



## The Language Strategy of Power in the Separation of Case Files through the Concept of the Truth Game



Rocky Marbun<sup>1✉</sup> , Erli Sandiana<sup>2</sup> , Dellia Rahma Sari<sup>3</sup> 

<sup>1,2,3</sup> Faculty of Law, Universitas Pancasila, Indonesia

Corresponding: rocky\_marbun@univpancasila.ac.id

Received: 2025-06-17 | Accepted: 2026-04-18 | Published: 2026-05-02

### Abstract

The Criminal Procedure Code provides juridical rights based on the principle of functional differentiation, to the Public Prosecution Service of the Republic of Indonesia to make internal rules that will be implemented by the Public Prosecutor in the trial process of criminal cases. One of the authorities that is technically regulated by the Public Prosecutor's Office is the splitting of case files that contain elements of participation. This legal action is used to obtain witness testimony by confronting the Defendants. This article aims to show the violation of procedural law committed by the Public Prosecutor through its artificial authority in prosecuting criminal cases. The method used is a legal research method with a Trichotomy Relation Approach, namely the concept of Truth-Games based on secondary data. The result is that the Public Prosecutor utilizes internal rules as true knowledge in the form of written language and an Indictment to separate case files. The purpose of this legal action, was so that each defendant provide incriminating testimony against the other, under the shadows of criminal threats if they gave false testimony or refused to testify. Thus, this legal action is a violation of the principle of non-self-incrimination.

**Keywords:** Separation of Case Files; Truth-Games; Indictment; Public Prosecution; Power Language Strategy

### I. Introduction

This article discusses truth-games in the form of knowledge production as a juridical right of the Public Prosecutor to take legal action in the form of splitting case files (splitting) against criminal cases that contain aspects of participation. This juridical right is interpreted from the authority granted through Article 142 of the Criminal Procedure Code (CPC), by ignoring Article 141 of the Criminal Procedure Code through internal regulations from the Public Prosecutor's Office of the Republic of Indonesia. The truth-games are based on the ability to interpret written text through the affective function of language, which is not realised by the Public Prosecutor. The discussion in this article is to show that knowledge constructed based on juridical authority is seen as something that is justified and legally valid. However, the essence and existence of procedural law - basically, to ensure that every legal action applied under CPC must provide legal protection and respect for the human rights of every person suspected and accused in the process of resolving criminal cases. Therefore, this research is important to uncover the interests that are normatively hidden by the Public Prosecutor who ignores the rights of the accused.

CPC, in various legal literature, is believed to have the objective of seeking and discovering material truth. However, the researcher believes that, in principle, there is another fundamental purpose behind the enactment and ratification of the CPC, namely to serve as a barometer for fostering the 'attitude' of law enforcement officials in carrying out their functional duties based on the authority granted by the CPC to enforce criminal law, as emphasised in Consideration Letter c of the CPC.

Understanding how to "behave" based on this legal authority is, of course, inseparable from the philosophical foundation of the CPC, which is based on Pancasila and respect for human rights, as emphasised in Consideration Letter a of the CPC. However, the process of distilling this abstraction intersects with the ability to articulate it in the world of language. This is what Paul Scholten<sup>1</sup> emphasises, highlighting the commonality of issues between Law and linguistics, namely the problem of interpreting norms and reading signs/symbols in legal norms.

What law enforcement officials – particularly public prosecutors, who are the subject of this study – do not realise, that they are experiencing a sense of alienation (*gowerfen-sein*) in a common sense of the separation of legal science from linguistic science (language). However, in the view of Satjipto Rahardjo<sup>2</sup>, who asserts that when law depends on written texts, language plays the primary role in determining the meaning of those texts. As a result, the essence of a legal text becomes trapped in language games. Thus, rigid grammatical interpretation leads to the loss of justice as the purpose of law.

In response to this, the lack of awareness among academics and legal practitioners in positioning the CPC as a law – in principle, from the researcher's perspective, has the function of a mass communication instrument through its emphasis on the principle of legal fiction. Therefore, anyone who reads the law as a text disseminated through legal instruments, as understood by discourse analysis scholars, will produce three effects: cognitive effects (knowledge), affective effects (emotions and feelings), and behavioural effects (behavioural changes).<sup>3</sup>

When an understanding is reached as a result of interpreting legal texts, which is then actualised through legal authority in the form of discretionary power<sup>4</sup> in the law enforcement process, the Public Prosecutor – as the law enforcer – will have a dominant position. Therefore, as the holder of authority, the Public Prosecutor will make arguments that can be enforced based on power and force.<sup>5</sup> This means that an understanding that finds its articulation in language manifests itself as an understanding of the values contained therein (*habitus*), and will always be linear with action<sup>6</sup>. In other words, every utterance (speech) will be represented through an action (deed) that is the result of an interpretation of the legal norms hidden behind normativity.

Legal science – as if denying the direct link between written text as the visualisation of the convergence between understanding, speech acts (spoken language), and the actions of those in authority – in this case, the Public Prosecutor – to dominate the inferior binary opposition (the other)<sup>7</sup> as a subaltern group. For example, in the case of transferring case files to the District Court after declaring that the investigation has been completed. A Public Prosecutor is aware of the principle of *dominis litis* – which is distilled through Article 139 of the CPC – in the process of enforcing the law.

<sup>1</sup> Paul Scholten, *Struktur Ilmu Hukum*, ed. Bernard Arief Sidharta (Bandung: Alumni, 2011), 39.

<sup>2</sup> Satjipto Rahardjo, *Penegakan Hukum Progresif* (Jakarta: Penerbit Kompas, 2010), 10.

<sup>3</sup> Umi Halwati, "Analisis Foucault Dalam Membedah Wacana Teks Dakwah Di Media Massa," *At-Tabsyir, Jurnal Komunikasi Penyiaran Islam* Volume 1, no. 1 (2013): 145-58, <https://doi.org/http://dx.doi.org/10.21043/at-tabsyir.v1i1.456>.

