

Legal Problems of the Prosecutor's Authority as a Single Prosecution System in the Criminal Trial Process of Corruption

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Abstract. *In cases of corruption, synchronization of each subsystem in the criminal justice system is very necessary, considering that corruption is exclusive and systemic in nature and is very closely related to power. Moreover, if each subsystem feels that its authority is higher than other subsystems, then law enforcement efforts in corruption will not achieve the desired target. The results of the research and discussion can be concluded: (1) In principle, the principles inherent in the Prosecutor's Agency relating to the power of prosecution, both those that apply generally and those that apply specifically, one of which is the principle of single prosecution, namely the principle of single prosecution is the principle that positions the Attorney General as the highest public prosecutor in a country, only public prosecutors can carry out prosecutions, and investigations are part of the prosecution; (2) In terms of legal legitimacy, the implementation of the Single Prosecution System can be found in Article 18 paragraph 1 of Law Number 11 of 2021 concerning the Indonesian Attorney General's Office which emphasizes that the Attorney General is the highest Public Prosecutor and state attorney in the Unitary State of the Republic of Indonesia. As the highest public prosecutor, the Attorney General has the responsibility to ensure that all prosecutorial actions in the field are in accordance with the established directions; (3) The existence of the principle of the single prosecution system in the criminal justice system in Indonesia has become a question after the birth of the KPK.*

Keywords: *Corruption; Justice; Legal; Problems.*

1. Introduction

The Republic of Indonesia is a state based on law (Rechtsstaat) and not based on mere power (Machtsstaat), as reflected in Article 1 paragraph (3) of the 1945

Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia) with the 4th amendment, which states that the Republic of Indonesia is a state based on law.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

Law enforcement basically involves all Indonesian citizens, where in its implementation it is carried out by law enforcers. The law enforcement is carried out by authorized officers. The state apparatus authorized in examining criminal cases are the Police, Prosecutors and Courts. The Police, Prosecutors and Judges are three elements of law enforcement, each of which has duties, authorities and obligations in accordance with applicable laws and regulations.

The court consists of several judges, each of whom is counted as 1 (one) judge. However, the prosecutors in the court, although consisting of several prosecutors, are one unit and are only counted as 1 (one) prosecutor under the Chief Prosecutor. This is the true meaning contained in the principle of "een en ondelbaar", namely the Prosecutor's Office is one and inseparable.³In fact, this principle speaks of the existence of a unified prosecution policy under the Attorney General as the Supreme Public Prosecutor.

The affirmation of the Single Prosecution System principle in the criminal justice system in Indonesia, where it aims to avoid disparities in prosecution in handling Corruption Crime cases. This is important to minimize the occurrence of confusion in law enforcement that can lead to injustice for justice seekers.

The implementation of state power in the field of prosecution can be seen from 2 (two) aspects. First, institutional independence, which means that the Prosecutor's Office is placed in an institutionally independent position. The Prosecutor's Office should indeed be better placed institutionally independent and free from any power. Second, functional independence, which means that the Prosecutor can be free and independent in carrying out his duties to prosecute or not to prosecute. Based on objective reality, the determination and control of prosecution policies are only in one hand, namely the Attorney General. The authority inherent in the position of the Attorney General as the controller of prosecution policies, in accordance with the principle of the single

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

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

³Rangga Trianggara Paongan, The Prosecutorial Authority of the Corruption Eradication Commission and the Prosecutor's Office in Handling Corruption Crimes in Indonesia. *Lex Crimen*, 2 (1), 2013, pp. 21-36

prosecution system, also places him as the Highest Public Prosecutor in a country.

The provisions of Article 26 of Law No. 31 of 1999, which are very good and correct, are actually blurred again by Article 27 of Law No. 31 of 1999, where for crimes that are difficult to prove, a joint team will be formed under the coordination of the Attorney General. The coordination function in Article 27 in eradicating corruption is taken over by the Corruption Eradication Commission (KPK) in accordance with Article 6 of Law No. 19 of 2019 concerning the Eradication Commission, with the formulation that the KPK has the following duties: Coordinating with agencies authorized to eradicate corruption, Supervising agencies authorized to eradicate corruption, Conducting investigations, inquiries, and prosecutions of corruption. Taking measures to prevent corruption, and Monitoring the implementation of state

2. Research Methods

There are several ways or methods used by the author in compiling this thesis, previously it is necessary to know the meaning of "method" itself. Method is technique-techniques that are sufficiently generalized to be accepted or used equally within a discipline, practice, or field of disciplines and practices. In compiling this thesis must be preceded by a research or study, because with the existence of a study is expected to achieve the desired target. With the research method that will be used in the study, it provides a very precise description of the main points and very strict requirements, so that the research method can maintain that the knowledge obtained from the results of the study has high scientific value. Thus, this thesis can be accounted for its scientific values.

