

The Existence of the Prosecutor's Office in Implementing the Principle of a Single Prosecution System

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Abstract: *The aim of this research is to determine and analyze the paradigm of the existence of the Prosecutor's Office in implementing the principle of a single prosecution system. The approach method used in this writing is normative juridical. This writing specification is analytical descriptive. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and the formulation of Article 2 of the Prosecutor's Law which confirms the position of the prosecutor's office or public prosecutor in terms of implementing state power in the field of prosecution and other authorities based on the law independently have not been implemented ideally. It is necessary to understand the empirical, philosophical and juridical background regarding the principle of the Single Prosecution System and its implications for prosecution policy from the perspective of the Criminal Justice System in Indonesia. The role of the prosecutor as a single public prosecutor or single prosecution system is a basis for carrying out the duties of the prosecutor's office which aims to maintain a unified prosecutorial policy that displays unique characteristics that are integrated in the behavior, thinking and work procedures of the prosecutor's office. What prosecutors must have is professional expertise, both in terms of understanding and insight*

Keywords: *Existence; professional; Prosecutor.*

1. Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) which states that "The State of Indonesia is a state of law" shows that in enforcing the law, it must uphold the applicable law as a tool to regulate national and state life. In this case, law enforcement occupies a very central position in relation to the law which must function as a regulatory tool for the

life of society with society and society with the government.¹To realize the principles of a state based on the rule of law, both legal norms and statutory regulations are required, as well as law enforcers who are professional, have high integrity and discipline, supported by legal facilities and infrastructure and legal behavior.²

The creation of justice and welfare of citizens is the goal of law in a country. The law can run well or not apart from the firm role of the government in enforcing legal sanctions, public awareness to be able to comply with all applicable legal rules, and supported by the attitude of law enforcers in enforcing applicable laws.³

Law enforcement in the macro sense refers to all aspects of community, national and state life, while in the micro sense, law enforcement is limited to the litigation process in court, in criminal cases including the investigation process, inquiry, prosecution (examination before the trial) to the implementation of court decisions that have permanent legal force.⁴

The Attorney General's Office of the Republic of Indonesia is one of the bodies whose functions are related to judicial power and government institutions that exercise state power in the field of prosecution and other authorities carried out independently by the Attorney General's Office, the High Prosecutor's Office and the District Prosecutor's Office in accordance with applicable state power laws. The central position of the Attorney General's Office as a prosecutor and executor of judges' decisions in the integrated criminal justice system must always be integrated with investigations, trials and corrections.⁵It is important to strengthen the role of prosecutors in law enforcement functions, as mandated in the United Nations Guidelines on the Role of Prosecutors and adopted at the 8th Crime Prevention Congress, in Havana, 27 August–7 September 1990.⁶

Principle *Single Prosecution System* then it cannot be separated from the meaning of the Prosecutor is one and inseparable (een en ondeelbaar)" which in

¹Sulistiyawan Doni Ardiyanto, Eko Sopyono and Achmad Sulchan, Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination, *Jurnal Daulat Hukum*, Volume 3 Issue 1, March (2020), p.179

²Sri Praptini, Sri Kusriyah, and Aryani Witasari, Constitution and Constitutionalism of Indonesia, *International Journal of Legal Sovereignty*, Volume 2 Issue 1, March (2019), p.8

³Ahmad Firmanto Prasedyomukti and Rakhmat Bowo Suharto, The Role of Judicial Commission on Supervision of Judge's Crime in Indonesia, *Jurnal Daulat Hukum* Volume 1 Issue 4 December (2018), p.896

⁴ Adhe Ismail Ananda, Constitutionalism Concept in Implementation of Indonesian State Administration, *Journal of Sovereign Law*, Volume 4 Issue 2, June (2021), p.124

⁵Adami Chazawi. 2005, *Criminal Law Lessons: Trial and Participation Part 3*. Jakarta: Rajawali Pers, p.7

⁶Rangga Trianggara Paongan, The Prosecution Authority of the Corruption Eradication Commission and the Prosecutor's Office in Handling Corruption Crimes in Indonesia. *Lex Crimen*, Vol.2 No.1, (2013), p.21-36

its historical journey originated from Law Number 7 of 1947 dated February 27, 1947 concerning the Composition and Powers of the Supreme Court and the Attorney General's Office, which was later replaced by Law Number 19 of 1948 dated June 8, 1948 concerning the Composition and Powers of Judicial Bodies and the Attorney General's Office. In both laws, it is basically regulated that each Court (Supreme Court, High Court and District Court) has one Prosecutor's Office with the same jurisdiction and which consists of one or more Prosecutors counted as one Head of the Prosecutor's Office.⁷

The purpose of this writing is to find out and analyze *the paradigm of the existence of the Prosecutor's Office in implementing the principle of a single prosecution system*.

