



## Realizing Indonesia Prosecutors Commission Professional and Trustworthy

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### **Abstract**

Law enforcement in Indonesia is run by one of its institutions, namely prosecutors. Prosecutors have an essential role to be able to create and provide a sense of justice for the community. The performance and behavior of prosecutors run by the prosecutor are very often concern by the community, especially on the performance and behavior of the prosecutor. Prosecutors commission as one of the institutions that run the role as a supervisor of the behavior of the Prosecutor often also get attention because of the many cases involving the officials of the Prosecutor, especially the prosecutors. Concerning the role carried out by the Commission of the Prosecutor, then it can be withdrawn several problems such as the role of the Attorney's Commission in conducting performance supervision from the antics and what are the constraints of the Prosecutors Commission in conducting the performance supervision of the prosecutor. The role of the Prosecutor's Commission is related to the three main points of supervision, assessment, and monitoring, as well as the role of this Commission also publishes a report or recommendation which will later be released to the attorney general and passed back to the internal supervisor of prosecutors and the role of prosecutors the most critical commission is if the examination that has been processed by the internal Supervisor prosecutor does not show.

**Keywords:** *Prosecutors Commission; Supervision; Performance*

### **Introduction**

The Republic of Indonesia prosecutors became one of the critical elements in the law-based democracy, and for the law enforcement process. The prosecutor became the spearhead of justice, as the institution was given authority in the field of prosecution and executed a court ruling. The Prosecutor is responsible for the disclosure of truth and justice in judicial proceedings. Unfortunately, public belief in law enforcement agencies, including prosecutors, is still shallow.

Until now, there are at least 10 cases that have been handled by the Corruption Eradication Commission (KPK) involving law enforcement in the attorney. Hands-On operation (OTT) conducted by the KPK against the prosecutor showed no significant changes in the prosecutor's office. However, it has often proclaimed an integrity zone for working units in the Prosecutor's environment.

Based on the Ombudsman report of the Republic of Indonesia (ORI), in 2018, the Ombudsman received at least a complaint report related to the attorney's performance of 82 complaints. Complaints submitted to ORI are more related to the handling of the lawsuit by the prosecutor.<sup>1</sup> Also, according to the performance report of Commission of the Republic of Indonesia attorney year 2018, the institution that supervises explicitly the Prosecutor received reports of complaints from the community as many as 888 complaints throughout the Office unit.<sup>2</sup>

In the framework of the enforcement of discipline and code of ethics, in 2017, the Attorney General did the termination of the seven-person prosecutors and 24 personnel Administration officers from their status as local state apparatus because they proved to commit violations of the code of Ethics. In addition to the dismissal, prosecutors gave other severe disciplinary penalties to 22 persons in the Prosecutor and 31 of the administration in the form of a lower level of rank for three years. They freed as many as 15 persons from the Prosecutor's functional department and five prosecutors from the structural office. Besides, the attorney general also gave a mild disciplinary punishment against 61 person Prosecutors and 18 persons of administrative and disciplinary punishment against as many as 95 person prosecutors and 29 persons of administration.<sup>3</sup>

Based on the facts and data above shows, there are still problems in the implementation of the institution prosecutor. Still, the high abuse of authority by the Prosecutor is increasingly undermining the authority of this law enforcement agency, and increasingly erode the community's trust in law enforcement institutions. The prosecutor's institution is still being made public as a corrupt, non-transparent institution. The attorney general has not succeeded in establishing a professional and trusted attorney.

That the prosecutor has less integrity, professionalism, and efficiency in the outside perception by society, but at the beginning of Indonesia's independence, the prosecutor has a high reputation, as said by Price Water House Cooper "It is widely perceived as seriously lacking integrity, professionalism, and efficiency while earlier in it is history it enjoyed a strong reputation."<sup>4</sup>

Legal culture concerns the culture of the law, which is the human attitude (including the legal culture of law enforcement officers) to the law and the legal system. As well as any legal structure set up to enforce the rules of law made without being supported by legal culture by those involved in the system and society, then law enforcement does not run effectively.