3. Results and Discussion

3.1. Fundamental Principles of the Position of Prosecutors in the Prosecution System in Indonesia

The state as an organization of power has the authority to impose its will on its citizens. The imposition of this will has the aim of ensuring order and security in living together in an organization of power. Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia confirms that the state of Indonesia is a state of law, meaning that all aspects of national, social and state life are based on law.⁴

There is no country that does not want order in society. Every country long for peace, tranquility and balance in society, which is now more popularly called national stability. Human interests, both as individuals and groups, because they

⁴Nia Gabriella Kaihena, Position and Function of the Prosecutor's Office in the Employment System in Indonesia, *Lex Privatum*, 11 (1) 2023, p. 1

are always threatened by the dangers around them, require protection and must be protected. Human interests will be protected if society is orderly and society will be orderly if there is a balance in society. Society has an interest in the disturbed balance being restored. One of the elements to create or restore balance in society is the enforcement of law or justice that is free or independent, fair and consistent in implementing or applying existing legal regulations and in dealing with violations of the law, by an independent body, namely a free/independent court in trying and free from interference from extrajudicial parties.⁵

The definition of the Prosecutor's Office according to Article 2 paragraph (1) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning 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." From the formulation of Article 2 paragraph (1), it can be seen that the Prosecutor's Office is:

- a. Government institution. Thus, the prosecutor's office is included in the executive, not the legislative, and not the judiciary;
- b. Exercising state power; thus the prosecutor's office is a state apparatus.⁶

The word prosecutor comes from the Sanskrit word *adhyaksa* ⁷ means "superintendent" which means a supervisor or controller of social matters. If we look at history, the position of prosecutor has been known since long ago. In the past, prosecutors had the following duties:

- a. As a prosecutor in cases tried by the civil court or King's court.
- b. As a judge in solid cases.

So that during the kingdom era, a legal order was formed that was in force at that time to regulate society and to protect society, so that basically, since ancient times, before independence, Indonesia had laws that regulated society so that it could regulate the balance of society.

The definition of a prosecutor in Article 1 paragraph (6) letter a of the Criminal Procedure Code is: "A prosecutor is an official who is authorized by this law to act as a public prosecutor and to implement court decisions that have permanent legal force." Furthermore, the definition of a prosecutor according to

⁵Denny Saputra, et al. The Role of Prosecutors in the Justice System in Indonesia, *Halu Oleo Law Review*, 6 (2) September 2022, p 221

⁶Laden Marpaung, *Criminal Case Handling Process, Investigation and Prosecution*, Jakarta: Sinar Grafika, 2009, pp. 191-192

⁷RM. Surachman and Andi Hamzah, *Prosecutors in Various Countries: Their Roles and Positions*, Jakarta: Sinar Grafika, 1996, p. 3.

Comparatively, the prosecutor's office in Indonesia has quite limited authority compared to the prosecutor's office in the Netherlands, England and America. The prosecutor's office is a non-departmental institution, which means it is not under any ministry, the peak of the prosecutor's office leadership is held by the attorney general who is responsible to the president. This is certainly different from the organizational structure of the prosecutor's office in the Netherlands, England and America which are generally under the ministry of law. The position of the attorney general is at the ministerial level therefore the prosecutor's office is not under any ministry. The attorney general leads the prosecutor's office which is divided into legal regions starting from the provincial level (high prosecutor's office) to the district (district prosecutor's office) throughout Indonesia. This system of dividing legal regions imitates the system of dividing regions in the Netherlands, where the Netherlands has 5 (five) high prosecutor's offices, each of which has between 4 to 5 prosecutor's offices which are equivalent to the district level (district prosecutor's office).⁸

The main task of the prosecutor's office in the Indonesian criminal justice system is prosecution, and conversely, prosecution is the sole authority held by the Prosecutor's Office, and not by any other institution. The authority to prosecute is the dominus litis of the prosecutor's office in Indonesia, the Netherlands and America, but not in England. In England, prosecution can be filed individually, but in certain cases, individual prosecution can be taken by the public prosecutor of the Prosecutor's Office.⁹

The position of the Prosecutor's Office as a government institution that exercises state power in the field of prosecution, when viewed from the perspective of position, means that the Prosecutor's Office is an institution that is under the executive power. Meanwhile, when viewed from the perspective of the prosecutor's authority in carrying out prosecution, it means that the Prosecutor's Office exercises judicial power. In relation to the meaning of the Prosecutor's power in exercising state power in the field of prosecution independently. The Prosecutor's Office in carrying out its functions, duties and authorities is free from the influence of government power, and the influence of other powers. This means that the state will guarantee Prosecutors in carrying out their profession without intimidation, interference, temptation, inappropriate interference or disclosure that has not been proven true, both for civil, criminal, and other responsibilities.

