

AUTHORITY OF INDONESIAN ATTORNEY IN HANDLING THE CORRUPTION CRIMES: A PERSPECTIVE OF INTEGRATED CRIMINAL JUSTICE SYSTEM

**Andhy Hermawan Bolifaar, Universitas Diponegoro
Nyoman Serikat Putra Jaya, Universitas Diponegoro
Pujiyono, Universitas Diponegoro
Faisal Arif, Universitas Diponegoro**

ABSTRACT

The attorney is one of the government agencies as a component of law enforcement. The Prosecutor's Office has a central position and a strategic role in a legal state because of its function as a filter between the investigation process and the examination process in the trial. Thus, its existence must be able to carry out the law enforcement task. The main duties and authorities of the Prosecutor's Office, especially the authority in the prosecution sector, are in Article 2 paragraph (1) in Article 30 of Law number 16 of 2004 that the prosecutor's office is a government institution that carries out authority in the prosecution. In addition, according to Article 32 it is stated that the prosecutor's office can be assigned other duties and authorities based on the law. The implication of the provision of Article 32 is that the Prosecutor's Office has the main duties in the field of prosecution, and other duties and authorities, including the authority of the prosecutor as an investigator in certain criminal acts. Certain criminal acts include corruption and also gross violations of human rights. Based on the Integrated Criminal Justice System, it is strictly regulated that in law enforcement, the Investigation task is carried out by the Police, and the Prosecution task is carried out by the Prosecutor's Office, while the Examination's duties are carried out by Judges and Penitentiary by correctional institutions. Indonesia, especially in the handling of corruption, there are double authorities that are owned by the Prosecutor's Office, namely the authority of Investigation and Prosecution.

Keywords: Legal Authority, Attorney, Corruption Crimes, Integrated Criminal Justice System.

INTRODUCTION

In addition to the executive and legislative bodies, the judicial organ plays an important role in a country, as an agency that deals specifically with law and its enforcement (Schachter, 1960). To strengthen the legislative function and legal oversight, Indonesia has reformed several key judicial institutions and formed new institutions in the form of commissions including the Corruption Eradication Commission, the Business Competition Supervisory Commission, the National Human Rights Commission. The core judicial institutions such as the Indonesian National Police, the Attorney General's Office of the Republic of Indonesia, the Supreme Court,

Correctional Institutions and Advocates/Legal Counsel have also undergone many changes since the reformation period in 1998.

One of the government agencies as a component of law enforcement is the Prosecutor's Office (Ruff, 1976; Fredman, 1997). The office has a central position and a strategic role within a rule of law because the office is a filter between the investigation process and the examination process at the trial, so that its existence must be able to carry out law enforcement duties. The authority of the Attorney General and the Attorney General's Office is firmly regulated by Law Number 16 of 2004 concerning the Prosecutor's Office (Wicaksono, 2018). According to Chapter I of the second part of Article 2 paragraph (1) of Law Number 16 of 2004 concerning the Prosecutor's Office, it is stated that the Prosecutor's Office of the Republic of Indonesia is a government institution that carries out state authority in the prosecution and other authorities based on the law. This article explicitly states that the principal authority of the Prosecutor's Office is in the field of prosecution in addition to other duties and authorities as stipulated in Article 30 of Act Number 16 of 2004. Specifically, in the criminal field, the prosecutor has the duties and authority:

1. Prosecution;
2. Carrying out the determination of judges and court decisions that have obtained permanent legal force;
3. Supervising the implementation of conditional criminal decisions, criminal verdicts of supervision, and conditional decisions;
4. Investigating certain crimes based on law;
5. Complete certain case files. In the last function, the prosecutor can conduct additional checks before being delegated to the court which in coordination is coordinated with the investigator.

In the civil and administrative fields of the state, prosecutors with special powers can act both inside and outside the court for and on behalf of the state or government (Sarat & Clarke, 2008). In the field of public order and peace, the Attorney General's Office also carries out several activities such as increasing public legal awareness, safeguarding law enforcement policies, controlling the circulation of printed goods, controlling the flow of trust that can endanger the community and the state, preventing abuse and/or blasphemy and legal research and development and criminal statistics. The authority and other duties of the Prosecutor's Office are the attorney's authority as an investigator in certain criminal acts. Certain criminal acts here refer to criminal acts of corruption and criminal acts of human rights violations (Suhaimi, 2015). The authority of the Prosecutor's Office to investigate certain criminal acts is rooted far in the *Het Herziene Inlandch Reglement (HIR) Staatsblad* regulation No. 44 of 44. To strengthen this provision, Law No. 30 of 2002 concerning the Corruption Eradication Commission was promulgated, almost simultaneously with the Law Number 31 of 1999, amended by Act Number 20 of 2001 concerning Eradication of Corruption Crimes. In this context, the prosecutor's office is burdened with the dual function of investigation and prosecution (Fijnaut & Huberts, 2002). More specifically, a deeper analysis of the implementation of this dual authority is needed in the context of corruption. Here, this paper seeks to investigate the dual authority of the Attorney General's Office in handling corruption. Because the dual function has been strengthened by the Law, the use of the perspective of the Integrated Criminal Justice System, namely as an investigation and also as a prosecution, also deserves to be used as an analytical tool in this study.

