



Problematics Independence of Witness as a Law Enforcement Institution

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Abstract

The position of the Prosecutor's Office which is institutionally under the executive power but carrying out the duties and functions that are part of the judicial authority clearly raises a problem of its own in the world of law enforcement. The prosecutor's office as a law enforcement officer in the prosecution field is required to be fair and objective and independent in faithfully carrying out his duties and authorities, but placing the prosecutor's position as a government institution under the executive very vulnerable from power intervention. This condition is very dilemmatic to support the attorney's performance in carrying out his functions and authority.

Keywords: *Prosecutor's Office; Law Enforcement; Prosecution*

Introduction

The position of the Prosecutor's Office which is institutionally under the executive power but carrying out the duties and functions that are part of the judicial authority clearly raises a problem of its own in the world of law enforcement. The prosecutor's office as a law enforcement officer in the prosecution field is required to be fair and objective and independent in faithfully carrying out his duties and authorities, but placing the prosecutor's position as a government institution under the executive very vulnerable from power intervention. This condition is very dilemmatic to support the attorney's performance in carrying out his functions and authority.

The main task of the Prosecutor's Office as law enforcement in the Indonesian criminal justice system is prosecution. Prosecution is the sole authority of the Prosecutor's Office and not possessed by other institutions. The authority to prosecute is *dominus litis* Indonesian Prosecutor's Office.¹ 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 at a court hearing. Based on the prevailing legal doctrine, a principle that the Public Prosecutor has a prosecution monopoly, means that each person can only be tried

¹ Tolib Effendi, *Sistem Peradilan Pidana Perbandingan Komponen dan Proses Sistem Peradilan Pidana di Beberapa Negara*, (Surabaya: Pustaka Yutisia, Surabaya, 2014), p. 153.

if there is a criminal claim from the Public Prosecutor, namely the Prosecutor's Office because only the Public Prosecutor is authorized to bring a person suspected of a criminal offense to a court hearing.²

Article 2 paragraph (1) of Law No.16 of 2004 states that the prosecutor's office is a government agency that exercises state power in the field of prosecution and other authorities based on law. While paragraph (2) explains that the state power referred to in paragraph (1) is carried out independently. According to Marwan Effendi³, Law No.16 of 2004 has not yet realized the independence and independence of the Prosecutor's Office. This is due to the presence of regulations that result in the intervention of executive power over the power of the Prosecutor's Office. The regulation contained in Article 2 paragraph (1) implies that the Prosecutor's Office is an institution under the executive. This means, the Prosecutors' Office is not independent or independent from executive power.

The independence of law enforcement agencies to avoid irregularities as a tool to maintain power by certain regimes. The strategic role of law enforcement agencies in the state administration system and realizing the principles of the rule of law is crucial, so that the oversight function is balanced in the principle of distributing power that is applied in a country.

Research Method

This research is a normative legal research with a statutory approach and conceptual approach.⁴

Discussion

The concept of power distribution in the rule of law is a form of effort to create mutual oversight between one state institution and another within the frame of the Check and Balances principle, of course it is important to discuss here about the independence of the Prosecutor's Office as a law enforcement agency in the field of prosecution. Such matter is intended to find out how the position and role of the Republic of Indonesia Attorney's institution in carrying out its functions in the context of enforcing the law. With regard to this matter, Daniel S. Lev illustrates that political dynamics influence the degree of independence and independence of this profession, so that political intervention inhibits the professionalism of prosecutors.

Functional Independence is that the Prosecutor can be free and independent in carrying out his duties to prosecute in the field of prosecution. One of the factors that greatly influences both institutional / institutional and functional independence is its position in the institutional structure. Institutional and functional independence is something that is very important. To reform the institutional and independence of prosecutors and prosecutors, as stated in the prosecutors' profile in 2025 as follows:⁵

1. The independence of the Attorney General is guaranteed in the Constitution as part of the Judiciary Power which carries out the Prosecution function, thus Independence is also inherent in the function of the Attorney General.
2. The term of office of the Attorney General is stipulated in the Constitution.

² Didit Ferianto Pilok, "Kedudukan dan Fungs Jaksa Dalam Peradilan Pidana Menurut KUHAP", Jurnal Lex Crimen, Vol. II/No. 4/Agustus/2013, p. 147

³ Marwan Effendy, *Kejaksaan RI: Posisi dan Fungsinya dari Prespektif Hukum* (Jakarta: PT.Gramedia Pustaka Utama, 2005), p.90

⁴ Astria Yuli Satyarini Sukendar, Amanda Raisaa dan Tomy Michael, Penjualan Rogodi (Roti Goreng Mulyodadi) Sebagai Usaha Bisnis Dalam Meningkatkan Usaha Mikro Kecil (UMK) Di Desa Mulyodadi, Kabupaten Sidoarjo, Jurnal Hukum Bisnis Bonum Commune Volume 3 Nomor 1 Februari 2020.

⁵ Profil Kejaksaan 2025, https://www.kejaksaan.go.id/reformasi_birokrasi.php?section=8&idkat=8, April, 12, 2020.