⁸Denny Saputra, et al. Op.Cit, 6 (2) September 2022, p. 224

⁹Tolib Effendi, Criminal Justice System, Comparison of Components and Processes of Criminal Justice Systems in Various Countries, Yogyakarta: Pustaka Yustisia, 2013, p. 153.

The position of the Prosecutor's Office in criminal justice is decisive because it is a bridge that connects the investigation stage with the examination stage in court. Based on the applicable legal doctrine, a principle that the Public Prosecutor has a monopoly on prosecution, meaning that every person can only be tried if there is a criminal charge from the Public Prosecutor, namely the prosecutor's office because only the Public Prosecutor has the authority to bring a suspect of a crime to court. In principle, the author describes the principles inherent in the Prosecutor's Office¹⁰relating to the power of prosecution, both those of general and specific application, as follows:

1) Principles of Prosecution as Judicial Power

This principle means that prosecution is the state's power in the field of justice or judicial power. The state is the result of a social contract from its people who surrender some of their rights, freedoms, and powers to a joint "power" entity and is called "state", "state power", "power organization", or other identical terms.¹¹The state is given power by the people to regulate or protect the interests of its people, one of which is the right to justice. When there is an act that is detrimental to the state, society/individuals and violates the law, it is the state's obligation to prosecute the perpetrators of the act so that justice is created.

2) Principle of Jurisdiction of Prosecution

This principle means that the Attorney General as the implementer of state power in the field of prosecution and as the highest public prosecutor in a country has the authority to prosecute in all courts, both domestically and abroad. Not only in the criminal field but also in other fields, including civil, state administration, military, and state administration. The principle of prosecution jurisdiction is access for the state to be able to prosecute. Principles of Prosecution for the Interests of the State, Public and Law

This principle means that prosecution can be carried out if it is in the interests of the state, the public and/or the law. Its function must be manifested in an accountable or measurable manner. The public prosecutor must be able to prove or map the three interests in a concrete legal event. The three interests do have a very thin intersection because they have so many similarities.¹²Despite having similarities, however, the three can be differentiated when viewed from various

¹⁰Muh. Ibnu Fajar Rahim, *Principles of Prosecution Law*, Jakarta: Guepedia, 2023, pp. 25-136.

¹¹Mohamad Nur Wahyudi, *Social Contract Theory (Comparative Study of Political Theory According to Imam Al-Mawardi, Thomas Hobbes and John Lock*, An-Nawa: Journal of Islamic Studies, 4 (2), 2022, pp. 113-125

¹²Billy Lanongbuka, *The Authority of the Public Prosecutor to Prosecute Corruption Crimes*, Lex Crimen, IX (4), October-December 2020, p. 38

perspectives, including from the perspective of the theory of sovereignty, namely the theory of state sovereignty, people's sovereignty, and legal sovereignty.

First, state interests, namely interests related to the integrity of the state, which include state sovereignty, territorial sovereignty, and sovereign government. Second, public interests, namely the interests of the nation and state and/or the interests of the wider community. Third, legal interests, namely interests related to the enforcement of the constitution and laws and regulations in Indonesia.¹³ These three interests can stand alone and can also be together. It is very possible that if a country or a certain society commits an act that is prohibited by Indonesian law but the act has consequences for the country and/or Indonesian society, then the Prosecutor's Office through the Attorney General can prosecute criminal acts, for the interests of the country, public interests, and/or legal interests.¹⁴

3) Principle of Single Prosecution

The principle of sole prosecution is a principle that places the Attorney General as the highest public prosecutor in a country, only the public prosecutor can carry out prosecution, and investigation is part of the prosecution. In the context of the principle of sole prosecution, the state grants prosecutorial power only to the Attorney General who can delegate the prosecutorial authority he has to anyone he wishes. As with the principle of no authority without accountability,¹⁵ in the delegation of authority there is accountability that must be carried out by the recipient of the delegation to the Attorney General. The implementation of the prosecution must be coordinated and controlled, both in terms of policy, technical implementation, and supervision, by the Attorney General who will be responsible for the implementation of the power of prosecution to parliament as a representation of the people as the owner of power.

4) The Principle of One and Only

The principle of *een en ondelbaar* means that the Prosecutor's Office is one and inseparable. This principle serves to maintain the unity of the prosecution policy which displays the mindset, behavior, and work procedures of the Prosecutor's Institution.¹⁶ This principle is regulated in Article 2 paragraph (2) of Law 11/2021 which states that "The Prosecutor's Office is one and inseparable". In the explanation of the article, it is explained that "What is meant by "one and inseparable" is one basis in carrying out the duties and authorities of the

¹³Isharyanto, *State Science*. Karanganyar: Oase Pustaka, 2016, pp. 89-93.

¹⁴Jesica Syahrani, Pujiyono & Umi Rozah, *The Role of the Prosecutor's Office as Public Prosecutor in Criminal Acts of Terrorism*, *Diponegoro Law Journal*, 8 (4), 2019, p. 2596

¹⁵Sufriadi, *Op.Cit*, 1 (1), 2014, p. 61,

¹⁶RM. Surachman and Jan S. Marangka, *Op. Cit.*, 2015, p. 154.