<sup>4</sup> Soerjono Soekanto, *Faktor-Faktor Yang Mempengaruhi Penegakkan Hukum* (Jakarta: RajaGrafindo Persada, 2014), 5-7.

<sup>5</sup> J.A. Pontier, *Rechtsvoinding (Penemuan Hukum)*, ed. Bernad Arief Sidharta (Jakarta: Jendela Mas Pustaka, 2008), 8.

<sup>6</sup> Zulkarnain and Rocky Marbun, "Symbolic Domination in the Regulation of the Supreme Court Number 4 of 2016 Concerning the Prohibition of Reviewing Pre-Trial Decisions," in *Proceedings of the 2nd International Conference on Law Reform (INCLAR 2021)*, vol. 590 (Atlantis Press SARL, 2021), 57-62, <https://doi.org/https://doi.org/10.2991/assehr.k.211102.167>.

<sup>7</sup> Rocky Marbun, "Trikotomi Relasi Dalam Penetapan Tersangka : Menguji Frasa 'Pemeriksaan Calon Tersangka' Melalui Praperadilan," *Undang: Jurnal Hukum* 4, no. 1 (2021): 159-90, <https://doi.org/10.22437/ujh.4.1.159-190>.

The authority to separate case files (splittings) is normatively regulated in Article 142 of the CPC, with due regard to the provisions of Article 141 of the CPC. However, through the collaboration of the dominis litis principle – where the Public Prosecutor is often referred to as the “case manager”<sup>8</sup> – and the principle of functional differentiation, the idea of protecting the interests of prosecution is normalised through the production of new knowledge by the authority holder – in this case, the Attorney General's Office of the Republic of Indonesia, as outlined in the Circular Letter of the Deputy Attorney General for General Criminal Matters No. B-69/E/02/1997 on the Law of Evidence in Criminal Cases (SE JAMPIDUM No. B-69/1997) regarding criminal cases involving complicity, whether under Article 55 of the Criminal Code or Article 56 of the Criminal Code.

The analysis in this article is a critique of normative research on case file separation (splittings) as written by Sabirin (2021)<sup>9</sup>, whose research results show agreement with case file separation (splittings) in order to achieve legal certainty and justice. Additionally, it critiques the research conducted by Muhammadi Kholil Najih<sup>10</sup>, who approved of the practice based on testing the consistency of the defendants' answers. Furthermore, it complements the study conducted by Manik et al.,<sup>11</sup> who expressed disapproval of the splittings behaviour by the public prosecutor, which was viewed as a violation of the principle of non-self-incrimination, conducted normatively. The research conducted by Muhammadi Kholil Najih aligns with this article, but this research complements the Trichotomy of Relations approach<sup>12</sup> to uncover the language strategies of power wielded by those in authority who perpetuate the practice of splitting case files (splittings).

In discussing the strategy of language of power as a tool of domination in the behaviour of case splitting (splittings), before entering into the analysis in the discussion section, we will first explain the relationship between the Theory of Power Relations that forms truth-games as a form of language of power strategy. Linguistic studies through discourse analysis pioneered by Michel Foucault provide a perspective that is used to examine the use of language in both spoken and written forms by linking it to a context, in order to uncover the objectives of certain practices<sup>13</sup> in criminal law. In the next section, the power and authority of the Public Prosecutor is based on secondary data, which separates case files and is incorporated into the indictment. Meanwhile, the final section reveals the Public Prosecutor's strategy through structured, massive and systematic language of power, which causes harm to the defendants.

## II. Research Problems

This article attempts to expose the truth-games behaviour that violates the rights of suspects/defendants through the use of normative language that conceals the interests of the public prosecutor with the concept of Truth-Games as a model of power language strategy. Specifically, this study focuses on two research questions: how does the pattern of power language strategies that give rise to Truth-Games in decision-making work, and how does the

<sup>8</sup> Tiar Adi Riyanto, “Fungsionalisasi Prinsip Dominus Litis Dalam Penegakan Hukum Pidana Di Indonesia,” *Jurnal Lex Renaissance* 6, no. 3 (2021): 481-92, <https://doi.org/10.20885/jlr.vol6.iss3.art4>.

<sup>9</sup> Sabirin Sabirin, “Pemecahan Berkas Perkara Dan Relevansinya Dengan Asas Peradilan Cepat Dalam Perspektif Keadilan,” *Al-Adl : Jurnal Hukum* 13, no. 2 (2021): 459, <https://doi.org/10.31602/al-adl.v13i2.5067>.

<sup>10</sup> Muhammad Kholil Najih, “Pemisahan Berkas Perkara Dalam Penyertaan Tindak Pidana Korupsi” (Skripsi, Universitas Gadjah Mada, 2019).

<sup>11</sup> Khatherine Sesilia Manik et al., “Pemisahan Berkas Perkara (Splittings) Dalam Tindak Pidana Korupsi Perspektif Hukum Islam,” *AL-SYAKHSHIYYAH: Jurnal Hukum Keluarga Islam Dan Kemanusiaan* 5, no. 2 (2023): 143-64, <https://doi.org/http://dx.doi.org/10.30863/as-hki.v5i2.5438>.

<sup>12</sup> Rocky Marbun, Wibisono Oedoyo, and Debby Monica Sinaga, “Logika Monolog Dalam Trikotomi Relasi Pada Proses Pra-Adjudikasi,” *Jurnal USM Law Review* 4, no. 1 (2021): 1-26, <https://doi.org/http://dx.doi.org/10.26623/julr.v4i1.3308>; Marbun, “Trikotomi Relasi Dalam Penetapan Tersangka: Menguji Frasa ‘Pemeriksaan Calon Tersangka’ Melalui Praperadilan”; Rocky Marbun, “Permainan-Kebenaran (Truth-Games) Oleh Hakim Dalam Kegiatan Kognitif-Interpretatif Berdasarkan Pendekatan Trikotomi Relasi,” *Jurnal Humani (Hukum Dan Masyarakat Madani)* 13, no. 1 (2023): 182-201, <https://doi.org/http://dx.doi.org/10.26623/humani.v13i1.6842>.

