

The Position of the Prosecutor as a State Attorney in Handling Civil Proceedings & State Administration of State-Owned Enterprises

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Abstract. *In the event of a civil or state administrative dispute, where one of the parties involved is the state, the Prosecutor's Office can play a role and have the authority to act as the state's attorney in civil and state administrative cases. The aim of this research is to find out and analyze the regulations on the position of the Republic of Indonesia Prosecutor's Office in providing legal assistance in the field of civil and state administration to the state and to know and analyze the position of prosecutors as state lawyers in handling civil and state proceedings administration for State-Owned Enterprises. The approach used in this research is normative juridical or library legal research or doctrinal legal research. The Deputy Attorney General for Civil and State Administration (JAMDATUN) explained that institutionally JAMDATUN is a State Attorney's Office which can provide legal services to state or government institutions that require legal services provided by the prosecutor's office. As a State Attorney's Office, the legal services provided are the same as (private) attorney's offices in general. The main difference is only in the clients, those who can be served by the State Attorney's Office are limited to state institutions, the government or its officials. So, to obtain legal assistance from the State Attorney, BUMN previously made a Special Power of Attorney to the Prosecutor's Office which is the basis for obtaining legal assistance from the State Attorney to carry out their duties as Legal Attorney and will be fully responsible like a lawyer for the case. In relation to the role of State Attorneys in representing the interests of the state, State Attorneys with special powers act for and on behalf of the Government or State in Civil and State Administrative cases or cases. The State Attorney can play the role of being the party who receives the*

BUMN power of attorney in terms of providing legal assistance through litigation (court) and non-litigation channels.

Keywords: *Administration; Civil; Prosecutor; Service.*

1. Introduction

The existence of the Prosecutor's Office occupies a central position and its strategic function in the law enforcement process. In the judicial system, it is the prosecutor who determines whether a person should be examined by the court or not. The prosecutor also determines whether or not a person will be sentenced through the quality of the indictment and the charges he makes.

With a strategic position in the judicial process, ideally the Prosecutor's Office is filled with professional people with high integrity. The Prosecutor's Office is expected to be independent and independent and has an apparatus that can exercise state power in the field of law enforcement in a proportional, professional, and fair manner.¹

The position of the Prosecutor's Office in the constitutional system as described in Article 2 paragraph (1) of Law Number 11 of 2021 is as: "The Prosecutor's Office in carrying out its functions related to judicial power is carried out independently". The Prosecutor's Office is a public prosecutor in criminal cases representing the state and society. On the other hand, the Prosecutor's Office is the main party in representing the state in court and carrying out its obligation to apply legal regulations.²

The position and role of the Prosecutor's Office of the Republic of Indonesia as a state institution that exercises state power through law enforcement, especially in the field of prosecution, is expected to play a more important role in upholding the rule of law, protecting public interests, and upholding human rights. However, in practice that community association, based on legal relations, often causes disputes, both in terms of criminal law, civil law and state administrative law, so since 1991, the Prosecutor's Office has been given additional duties and authorities, namely in the civil and state administrative fields, namely to act on behalf of and represent the state or government both outside and inside the court.³

In the event of a civil or state administrative dispute, where one of the parties involved is the state, the Prosecutor's Office can play a role and authority to be

¹Sentot Sudarwanto, Revitalization of Public Participation in the Selection of High-Leading Positions (JPT) in the State Civil Service (ASN) Personnel System in Indonesia. *Journal of Rechtsvinding National Legal Development Media*, Vol 11 No 2, 2022, pp 319-334

²Azhary, *The Legal State of Indonesia, Normative Legal Analysis of Its Elements*, University of Indonesia Press, Jakarta, 1995, p. 20.