Prosecutor's Office which aims to maintain the unity of the Prosecutor's policy so that it can display characteristics that are united in the mindset, behavior, and work procedures of the Prosecutor's Office (een en ondeelbarheids)". This article emphasizes that the Prosecutor's Office institution is the only institution given the authority to prosecute where the Attorney General as the leader controls the duties and authorities of the Prosecutor's Office.

The control of the Attorney General is not limited to control over duties and authorities, but also includes the mindset, behavior, and work procedures for public prosecutors and other officials who receive delegations of prosecution so as to display a unity of policy and behavior. The principle of een en ondeelbarheids is a principle that cannot be separated from the principle of single prosecution which places the Attorney General as the highest public prosecutor. It can be said that based on this principle, there is only 1 (one) public prosecutor, namely the Attorney General. Other public prosecutors are the implementation of the prosecutorial powers delegated by the Attorney General.¹⁷

5) Principle of Delegation of Authority to Demand

This principle means that prosecution as an authority can be delegated. The basic principle of this principle is that there is no authority that cannot be delegated. The Attorney General as the highest public prosecutor in a country has the authority to delegate the authority to prosecute to anyone appointed by the Attorney General. This principle is regulated in Article 35 paragraph

(1) letters i and j of Law 11/2021 which state "The Attorney General has the duty and authority to delegate part of the prosecutorial authority to the prosecutor general to carry out prosecutions and delegate part of the prosecutorial authority to the public prosecutor to carry out

prosecution".

Article 35 paragraph (1) letters i and j of Law 11/2021 is an improvement

provisions of Article 57 paragraph (1) in conjunction with the Explanation of Article 57 of the Military Justice Law which states that "The Prosecutor General in carrying out his duties in the technical field of prosecution is responsible to the Attorney General of the Republic of Indonesia as the highest public prosecutor in the Republic of Indonesia through the Commander-in-Chief, while in carrying out his coaching duties the Prosecutor General is responsible to the Commander-in-Chief". As with the principle of no authority without accountability, Article 57 paragraph (1) in conjunction with the Explanation of Article 57 of the Military Justice Law is a provision that regulates the accountability of the Prosecutor

¹⁷Muh. Ibnu Fajar Rahim, Op.Cit, 1 (1) April 2023, p. 13

General to the Attorney General as the highest public prosecutor, while Article 35 paragraph (1) letters i and j of Law 11/2021 regulates the source of this accountability, namely based on the authority delegated by the Attorney General.¹⁸

6) The Principle of Dominus Litis

This principle means that the public prosecutor is the owner of the case or the party who has a real interest in a case, so that he has the authority to determine whether or not a case can be examined and tried in court. In the context of the criminal justice system, dominus litis is the party who has a real interest so that a case is prosecuted, examined and tried in court, namely the public prosecutor. The consequence of the existence of this real interest requires the public prosecutor as the owner of the interest to be active in defending his interests.¹⁹

The principle of dominus litis is a universally applicable principle and is contained in Article 11 of the Guidelines on the Role of Prosecutors which states "Prosecutors shall perform an active role in criminal proceedings," (Prosecutors must play an active role in the process of handling criminal cases). The active role of the public prosecutor is a consequence of the public prosecutor as the owner of the case who has the obligation or burden to prove the charges.²⁰

In Indonesia, this principle is regulated in various laws and regulations, including in Article 139 of the Criminal Procedure Code which essentially states that "the public prosecutor determines whether a criminal case can/cannot be submitted to court based on valid evidence as per criminal procedure law". Article 1 number 6 letters a and b of the Criminal Procedure Code also emphasizes that only the prosecutor can act as the public prosecutor and carry out prosecution in criminal cases so that they are also parties who have a real interest in a criminal case. Based on the formulation of these various articles, it can be honestly seen that the Criminal Procedure Code as the operational basis of the criminal justice system positions the public prosecutor as the owner of the case and at the same time recognizes the validity of the dominus litis principle as a legal principle that applies in criminal procedure law in Indonesia.²¹

7) Principle of Obligation to Prosecute (Mandatory Prosecution)

This principle is often referred to as the origin of the legality of prosecution. According to this principle, the public prosecutor is obliged to prosecute a crime.

