

The position of the Prosecutor's Office as Corruption Crime Investigator

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Abstract. *The aim of this research is to understand and analyze the literal implementation of the Prosecutor's investigative authority regarding criminal acts of corruption. In this writing the author uses a normative juridical method with research specifications in the form of descriptive analysis. Corruption is a special category of crime. In handling these special criminal acts, the investigation is carried out by the prosecutor. However, in this latest development, the issue of investigation has been questioned by various groups. Because it is difficult to determine the boundaries of investigative authority between the prosecutor and the Corruption Eradication Commission (KPK), as far as the authority of the prosecutor in handling specific criminal acts, and to what extent the authority of the Corruption Eradication Commission. Theoretically, the indicators that underlie the authority of the public prosecutor to investigate criminal acts of corruption include philosophical aspects, sociological aspects, historical aspects and practical aspects. The prosecutor's authority to carry out investigations and at the same time prosecutor, will eliminate the pre-prosecution chain which has caused cases to go back and forth between the public prosecutor and investigators. With the prosecutor's authority to carry out investigations, cases can be avoided going back and forth, so that the case resolution process becomes efficient and effective.*

Keywords: *Corruption; Crime; Investigator; Prosecutor.*

1. Introduction

Corruption in Indonesia has become widespread in society. Its development continues to increase from year to year. The increase in uncontrolled corruption will bring disaster, not only to the national economy but also to the life of the nation and state in general.¹The crime of corruption is a violation of the social

¹Muhamad Riyadi Putra and Gunarto, (2019), Analysis of Handling Practices on Corruption Crime by Police (Case Study in Special Criminal Investigation Police Directorate of Central Java), Jurnal Daulat Hukum, 2 (2), p 210

and economic rights of the community. The crime of corruption has become an extraordinary crime. Likewise, efforts to eradicate it can no longer be carried out in a normal way, but are demanded in an extraordinary way. Furthermore, it is proven that there is a link between corruption and other forms of crime, especially organized crime (terrorism, human trafficking, smuggling of illegal migrants and others) and economic crime (money laundering). So that the crime Corruption is a crime that is very detrimental to the state.²

In Indonesia, there are law enforcers, one of which is the Prosecutor's Office. The formation of this Prosecutor's Office is based on Law No. 16 of 2004 concerning the Prosecutor's Office which in the section considering explains that Indonesia's national goal is law enforcement and justice and as one of the bodies whose functions are related to the Composition of the Prosecutor's Office according to Law No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia consists of the Attorney General's Office, the High Prosecutor's Office, and the District Prosecutor's Office. Where the highest power in the Prosecutor's Office lies with the Attorney General, namely the Attorney General himself, while a prosecutor is appointed and dismissed by the Attorney General, where the requirements to be appointed as a prosecutor are regulated in Law No. 16 of 2004 Article 9. In carrying out his duties and functions, the prosecutor acts on behalf of the state and is responsible according to the hierarchical channel. Before taking office, the prosecutor is required to take an oath or promise according to his religion before the Attorney General. The function of the prosecutor is one of the links in the law enforcement process in dealing with crimes or criminal acts that occur in society, where this function cannot be separated from the process of investigation, inquiry, prosecution, trial and execution.

The investigation process is whether an event that occurs has sufficient evidence and is a criminal act or not, whether the crime meets the elements of criminal provisions or not, so that the final decision or verdict of the judge is also influenced by the process of collecting evidence at the investigation stage, therefore the professionalism of investigators is important, because errors in the application of articles will have fatal consequences for the subsequent law enforcement process and the inability to apply normative criminal law rules to concrete legal events that occur will have an impact on the bluntness of law enforcement or the rampant crime, so that the dream of upholding the law will be far from hope. As we know that research on the criminal law system, especially in law enforcement against corruption, is felt to be very serious.

After the enactment of Law Number 31 of 1999 concerning the eradication of criminal acts of corruption until the enactment of the next law, namely Law

²Abdul Haris, Umar Ma'ruf, and Sri Kusriyah, (2019), Role And Function Of Attorney In Order To Optimize The Prevention Of Corruption Through Establishment Of TP4P/D (Case Studies In State Attorney Of Grobogan), Jurnal Daulat Hukum, 2 (4), p 449

Number 16 of 2004 concerning the prosecutor's office of the Republic of Indonesia and amended into Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, the authority of the prosecutor as an investigator or the authority of the prosecutor's office in investigating corruption crimes was once doubted as to its legitimacy.