2. Research Methods

To conduct a study in this writing, the author uses a normative legal method, emphasizing on literature studies. The specifications in this study are descriptive analysis. Secondary research materials come from the Laws and Regulations related to the writing carried out. To obtain data in this writing, a secondary data collection method is used which is obtained from literature books, laws and regulations, and opinions of legal experts. The data that has been obtained is then analyzed with qualitative analysis.

3. Results and Discussion

3.1. Paradigm of the Existence of the Prosecutor's Office in Implementing the Principle of the Single Prosecution System

The prosecutorial power is a free and independent state power, and has a fundamental position in protecting the interests of the state, the public and the law in a country. Unlike the judicial power which is passive in waiting for a case, the state through its prosecutorial power can sue anyone who commits an act that violates the interests of the state, the public and the law. There is no country that does not have the prosecutorial power. The prosecutorial power is a free and independent power that is free from the influence of any power which is a characteristic of the judicial power or judicial power. Thus, the prosecutorial power is part of the judicial power whose function is related to the judicial power to realize just prosecution as the main goal of the prosecutorial power.

The power of prosecution as a state power is not an absolute power but is limited by law. In Indonesia itself, the power of prosecution is carried out by the Prosecutor's Office which is led by the Attorney General based on the law governing the Prosecutor's Office.

Responding to the reality of legal politics, and to maintain the purity of the free and independent prosecutorial power to protect the interests of the state, the public and the law, legal principles are needed that are able to become the rukh

⁷Edita Elda, Direction of Corruption Eradication Policy in Indonesia: Post-Amendment Study of the Corruption Eradication Commission Law. Scientific Journal of Law, Vol.1 No.2, (2019). p.166

or basic justification in regulating, implementing and supervising the prosecutorial power. A scientific study of the legal principles underlying the prosecutorial power is very necessary so that it can realize a just prosecution, which is comprehensive in nature and meets the principles of scientific truth.

According to OC. Kaligis, the prosecutor's authority as an investigator of certain crimes is only maintained for 2 (two) years or until there is a change in special laws such as laws on corruption and economic crimes, which means that the prosecutor's authority to investigate special crimes has expired. This authority is only given until the law related to special crimes is renewed and the position of the prosecutor's office is returned as a supervisor in accordance with the system regulated in the Criminal Procedure Code.⁸The principle of *lex certa* states that every legal regulation must be interpreted explicitly. This confirms that the authority to investigate remains valid for prosecutors for corruption and economic crimes.

The enactment of the Indonesian Attorney General's Law in Article 30 paragraph (1) letter d states that "the duties and authorities of the prosecutor are to conduct investigations into certain criminal acts based on the law". The prosecutor's authority has drawn debate in terms of conducting investigations into special crimes. The delegation of authority is explained in the background of the Attorney General's Law, namely to accommodate several provisions of legislation that previously gave the prosecutor's office authority to conduct investigations. Based on the explanation of the article, it can be said that the prosecutor's office has privileges, namely special rights to be able to carry out investigations into special crimes.⁹

The position of the prosecutor's office is *dominus litis* (case controller) which means that the prosecutor's office has full authority in determining whether a case can proceed to the next stage or not. Therefore, in the process of implementing the handling of corruption crimes, the prosecutor's office has the authority to conduct investigations and prosecutions, this has implications for the criminal justice system where the prosecutor's office also conducts investigations with a one-roof system. If you look at the Criminal Procedure Code guidelines, there is no one-roof system because the Criminal Procedure Code adheres to the principle of functional differentiation which emphasizes the existence of different work functions between investigations and prosecutions carried out by different agencies, but are interrelated, which is called the Integrated Criminal Justice System.¹⁰This system implies a process of interaction,

⁸OC Kaligis, 2006, *Supervision of Prosecutors as Corruption Crime Investigators*, Bandung, PT. Alumni, p.225.

⁹Irfan Ardiansyah, *The Influence of Disparity in Sentencing on Combating Corruption in Indonesia*. *Jurnal Hukum Respublica*, Vol.17 No. 1, (2017), p.88

¹⁰Marwan Effendy, 2012, *Criminal Justice System: A Review of Several Developments in Criminal Law*, 1st Edition, Jakarta: Referensi, p. 18-19

which is prepared rationally and in an efficient manner, to provide certain results with all its limitations.¹¹

The prosecution system adopted according to Indonesian Criminal Procedure Law is:

1) *Mandatory Prosecutorial System:*

Based on this system, the prosecutor in handling a case only bases it on the existing evidence and not on matters outside of what has been determined (except in certain circumstances).