¹⁸Ibid, p. 14

¹⁹Gita Santika Ramadhani, The Role of the Prosecutor's Office in Realizing Restorative Justice as an Effort to Combat Crime, *Progresif: Jurnal Hukum*, 15 (1), 2021, pp. 77-91

²⁰Muh. Ibnu Fajar Rahim, *Op.Cit*, 1 (1) April 2023, p. 15

²¹Ibid

This means that the public prosecutor must continue the prosecution of a case that has sufficient evidence. The public prosecutor does not have the authority to set aside a case, but is obliged to refer the case to the court, without having an attitude of exceptionalism. This principle of legality is adopted by Germany, Austria, Italy, Spain and Portugal.²²

This legality principle teaching is often referred to as *nullum delictum, nulla poena sine praevia lege poenali*, meaning: no crime, no crime, without being preceded by criminal provisions in legislation. Although using Latin, according to Jan Remmelink, the origin of the adage above does not come from Ancient Roman law, but was developed by a German jurist named von Feuerbach, in the 19th century and therefore must be viewed as a classical teaching.²³

In Indonesia itself, the principle of legality of prosecution is not adopted because the law regulates the authority of the Attorney General to set aside a case for the public interest as explained in the principle of opportunity later. The meaning of the obligation to prosecute in this principle of legality must be interpreted that the public prosecutor is obliged to prosecute unless there are reasons that dismiss the prosecution or there are reasons to eliminate the criminal offense, even if there is sufficient evidence to prosecute.

8) Principle of Opportunity

This principle means that the public prosecutor has the authority not to carry out (set aside) prosecution even though there is sufficient evidence. The principle of opportunity is one of the principles known in the power of prosecution (*opportunities beginsel*). The principle of opportunity is a general legal principle that applies universally in various countries, such as the Netherlands, France, Belgium, the Russian Federation, Sweden and Japan, South Korea, and Thailand.²⁴

The authority to set aside cases based on the principle of opportunity is recognized in Indonesia and is given only to the Attorney General. Finally, this principle of opportunity is regulated in Article 35 paragraph (1) letter c of Law 11/2021 which states "The Attorney General has the duty and authority to set aside cases in the public interest".²⁵

9) Principle of Non-Prosecutable Crime

²²David Simons, *Leerboek van het Nederlandsche Strafrecht*, Groningen : P. Noordhoff, 1929, p 25.

²³Ayu Rizka, et al. The Meaning of the Principle of Legality in Indonesian Law, *Ikamukum Journal*, 3 (1) July 2023, p. 20

²⁴Andi Hamzah, et al. Report on the Results of the Legal Analysis and Evaluation Team on the Implementation of the Principle of Opportunity in Criminal Procedure Law, 2006, p. 92.

²⁵Ramelan, *Criminal Procedure Law: Theory and Implementation*, Jakarta: Sumber Ilmu Jaya, 2006, p. 10.

This principle basically places the state's obligation through the public prosecutor to prosecute every crime, whether regulated in laws and regulations or not regulated in laws and regulations. Prosecution is a state power that aims to protect state interests, public interests and legal interests. There are 3 (three) interests that must be protected through prosecution, including protecting them from crime. Why is that? Because crime is an act that is certain to harm the interests of the state, the public and the law.

This principle becomes important in Article 12 of the Law

Number 1 of 2023 concerning the Criminal Code (hereinafter referred to as the Criminal Code Law) states that "a criminal act is an act that is threatened with criminal sanctions and/or actions by statutory regulations. To be declared a criminal act, an act that is threatened with criminal sanctions and/or actions by statutory regulations must be unlawful or contrary to the laws that apply in society. Every Criminal Act is always unlawful, unless there is a justification". The formulation of Article 12 of the Criminal Code Law at least states that there are crimes that are regulated by statutory regulations and those that have not been regulated by statutory regulations. Especially for crimes that have not been regulated by statutory regulations, they must be unlawful or contrary to the laws that apply in society.²⁶

10) Principle of No Punishment Without Prosecution

This principle only applies in the criminal field because this principle is basically a principle that arises from the approach of the criminal justice system where it is impossible for there to be a crime without being preceded by prosecution.²⁷ Thus, it is impossible for there to be a transfer without being preceded by a prosecution carried out by the public prosecutor. This makes prosecution a strategic and crucial stage in the criminal justice system to determine whether or not a perpetrator is punished.

11) The Principle That Public Prosecutors Are Presumed to Know the Law

This principle is a derivative of the *ius curia novit* principle, which means that judges are assumed to know the law.²⁸ This principle also applies to public prosecutors. After all, judges and public prosecutors are executors of state power in the same field of justice as judges. Public prosecutors are required to know the law that will be applied in entering the trial process. If a crime occurs,

²⁶Muh. Ibnu Fajar Rahim, Op.Cit, 1 (1) April 2023, p. 20

²⁷T. Effendi, Criminal Justice System: Comparison of Components & Processes of Criminal Justice Systems in Several Countries, Yogyakarta: Pustaka Yustisia, 2013, p. 19

²⁸Muhidin, et al., Implementation of The *Ius Curia Novit* Principle in Examining Case At The Constitutional Court of The Republic of Indonesia, Baltic Journal of Law & Politics, 15 (1), 2022, pp. 453-465

there is no reason for the public prosecutor to refuse to prosecute the crime on the grounds that there is no law because he is considered to know the law.