The authority of the prosecutor's office in investigating corruption crimes or the authority of the prosecutor as an investigator is doubtful in its legitimacy because there is a provision in Article 26 of the law on the eradication of corruption crimes, which states that investigations, prosecutions and examinations in court of corruption crimes are carried out based on the applicable criminal procedure law unless otherwise specified in this law", which some people then use the sentence "applicable criminal procedure law"

interpreted as limited to the Criminal Procedure Code, so that the basis for conducting investigations in implementing the material law of the corruption eradication law is only the Criminal Procedure Code.

The author conducted a study on the authority of the prosecutor's investigation in handling corruption crimes, in which case the author will present an analytical and scientific description. Based on the background above, the author is interested in conducting a scientific study in the form of systematic and fundamental research regarding determining purpose of writing for knowing and analyzing the implementation of the Attorney General's investigative authority regarding corruption crimes literally.

2. Research Methods

The approach used in this study is normative juridical or written legal approach (statute approach). The normative juridical approach is an approach carried out based on the main legal material by examining theories, concepts, legal principles and laws and regulations related to this study. This approach is also known as the literature approach, namely by studying books, laws and regulations and other documents related to this study.

3. Results and Discussion

3.1. Authority of the Prosecutor's Office in Handling Corruption Crimes Legally

Indonesia as a state of law (Rechtsstaat) means that in the Unitary State of the Republic of Indonesia, law is the lifeblood of all aspects of life. The essential elements of a state of law (rechtsstaat) that characterize the upholding of the supremacy of law include a guarantee that the government in exercising its power is always and consistently based on law and regulations. In Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it is emphasized that the Prosecutor's Office of the Republic of Indonesia is a government institution that exercises state power in the field of prosecution and other authorities based on

law. The Prosecutor's Office as the controller of the case process (*Dominus Litis*), has a central position in law enforcement, because only the Prosecutor's Office institution can determine whether a case can be submitted to the Court or not based on valid evidence according to the Criminal Procedure Code. In addition to being the holder of *Dominus Litis*, the Prosecutor's Office is also the only institution that implements criminal decisions (*executive ambtenaar*).³

Investigators in Corruption Crimes are first handled by investigators from the Prosecutor's Office or by Police Investigators. In special crimes, the prosecutor acts as an investigator. The legal basis that grants the authority to investigate corruption crimes to the Prosecutor's Office is Article 30 paragraph (1) letter d of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia which states "in the criminal field, the Prosecutor's Office has the task and authority to conduct investigations into certain crimes".

Based on Article 284 paragraph (2) of the Criminal Procedure Code. The Criminal Procedure Code has removed the investigative authority from the Prosecutor's Office, and given it entirely to the police. However, even so, Article 284 paragraph (2) as a "transitional provision" article from the HIR period to the Criminal Procedure Code still leaves the investigative authority to the public prosecutor as long as it concerns certain crimes, such as economic crimes and corruption.

Specifically regarding the transitional regulations referred to in Article 284 paragraph (2), because these transitional regulations have a rather special connection to the function and authority of the prosecutor as a public prosecutor. Because the transitional regulations paragraph (2) involve the prosecutor or public prosecutor as an investigator in "special criminal acts", in fact only the prosecutor is authorized to conduct investigations. Article 284 paragraph (2) states: "within two years after this law is enacted, the provisions of this law shall apply to all cases, with the temporary exception of special provisions of criminal procedures as referred to in certain laws, until there are changes and or are declared no longer valid." With the explanation of Article 284 paragraph (2) that:

- a. What is meant by all cases are cases that have been submitted to court;
- b. What is meant by "special provisions" of criminal procedure as in certain laws are special provisions of criminal procedure as in:
 - 1) Law on investigation and prosecution of economic crimes (Emergency Law No. 7 of 1955)
 - 2) Law on the eradication of criminal acts of corruption (Law No. 3 of 1971), with the note that all special provisions of criminal procedure as referred to in

³Hotma Hutadjulu, (2013), Optimizing the Role of the Prosecutor's Office in Eradicating Criminal Acts of Corruption in the Era of Regional Autonomy. *Lex Ex Societatis Journal*, I (5), p 96

certain laws will be reviewed, amended or revoked within the shortest possible time.