<sup>13</sup> Halwati, “Analisis Foucault Dalam Membedah Wacana Teks Dakwah Di Media Massa.”, 149.

pattern of case file separation in the prosecution process based on the concept of Truth-Games through power language strategies work?

### III. Research Methods

This article uses a legal research method based on secondary data in the form of indictments, court decisions, and legislation through library studies. This research, in addition to using the approaches commonly employed in Legal Science—namely the legal approach, case approach, and conceptual approach—as outlined by Johnny Ibrahim<sup>14</sup>, can also employ other approaches while maintaining a qualitative analysis model. Furthermore, the researcher employs approaches from Social-Political Science as a complement to uncover the interests underlying the behaviour of Law Enforcement Officials that remain undetected—conceptually—by Legal Science.

### IV. Results and Discussion

#### 1. The Working Pattern of the Language Strategies of Power that Give Rise to Truth-Games

The most disturbing thing when discussing Michael Foucault's Theory of Power Relations is the interpretation of various parties who assert that power is not ontological, because for Foucault, power is a strategy<sup>15</sup>. Meanwhile, legal scholars view power as a given state through the juridical construction of certain positions through a series of written texts in legislation. Thus, Foucault's perspective is intriguing, as every issue is always seen as a complex relationship, due to the presence of other social elements—elements of power and politics are inherent within it, as part of an overall system of thought, which he refers to as the episteme<sup>16</sup>.

Why is it called a 'strategy'? Because, in Foucault's view, power is a relationship that is constructed and disseminated through various social relationships, in contradictory and/or competitive ways. Thus, power is a strategy for reproducing a relationship of production. In other words, power itself is productive or actively involved in producing new objects of knowledge.<sup>17</sup>

Power as a strategy, through the construction of episteme, is directly related to reasoning through language to achieve truth. Meanwhile, language itself—in Foucault's view, which is used as a tool for reasoning—is not neutral. Foucault<sup>18</sup> asserts that every statement will always be identified as not being a general statement, not being free, neutral, or independent. However, a statement is always part of a series or whole, always playing a role among other statements, gaining support from them and distinguishing itself from them; the statement is always part of a network of statements, within which there is a role, however small, that must be played.

The mechanism described by Foucault regarding the behaviour of 'infiltration'—power into knowledge through epistemic power—is carried out in two ways, namely political power and epistemic power. Both channels are used to normalise the knowledge that emerges. This means that knowledge that emerges outside the normal channel will be considered "abnormal"<sup>19</sup>.

In relation to this strategy—the interpretation of the 'infiltration' of power into knowledge—Foucault reintroduces the concept of the 'Regime of Truth'. Where Foucault connects power with knowledge, but 'truth' is also important in understanding the relationship between knowledge and power. Where a claim to truth is a form of the operation of power as a discourse that influences social institutions and social practices. Thus, the pattern of power cannot be directly justified as something negative in the form of 'frontal coercion' that represses

<sup>14</sup> Johnny Ibrahim, *Teori Dan Metodologi Penelitian* (Jakarta: Bayumedia Publishing, 2012), 300.

<sup>15</sup> Mangihut Siregar, "Kritik Terhadap Teori Kekuasaan-Pengetahuan Foucault," *JURNAL ILMU SOSIAL Dan ILMU POLITIK* 1, no. 1 (2021): 1–12, <https://doi.org/10.30742/juispol.v1i1.1560>.

<sup>16</sup> Alfathri Adlin, "Michel Foucault: Kuasa/Pengetahuan, (Rezim) Kebenaran, Parrhesia," *JAQFI: Jurnal Aqidah Dan Filsafat Islam* 1, no. 1 (2016): 13–26, <https://doi.org/https://doi.org/10.15575/jaqfi.v1i1.1694>.

<sup>17</sup> Mudjia Rahardjo, "Bahasa Dan Kekuasaan: Studi Wacana Politik Abdurrahman Wahid Dalam Perspektif Hermeneutika Gadamerian," *UIN Malang* (Disertasi: Universitas Airlangga, 2005), 55.

<sup>18</sup> Michel Foucault, *The Archaeology of Knowledge & The Discourse on Language*, ed. A.M. Sheridan Smith (New Jersey: Tavistock Publications Limited, 1972), 99.

<sup>19</sup> Sunaryo, "(Inter-) Relasi Kekuasaan Dan Kebenaran Menurut Michel Foucault," *Jurnal Dekonstruksi* 9, no. 03 (2023): 31–35, <https://doi.org/10.54154/dekonstruksi.v9i03.164>.

'the other', but rather power operates positively and productively. This means that although the form of power is invisible, it can be traced through its effects. In fact, according to Foucault, this pattern of operation is not recognised by the agents of the authority structure. The form of knowledge or authoritative discourse regime is an effect of that power. It cannot be separated from the apparatus that controls whether knowledge is authoritative or not. The distinction between right and wrong also involves scientific apparatus (academics) that produce knowledge through rituals of truth, namely through empirical foundations as legitimisation for the truth of that knowledge.<sup>20</sup>

Konrad Kebung<sup>21</sup> explains that every era of thought will always have its own episteme or, in other words, Foucault asserts that there will always be truth-games in every era of human thought and culture. The exercise of this power is impossible without a discourse regime that is essential to every culture and society. The exercise of this power would be impossible without the existence of a discourse regime that is essential to every culture and society. Discourse regimes can be seen in various historical events, and it is precisely in these discourses that truth-games can be observed. Every society has its own history and way of life. This way of life and all the mechanisms of relations that come together within it have shaped discourse. From discourse and the exercise of power emerges truth, which is a combination of two practices: discursive formation and non-discursive formation.