12) Principles of Legal Protection for Public Prosecutors

The principle of legal protection for public prosecutors is regulated in Article 8A of Law Number 11 of 2021 concerning the Prosecutor's Office which states "In carrying out their duties and authorities, prosecutors and their family members have the right to receive state protection from threats that endanger themselves, their lives, and/or their property". The regulation of protection for prosecutors and their families is a form of adjustment to the standards of protection for public prosecutors regulated in the United Nations Guidelines on the Role of Prosecutors, Declaration of Minimum Standards Concerning The Security and Protection of Public Prosecutors and Their Families - International Association of Prosecutors and the International Association of Prosecutors (IAP).²⁹

The important background and need for protection of public prosecutors is based on the condition of public prosecutors who must be able to carry out their duties professionally, without intimidation, obstruction, harassment, inappropriate interference or unjustified exposure to civil, criminal or other liability, and the state must ensure the fulfillment of this protection, including by regulating the guarantee of this protection in laws and regulations. It is recognized that in carrying out their duties and functions, public prosecutors are vulnerable to intimidation. The intimidation in question includes physical intimidation, as well as legal intimidation. This principle of protection is derived from the principle of legal protection that applies in general.

13) The Principle of Free and Independent Prosecution

Prosecution is a state power in the judicial field in addition to judicial power, each of which is carried out independently. Many constitutions in several countries regulate the independence in carrying out the duties, functions and authority to prosecute for public prosecutors. The principle of independent prosecution is also regulated in Article 2 paragraph (1) of Law Number 11 of 2021 concerning the Prosecutor's Office which states "The Prosecutor's Office in carrying out its functions related to judicial power is carried out independently".

The function of the Prosecutor's Office related to the judicial power is of course the prosecutorial power and all actions taken in the interests of the prosecution. Although Law 11/2021 does not explain what is meant by independence, in the Explanation of the old Prosecutor's Office Law, Article 2 paragraph (1) of Law 16/2004 once explained the meaning of the word independence, namely "in

²⁹Jojon Desduan Lumban Gaol and Joko Setiyono, The Urgency of Legal Protection for Prosecutors, *Al Qalam: Journal of Religious and Social Sciences*, 17 (2), 2023, pp. 87-99

carrying out its functions, duties, and authorities free from the influence of government power and the influence of other powers". The implementation of prosecutorial power must be carried out independently and free from the influence of any power.

14) Principle of Public Prosecutor as Executor of Judge's Determination

This principle is regulated in Article 1 number 3 of Law 11/2021 which states that "The public prosecutor is a prosecutor who is authorized by this law to carry out prosecution and implement the judge's determination and other authorities based on the law". Likewise in Article 30 paragraph (1) letter b of Law Number 11 of 2021 concerning the Prosecutor's Office which states that "In the criminal field, the Prosecutor's Office has the duty and authority to implement the judge's determination and court decisions that have obtained permanent legal force". This principle only applies in the criminal field, where the judge's determination is a letter of determination issued by the judge based on a request submitted by the public prosecutor. In court decisions, there are also judge's determinations that must be implemented by the public prosecutor. This means that the prosecution action cannot be separated from the implementation of the judge's determination or the implementation of the court decision.³⁰

3.2. Legal Legitimacy of Prosecutors as a Single Prosecution System in Corruption Cases

The interrelation of prosecutorial power with judicial power can be described as: in a criminal case examination process in a court trial, the Public Prosecutor represents the legal interests of the community, nation and state to bring the defendant to trial with charges of having committed an act that violates criminal law. The Judge's task in handling the case is to try (provide justice) based on valid evidence (at least two pieces of evidence) and with that evidence the Judge has the belief that the Public Prosecutor's charges have been proven legally and convincingly or not. If proven legally and convincingly, the Judge will decide the defendant is guilty and sentence the defendant according to his guilt. Conversely, if the Public Prosecutor's charges are declared unproven, the Judge will acquit the defendant. Thus, if there is no act of prosecution carried out by the Public Prosecutor, there will automatically be no act of trial by the Judge in the court trial.

Both pure and impure single prosecution systems, as well as prosecution systems in the broad sense and the narrow sense, all place the Attorney General as the highest public prosecutor who controls the power of prosecution. The principle of single prosecution has a very important role in preventing disparities in prosecution by providing access to justice in the form of equal treatment in every

³⁰Muh. Ibnu Fajar Rahim, Op.Cit, 1 (1) April 2023, p. 29

prosecution of cases as in the implementation of the principle of equality before the law and the principle of non-discrimination.