RESEARCH METHODS

This research is a study that falls into the category of doctrinal research. Doctrinal legal research is research on law that is developed and conceptualized on the basis of the doctrine adopted by the conceptualist. Hutchinson & Duncan (2012) defines that doctrinal research is:

“A systematic exposition of governing rules a particular legal category, analysing the relationship between rules, difficulty and, perhaps, predicts future development.”

The approach used in this study is the statue approach, comparative approach and historical approach. This method that refers to the legislation governing the issue of the Authority of the Prosecutor of the Republic of Indonesia in the field of investigation and prosecution in the act of corruption. Criminal law enforcement is an attempt to overcome crime in society (Gibbons, 1982). Efforts to tackle crime in the community are identical to criminal policy talks. Criminal policy is a rational effort from the authorities or the community in overcoming crimes that can be operationally carried out using criminal and non-criminal law (Newburn, 2003). Basically, the efforts of reasoning and non-reasoning complement each other. However, specifically, crime prevention through reasoning means is operationally carried out through the steps of formulating criminal law norms both substantive criminal law, criminal law procedure, and criminal law enforcement through the formulation of norms. The criminal law which contains substantive, structural and cultural elements of the society where the criminal law system is applied (Gold, 2011). The criminal law system will then operate through a network called the Criminal Justice System. According to Mardjono Reksodipoetro (2014), the aim of the Criminal Justice System is to prevent people from being victims of crime, resolve criminal cases so that the community satisfied that justice has been upheld and the guilty are convicted, and that those who have committed crimes do not repeat their crimes, in this context, Reksodipoetro (2014) argues that integrated criminal justice system requires cooperation and the integration of four components in the criminal justice system namely the police, prosecutor's office, courts and correctional institutions.

Investigation and Prosecution in Corruption Criminal Act

Basically, the implementation of the dual authority of the Investigation and Prosecution of Corruption in the Prosecutor's Office of the Republic of Indonesia cannot be separated from the tasks of dual authority which are also owned by the Prosecutors in various parts of the world. This does not conflict with the Guidelines on the role of prosecutor as the principle of implementing the duties of the Prosecutor's Office throughout the world. In the Georgia Prosecutor's Office, it was stated that in the most recent Criminal Procedure Code from Georgia, specifically Article 37 concerning Investigation Jurisdiction, five agencies that could investigate, namely the Ministry of Home Affairs investigators, Investigators from the Prosecutor's Office, Investigators from the Financial Police from the Ministry of Finance, Investigators from the Ministry of Defence and Investigators from the Ministry of Justice. Article 37 Paragraph (7) states that if the investigation overlaps between the prosecutor's office and other investigators, the prosecutor's office has the right to investigate. Article 37 Paragraph (10) states that if there is a conflict of dispute between the investigations of the five investigators, then it is settled by the superior prosecutor. In Portugal, a parliamentary committee was formed in 1999 to restructure

the function of the prosecutor's office to supervise and investigate cases. In Brazil, Procodaires de La Republic has the task of prosecuting and also criminal investigation in major cases usually involving police or public officials. Prosecutors in various other parts of the world were also given such dual authority such as Sweden, Japan, Mexico and Brazil. The prosecutor besides having a prosecution task also conducted an investigation. The role of the investigation is always given a law, in addition to the role of supervision.

The implementation of the Attorney General's dual authority does not conflict with the main provisions of the Prosecutor's Office around the world, namely the Guidelines on the role of the Prosecutor also do not conflict with the principles of international law. In terms of international public law, there are Guidelines on the role of the Prosecutor, which were received unanimously at the UN conference in Havana Cuba, on 27 August 1990 to 7 September 1990 concerning the prevention of crime and the treatment of convicted persons (Clark, 1990). In the Preamble of the Guidelines on the role of prosecutor, there is an incentive for the inclusion of this convention in the practices and provisions of each national law. In the guidelines, the AGO does not only prosecute but also investigates criminal acts and supervision.