Just as human history is constantly changing, so too is discourse. And because power can be exercised within the realm of discourse, power is always changing and constantly transforming itself. The transformation of discourse and power inherently implies the transformation of truth. It is clear here that truth is not something stable or pre-existing, but rather exists within a history that is constantly changing. Truth is also present in every scientific discourse where strategic power is practised. Truth exists within power and never outside of it. Just as power is everywhere, so too is truth.<sup>22</sup>

Ultimately, a discourse of power will produce knowledge that is (1) biased and non-neutral; (2) related to other issues; (3) does not arise on its own; and (4) receives support from different but related parties. In the Relational Trichotomy approach, borrowing Foucault's perspective, there is a fundamental similarity with Habermas's detection of a unity between interest and knowledge – as a formation of those in authority.

If power is viewed as a "strategy" that uses "language" as an instrument of reasoning, then the strategy employed is to actively produce knowledge. In other words, power will infiltrate knowledge. In this position, "linguistics" plays a role in presenting itself as an articulation of truth for the knowledge produced by those in power.

What is interesting is that the emergence of truth-games was not only based on Foucault's views, or at least, those views influenced other philosophers, such as Pierre-Felix Bourdieu. Where language is understood as habitus (values that are understood and believed) and at the same time as capital, which will always change – as a discourse, and dialectically interact with the constellation of power and authority. This change goes hand in hand with changes in the ideology of the dominant group and changes in social power relations. Furthermore, as Bourdieu emphasises, language and discourse are instruments for maintaining dominance or gaining power.<sup>23</sup>

Language – in Bourdieu's view – is not merely a habitus, which is related to cognitive aspects – from a linguistic perspective, in reasoning – but also functions as capital attached to social capital or status. Thus, language can also be interpreted as exerting influence in the field

<sup>20</sup> Abdil Mughis Mudhoffir, "Teori Kekuasaan Michel Foucault: Tantangan Bagi Sosiologi Politik," *MASYARAKAT: Jurnal Sosiologi* 18, no. 1 (2013): 75-100, <https://doi.org/10.7454/mjs.v18i1.3734>.

<sup>21</sup> Konrad Kebung, "Membaca 'Kuasa' Michel Foucault Dalam Konteks 'Kekuasaan' Di Indonesia," *Jurnal Melintas* 33, no. 1 (2017): 34-51, <https://doi.org/10.26593/mel.v33i1.2953.34-51>.

<sup>22</sup> Konrad Kebung, "Kembali Moral Melalui Seks," *Majalah Basis*, 2002, 35.

<sup>23</sup> Karman, "Bahasa Dan Kekuasaan (Instrumen Simbolik Peraih Kekuasaan Versi Bourdieu)," *Jurnal Studi Komunikasi Dan Media* 21, no. 2 (2017): 235-46, <https://doi.org/https://doi.org/10.31445/jskm.2017.210208>.

(Arena) or structure that encompasses agents. Therefore, in every conflict of interests, there will be a game that seeks to gain advantage through linguistic transactions.<sup>24</sup>

## 2. The Pattern of Case File Separation in the Prosecution Process Based on the Concept of Truth-Games Through the Strategy of Power Language

### a. File Separation Concept (*Splitsing*) in the Prosecution

The Public Prosecutor is a functional position that carries several legal powers (authority)<sup>25</sup> based on Article 14 of the CPC, namely: (1) Receiving and reviewing case files from investigators or assistant investigators; (2) Conducting preliminary investigations if there are deficiencies in the investigation, in accordance with the provisions of Article 110(3) and (4) of the CPC, by providing guidance to improve the investigation conducted by the investigators; (3) Granting extensions of detention, conducting detention or further detention, changing the status of detainees after the case has been transferred by the investigator and suspending requests; (4) Preparing the indictment; (5) Transferring the case to court; (6) Notifying the defendant of the date and time of the trial, accompanied by a summons, both to the defendant and to witnesses, to attend the scheduled hearing; (7) Conducting prosecution; (8) Closing the case in the interest of justice; and (9) Taking other actions within the scope of duties and responsibilities as a public prosecutor in accordance with the provisions of this law.

Referring to the above provisions, as the 'case controller', in addition to having a pattern of work that confirms the results of the investigation<sup>26</sup>, he also has the authority to determine whether or not to prosecute<sup>27</sup>. This results in a formal administrative procedure for prosecution – including the preparation of an indictment – which, in addition to referring to the provisions of the CPC, also refers to technical provisions regulated through internal policies based on the principle of functional differentiation.

The authority of the Public Prosecutor in constructing the Indictment cannot be separated from the Case Files originating from the investigation. Whereas, the CPC only provides regulations regarding the consolidation of cases (*voeging*) into a single indictment – Article 141 of the Criminal Code, and the separation of case files (*splitsing*) into separate indictments – Article 142 of the CPC. The separation of case files may occur because a single case file contains more than one criminal offence and also involves more than one perpetrator, accompanied by a failure to meet the requirements for combining case files, so that the public prosecutor must separate the criminal case files or *splitsing*.<sup>28</sup>

Splitting (also known as a *Splitsing* in Indonesia style) is carried out so that the elements of the offence of each defendant are fulfilled and in an effort to avoid a lack of witness evidence. In Indonesia, in judicial practice, the Public Prosecutor will present the defendant as a witness. The consequence of splitting is that defendants must testify for each other in their respective cases, either as witnesses or defendants, to support the proof of complicity in cases where there is insufficient evidence. This is referred to as a crown witness (*Kroon getuige*).<sup>29</sup>

The above view, as stipulated in SE JAMPIDUM No. B-69/1997, which states as follows(Sic!):

“In practice, crown witnesses are used in cases of complicity (*deelneming*), where one defendant is used as a witness against another defendant because other evidence is lacking or minimal. Considering that in his status as a defendant, his testimony only applies to himself in accordance with the provisions of Article 189 (3) of the Criminal Code, therefore, based on Article

<sup>24</sup> M Jazeri, “Menabur Bahasa, Menuai Kuasa (Memahami Relasi Bahasa Dan Kekuasaan Dalam Iklan Politik),” *Jurnal Lingua Scientia* 2, no. 2 (2010): 101-13, <https://doi.org/https://doi.org/10.21274/ls.2010.2.2.101-113>.