Indonesia adopts a single prosecution system, which means that prosecution is only carried out by 1 (one) authorized state institution, namely the Prosecutor's Office. This is reinforced by Article 2 of Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia. Single prosecution system, namely a single prosecution system. The sentence "prosecutors must carry out prosecution" must be interpreted as an implementation of the principle of a single prosecution system in the criminal justice system. This term is the true meaning of the principle of one and inseparable (*een en ondeelbaar*) as the basis for implementing the prosecutor's duties which aims to maintain the unity of policy prosecution that displays distinctive characteristics that are integrated in thought patterns, behavior patterns and work patterns.

In general terminology, corruption itself is a bad act, such as embezzlement, accepting bribes and so on.³¹In Webster's Third New International Dictionary, corruption is an invitation from political officials with unreasonable considerations to commit a violation of duty. Sheikh Hussein Alatas explains that corruption is the subordination of public interest to personal interests which includes violations of norms, duties and public welfare, which are carried out with secrecy, betrayal, fraud and indifference with the consequences suffered by the people.³²

As a reference for the Prosecutor's Office in carrying out its duties and authority to prosecute corruption crimes, it refers to Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning the Eradication of Corruption as material criminal law, and Law Number 8 of 1981 concerning Criminal Procedure Law (KUHP) as formal criminal law.

The duties and authorities of the Public Prosecutor (JPU) in the criminal prosecution process include:

- 1) The public prosecutor (JPU) submits the case to the District Court (PN) with an indictment and a request for a speedy trial. An indictment is a written document containing official charges against the defendant for a crime he is suspected of committing. This document is prepared by the JPU and is used as the basis for the legal process;
- 2) Providing evidence is the responsibility of the public prosecutor, even though there is no provision in the Criminal Procedure Code (KUHP);

³¹I. Made Laut Mertha Jaya, Op.Cit, 2020.

³²Florentinus Sudirman. Op. Cit. 2(1), June 2017

3) After the investigation is determined to be complete, the public prosecutor files a criminal charge, although it would actually be more appropriate to file a demand (*requisitoir*). Because, it does not rule out the possibility of options other than filing a criminal charge against the defendant. The prosecutor can request the defendant's release.

4) If the court is satisfied, based on the accusations and evidence incriminating the defendant, that the crime was actually committed and the defendant is guilty of committing it, then the court will issue a verdict. If the prosecutor and the defendant accept it, then the verdict has permanent legal force (*inkracht*) and the verdict becomes final. The prosecutor then issues an execution verdict based on Article 270 of the Criminal Procedure Code.

5) If the defendant and the public prosecutor do not accept the verdict, then the defendant or public prosecutor has the option to take legal action. Legal remedies are the rights of the defendant or public prosecutor not to accept the court's decision in the form of resistance, appeal or cassation or the right of the convict to bring his case to court to file a request for judicial review in the manner stipulated in the law.

6) The public prosecutor may decide to stop the prosecution by issuing a Letter of Termination of Prosecution (SKPP) due to insufficient evidence in the case. If a suspect is arrested, the SKPP must be immediately released.³³

A Letter of Indictment (*Requisitoir*) is a document prepared by the Public Prosecutor after the completion of the examination of a case in court, which contains the alleged criminal act, facts obtained during the trial, legal analysis of these facts, as well as his opinion on whether the alleged criminal act has been proven or not and the request submitted to the panel, both regarding whether or not the alleged criminal act has been proven and regarding the sentence imposed on the defendant.³⁴

The letter of demand is submitted after the examination in court is declared complete, in accordance with the provisions of Article 182 paragraph (1) letter a of the Criminal Procedure Code, which states that after the examination is complete, the Public Prosecutor submits a criminal charge. The function of the Letter of Demand can be described as follows:

a) For the Public Prosecutor, this letter is the basis for determining whether the defendant is demanded to be sentenced or acquitted of all charges;

³³Selvia Natalia Berutu & Janpatar Simamora, The Important Role of Public Prosecutors in Handling Corruption Cases in the Criminal Justice System (Study at the Binjai District Attorney's Office), *Jurnal Media Informatika*, 6 (2) January-April 2025, p. 1097

³⁴Suharto RM, *Prosecution in Judicial Practice*, Jakarta: Sinar Grafika, 2004, p. 11.

b) For the Defendant, this letter serves as material for defense, where the defendant can refute the arguments put forward by the Public Prosecutor (JPU) if the charge is criminal;

c) For judges, the main purpose of making a letter of indictment is to direct and influence the judge's opinion, so that they can form a belief regarding the truth of the criminal act previously charged against the defendant.

Then regarding the prosecution of Corruption Crimes carried out by the Public Prosecutor, it is basically the same as general crimes because the implementation guidelines used are the same, namely criminal procedural law. Specifically in corruption cases, the length of the trial period is determined. Corruption crimes are examined, tried, and decided by the first-level Corruption Court within a maximum of 120 (one hundred and twenty) working days from the date the case was transferred to the Corruption Court based on the provisions of Article 29 of Law Number 46 of 2009 concerning the Corruption Court.