³Muhamad Jusuf, *op.cit.*, p. 12.

the power of attorney in civil and state administrative cases. This is affirmed in Article 30 paragraph (2) of Law Number 11 of 2021, namely: "In the field of Civil and State Administration, the Prosecutor's Office with special powers can act both inside and outside the court for and on behalf of the state or government". Article 30 paragraph (2) of Law Number 11 of 2021 is regulated later by Article 24 of Presidential Decree Number 38 of 2010 concerning the Organizational Structure and Work Procedures of the Attorney General of the Republic of Indonesia, which reads as follows: The Junior Attorney General for Civil and State Administration has the duties and authorities of law enforcement, legal assistance, legal considerations, and other legal actions to the state or government, includes state institutions/agencies, central and local government institutions/agencies, State/Regional Owned Enterprises in the Civil and State Administration fields to save, recover state wealth, uphold government and state authority and provide legal services to the community.

The fundamental reason that causes the Prosecutor's Office to be given a role in the field of civil law and state administration, because of the objective conditions that require the role of the Prosecutor in both fields. The law assigns duties and functions to the Prosecutor's Office to play a role in the civil and administrative fields, because Indonesia as a state of law that organizes public welfare finds many legal involvement and interests from the state or government in the civil and state administrative fields. This attitude illustrates an anticipatory view of legislative power in dealing with national and international problems that will arise in the future in the civil and administrative fields of the state.⁴

Based on this provision that in the field of Civil and State Administration, the Prosecutor's Office has the authority to and on behalf of the state or government as a plaintiff or defendant who in its implementation does not only give consideration or defends the interests of the state or government,⁵but also defend and protect the interests of the people. Thus, the Prosecutor's Office is not only a public prosecutor, but in handling civil and administrative cases, the Prosecutor's Office acts as a legal representative or government representative as a legal entity with a special power of attorney to carry out its duties both inside and outside the court for and on behalf of the government and state. Thus, the task of the Prosecutor's Office is to provide legal assistance to the state or government in civil and administrative cases, legal assistance here the Prosecutor acts as a lawyer for the state.

The authority of the Prosecutor's Office in the field of Civil and State Administration referred to in Article 30 paragraph (2) of Law Number 16 of 2004 has not been expressly related to the authority of the Prosecutor's Office to

⁴Nia Gabriella Kaihena, Position and Function of the Prosecutor's Office in the State System in Indonesia, *Lex Administratum*, Vol 11, No. 2 2023, pp. 1-11

⁵Ainul Amaliyah, The Existence of Prosecutors as State Attorneys in Civil Dispute Resolution, *Alauddin Law Development Journal (ALDEV)* Vol 3 No 2 August 2021, pp 357-366

represent the state or government in Civil and State Administrative cases, so legal arrangements are needed related to the position of the Prosecutor to represent the state or government in Civil and State Administrative cases.

According to Gustav Radbruch that law only means as law if it is a manifestation of justice or at least an effort in that direction. Radbruch, taught the concept of three basic legal elements, namely certainty, justice, and expediency. Radbruch teaches that there is a scale of priorities that must be carried out, where the first priority is always justice, then expediency, and finally legal certainty. According to Radbruch, if there is a conflict between the content of the legal system and justice, it becomes so great, that the legal system seems unfair. At that time the legal system may be relinquished.⁶

Legal arrangements related to the position of the Prosecutor's Office to represent the state or government in Civil and State Administration cases provide great benefits, especially for the state to utilize the Prosecutor's Office in handling state cases, preventing corruption in civil and State Administration cases, as well as in the context of saving state finances.

The law should be aimed at something useful or beneficial. The utilitarian school pioneered by Jeremy Bentham said that law aims to guarantee the greatest good of the greatest number, which is essentially the core teaching of utilitarian theory that the purpose of law is to produce the greatest pleasure or happiness for the greatest number of people.⁷

2. Research Methods

The approach used in this study is normative juridical or legal literature research or doctrinal legal research, namely legal research by examining library materials and secondary materials.⁸

3. Results and Discussion

3.1 Regulation of the Position of the Prosecutor of the Republic of Indonesia in the Provision of Legal Assistance in the Civil and State Administrative Fields

The term "Lawyer" used by the Prosecutor's Office after the enactment of Law Number 18 of 2003 concerning Advocates must be understood to mean the same as Advocates. Regarding the definition of an Advocate, Article 1 number 1 of Law Number 18 of 2003, explains that: "An advocate is a person who works to provide legal services, both inside and outside the court that meets the requirements under the provisions of this Law ". Pay attention to the phrase: "... comply with the requirements under the provisions of this Act" apparently many things conflict with the conditions of the Prosecutors who must act as "Lawyers".