<sup>25</sup> Maulana Meldandy, “Eksistensi Single Prosecution System (Sistem Penuntutan Tunggal) Terhadap Kewenangan Jaksa Dalam Penuntutan Antara Jaksa KPK Dengan Kejaksaan Republik Indonesia” (Universitas Andalas, 2001), 5.

<sup>26</sup> Muhammad Azhar Nur and Mustamin, “Kegagalan Asas Diferensiasi Fungsional: Transformasi Sistem Peradilan Pidana Terpadu Berdasarkan Asas Dominus Litis Dalam RUU CPC,” *Al-Ahkam: Jurnal Hukum Pidana Islam* 7, no. 1 (2025): 38-68, <https://doi.org/https://doi.org/10.47435/al-ahkam.v7i1.3673>.

<sup>27</sup> Muhammad Rahim, “Asas-Asas Hukum Penuntutan,” *The Prosecutor Law Review* 1, no. 1 (2023): 1-36.

<sup>28</sup> Khatherine Sesilia Manik, et.al, *Op.cit.*, 149.

<sup>29</sup> Wisnu Waskitara, “Pemisahan Berkas Perkara (*Splitsing*) Oleh Penuntut Umum Dalam Proses Pembuktian Suatu Tindak Pidana Pada Delik Penyertaan,” *Journal of Law* 8, no. 1 (2022): 1-14.

142 of the Criminal Code, the case files must be separated (splittings). In order for the defendants to be tried separately, so that one defendant can be a witness against another defendant. That the jurisprudence followed so far still recognises the Crown witness as a means of evidence, for example, Supreme Court Decision Number: 1986 K/Pid/1 989 dated 2 March 1990, which states that the Public Prosecutor is permitted by law to call the defendant's accomplice who participated in the criminal act as a witness in the District Court, provided that this witness, in his capacity as a defendant, is not included in the case file for which testimony is given (Gesplits)."

Case File Separation (Splittings), legally, refers to Article 142 of the CPC, which states, 'In the event that the public prosecutor receives a case file containing several criminal acts committed by several suspects who are not included in the provisions of Article 141, the public prosecutor may prosecute each defendant separately.' Furthermore, Article 141 of the CPC states as follows:

*"Prosecutors may consolidate cases and combine them into a single indictment if they receive several case files at the same time or in close succession in the following circumstances:*

- a. *several criminal acts committed by the same person and the interests of the investigation do not constitute an obstacle to their joinder;*
- b. *several criminal offences that are related to one another;*
- c. *several criminal offences that are not related to each other, but which are connected to each other, in which case the combination is necessary for the purposes of the investigation."*

Meanwhile, regarding Article 141 letter b of the CPC, there is an explanation from the Lawmaker, as follows:

*"What is meant by 'criminal acts are considered to be related to one another' is when the criminal acts are committed:*

1. *by more than one person working together and performed at the same time;*
2. *by more than one person at different times and places, but is the implementation of a malicious agreement made by them beforehand;*
3. *by one or more persons with the intention of obtaining a tool to be used to commit another crime or to avoid punishment for another crime."*

According to M. Yahya Harahap<sup>30</sup>, the reason for splitting is because there is more than one perpetrator, so that the public prosecutor can split the case in accordance with the interests of the prosecution. The characteristics are as follows:

1. The public prosecutor will separate case files into several files;
2. The separation of files is due to the fact that there are several suspects and separate indictments will be prepared for each of them;
3. During the investigation process, each defendant whose case file has been separated will be tried in a different court;
4. Cases are often split up due to a lack of evidence and testimony.

Regarding the reasons for splitting, Wisnu Waskitara<sup>31</sup> in his research clearly provides the following limitations:

1. To prove the defendant's guilt in court
2. There is a lack of witnesses in the criminal case
3. The status of the defendants is different
4. Some of the defendants are minors
5. The case involves complicity
6. Some of the perpetrators have not yet been apprehended

Thus, the legal action of the Public Prosecutor in splitting the case files and incorporating them into different indictments for a criminal act containing elements of participation is an action to protect the interests of the prosecution due to insufficient evidence and witnesses.

One example of case file separation practised by the Public Prosecutor, for example, in the criminal case examination process at the District Court of Sumber in Cirebon Regency, where the Public Prosecutor charged three defendants with three different indictments, but the

<sup>30</sup> M. Yahya Harahap, *Pembahasan Permasalahan Dan Penerapan CPC (Penyidikan Dan Penuntutan)* (Jakarta: Sinar Grafika, 2003), 442.

<sup>31</sup> Waskitara, *Op.cit.*, 8.

examination process was combined into one, namely Indictment Number Reg. Perk: PDM-II-33/M.2.29/Eku.2/05/2022—as decided in the District Court Decision No. 121/Pid.B/2022/PN.Sbr in the name of the defendant Mulya Bin (the late) H. Solekh. Then, Indictment No. Reg. Case No. PDM-II-33/M.2.29/Eku.2/05/2022—as stated in the District Court Decision No. 122/Pid.B/2022/PN.Sbr in the name of the Defendant Wahyudin Als Ade Bin Saefudin, and another example is the Indictment No. Perk: PDM-II-34/M.2.29/Eku.2/05/2022—as stated in the District Court Decision No. 123/Pid.B/2022/PN.Sbr on behalf of the Defendant Muhammad Yahya Jaya Bin H. Sholekh.

In a criminal case within the jurisdiction of the Malili District Court in the East Luwu Regency, three defendants—Achmad Sobari, Ajat Sudrajat, and Bachtiar Beriardi—were charged, prosecuted, and examined simultaneously for the same offenses: Article 363(1)(3) and (4), Article 362 of the Criminal Code joined with Article 55(1)(1) of the Criminal Code, and Article 372 of the Criminal Code joined with Article 55(1)(1) of the Criminal Code. However, the case files of the three defendants were separated with distinct case numbers. One case, not assigned a number by the prosecutor, was dated May 19, 2023, and was given the number PDM: /P.4.36/Eoh.2/5/2023.