In order to strengthen the connected justice system, the government has also formed the Deputy Attorney General for Military Crimes (JAMPIDMIL) through Presidential Regulation Number 15 of 2021. JAMPIDMIL functions to ensure that cases involving military and civilian elements are handled with good coordination between civilian prosecutors and military prosecutors. This policy is a manifestation of the Single Prosecution System, where the entire prosecution process is under the control of the Attorney General.³⁵

3.3. Legal Problems on the Authority of the Single Prosecution System by Prosecutors in Corruption Cases

The Prosecutor's Office as the controller of the case process or *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 court or not based on valid evidence as per criminal procedure law. In addition to being the holder of *dominus litis* (*Procureur die de procesvoering vaststelt*)³⁶The Prosecutor's Office is also the sole agency that executes criminal decisions (*executive ambtenaar*).³⁷

³⁵Muhammad Ihsan, The Position of the Republic of Indonesia Prosecutor's Office in the Military Court Prosecution Process in Indonesia, *Intelektualita Journal: Islam, Social, and Science*, 10 (2) 2021, p. 290

³⁶Benny Leonard Saragih, Ediwarman & Muaz Zul, Disparity in Prosecution of Persecution Cases in the Criminal System in Indonesia, *Arbiter: Scientific Journal of Master of Law*, 1(1) 2019, p. 56

³⁷Gabriel Kalalo & Arman Tjoneng, The Role of the Prosecutor's Commission in Supervising the Performance of the Prosecutor's Office as an Implementer of the *Dominus Litis* Principle in Resolving Corruption Cases, *Unes Law Review*, 6 (4) June 2024, p. 9937

In principle, the KPK has set aside the *dominus litis* of the prosecutor's office. Furthermore, the prosecutor is no longer a single prosecution system, namely *een en ondeelbaar* (the prosecutor is one and inseparable). The single prosecution system itself is a principle that places the Attorney General as the highest public prosecutor in a country.³⁸ The principle of a single prosecution system is reflected in Article 2 paragraph (3) of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia as amended by Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 (the Attorney General's Office Law) which states that "the prosecutor's office is one and inseparable" (*een en ondeelbaar*). This article in Law No. 11 of 2021 becomes Article 2 paragraph (2), emphasizing the Attorney General's Office as the only institution given the authority to prosecute in order to realize a unified policy and place the Attorney General as the holder of control over the duties and authority of prosecution.³⁹

Article 57 paragraph (1) of Law No. 31 of 1997 concerning Military Justice states that the Prosecutor and Prosecutor General are functional officials who carry out prosecutions, who in the technical field of prosecution are responsible to the Attorney General of the Republic of Indonesia as the highest public prosecutor in the Republic of Indonesia through the Commander in Chief. This article shows the strengthening of the principle of single prosecution.

Certainty is a characteristic that cannot be separated from law, especially for written legal norms. Law without certainty will lose its meaning, because it can no longer be used as a guideline for behavior for everyone. Certainty can have several meanings, namely clarity, does not cause multiple interpretations, does not cause contradictions, and can be implemented. The law must apply firmly in society, contain openness so that anyone can understand the meaning of a legal provision. One law with another must not be contradictory so that it does not become a source of doubt.⁴⁰

4. Conclusion

The position of the Prosecutor's Office in criminal justice is decisive because it is a bridge that connects the investigation stage with the examination stage in court. Based on the applicable legal doctrine, a principle that the Public Prosecutor has a monopoly on prosecution, meaning that every person can only be tried if there is a criminal charge from the Public Prosecutor, namely the prosecutor's office because only the Public Prosecutor has the authority to bring a suspect of a crime to court. In principle, the principles inherent in the Prosecutor's Office relating to the power of prosecution, both those that apply

³⁸Muh. Ibnu Fajar Rahim, *Op.Cit*, 1 (1) April 2023, p. 10

³⁹*Ibid*, p. 15

⁴⁰Roni Andriyanto, et al. *Op.Cit*, 4 (5), 2022, p. 1298

generally and those that apply specifically, include (1) the principle of prosecution as a judicial power, namely the validation of prosecution as a free and independent state power regulated in various laws and regulations governing the Prosecutor's Office. Finally, through Law Number 11 of 2021 concerning the Indonesian Attorney General's Office, where Article 1 number 1 states that "The Attorney General's Office of the Republic of Indonesia, hereinafter referred to as the Attorney General's Office, is a government institution whose functions are related to judicial power that exercises "state power in the field of prosecution" and other authorities based on law; (2) the principle of single prosecution, namely the principle of single prosecution is the principle that positions the Attorney General as the highest public prosecutor in a country, only public prosecutors can carry out prosecution, and investigations are part of the prosecution; (3) The principle of *een en ondelbaar*, namely the Attorney General's Office is one and inseparable. The Attorney General's Office as the only institution given the authority to prosecute where the Attorney General as the leader controls the duties and authorities of the Attorney General's Office.

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