The new Attorney General's Law is seen as stronger in determining the position and role of the Attorney General's Office of the Republic of Indonesia as a state government institution that carries out investigative and prosecution duties. The government has actually made great efforts to eradicate corruption, as seen from the many regulations issued by the government together with the DPR, including Law Number 31 of 1999, which regulates in detail the issue of reversed burden of proof for perpetrators of corruption and also the imposition of heavier sanctions for corruptors. Recently, this law has also been seen as weak and has caused corruptors to escape because there are no transitional provisions in the law.

Prosecutors as law enforcement officers are also given the authority to conduct investigations into certain crimes, one of which is corruption. In handling corruption crimes as ordered by Law Number 31 of 1999, if it is considered that there is a corruption crime that is difficult to prove, then the prosecutor can be involved in the investigation. In addition, this is also emphasized in Law Number 16 of 2004 concerning the Prosecutor's Office, which determines that the authority of the prosecutor's office to conduct investigations into certain crimes is intended to accommodate several provisions of laws that give authority to the prosecutor's office to conduct investigations, for example, the law on human rights courts, the law on corruption, and various other laws.

Related to the authority of the prosecutor as an investigator in corruption crimes. Based on the provisions of Article 27 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes, it is determined that "in the event that a corruption crime is found that is difficult to prove, a joint team can be formed under the coordination of the attorney general. This is also emphasized in the provisions of Article 39 which states that; the attorney general coordinates and controls the investigation, inquiry, and prosecution of corruption crimes carried out jointly by people who are subject to general justice and military justice.

3.2. Implementation of the Attorney General's Investigative Authority for Corruption Crimes Literally

Handling corruption cases by the Prosecutor's Office has so far been one of the main missions and a main task that must be successful in line with the demands of reform in the field of law enforcement in Indonesia. The authority of prosecutors to conduct investigations is currently still in the spotlight, namely regarding the validity of investigations into corruption cases carried out by the prosecutor's office. Some argue that prosecutors are not authorized to investigate corruption cases, while others argue that prosecutors have the authority to investigate corruption cases. This fact certainly has consequences

for the variety of court decisions on the same thing and object in corruption cases.⁴

Regarding the matter of investigation, as is known in the Criminal Code, the authorities to conduct investigations are primarily the Police and the coordination of criminal investigations of other agencies. However, if we look at Article 184 paragraph (4) of the Criminal Procedure Code, the Prosecutor is still given the authority to conduct investigations into special crimes such as corruption. Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption is supplemented by special criminal procedural law which is an exception to that regulated in the Criminal Procedure Code. The authority of the Prosecutor's Office is based on Article 17 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption, as follows:

"Investigators according to the special provisions of criminal procedures as referred to in certain laws as referred to in Article 284 paragraph 2 of the Criminal Procedure Code are carried out by investigators, prosecutors and authorized investigative officials based on statutory regulations."

The authority of the prosecutor as an investigator based on Article 30 paragraph (1) letter d of Law Number 16 of 2004 concerning the Prosecutor's Office, is as follows:

"Conducting investigations into certain criminal acts based on the law".

So that it can be known the authority of the prosecutor's office as an investigator related to the legal provisions regulated in the Criminal Procedure Code and Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption.

In conducting an investigation into a corruption crime, the prosecutor automatically also conducts an investigation because before the prosecutor conducts an investigation into a corruption crime, it must be preceded by conducting an investigation. Thus, although before the enactment of Law Number 30 of 2002, Law Number 31 of 1999 which was later amended by Law Number 20 of 2001 did not explicitly state that the prosecutor has the authority to conduct an investigation, including an investigation into a corruption crime, but for reasons such as those above, the prosecutor does have the authority to conduct an investigation, including an investigation into a corruption crime.

The function of the public prosecutor as an investigator is also regulated in Article 7 and Article 8 of the Criminal Procedure Code. The authority of the public prosecutor in Article 14 letter l of the Criminal Procedure Code states: "Carrying out other actions in the duties and responsibilities as a public prosecutor according to this law". The meaning of "other actions" in the article is to examine

⁴MRSaripi, (2016), Prosecutors as Corruption Crime Investigators, Unsrat Journal of Legal Studies, 22, (7), p 24

the identity of the suspect, evidence, between investigators, public prosecutors and the court.⁵

Legally, the authority of the public prosecutor in criminal acts of corruption has been described in the sub-chapter above, theoretically the indicators underlying the authority of the public prosecutor to investigate criminal acts of corruption are as follows:

1) Philosophical Reasons

The authority of the Prosecutor to conduct investigations and prosecutions at the same time will eliminate the chain of pre-prosecution that has caused cases to go back and forth between the public prosecutor and investigators. With the authority of the Prosecutor to conduct investigations, cases can be avoided going back and forth, so that the case resolution process becomes efficient and effective.⁶

