah's interpretation, the principle of oportunitas should not be limited to violations but should encompass all offenses. By "all offenses" here, as in the system known in Law No. 1 of 2023 concerning the Criminal Code (New KUHP), only the terminology of criminal acts is used without distinguishing between crimes and violations. However, according to Hamzah, what should be considered is that the reason for using the principle of oportunitas to settle a case is for the public interest. Based on this, Hamzah emphasizes that the arguments justifying the concept or phrase "for the public interest" must be clear and objectively acceptable.

Based on the theory of Dignified Justice, which seeks to find legal principles, including the meaning of a legal principle formulation (legal concept), such as the meaning of the concept of public interest, it must be sought within the spirit of the Indonesian nation (Volkgeist)[12]. Therefore, regarding the concept of seponeering as mentioned above, in line with the understanding presented in the guidelines for implementing the Criminal Procedure Code (KUHAP), it is explained that the criteria for the public interest in applying the principle of oportunitas in Indonesia are based on the interests of the state and society, not for personal interests. Furthermore, it is stated in the Guidelines for the Implementation of the Criminal Procedure Code that the "setting aside of a case for public interest," which is the authority of the Attorney General, is not included in the "termination of prosecution." Therefore, it can be said that the Criminal Procedure Code (Law No. 8 of 1981 concerning Criminal Procedure Law) recognizes the existence of the principle of opportunities, which is always associated with the concept of dendadamai (compromise fine).

Thus, the manifestation of the principle of oportunitas, in this case, including its connection with "dendadamai" (compromise fine), does not need to be questioned. Considering the prevailing legislation in Indonesia, both in the Official Explanation of Article 77 of the Criminal Procedure Code (KUHAP), even though it does not explicitly mention the terminology of the oportunitas principle, and in Article 35 Letter (c) since its formulation in Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia, and still in the same article (Article 35 Letter (c)) according to the formulation changes in Law of the Republic of Indonesia Number 11 of 2021, it regulates that the Attorney General has the duty and authority to set aside a case for the public interest.

The realization of the oportunitas principle following the criteria of "for the public interest" to be used by the Attorney General can refer to the understanding of public interest as formulated in the Attorney General Law. In the past, for example, in the formulation of Article 8 of Law Number 15 of 1961 (no longer valid), there was no clarity about what was meant by "public interest." So, before the new Attorney General Law was formed, the meaning of public interest referred to the Guidelines for the Implementation of the Criminal Procedure Code. In practice, regarding setting aside cases involving public interest, the Attorney General always consulted with the highest officials (currently, there are no longer the highest officials, only high-ranking officials) of the state who have relevance to the case in question.

[11]Hamzah, *Delik-Delik Tersebar Di Luar KUHP Dengan Komentarnya*, 9.
[12]Prasetyo and Barakatullah, *Filsafat, Teori & Ilmu Hukum, Pemikiran Menuju Masyarakat Yang Berkeadilan Dan Bermartabat*.

The term "highest state official," according to the Guidelines for the Implementation of the Criminal Procedure Code, includes, among others, the Minister of Defense and Security, the Chief of Police, and often even the President. On this basis, in practice, in the past, and now strengthened by the current Attorney General Law, the criteria of "for the public interest" in the application of the oportunitas principle in Indonesia are no different from the understanding presented in the Guidelines for the Implementation of the Criminal Procedure Code. This understanding is based on the interests of the state and society and not on personal interests.

In addition to the reference above, it is explained in the Explanation of Article 35 Letter (c) above that "public interest" refers to the interests of the nation and the state and the interests of the wider society. Further clarification is provided in the Explanation of Article 35 Letter (c), both in Law No. 16 of 2004 and in the Explanation of the same Article in Law No. 11 of 2021, which amends Law No. 16 of 2004. It is explained that the phrase "public interest" in the formulation of Article 35 Letter (c) of Law No. 11 of 2021, which amends the formulation of Article 35 Letter (c) of Law No. 16 of 2004, refers to the interests of the nation and the state and the interests of the wider society. The meaning of the formulation of Article 35 Letter (c) of Law No. 11 of 2021 is further explained, which is relatively similar to the formulation in the previous law (Law No. 16 of 2004), that the Attorney General considers the advice and opinions of state authorities related to the matter.

Slightly different in formulation from Article 35 Letter (c) of Law No. 16 of 2004, the phrase "is the implementation of the oportunitas principle" in Article 35 Letter (c) of Law No. 11 of 2021 indicates that this is an authority solely within the hands of the Attorney General. In this regard, the authority to implement the oportunitas principle can only be exercised by the Attorney General. The execution of the Attorney General's authority can only be carried out after considering the advice and opinions of state authorities related to the matter.

## Conclusion:-

The understanding of the oportunitas principle, as mentioned above, has been recognized since the formulation of Article 8 of Law No. 15 of 1961 (Basic Prosecution Law), which is currently no longer in effect following the two laws mentioned earlier. The old law acknowledges the existence or manifestation of the oportunitas principle. In the formulation of the old law, it is stated that the Attorney General, as the Highest Public Prosecutor, can decide not to prosecute a criminal case before a criminal court trial based on actual circumstances, aiming to prevent any harm to the public interest, as mentioned above.

The purpose and intent of the law, as mentioned above, provide authority to the Attorney General, in this case, the authority according to the understanding of the oportunitas principle, to avoid the abuse of power in the implementation of the oportunitas principle. In this regard, the Attorney General is the only official granted the authority to implement the oportunitas principle. This authority to implement the oportunitas principle is not given to every prosecutor as a Public Prosecutor. This is in line with the rules in the current Prosecution Law and is consistent with the guidelines for implementing the Criminal Procedure Code, as the Attorney General is the highest Public Prosecutor.

To ensure legal certainty, according to the guidelines for implementing the Criminal Procedure Code, the Attorney General formalizes it in a decision document, a copy of which is given to the case being set aside for public interest. This decision document can also be used as evidence for the concerned parties. It should be noted that, according to the meaning in the guidelines for the implementation of the Criminal Procedure Code, concerning cases set aside for public interest, including economic criminal cases that harm the national economy, the Public Prosecutor is not authorized to prosecute the suspect in such cases in the future.

It is recommended that the Attorney General, through his authority, as formulated in the Prosecution Law, especially Article 35 (1) Letter (a), establishes and controls law enforcement and justice policies within the scope of the duties and authority of the prosecution; (b) effectively enforces the law provided by the legislation; which can be understood as a form of authority closely related to duties and authority to (c) set aside cases for public interest in a Regulation of the Attorney General, allowing for a settlement fee in economic criminal cases that harm the economy.

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