2) *Discretionary Prosecutorial System:*

In this system, prosecutors can implement various specific policies and can take various actions in resolving or handling a case. In this system, prosecutors in making decisions, in addition to considering the available evidence, also consider the factors underlying the occurrence of a crime, the circumstances in which the crime was committed, the personal attributes of the defendant and the victim, the level of remorse of the defendant, the level of forgiveness of the victim and considerations of public policy.

Of the two prosecution systems, Indonesia adheres to both and this is an advantage of the Republic of Indonesia's Attorney General's Office in carrying out prosecutions.¹² included in the Mandatory Prosecutorial System in handling general criminal cases and also included in the Discretionary Prosecutorial System in handling special criminal cases.

In the case example, namely the handling of a single prosecution by the Prosecutor's Office during the Old Order, a corruption case that was successfully handled by the Prosecutor's Office as the sole investigator and prosecutor was the corruption case of former Foreign Minister Ruslan Abdulgani in April 1957 who was found guilty of accepting bribes and violating foreign exchange regulations by the Supreme Court who at that time carried US \$ 11,000 entrusted by a Chinese businessman. Ruslan's case was handled by the Attorney General, Soeprapto who was eventually sentenced to one month in prison and sentenced to pay Rp 5,000, - and Ruslan resigned from his position. In revealing this case, it was not as easy as imagined, because Soeprapto received intervention from Ali Sastroamijoyo as Prime Minister, President Soekarno and even from the Supreme Court itself to stop the case that happened to the Former Minister of Foreign Affairs. However, because Soeprapto was a career prosecutor and not a politician who had an interest in a court decision, the case that occurred was able to be resolved by the Prosecutor's Office. This incident

¹¹Hutahaeen, Armunanto and Erlyn Indarti, Investigative Institutions in the Integrated Criminal Justice System in Indonesia, Indonesian Legislation Journal, Volume 16 Number 1, March (2019), p.30

¹²Moh.Hatta. 2008, Welcoming Responsive Law Enforcement of Integrated Criminal Justice System (in Conception and Implementation of Selected Chapters). Yogyakarta: Galang Press, p.72

marked the beginning of the decline in fighting corruption cases where prosecutors as law enforcers received intervention from the Prime Minister himself, Ali Sastroamijoyo.

The weak existence of the Indonesian Attorney General's Office in the sole prosecution of special crimes is apparently caused by the many interventions and the lack of independence of the prosecutor's office, considering that the position and role of the Indonesian Attorney General's Office is as a state body that is inseparable from the executive institution and the appointment of the Attorney General is also appointed and dismissed by the President with the approval of the DPR. So it is not surprising that prosecutors are often said to have "thin ears" so that many cases have not been resolved seriously by the prosecutor's office and the public is of the opinion that this contains political nuances. For example, the case of Ginanjar Kartasmita, (Former Minister of Mining and Energy/Chairman of Bappenas), Syahril Sabirin (Governor of Bank Indonesia), and Akbar Tanjung (Chairman of the Indonesian House of Representatives).

3.2. Independence of the Prosecutor's Office in Sole Prosecutorial Authority

Executive power is indeed a threat to the power of prosecution. According to some expert opinions regarding the prosecutor's office cannot be subordinated to the executive power, but in this case the expert has another view that the prosecutor's office is part of the executive institution that carries out independent justice if there is a normative guarantee. Therefore, the Prosecutor's Office in carrying out its functions, duties, and authorities is free from the influence of government power and other powers. Then further it will be determined by the Attorney General who has responsibility for the demands made without intervention from other parties.

In the provisions of Article 2 of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, it states that paragraph (1) The Attorney General's Office of the Republic of Indonesia, hereinafter referred to as the Attorney General's Office, is a government institution tasked with implementing state power in terms of prosecution and has other authorities as determined by law. Paragraph (2) states that the state power referred to in paragraph (1) will then be carried out "independently".

Thus, the explanation of paragraph (2) is that what is meant by "independently" is that the prosecutor's office carries out its duties, functions and authority independently from the influence of the government and other powers. Regarding the independence of the prosecutor's office, in a paper presented at the 6th International Criminal Law Congress held in Melbourne in 1997, this was stated by John Mc Kechine QC.

Stating that "The potential for ultimate dismemberment of the office by a government is so obvious it barely needs stating. If a government or a parliament really wishes to destroy a prosecution service, each is capable of doing so.