#### **b. Tracking Truth-Games in Case File Splitting (Splittings) Through the Strategy of Power Language**

The dialectic of power and knowledge—in Foucault's view—are two things that are always interrelated because power is always articulated through knowledge and, conversely, knowledge always has an effect on power. It can be said that power here is exercised by creating regulations that are voluntarily implemented and obeyed within an organisation, agency, or state. Knowledge is regarded as a discourse or discourse that can shape and produce reality, which then becomes common knowledge that is subsequently believed by society as truth.

This truth does not come about on its own. Rather, it is something that is produced and manipulated, reinforced by various techniques and procedures, by aligning values in the acquisition of truth by those who have the authority or power to determine or say what is considered true, so that objectively there appear to be games of truth (*truth games*). This means that knowledge—in the process of becoming *truth games*—undergoes objectification (justification arguments) that obtains legitimacy and justification, in a normative juridical form, in the form of enforceable public official decisions—according to J.A. Pontier<sup>32</sup>, with power and violence.

Truth games played by those in authority—in this case, the Public Prosecutor, in the prosecution process through the construction of the indictment—have been used as a form of “symbolic domination” through the objectification of the principle of functional differentiation recognised in the CPC. However, the functionalisation of language to achieve “symbolic domination” as the purpose of truth-games always begins with linguistic reasoning about the context in which they occur.

As seen in SE JAMPIDUM No. B-69/1997, the background to this thinking is based on contextual interpretation, as follows:

1. The logical construction of SE JAMPIDUM No. B-69/1997 is based on *epistemic* authority or is carried out in a hegemonic manner, namely through special examination. This means that SE JAMPIDUM No. B-69/1997 was constructed based on scientific activities

In response to the above, from Michel Foucault's perspective, power operates in a positive and intangible form, so that how power works cannot be realised by humans and its effects can be seen through forms of knowledge and discourse. Scientific definitions also clearly show this as one of the effects of the operation of power in the form of a discourse regime.<sup>33</sup> Where, the logic of SE JAMPIDUM No. B-69/1997—in a hegemonic manner—is concealed through the concept of ‘examination.’ Thus, there is

<sup>32</sup> J.A. Pontier, *Loc.cit.*

<sup>33</sup> Refaldi Andika Pratama, “Kekuasaan, Pengetahuan, Dan Hegemoni Bahasa Dalam Perspektif Michael Foucault Dan Francis Bacon,” *Jurnal Filsafat Indonesia* 4, no. 1 (2021): 33-43, <https://doi.org/https://doi.org/10.23887/jfi.v4i1.30543>.

an effort to shift the understanding of SE JAMPIDUM No. B-69/1997 so that it is not *top-down*. However, SE JAMPIDUM No. B-69/1997 is the result of a scientific activity, namely examination. Therefore, examination is a scientific activity – although not a tradition in the civil law system – which is the result of the thinking of legal experts who conduct studies and assessments of certain legal products – not only with the aim of providing corrections, but also as an effort to develop knowledge.<sup>34</sup>

2. The construction of thinking in the realm of prosecution is based on the paradigm of a win-lose solution<sup>35</sup>, as confirmed in SE JAMPIDUM No. B-69/1997, as follows:

“Based on the results of a special examination and monitoring by the leadership of the handling/resolution of cases to date, it appears that “there are still frequent failures in the prosecution” due to a lack of attention to detail or a lack of mastery of the law of evidence by public prosecutors.”

At this point, the Attorney General's Office has produced new knowledge by setting aside old knowledge, namely that CPC has the objective of seeking material truth. However, this objective of CPC has been shifted by the obligation to win every trial. This is further reinforced by the obligation to win, as stipulated in SE JAMPIDUM No. B-69/1997 on point 3 page 4, which states:

“Every public prosecutor is expected to be motivated to prove the charges from the moment they receive the notification of the commencement of investigation until the examination in court.”

Of course, the word ‘motivation’ as a concept is often overlooked in terms of its meaning and function. “Motivation” comes from the Latin word ‘*movore*’, which means movement or the urge to move. In English, motivation comes from the word ‘*motive*’, which means driving force or reason. In Indonesian, motivation comes from the word ‘*motif*’, which means the inner strength that drives an individual to do something. Meanwhile, Abraham Maslow explains that motivation is something that is constant (fixed), never-ending, fluctuating and complex, and that it is largely a universal characteristic of every organism's activities.<sup>36</sup>

Although SE JAMPIDUM No. B-69/1997 uses the word “expected” before the word “motivation”, every prosecutor who holds a functional position as a public prosecutor will certainly look at “who issued and signed the circular”. Therefore, the JAMPIDUM is directly issuing an “order” rather than an expectation for Public Prosecutors to have the intention not to fail in carrying out their prosecutorial duties. This is the *pretext* underlying the entire SE JAMPIDUM No. B-69/1997.

SE JAMPIDUM No. B-69/1997 has been positioned as a regulation that distills Article 142 of the CPC and the principle of functional differentiation. Thus, the reading and interpretation of SE JAMPIDUM No. B-69/1997 finds articulation in the affective interpretation of a language – specifically directed at the signatory of SE JAMPIDUM No. B-69/1997, closely related to power, concerning who is ‘permitted/entitled’ to say what, and its connection to power and social status.<sup>37</sup>

3. The regulation regarding *splitsing* is based on bitter experience in the law enforcement process, where several judges refused to grant the Public Prosecutor the authority to use Crown Witnesses. In other words, from the perspective of the Attorney General's Office, there is a disparity between the Supreme Court's interpretation of the concept of ‘Crown Witness’, resulting in the Public Prosecutor often losing cases.

<sup>34</sup> Ummi Maskanah, “Eksaminasi (Legal a Nnotation) Sebagai Pintu Masuk Proses Reformasi Lembaga Peradilan,” *Jurnal Ilmu Hukum Litigasi* 14, no. 1 (2013): 1773–1801, <https://doi.org/https://doi.org/10.23969/litigasi.v14i1.153>.

<sup>35</sup> Yuhelson, *Hukum Arbitrase* (Yogyakarta: Arti Bumi Intaran, 2018), 7.