Harkristuti Harkrisnowo Concerning this says that there is a condition in which the whole system works in different spaces and settings in one major job. This condition is because it is influenced by the aspects of legal structure, a legal substance, and legal culture.<sup>5</sup>

Prosecutor's Commission formed to fix the performance of prosecutors to be better and restore community confidence. The Prosecutor's Commission is a state institution born after a reform that plays a role in maintaining the dignity and honor of prosecutors and encourages the performance of prosecutors to be more professional, integrity, accountable, and transparent. The attorney's commission tasked with supervising, monitoring, and assessing the performance and behavior of the attorney and/or attorney officers, as well as monitoring and providing an assessment of the organization, work, completeness, and infrastructure and human resources attorney. As a manifestation of community representation, the Prosecutors Commission has a mission to fix and create a more trusted prosecutor's institution.

<sup>1</sup> <https://news.detik.com/berita/d-4354281/ombudsman-soroti-lambatnya-penanganan-perkara-polri-kejaksanaan-sepanjang-2018>.

<sup>2</sup> <https://jakarta.tribunnews.com/2019/01/15/tahun-2018-komisi-kejaksanaan-terima-888-laporan-pengaduan>.

<sup>3</sup> <https://www.jpnn.com/news/tujuh-oknum-jaksa-dan-24-pegawai-tu-dipecat-kejangung>.

<sup>4</sup> Price Water House Cooper, Final Report of the Governance Audit of the Public Prosecution Service of The Republic Indonesia, 2001, p. 9.

<sup>5</sup> Harkristuti Harkrisnowo, Merancang Ulang Korps Adhyaksa, Newsletter Komisi Hukum Nasional, Edisi Juni 2003.

The birth of the Prosecutor's Commission caused by the not optimal supervision and enforcement of professions by the Internal supervisor of prosecutors. Internal administration tends to be closed, unaccountable, and high motivation protection against the corp so that public complaints against the performance and behavior of the prosecutor are not getting a fair settlement. The attendance of Prosecutors Commission expected to answer general restlessness against the weak prosecutor's version and deviant behavior.

## **Result**

### ***Employment Status of Attorney***

In general, the legal profession related to law enforcement efforts includes judges, advocates, prosecutors, police, and notaries. The five professions have a code of ethics in carrying out their duties. Status of personnel attorney is a functional officer but also quality as a civil servant. The Status of attorney position is placed as a class of functional office because the Department of Prosecutors requires particular technical expertise in their field. While attorney status as civil servants already fulfilling the provisions in article 1 Figure 1 of Law No 43 the year 1999 on the amendment of Law No. 8 years 1974 on employment points stating that: civil servants are any qualified citizens of the Republic of Indonesia, appointed by competent officers and assigned duties in a state office, or other responsibilities of the state, and paid under the prevailing laws and regulations. With the status of this state officer, the welfare prosecutor becomes the responsibility of the government to fulfill.

The institution's accountability for the prosecution is conducted independently for justice based on the law and the direct conscience to the President and parliament as mandated by article 37 of Law number 16 the year 2004 about the prosecutor of Indonesia. There is a logical consequence of its position in the constitutional system as a "government agency."<sup>6</sup>

### ***Role of Prosecutors Commission***

Commission of the Republic of Indonesia Prosecutor was born in the democratic era and the demand for citizen participation in the governance of Indonesia. Similarly, other commissions that delivered after the reform, the existence of the Prosecutor's Commission, is the embodiment of the ideals of democracy, justice, and good government.

The idea of the establishment of the Prosecutor's Commission does not expire from the experimental conditions of prosecutors in carrying out duties and functions of law enforcement. Prosecutors considered not optimal in providing protection and a sense of justice for citizens through prosecution activities. On the other hand, the institution still covered by various internal problems affecting the level of community confidence. Abuse of power seems to be an integral part of the law enforcement process.<sup>7</sup>

The Prosecutor's commission was formed in hopes of controlling the process of law enforcement professionally and in fairness, as well as encouraging institutional improvement to be more accountable, transparent, and in line with sound governance principles. The great idea of the efforts to increase the performance of the prosecutor was actualized through the duties, authority, and right of the Prosecutor's Commission as stipulated in Presidential Regulation No. 18 Years 2011 concerning the Prosecutor's Commission.

<sup>6</sup> Marwan Effendy, Akuntabilitas Kejaksaan dan Komisi Pengawas, Makalah, Jakarta 28 Oktober 2004.

<sup>7</sup> Pulton, Urgensi Penguatan Komisi Kejaksaan, 2017.