⁶Theo Huijbers, *Philosophy of Law in the Course of History*, Kanisius, Yogyakarta, 1982, p. 161.

⁷Sudikno Mertokusumo, *Understanding the Law: An Introduction*, Liberty, Yogyakarta, 2008, p. 80.

⁸Soerjono Soekanto & Sri Mamudji, *Normative Legal Research: A Brief Review*, PT. Jakarta: Raja Grafindo Persada, 2003, p. 13.

Article 3 paragraph (1) of Law Number 18 of 2003 concerning Advocates, states that to be appointed as an Advocate must meet the requirements, other than "do not have the status of civil servants or state officials". The problem is the status of prosecutors who are civil servants (PNS).

It is stated in Article 3 paragraph (2) of Law Number 18 of 2003 concerning advocates, that: "Advocates who have been appointed based on the requirements as referred to in paragraph (1) can carry out their practice by specializing in certain fields in comply with the requirements determined by laws and regulations", then Article 2 paragraph (2) of Law Number 18 of 2003, that: "The appointment of Advocates is carried out by the Advocates organization". Article 12 paragraph (2) of Law Number 18 of 2003 concerning advocates, that: "Supervision of Advocates is carried out by Advocate Organizations". In this case, the problem is the technical supervision of the Advocate Organization on the Prosecutors who become JPN and which Advocate Organization can be chosen by the Attorney General's Office. Meanwhile, Article 30 paragraph (2) of Law Number 18 of 2003 concerning Advocates, confirms that: "Every Advocate appointed under this Law must be a member of the Advocates Organization". Regarding Article 30 paragraph (2) of Law Number 18 of 2003 concerning advocates, JPNs or the Prosecutor's Office must accept the facts of submission to private organizations.

Referring to Law Number 18 of 2003 concerning advocates, the provisions of Article 30 paragraph (1) affirm that: "Advocates who can carry out the work of the Advocate profession are those appointed in accordance with the provisions of this Law". Regarding the Article, the problem is that JPNs must wait for an appointment from the Advocates Organization before carrying out their duties and authorities as JPNs. If this is the case, it will certainly affect the authority of large institutions such as the Attorney General's Office.

Law Number 11 of 2021 concerning the Prosecutor's Office gives the Prosecutor's Office the duty and authority to play a role in the field of civil law and state administration because in Indonesia as a legal state that organizes laws from the state or government in the civil and state administrative fields. This attitude illustrates an anticipatory view of legislative power (lawmakers) in dealing with national and international problems that will arise in the future in the civil and administrative fields of the state.

The Prosecutor's Office may also be assigned other duties and powers under the Law. Instruction of the Attorney General of the Republic of Indonesia Number: INS001/G/9/1994 concerning Law Enforcement Procedures, Instruction of the Attorney General of the Republic of Indonesia Number: INS-002/G/9/1994 concerning Legal Aid Procedures, and Instruction of the Attorney General of the Republic of Indonesia Number: INS003/G/9/1994 concerning Procedures for Legal Services, Legal Considerations and Other Legal Actions which were later updated with the Regulation of the Attorney General of the Republic of

Indonesia Number: Perja-040/A/JA/12/2010 concerning Standard Operating Procedures (SOP) for the Implementation of Duties, Functions and Authorities of Datun (Civil and State Administration) which includes the provision of Legal Aid.

The implementation of JAM DATUN's duties in the jurisdiction of the High Prosecutor's Office is carried out by the Assistant for Civil Affairs and State Administration, while in the jurisdiction of the State Attorney's Office it is carried out by the Head of the Section for Civil and State Administration. Along with the dynamics of community development, opportunities for the role of State Attorneys in the future can be predicted to become stronger in line with the magnitude of the potential to carry out their functions and authorities in maintaining the existence and authority of the government.