The Dual Authority of the Attorney's Office in the form of Investigation and Prosecution of Corruption in the Integrated Criminal Justice System is not only a problem in Indonesia but also a matter of discussion and material in international forums, including the Asia Crime Prevention Foundation (ACPF) Working Group Meeting on the Role of the Prosecutors in the Changing World in 1999. Prosecution Policy which was linked to the Asia Crime Prevention Foundation (ACPF) Working Group Meeting on the Role of the Prosecutors in the Changing World in Bangkok in 1999, grouped into two systems adopted by various Prosecutors in various countries (Shikita, 2002). The first system is the Mandatory Prosecutorial System. Based on this system, the Prosecutor in handling a case is only based on evidence that already exists and not on matters that are outside the predetermined, except in certain circumstances. This system is embraced by countries, such as Thailand, China, India, Sri Lanka and Papua Guinea (for other perspectives, Simmons, 2009; Bjerck, 2005). The second system is the Discretionary Prosecutorial System. Based on this system, the Prosecutor can carry out certain policies and can take various actions in the settlement/handling of a case. In this system the Prosecutor in making decisions, in addition to considering the available evidence, also considers the factors behind 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 the defendant, the level of forgiveness from the victim and public policy considerations (Knoops, 2004).

Attorney Authority on Corruption Crimes

Based on the Integrated Criminal Justice System, it is expressly stipulated that in law enforcement that carries out the task of Investigation is the Police, the Prosecution task is carried out by the Prosecutor's Office, the task of Examination at the trial is conducted by Judges and Correctional Institutions conducted by the Penitentiary. But in Indonesia, especially in the handling of criminal acts of corruption, there is double the authority of the Prosecutor's institution, namely the authority of Investigation and Prosecution. At the time of validity *Herziene Inlandsche Reglement (HIR)* Indonesia adheres to the "*Discretionary Prosecutorial*" system, but after the enactment of Law Number 8 of 1981 concerning the Criminal Procedure Code, Indonesia adheres to both systems, even though Article 284 Paragraph (2) only states

temporary nature. So that on these facts that in various countries in the world the attorney's dual authority also exists and it does not deviate from the Integrated Criminal Justice System.

The dual authority of the Attorney General's Office of the Republic of Indonesia in the form of Investigation and Prosecution Acts is strictly regulated in Law No. 16 of 2004. This dual authority is limited to the authority of Investigation and Prosecution. In carrying out the dual authority of the Prosecutor's Investigation and Prosecution of the handling of corruption in the Prosecutor's Office at the stage of the investigation process is handled by a number of appointed Investigating Prosecutors and an Investigation Order is made by the Director at the Junior Attorney General for Special Crimes/Head of the High Prosecutor's Office/Head of the State Prosecutor's Office/Head of the District Attorney's Office. The investigating prosecutor who has been appointed by the order has the right to carry out Actions in relation to the investigation process in the form of: arrest, detention, search, seizure and other actions in accordance with the law in the Investigation process.

Attorney Investigator in handling corruption acts has various features in carrying out their duties, in the process of investigating general criminal acts investigators are subject to formal legal rules of investigation, namely the rule of law in the Criminal Procedure Code but in handling corruption acts Prosecutors are given more authority this is in accordance with the nature of corruption itself which is an extraordinary crime so that the handling of extraordinary criminal acts is given extraordinary authority, the broader authority granted to investigators in handling corruption in the Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Act number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes, namely:

1. In investigating corruption, the suspect must provide information about all of his property and the assets of the wife or husband, children, and property of any person or corporation that is known and/or suspected of having a relationship with corruption committed by a suspect (Article 28);
2. Investigators can ask the bank to block savings accounts owned by suspects allegedly from corruption (Article 29);
3. The investigator has the right to open, examine, and confiscate letters and shipments by post, telecommunications or other equipment suspected of having a relationship with a corruption case being examined (Article 30);
4. Investigators are prohibited from mentioning the name or address of the complainant or other matters that give the possibility of knowing the complainant's identity (Article 31);
5. The investigator is of the opinion that there is not enough evidence of one or more elements of corruption, while there is clearly a loss of state finances, the investigator immediately submits the case file of the investigation to the State Attorney for civil lawsuits (Article 32).

The expansion of the authority is granted by Law Number 31 of 1999 concerning Eradication of Corruption Crimes as amended by Act number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes based on the experience experienced by the author's authority number 5 mentioned above which has never been carried out in the investigation of criminal acts of corruption committed by Police Investigators. Article 32 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Act Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Corruption Crimes also provides assurance that if the investigation is carried out by the Prosecutor's Office then the civil suit for repayment of state financial losses made by the State Civil and Administrative Section is easier because if the

investigation is carried out by the Police the State Attorney Prosecutor who handles the claim does not have the authority to force the investigator to provide documents relating to the claim of returning financial losses.