<sup>36</sup> Novia Sandra Dewi, “Teori Motivasi,” in *Pengantar Manajemen (Teori Dan Konsep)*, ed. by Hartini (Bandung: Media Sains Indonesia, 2021), 117.

<sup>37</sup> Rocky Marbun, “Parole Sebagai Alat Komunikasi Dalam Praktik Peradilan Pidana,” *Jurnal USM Law Review* 3, no. 1 (2020): 1–16, <https://doi.org/https://doi.org/10.26623/julr.v3i1.1824>; Linda Thomas and Shan Wareing, *Bahasa, Masyarakat & Kekuasaan* (Yogyakarta: Pustaka Pelajar, 2007), 14.

The Circular Letter is a legal product of the Attorney General's Office of the Republic of Indonesia—based on the principle of functional differentiation—and is a legal discourse (action) that cannot be viewed merely as a text detached from its context. SE JAMPIDUM No. B-69/1997, through a Critical Discourse Analysis (CDA) approach, is a discourse. Meanwhile, in the perspective of Critical Discourse Analysis (CDA), a discourse consists of two pillars, namely text and context. Therefore, one of the pillars of the Critical Discourse Analysis (CDA) approach does not merely examine the linguistic text itself, but always relates it to the context (in addition to the pillars of action, history, power, and ideology) or the situation and conditions in which the text emerged<sup>38</sup>. So, looking at this context is also really connected to history and the people in power who created the actions to carry out their ideology. Therefore, at this point, if we use the principles of Critical Discourse Analysis—as one of the instruments of language analysis based on Power Relations Theory—awareness of this historical context has become the basis for constructing legal reasoning to avoid defeat. Thus, the existence of SE JAMPIDUM No. B-69/1997 as legal legitimation for the *splitsing* action is based on a series of defeats in the prosecution.

4. Behaviour of taking one thing and ignoring another. This behaviour appears in the sentence "Considering that in his status as a defendant. His statement is only valid for himself in accordance with the provisions of Article 189 (3) of the Criminal Code. Therefore, based on Article 142 of the Criminal Code, the case files must be separated (*splitsing*)."

The statement gives the impression that JAMPIDUM is trying to respect the human rights contained in Article 189(3) of the CPC by using Article 142 of the CPC to avoid violating Article 189(3) of the CPC. However, in SE JAMPIDUM No. B-69/1997, JAMPIDUM does not explain the parameters for conducting the *splitsing*. Therefore, since Article 142 of the CPC is an 'exit clause' from Article 141 of the CPC, which permits splitting while still adhering to Article 141 of the CPC, the failure to elaborate on Article 141 of the CPC in the JAMPIDUM Circular Letter seems to imply that the regulations regarding splitting are only contained in Article 142 of the CPC.

The legal action in the form of *splitsing*, in a case at the Malili District Court, involved three defendants who committed the same crime together. However, the indictment was prepared separately by the Public Prosecutor using the same article to charge the three defendants. This shows that there was no difference in the roles or forms of crime committed by the three defendants. Therefore, the indictments should be consolidated in accordance with Article 141(b) of the Criminal Procedure Code (CPC), which provides for the consolidation of cases (*voeging*) based on 'several criminal offences that are interconnected.' This consolidation is based on the fact that the offences were committed by several persons acting in concert at the same time.

Similarly, in a criminal case examined by the District Court of Sumber, as stated in District Court Decision Number 123/Pid.B/2022/PN.Sbr on behalf of the defendant Muhammad Yahya Jaya Bin H. Sholekh, the use of the term "the defendants" indicates the awareness of the Public Prosecutor and the Judge that the defendants committed the criminal act together, but the indictment was filed based on the separation of case files. In fact, the Public Prosecutor used a linguistic strategy by not using Article 55(1)(1) of the Criminal Code, so that the cases would appear to be different, thereby avoiding the joinder of cases (*voeging*). However, there are two factors indicating that the case should not have been split, namely the chronological description in the three indictments and the use of the phrase "the defendants" by the same panel of judges during the joint examination process.

If we refer to Foucault's view above, there are different institutions that support *splitsing* as the production of knowledge based on the power and authority of the Public Prosecutor, namely the Supreme Court Circular Letter Number 7 of 2012 concerning the Legal Formulation

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<sup>38</sup> Masitoh, "Pendekatan Dalam Analisis Wacana Kritis," *Jurnal Elsa: Edukasi Lingua Sastra* 18, no. 1 (2020): 66-76, <https://doi.org/https://doi.org/10.47637/elsa.v18i1.221>.

of the Results of the Plenary Meeting of the Supreme Court Chamber (SEMA No. 7/2012). Where, in every formulation of issues raised in the Criminal Chamber related to the form and type of the indictment, there are two models of conclusions provided, namely (1) This is the authority of the Prosecutor/Public Prosecutor, and (2) The judge does not need to address the indictment of the Public Prosecutor. Because the drafting of the indictment is the authority of the Public Prosecutor.<sup>39</sup>

The Supreme Court's support for the *splitsing* legal action also emerged during the criminal trial, as clearly seen and demonstrated in public during the trial of Ferdy Sambo. During the trial of the defendant Eliezer, the Chief Judge said the following to Ferdy Sambo:<sup>40</sup>

"I often say that I don't need recognition, but since you are sworn to tell the truth, please tell it like it is."

Atau, tindak tuturan dari Hakim Ketua Majelis – pada perkara yang sama, yang mengeluarkan ancaman kepada Saksi, sebagai berikut:<sup>41</sup>

"If you continue to lie like this, you should be sitting here as a suspect. The penalty is seven years, no joke. We are all digging for the material truth in this case. It seems like you are playing games,"

Regarding this legal phenomenon, it seems impossible to escape the status of "Defendant" and be legally forced to consciously position oneself as a "witness" in the same case as the other Defendants. This is because both are part of the same criminal act. Furthermore, referring to the statement made by the Chairman of the Panel of Judge, it shows a lack of concern for the mental condition arising from the defendant's awareness of his own status.