3.2 The position of the prosecutor as a state attorney in handling civil proceedings and state administration of state-owned enterprises

The purpose of the state is basically to provide prosperity to its people. To achieve this goal, the state uses state revenues to establish companies. State-established companies are now known as SOEs (State-Owned Enterprises). Every company establishment is required to have capital put into the company when it is established. Similarly, the state as the founder of SOEs, has also included its capital derived from state finances so that it becomes the wealth of SOEs. BUMN status is purely as a company where there are 2 (two) types, namely persero (company company) and perum (public company).⁹

In carrying out its duties, SOEs must uphold the application of the principles of good corporate governance, namely transparency, independence, accountability, accountability and fairness. The application of SOE principles is very important in the management and supervision of SOEs. Experience has proven that economic downturns in various countries including Indonesia, among others, companies in those countries do not apply the principles of good corporate governance.¹⁰ Regarding the implementation of the duties of SOEs, it is undeniable that SOEs as State entities in conducting their business find problems that have the potential to harm state finances so it is necessary to ask for legal assistance from the State Attorney.

In relation to the role of the State Attorney in representing the interests of the state, the State Attorney with special powers acts for and on behalf of the Government or State in Civil and Administrative cases or cases. The State Attorney can play a role as a party who receives a BUMN power of attorney in terms of providing legal assistance through litigation (court) and non-litigation channels.¹¹Based on Article 24 of Presidential Regulation Number 38 of 2010

⁹Gatot Supramono, "BUMN Acquisition and Share Confiscation," *Varia Peradilan* Year XXIX No. 345 August 2014, 2014, pp. 42-43

¹⁰General Provisions, "Law No. 19 of 2003 concerning State-Owned Enterprises."

¹¹Juristoffel Simanjuntak, "Legal Study of the Provision of Legal Assistance by State Attorneys in Civil and State Administrative (TUN) Cases," *Lex Administratum* VI, no. 1 (2018): 152-63.

concerning the Organization and Work Procedures of the Attorney General of the Republic of Indonesia as updated with Article 444 paragraph (2) of the Attorney General Regulation of the Republic of Indonesia Number 06 of 2017 concerning the Organization and Work Procedures of the Attorney General of the Republic of Indonesia, the State Attorney is authorized to represent SOEs and BUMDs. Furthermore, it is stated that Circular Number 04 of 2014 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2013 as a Guideline for the Implementation of Duties for the Court has determined that the Prosecutor as a State Attorney can be the power of attorney for SOEs / BUMDs.

The role of the State Attorney in the exercise of authority in the civil and administrative fields is tasked with providing law enforcement, legal assistance both through trial channels (litigation) and through out-of-trial processes (non-litigation), legal considerations, other legal actions and legal services.¹²The implementation of the duties and authorities of the State Attorney is carried out optimally based on the principles of fast, precise, complete and benefits, and does not cause conflicts of interest with the field of intelligence and special criminal acts. The State Attorney is also bound by the principle of maintaining the confidentiality of the Applicant (the SOE), namely the State Attorney is prohibited from providing data provided by the Applicant and the results of the implementation of activities to other parties.¹³

In the era of free trade, the settlement of SOE business disputes with other parties through arbitration is increasingly popular because of the assumption that settlement through non-litigation channels with arbitration is felt to be more profitable. The community began to look for alternatives instead of filing a lawsuit with the Court. The formal and technical nature of the judiciary often results in the resolution of disputes through protracted litigation.¹⁴This causes in some contracts / cooperation agreements / letters of employment involving SOEs with other parties to use arbitration as a way of resolving disputes in the future. SOEs cooperate with the Prosecutor's Office of the Republic of Indonesia which has authority in the field of Civil and State Administration by optimizing the provision of non-litigation legal assistance and carrying out other legal actions.

¹²General Provisions, "Regulation of the Attorney General of the Republic of Indonesia No. 7 of 2021 concerning Guidelines for the Implementation of Law Enforcement, Legal Aid, Legal Considerations, Other Legal Actions, and Legal Services in the Civil and State Administrative Fields" (nd).

¹³Explanation regarding the Principles in the Republic of Indonesia Attorney General's Regulation No. 7 of 2021 concerning Guidelines for the Implementation of Law Enforcement, Legal Aid, Legal Considerations, Other Legal Actions, and Legal Services in the Civil and State Administrative Fields.