Management of Corruption Case Handling among Indonesia's Law Enforcement Institutions

Management of handling cases of corruption in Indonesia and the authority of law enforcement officials from the Corruption Eradication Commission (KPK), the Attorney General's Office and the Police raised the issue of the relationship of management in handling cases of corruption in Indonesia between the KPK, the Attorney General's Office and the Police. By taking the research location in the jurisdiction of the West Nusa Tenggara High Prosecutor's Office, North Maluku High Prosecutor's Office, South Sulawesi High Prosecutor's Office, East Kalimantan High Prosecutor's Office, West Java High Prosecutor's Office (Prosecutors, Police, Judges, Lecturers, NGOs, and Audit Board of the Republic of Indonesia) selected by purposive sampling, it is expected that the collected data can be used as input for the Prosecutor's leadership. Management Linkages handling cases of criminal acts of corruption between the Corruption Eradication Commission and the Attorney General's Office/Police in terms of coordination and supervision.

The results show that the existence of the prosecution authority by the Prosecutor in the national legal system can be seen from the 1945 Constitution implicitly regulates the existence of the Indonesian Prosecutor's Office in the constitutional system, as a body related to judicial power (vide Article 24 paragraph 3 of the 1945 Constitution Article 41 of Law No. 4 of 2004 concerning Judicial Power), with a very dominant as a person with dominus litis principle, controlling the case process that determines whether or not a person can be declared a defendant and submitted to the court based on legal evidence according to the law, and as an executive executor of court decisions and decisions in criminal cases.

Moreover, article 1 point 13 of the Criminal Procedure Code which confirms that the Public Prosecutor is a Prosecutor authorized by law to prosecute, and Article 2 of Law No. 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office which places the position and function of the prosecutor's office with a specific character in the constitutional system, namely as a government institution that implements state power in the field of prosecution freely from the influence of any party. Meanwhile, in reality the implementation of the prosecution authority by the Prosecutor's Office often arises problems between other law enforcement agencies in terms of coordination, accountability and dualism of the prosecution authority. In terms of coordination, it occurs in case files between the Prosecutor's Office and Police investigators at the pre-prosecution stage. In the aspect of accountability, it occurs for the holding of detention between the Prosecutor's Office and the Court against the status of transfer of detention during the hearings in the trial and the transition when the case files are transferred to the court. Lastly, in terms of dualism, this problem arises in dual authority between the Prosecutor's Office and the Corruption Eradication Commission against cases of corruption.

Furthermore, the results show that the problem occurs because there is still an overlapping conception that relates to the duties and authorities of the Prosecutor's Office. First, the integrated criminal justice system adopted in the Criminal Procedure Code raises problems related to the prosecution of prosecutors and other law enforcement subsystems, namely the

Police in terms of investigations and trials in the judicial process. Second, position of the Prosecutor's Office in the context of national law based on Law No. 16 of 2004 concerning the Indonesian Prosecutor's Office placed this institution in an executive environment which caused the Attorney General's Office to be independent and independent. Third, reduction and limitation of authority by law, both in the field of investigation and in the field of prosecution. This can be seen by the establishment of the Corruption Eradication Commission based on Presidential Decree No. 266/M/2003 as a follow-up to Law No. 30 of 2002 which has such great authority, has an impact on the increasingly bloated constitutional structure, which overrides the principle of *dominus litis* (as controlling the case process) and the principle of *een on deelbaar* (Prosecutor's Office is one and not separated).

CONCLUSION

The Prosecutor's Office of the Republic of Indonesia with the legal basis of Law Number 16 of 2004 in the implementation of its dual authority in the field of investigation and prosecution of corruption has been carried out with limited legal rules, namely the Criminal Procedure Code and the Corruption Act in addition to the law, the prosecutor's office is also limited by the rules of internal organic law, namely in the form of Presidential Regulation No. 38 of 2010 concerning the Organization of the Prosecutor's Work Procedure and also the Attorney General's Regulation Number 009/A/JA/01/2011 concerning the Prosecutor's Office and Work Procedure because it has a very large and broad authority in dealing with extraordinary crime, namely corruption, so it is feared to misuse its authority in addition to being limited by the rule of law to overcome abuse of authority is also carried out by means of supervision carried out in the field of supervision so that the prosecutor's dual authority can be carried out properly and in accordance with applicable law.

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