Parliament can abolish courts. Governments can withhold funding. Ministers can decline to reappoint troublesome directors who are therefore not immune from destruction".¹³

The statement from John Mc. Kechine refers to the prosecutor's office as an institution that has a very high potential for intervention from outside parties, both from the executive and legislative branches. If both parties really want to destroy the prosecutor's office, then both institutions can easily do so. The legislature has a wide opportunity to play through the creation of legislation, and the executive is in the administrative section, such as withholding money or even dismissing an Attorney General. In theory, legal experts have long been concerned about law enforcement if later there is interference from other parties using political power, experts believe that if the law is faced with political power, this will result in defeat against the law itself because this problem is often found in Indonesia, this is what causes the law to be powerless and have no power when faced with political elites, officials or fellow law enforcers themselves.¹⁴

Institutional independence means that the prosecutor's office is in an institutionally independent position, the prosecutor's office is in an institutionally independent place and free from the power of other parties, while functional independence is that the prosecutor is free and independent in carrying out his duties to prosecute or not to prosecute. Both of these bases are very important, both institutional independence and functional independence, because the position of the prosecutor's office in the Indonesian government system is very easy to get the influence of independence and professional attitude in carrying out the authority and duties of the prosecutor's office, for that it is necessary to pay attention to the prosecutor's institution so that an honest trial can be created and not intervened by outside parties.

4. Conclusion

Article 2 of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia which places the Prosecutor's Office as an institution that exercises state power in terms of prosecution which is carried out freely without influence from any party. The implementation of the Integrated Criminal Justice System is actually carried out to prevent such things which can later cause disparities in criminal law enforcement. The role of the prosecutor as a single public prosecutor or single prosecution system which is a foundation for the implementation of prosecutorial duties which aims to maintain a unified prosecution policy that

¹³Nicholas Cowdery, Independence The Prosecution. Paper Presented At (Conference Of Rule Of Law: The Challenges Of A Changing World, 2007), In Brisbane On 31 August 2007, p. 6

¹⁴M. Thalbah, Law Enforcement by the Prosecutor's Office in the Progressive Law Paradigm. Jurnal Magister Hukum, Vol.1 No.1, (2005), p. 87

displays characteristics that are integrated in the behavior, mindset, and work procedures of the prosecutor's office. What the prosecutor's office must have is professional expertise, both in terms of understanding and comprehension.

5. References

Books:

- Adami Chazawi. 2005, *Criminal Law Lessons: Trial and Participation Part 3*. Jakarta: Rajawali Pers
- Marwan Effendy, 2012, *Criminal Justice System: A Review of Several Developments in Criminal Law*, 1st Edition, Jakarta: References
- Moh.Hatta. 2008, *Welcoming Responsive Law Enforcement of Integrated Criminal Justice System (in Conception and Implementation of Selected Chapters)*. Yogyakarta: Galang Press
- OC Kaligis, 2006, *Supervision of Prosecutors as Corruption Crime Investigators*, Bandung, PT. Alumni

Journals:

- Adhe Ismail Ananda, *Constitutionalism Concept in Implementation of Indonesian State Administration*, *Journal of Sovereign Law*, Volume 4 Issue 2, June (2021)
- Ahmad Firmanto Prasedyomukti and Rakhmat Bowo Suharto, *The Role of Judicial Commission on Supervision of Judge's Crime in Indonesia*, *Jurnal Daulat Hukum* Volume 1 Issue 4 December (2018)
- Edita Elda, *Direction of Corruption Eradication Policy in Indonesia: Post-Amendment Study of the Corruption Eradication Commission Law*. *Scientific Journal of Law*, Vol.1 No.2, (2019)
- Hutahaean, Armunanto and Erlyn Indarti, *Investigative Institutions in the Integrated Criminal Justice System in Indonesia*, *Indonesian Legislation Journal*, Volume 16 Number 1, March (2019)
- Irfan Ardiansyah, *The Influence of Disparity in Sentencing on Combating Corruption in Indonesia*. *Jurnal Hukum Republica*, Vol.17 No. 1, (2017)
- M. Thalhah, *Law Enforcement by the Prosecutor's Office in the Progressive Law Paradigm*. *Jurnal Magister Hukum*, Vol.1 No.1, (2005)
- Rangga Trianggara Paongan, *The Prosecution Authority of the Corruption Eradication Commission and the Prosecutor's Office in Handling Corruption Crimes in Indonesia*. *Lex Crimen*, Vol.2 No.1, (2013)
- Sri Praptini, Sri Kusriyah, and Aryani Witasari, *Constitution and Constitutionalism of Indonesia*, *International Journal of Legal Sovereignty*, Volume 2 Issue 1, March (2019)

Sulistiyawan Doni Ardiyanto, Eko Soponyono and Achmad Sulchan, Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination, *Jurnal Daulat Hukum*, Volume 3 Issue 1, March (2020)