That's because, as someone with the status of a defendant, they're protected by Article 66 CPC *jo* Article 189 paragraph (3) CPC. So, a defendant can't be forced by anyone – including a judge – to admit to things they didn't do. The situation is different when a person with the status of a defendant is subsequently legally released through a 'splitsing,' thereby 'forcing' their legal status to change to that of a witness. In this case, the provision of testimony as a witness is subject to Article 174(1) of the CPC in conjunction with Article 242 of the Criminal Code, which carries the threat of criminal penalties, including imprisonment.

In relation to the above explanations, in the case of legal action to separate case files (*splitsing*) as truth-games through the strategy of power language – both verbal and written – the Public Prosecutor must have at least three self-awareness, namely:

1. The Public Prosecutor has legal instruments to enforce using Article 242 of the Criminal Code, which carries a maximum penalty of 7 years' imprisonment (paragraph 1) and 9 years' imprisonment (paragraph 2);
2. The Public Prosecutor is aware of the support from the Supreme Court, so as not to challenge the form and type of the Indictment. Thus, the Public Prosecutor can avoid the threat of the Indictment being declared null and void under Article 143(3) of the CPC; and
3. The Prosecutor's awareness, despite the lack of evidence in the case and the prohibition arising from the principle of 'unus testis nullus testis,' allows the Prosecutor to utilise one of the defendants, without fear of rejection by the Panel of Judges, to proceed with and transfer the criminal case for examination at the District Court.

Based on the *winning-losing solution* paradigm in criminal trials, the Attorney General's Office, through JAMPIDUM, used a power language strategy by issuing SE JAMPIDUM No. B-69/1997, which hid the formal requirements for *splitting* the indictment, namely Article 141 of the CPC, by 'only' mentioning Article 142 of the CPC. As a result, the 'splitting' is only legally valid based on the argumentation in Article 142 CPC. This regulation also directly serves as a "framing" for the Public Prosecutor, as a functional position, to reduce the interpretation of the principle of

<sup>39</sup> Mahkamah Agung Republik Indonesia, *Surat Edaran Mahkamah Agung Nomor 7 Tahun 2012 Tentang Rumusan Hukum Hasil Rapat Pleno Kamar Mahkamah Agung Republik Indonesia* (Jakarta, 2012), 14-15 & 38.

<sup>40</sup> KompasTV, "Hakim Wahyu Tegaskan Tidak Butuh Pengakuan Ferdy Sambo: Sangatlah Janggal Keterangan Saudara!," KompasTV, 2022, [https://www.youtube.com/watch?v=rtkTCbJBzq0&ab\\_channel=KOMPASTV](https://www.youtube.com/watch?v=rtkTCbJBzq0&ab_channel=KOMPASTV).

<sup>41</sup> Nanda Perdana Putra, "Dugaan Kesaksian Palsu ART Sambo Dan Kecurigaan Jaksa Soal Penggunaan Earphone," *liputan6.com*, 2022, <https://www.liputan6.com/news/read/5112592/dugaan-kesaksian-palsu-art-sambo-dan-kecurigaan-jaksa-soal-penggunaan-earphone>.

'dominus litis' as one of the legal principles for achieving material truth, which is only used for one purpose: to win the case.

This dominant position has been further strengthened by the emergence of legal reasoning regarding the legal authority granted under Article 174(2) of the CPC<sup>42</sup>, which threatens the provision of false information with criminal sanctions of imprisonment. This must be understood as a threat to human rights, as not everyone – particularly those unfamiliar with procedural law – understands the essence and existence of Article 174 of the CPC in conjunction with Article 242 of the Criminal Code. As a result, the defendants were compelled to provide statements to one another regarding the case in question. As a result, the defendants unknowingly make confessions, which they are entitled to legal protection under Article 189(3) of the CPC and the principle of 'non-self incrimination.'

## V. Conclusion

This article concludes that truth-games, in the form of artificial knowledge production by authorities – in this case, the Public Prosecutor – are constructed in the form of the Deputy Attorney General for General Crimes Circular Letter No. B-69/E/02/1997 on Criminal Evidence Law, using the strategy of power language. This power language strategy uses an *epistemic* power pattern as the basis for issuing political power in the form of the SE JAMPIDUM. The form of *epistemic* power used is the existence of a special examination of the failure of the Public Prosecutor in the prosecution using the concept of 'Crown Witness'.

The language strategy contained in the SE JAMPIDUM uses the pattern of excluding Article 141 CPC as a material requirement for Article 142 CPC and Article 143(2) CPC. By only mentioning Article 142 CPC, it provides motivation – as a *framing* – for the Public Prosecutor to win criminal cases in a legally valid manner. This constitutes a negative reduction of the principle of *dominus litis*. Additionally, there is an awareness of an 'unspoken agreement,' manifested through support from the Supreme Court via Supreme Court Circular Letter No. 7 of 2012 on the Legal Formulation of the Plenary Session of the Supreme Court Chamber, instructing judges not to question the form and type of the indictment. Ultimately, even though he was aware that the criminal case lacked sufficient evidence, the legal action of separating the case files (splitsing) gained legitimacy to not be subject to Article 143(3) CPC as an invalid indictment by law if it violated Article 141 CPC.

As a result, the defendants – in a criminal case involving the element of complicity – will face each other and provide testimony under the threat of criminal sanctions under Article 242 of the Criminal Code. The defendants have been framed to provide witness testimony, without realising that they have waived the legal protection of Article 66 of the CPC in conjunction with Article 189(3) of the CPC. Thus, the Attorney General's Office of the Republic of Indonesia, acting through the Public Prosecutor, has violated the principle of non-self-incrimination by normalising the production of knowledge based on power relations through a strategy of power language with the support of the Supreme Court.

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<sup>42</sup> Article 174(2) of the CPC states, "If the witness persists in his testimony, the presiding judge, by virtue of his office or "at the request of the public prosecutor" or the defendant, may order that the witness be detained for further prosecution on charges of perjury."

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