2) Sociological Reasons

Corruption is a white collar crime with the characteristics of the perpetrators having high intellectual, very neat in hiding evidence and its implementation is more organized. Therefore, disclosing corruption cases is not easy because it is related to the time dimension, namely being uncovered after a long time has passed. So that evidence is often lost. In this regard, the experience and ability of the Prosecutor's Office to investigate corruption cases has been recognized by the public.⁷

3) Historical Reasons

The Prosecutor's Office has been investigating corruption crimes since the *Het Herziene Inlandsch Reglemen (HIR)* came into effect until now.⁸

4) Practical Reasons

The authority of the Prosecutor to conduct investigations will practically accelerate the Prosecutor to master the case and its evidence so that the resolution of corruption cases will be more effective and efficient. The Prosecutor's mastery of the case and understanding of the evidence from the start will make it easier for the Prosecutor to prepare the indictment and anticipate the possibilities that will occur during the trial.⁹

⁵Eddy Rifai, (2014). *Law Enforcement of Corruption Crimes*, Bandar Lampung, Justice Publisher, p 41

⁶MRSaripi, (2016), *Op.Cit*, 22 (7), p 31

⁷Jamin Ginting, (2012). *Legal and Non-Legal Factors in Corruption Crime Decisions in Indonesia*. *Media Hukum*, 19 (2), p 313

⁸Mardjono Reksodiputro, (1993), *Indonesian Criminal Justice System (Looking at Crime and Law Enforcement Within the Limits of Tolerance)*, *Journal of the Faculty of Law, University of Indonesia*, p 1

⁹Guse Prayudi, (2010), *Criminal Acts of Corruption, Viewed from Various Aspects*, Yogyakarta, Pustaka Pena, p 156

The limited authority of the public prosecutor in handling corruption crimes is to conduct investigations, inquiries and prosecutions (Article 30 paragraph 1 of the Indonesian Attorney General's Law). The duties and functions of the prosecutor as an investigator have the authority to take other actions such as examining the identity of the suspect, evidence between investigators, public prosecutors and the court as regulated in Articles 4, 5, 7, 8 and 14 of the Criminal Procedure Code. The last limitation of the public prosecutor in handling corruption crimes is regulated in Articles 26 and 30 of the Corruption Eradication Law, which has the authority to conduct wiretapping, open, examine or confiscate letters related to corruption crimes which must first obtain permission from the Head of the District Court.¹⁰ Furthermore, the final part is to provide recommendations to the Government, that there should be a restructuring of the Republic of Indonesia's prosecutor's law which emphasizes the limited authority of public prosecutors in enforcing corruption crimes and the delegation of authority to prosecutors in conducting investigations into corruption crimes, eliminating the authority of other law enforcers (the Police) to conduct investigations into corruption crimes so that there is no conflict of authority in handling corruption crimes.

4. Conclusion

Theoretically, the indicators underlying the authority of the public prosecutor to investigate corruption crimes are as follows: (1) Philosophical Reasons, The authority of the prosecutor to conduct investigations and prosecutions at the same time will eliminate the chain of pre-prosecution that has caused cases to go back and forth between the public prosecutor and investigators. With the authority of the prosecutor to conduct investigations, cases can be avoided going back and forth, so that the case resolution process becomes efficient and effective. (2) Sociological Reasons, Corruption is a white collar crime with the characteristics of perpetrators who have high intellectual abilities, are very neat in hiding evidence and their implementation is more organized. Therefore, disclosing corruption cases is not easy because it is related to the time dimension, namely being uncovered after a long time has passed. So that evidence is often lost. In this regard, the experience and ability of the prosecutor's office to investigate corruption cases has been recognized by the public. (3) Historical Reasons, the prosecutor's office has been investigating corruption since the *Het Herziene Inlandsch Reglemen* (HIR) was in effect until now. (4) Practical reasons, the authority of the prosecutor to conduct investigations will practically speed up the prosecutor's mastery of the case and its evidence so that the resolution of corruption cases will be more effective and efficient. The prosecutor's mastery of the case and understanding of the evidence from the start will make it easier for the prosecutor to prepare the indictment and anticipate possibilities that will occur during the trial.

¹⁰Marfuatul Latifah, (2012), Legality of the Prosecutor's Authority in Investigating Corruption Crimes, *STATE OF LAW*: 3 (1), p 110

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