¹⁴Susanti Adi Nugroho, *Arbitration Dispute Resolution and Its Legal Implementation* (Jakarta: Kencana, 2015). Page 13

The State Attorney through the granting of power of attorney from SOEs has legal standing in representing the interests of State entities either submitting a request for arbitration settlement or if the authorizer of the SOE is sued / becomes a respondent to undergo arbitration proceedings.¹⁵ SOEs as state entities that will pursue arbitration through the Indonesian National Arbitration Board (BANI) with several considerations. Dispute resolution through arbitration is considered more neutral when compared to civil dispute resolution through District Court or judicial bodies or litigation. Indeed, for the developed world, commercial arbitration has been considered as a business executive's court as an alternative dispute resolution, because they argue that business settlement through official courts generally takes a long time because the procedural factors of the judicial system are very complex and complicated. In addition, because settlement through arbitration channels with its characteristics is informal procedural so that it can be simpler, faster, and the nature of the award is directly final and binding.

4. Conclusion

The term State Attorney (JPN) is not explicitly stated in Law Number 5 of 1991, Law Number 11 of 2021, or Presidential Decree Number 55 of 1991, but the meaning of "Special power of attorney in the civil sector" is itself synonymous with Lawyer. Regarding special powers, there is Article 30 paragraph (2) of Law Number 11 of 2021, namely: "In the civil and administrative fields of the state, the Prosecutor's Office with special powers can act both inside and outside the court for and on behalf of the state or government". Based on this assumption, in addition to having used the term State Lawyer as a translation of *landsadvocaat* version of *Staatsblad* 1922 Number 522, then KEPJA Number: Kep-039 / JA / 1993 dated April 1, 1993 concerning Administration of Civil Cases and State Administration, which has been revised with KEPJA: Number Kep-148 / JA / 12/1994 dated December 22, 1994 concerning Improvement of Civil Case Administration and State Administration, the term "State Attorney" has been used for Prosecutors who carry out DATUN duties, which have become popular. In order to carry out the duties and functions of the Attorney General in the civil and administrative fields in accordance with the Attorney General's Regulation Number: Per-025 / A / JA / 11/2015 concerning Guidelines for the Implementation of Law Enforcement, Legal Aid, Legal Considerations, Other Legal Actions and Legal Services in the Civil and State Administration Sector (hereinafter referred to as Perja Number: Per-025 / A / JA / 11/2015), as well as administrative management in accordance with the Decree of the Attorney General of the Republic of Indonesia Number : KEP-157/A/JA/11/2012 dated November 14, 2012 concerning the Administration of Civil and State

¹⁵Based on the provisions of Article 30 paragraph (2) of Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

Administrative Cases, which is a refinement of the Decree of the Attorney General of the Republic of Indonesia No. : KEP-148 / JA / 12 / 1994 dated December 22, 1994, the Prosecutor's Office, especially the ranks of DATUN (Civil and State Administration) both at the central and regional levels must know, understand and implement the administration at every stage. In addition, the implementation of DATUN's functions, functions and administration must refer to the Attorney General's Regulation Number: PER-018/A/JA/07/2014 dated July 7, 2014 concerning Standard Operating Procedures for the Junior Attorney General for Civil and State Administration. In solving legal problems faced by SOEs, SOEs can cooperate with State Attorneys at the Prosecutor's Institution of the Republic of Indonesia which has authority in the civil and state administrative fields. The term State Attorney is not explicitly stated in the Attorney Law of the Republic of Indonesia. State Attorney is a Prosecutor with Special Power who can act in or out of court for and on behalf of the State or Government to perform the duties and authority of the Prosecutor's Office in the civil and administrative fields of the state. As specified in Article 30 paragraph (2) of Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Attorney General of the Republic of Indonesia, the meaning of "special power" in the civil and administrative fields of the state is itself synonymous with "lawyer". The State Attorney can receive a power of attorney for SOEs that are part of a State entity to be able to carry out dispute resolution actions. The State Attorney can play a role as a party who receives a BUMN power of attorney in terms of providing legal assistance through litigation (court) and non-litigation channels.

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