Prosecutor's Commission has the authority to supervise, assess, monitor attitudes, conduct, and performance of the Prosecutor and attorney officers both within the office and outside the service (Baharuddin Lopa; 2015).<sup>8</sup> The Prosecutor's Commission is an external supervisory institution whose position is under the President. The Commissioner of the prosecutor's Commission is elected, appointed, and responsible to the president. The Attorney's Commission on supervision is limited to receiving public complaints.

The task of the Prosecutor's Commission as supervision of the Prosecutor's agency on prosecutors and attorney officers in large lines, there are 2 (two) to the performance and attitudes and behaviors. The duties of Prosecutors Commission in terms of supervision against the attorney performance and Attorney officers concerned in carrying out the task of the state while management over the attitude and behavior of the Prosecutor and the Prosecutor's officers not only regarding the duty of ordinance but outside public.

The establishment of the Prosecutor's Commission is generally understood because of the distrust of public institutions, namely the Prosecutor. Due to the bad experiences experienced by the community in the new order, such as corruption, collusion, and systemic nepotism, violations of human rights, as well as reluctance to reform themselves make a policymaker to form a new institution to strengthen the existing institutions.<sup>9</sup>

Commission of the Republic of Indonesia Prosecutor was born in the democratic era and the demand for citizen participation in the governance of Indonesia. Similarly, other commissions that delivered after the Reformation, the existence of the Prosecutor's Commission, is the embodiment of democratic ideals, fairness, and good governance. Thus, the presence and reality of the Prosecutor's Commission is a representation of the public interest, especially the justice seekers who want the law enforcement process to done fair and fair. Therefore, the orientation of the task and authority of the Prosecutor's Commission should be direct to the efforts to fulfill the rights of the Community for fair and fair law enforcement.

The scope of supervision and assessment that is the duty of the Prosecutor's Commission is extensive, covering the entire territory of Indonesia. At the same time, personnel and human resources perform minimal monitoring. Therefore, the Prosecutor's Commission needs to build synergy and cooperation with public institutions, colleges, and non-governmental organizations to strengthen their access to the Attorney's Commission.

Every complaint report received by the Prosecutor's Commission should be followed up thoroughly, and make every complaint of the community as the entrance to see the fundamental problem in the Prosecutor and recommend the necessary policy change.

### ***Problem of Prosecutors and Prosecutors Commission***

There is a relationship that cannot separate between the Prosecutor and the Prosecutor's Commission. The success of the Prosecutors Commission in carrying out their duties is heavily influenced by how much openness, and institutional willingness of the Prosecutor involves the Attorney's Commission in conducting supervision and commitment of the officials in the Prosecutor's office to undertake the improvement and institutional renewal seriously, comprehensively and sustainably.

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<sup>8</sup> Baharuddin Lopa, Memperkuat Kejaksaan Kita, Mappi FHUI (Oktober 2015).

<sup>9</sup> Choky R Ramadhan, Kedudukan, Tugas, dan Kewenangan Komisi Kejaksaan, on Jurnal TEROPONG, Volume 1 November 2013.

In carrying out the task and the role of supervision by the Prosecutor's Commission is very important to know the problem that envelops the institutional attorney and the Commission of prosecutors, either from the internal viewpoint or public view or perception. As follows can be identified Several things:

### 1. *Accountability Still Weak and Transparency of Prosecutors in Handling Matters*

With authority held by the Prosecutor in the field of prosecution, made the prosecutor as the spearhead for the law enforcement process. Unfortunately, the prosecution process by the Prosecutor has not been fully able to bring a sense of justice to society. The Justice seeker still finds the alleged guesswork in handling matters, incomplete or comprehensively dragging perpetrators of criminal acts, less creative to make a breakthrough in dealing with issues, and lack of mastery over the material or case handled.

In today's modern era, the utilization of technology and information is a necessity to help facilitate the work of administration and data management, including the handling of matters. The handling of IT-based cases by prosecutors has not adopted optimally, so the control and integration of data handling matters cannot be adequately implemented. The existence of a Data Center for Criminal Statistics and information technology (Pusdaskrimti) has not been able to answer the need for handling matters effectively and efficiently.

Disclosure of information on each step of the subject's handling can contribute positively to increasing public confidence in law enforcement agencies. Handling quality matters requires several things, which are qualified human resources, solid teamwork, and support for the completion of the case in a fair manner.

### 2. *Less Professional Human Resources Management*

The success of case handling in the prosecutor determined by the quality and competence of the prosecutors and employees of the prosecutor's office. Good quality and competence will realize if supported by management and proper human resources management as well. Regular education, performance evaluation, equitable promotion mutation, and employee welfare are essential to creating qualified human resources.

One of the critical issues in the context of bureaucracy reform in the Prosecutor is the mutation and promotion process. The promotion is a problem in the internal prosecutor. Mutations and promotions not conducted transparently and accountable, resulting in jealousy and influence on the work ethic of prosecutors and attorney officers. Also, prosperity is still a problem. Compared with other law enforcement agencies such as the Supreme Court, police, and KPK, the welfare of employees in prosecutors is quite low. Inadequate welfare levels can affect quality in handling matters, and on the other hand, it is also potentially unlawful to abuse by law enforcement officials.

### 3. *Less Effective Supervision*

Minimize misuse of Prosecutor authority, and effective supervision becomes very important; both internal management and external administration conducted by the Commission of Prosecutors and the public.

Still, the high misuse of authority by the Prosecutor and the officer showed the ineffectiveness of internal supervision, both supervision by direct superiors and oversight by the young attorney general of direction. The existence of OTT by the KPK against the Prosecutor is effective evidence of internal administration. Effective internal supervision will cover the space for irregularities in carrying out tasks.

External supervision by the Commission of the Prosecutor seems to have not been well done. Based on Presidential decree No. 18 of 2011 about the Republic of Indonesia Prosecutor's Commission is tasked with supervising the performance and behavior of the Prosecutor and the administrative officer in the prosecutor, both in public and outside. The Prosecutor's Commission is also tasked with providing an assessment of the organization, governance, completeness of facilities and infrastructure, as well as human resources in the prosecutor's office.

To perform its duties, the Commission of Prosecutors has the authority, namely (1) Receive reports of public complaints, (2) forward reports of complaints to the Attorney General, (3) conduct a re-examination/supplementary, (4) take over the inspection, (5) Call and ask for information of the Prosecutor/officer. Also, the Commission of Prosecutors reserves the right to (1) propose the establishment of the Attorney Code of Conduct Council, (2) solicit information from a government agency, organization or community member, and (3) give appreciation to prosecutors and accomplished employees.

Several things affect the oversight and execution of the duties of the Prosecutor's Commission is not optimal in improving the performance of prosecutors, including:<sup>10</sup>

The legal basis for the establishment of the Prosecutor's Commission is deemed insufficient because only based on presidential regulation. Indeed, the mandate of the establishment of the Prosecutor's Commission is given by law No. 16 of 2004 concerning the attorney of the Republic of Indonesia, but the law does not specify its position and authority.

Besides, the duties and authorities given to the Prosecutor's Commission are substantial but are not supported by other experts who guarantee its execution (only providing recommendations). The scope of supervision by the Commission is extensive because it includes administration on performance and behavior, in office and out of service, and direction of prosecutors and non-prosecutors. Not only to the performance and equipment personnel, but this Commission is also tasked with supervising and provide an assessment of institutional aspects in the Prosecutor, which includes the organization, management, infrastructure, human resources, and finance.

The existence of the Prosecutor's Commission as an external supervisor has many limitations in carrying out its functions and roles. The authority is substantial but not balanced with the support of adequate human resources availability. The number of personnel is minimal, and the competence of existing resources has not fully supported the surveillance performance performed. The Prosecutor's Commission has not been able to consolidate the strength of the community, so it is the potential to encourage change in prosecutors.

Another critical issue is related to the independence of the Prosecutor's Commission. According to the provisions of the prevailing laws and regulations, the freedom of the Prosecutor's Commission is not available on institutional and administrative. Institutional independence is not available due to the Presidential restriction stipulated that the Prosecutor's Commission is under and responsible to the

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<sup>10</sup> <https://komisi-kejaksaan.go.id/urgensi-penguatan-komisi-kejaksaan/>, diakses pada tanggal 1 Juli 2019.

President and assisted by the secretariat under the Ministry of Political Law and security. This arrangement is mounting the Prosecutor's commission under executive power.<sup>11</sup>

## ***The Role of Prosecutors in Creating Professional and Trustworthy Attorney Institutions***

### ***1. Commission as Public Representation and Justice Seekers***

The establishment of the Prosecutor's Commission is generally understood because of the distrust of public institutions, namely the Prosecutor. Due to the poor experience of the people in the new order period, such as corruption, collusion, and systemic nepotism, violations of human rights, and reluctance to reform themselves make a policymaker to form a new institution to strengthen the existing institutions.<sup>12</sup>

The Commission of the Republic of Indonesia Prosecutor was born in the era of democracy, and the demand for citizen participation in the governance of Indonesia. Similarly, other commissions that are born after the Reformation, the existence of the Prosecutor's Commission, is a manifestation of the ideals of democracy, justice, and good government. Thus, the existence and existence of the Prosecutor's Commission is a representation of the public interest, especially the justice seekers who want the law enforcement process to be done fair and fair. Therefore, the orientation of the task and authority of the Prosecutor's Commission should be directed to the efforts to fulfill the rights of the Community for fair and fair law enforcement.

The scope of supervision and assessment that is the duty of the Prosecutor's Commission is extensive, covering the entire territory of Indonesia. At the same time, personnel and human resources perform minimal monitoring. Therefore, the Prosecutor's Commission needs to build synergy and cooperation with public institutions, colleges, and non-governmental organizations to strengthen their access to the Attorney's Commission.

Every complaint report received by the Prosecutor's Commission should be followed up thoroughly, and make every complaint of the community as the entrance to see the fundamental problem in the Prosecutor and recommend the necessary policy change.

### ***2. Commission of Attorney as a Presidential Advisor in the Field of Task Implementation Prosecutors***

Article 38 Act No. 16 of 2004 about the Republic of Indonesia prosecutors that in order to improve the performance of prosecutors, the president may form a commission whose arrangement and authority is governed by the President. Such conception suggests that the establishment of the Prosecutor's Commission by the President is not mandatory so that its exposure is highly dependent on the political will of the president and his views on the prosecutor's office.

The Chairman and members of the Prosecutor's Commission were appointed and dismissed by the president. Also, the Prosecutor's Commission must report its performance to the President regularly.

Based on the provisions mentioned above, that the Prosecutor's Commission has an essential role in the institutional of the presidency, or it can be said the prosecutor's Commission as a presidential advisor in the field of duties of prosecutors The Prosecutor's Commission is the president's right hand in realizing a better Prosecutors institution.

<sup>11</sup> Choky R. Ramadhan, S.H., *Kedudukan, Tugas, dan Kewenangan Komisi Kejaksaan*, on Jurnal TEROPONG, Volume 1 November 2013.

<sup>12</sup> Choky R. Ramadhan, S.H., *Kedudukan, Tugas, dan Kewenangan Komisi Kejaksaan*, on Jurnal TEROPONG, Volume 1 November 2013.

Therefore, the Chairman and the Prosecution Commission members must be able to capture the vision, mission, and expectations of the President in the process of law enforcement, especially against the performance of Prosecutors. The Prosecutor's Commission should be able to provide a comprehensive evaluation of the attorney's performance and provide recommendations to the President to make important decisions related to the intention of the Prosecutor. Even the prosecutor's Commission needs to provide input to the President about the ideal qualification of Attorney general, Echelon I officials in the prosecutor's ward, and the exact figure that will occupy these offices.

### *3. Prosecutors Commission as Strategic Partner Prosecutors*

The attorney general and the Prosecutors Commission are strategic partners, who in the performance of their duties and authorities, will always relate to and relate to each other. As a non-structural institution in the government, the Prosecutor's commission was formed to assist and accompany the Attorney general to achieve the best performance as an independent law enforcement agency, professional, integrity, and trusted community.

As a strategic partner, it is a necessity for prosecutors and Prosecutors Commission to establish communication, coordination, and equalizing views on how each institution performs its duties and functions. Communication and coordination are essential for the integration and synergy in pushing the performance improvement of prosecutors.

The attorney's Commission is based on the mandate to provide suggestions, opinions, and criticisms that build on the performance, behavior, and development of the organization, management, infrastructure, and human resources in the city. The advice and opinions given by the Prosecutor's Commission to the Prosecutor are solely based on the desire to maintain the nobility, dignity, and honor of the prosecutor, which in turn will be expected to increase public confidence to the institution of prosecutors.

### **Conclusion**

Prosecutors commission as one of the institutions that run the role as a supervisor of the behavior of the Prosecutor often also get attention because of the many cases involving the officials of the Prosecutor, especially the prosecutors. Concerning the role carried out by the Commission of the Prosecutor, then it can be withdrawn several problems such as the role of the Attorney's Commission in conducting performance supervision from the antics and what are the constraints of the Prosecutors Commission in conducting the performance supervision of the prosecutor.

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