3. The availability of the Prosecutors' budget must be guaranteed in the Constitution and the Law.
4. The prosecutor is independent in carrying out the prosecution task and has the discretion to continue or stop the prosecution based on the applicable laws and regulations and the existing conditions at the time.
5. The Attorney General's Office functions to provide policy direction in prosecution but does not interfere in technical matters or in cases;
6. Prosecutors act professionally and independently within the legal framework and can be accounted for in accordance with a sense of justice;
7. Attorney employment status is a civil servant in the Prosecutor's Office. Echelonization and rank symbols were abolished.

To realize all of that, efforts and strengthening of the Prosecutor's Office need to be done both institutionally and in authority so that the Prosecutor's institution is truly independent and independent and free from the influence of any power. This can be started from the process of selecting and appointing the leaders of a state institution and is also an important indicator for creating independence and independence.

Article 19 of Law No.16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia regulates the existence of the Attorney General. Article 19 paragraph(1) states that the Attorney General is a state official. While paragraph(2) explains that the Attorney General was appointed and dismissed by the President. This provision has the significance of the influence of executive power on the Attorney General's Office, because the Attorney General is appointed and dismissed by the president and is responsible to the president.

According to Jimly Asshiddiqie⁶, the Attorney General is the highest leader and person in charge of the Attorney General's Office which controls the implementation of the Attorney General's duties and authorities. The Attorney General is also the highest responsible in the field of prosecution. According to the provisions of Article 37 paragraphs (1) and (2) *juncto* Article 19 paragraph (2) of Law No. 16 of 2004, the Attorney General was appointed and dismissed by and is responsible to the President. This provision of accountability to the President needs attention because it is closely related to the principle of independence of the Prosecutor in carrying out his duties and authority as a law enforcement agency.

The Prosecutors' Office is included in the component of the legal structure. Legal structure becomes an important issue in the state administration system how law is directed and driven in a system of interrelated and interrelated systems. The function of the Prosecutor's Office as a law enforcement structure is not only to carry out what is written in the written rules, but also must be able to describe it as a social engineering tool.

Esmi Warasih⁷ stated that law enforcement should not be seen as a stand-alone, but always be among various factors. According to Mochtar Kusumaatmadja⁸, the legal function in developing Indonesian society is not enough to build certainty and order. Laws are expected to function more as a means of development.

⁶ Jimly Asshiddiqie, *Perkembangan & Konsolidasi Lembaga Negara Pasca Reformasi*, (Jakarta: Sinar Grafika, 2012), p. 189

⁷ Esmi Warasih Pujirahayu, *Pranata Hukum: Sebuah Telaah Sosiologis*, (Semarang: Suryandaru Utama, 2005), p. 78.

⁸ Mochtar Kusumaatmadja, *Hukum, Masyarakat, dan Pembinaan Hukum Nasional*, (Bandung: Bina Cipta, 1995), p. 13.

Departing from the above, we realize that whatever is carried out by the Prosecutor's Office as an inseparable part of the authority of the Judiciary institution must be carried out independently without any intervention. This is contrary to the provisions of article 19 paragraph (2) of Law No.16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, namely the Attorney General is appointed and dismissed by the president.

This independent position has an impact on the implementation of functions that are not independent, because as a government official must be demanded high loyalty in carrying out government functions, even though Article 2 paragraph (2) of Law no.16 of 2004 still guarantees that in carrying out the prosecution function its independence is guaranteed. There are conditions that are dilemmatic and contradictory in the position and function of the Prosecutor's Office.⁹

According to Yudi Kristiana, Law No.16 of 2004 concerning the Prosecutor's Office has built a bureaucracy to the Prosecutor with a bureaucratic, centralistic character, adopts a hierarchical responsibility and a command system. Every decision on case handling must be based on the leader's *policy*. The *centralization of case handling policy* has created opportunities for case management interventions from the internal prosecutors 'bureaucracy and higher intervention from the Prosecutors' leaders.

It should be stressed in this case the consequences of the position of the Prosecutor's Office under the auspices of the President (executive) both in terms of accountability and in terms of appointment and dismissal in accordance with the mandate of Law No.16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia stated in article 19 paragraph (2) must be balanced with the capacity of the President to provide good legal intervention.

Closing

The position of the Prosecutor's Office which is institutionally under the executive power but carrying out the duties and functions that are part of the judicial authority clearly raises a problem of its own in the world of law enforcement. The problem becomes even more interesting considering the provisions of Article 38 of Law no.48 of 2009 concerning Judicial Power which implicitly mentions the existence of the Republic of Indonesia Prosecutor's Office in the constitutional system as a body associated with the authority of the Judiciary, while Article 2 paragraph (1) of Law No.16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, placed the AGO as a government institution under the executive.

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Didit Ferianto Pilok, "Kedudukan dan Fungs Jaksa Dalam Peradilan Pidana Menurut KUHAP", Jurnal Lex Crimen, Vol. II/No. 4/Agustus/2013.

⁹ Pujiyono, "Rekontruksi Sistem Peradilan Pidana Indonesia Dalam Perspektif Kemandirian Kekuasaan Kehakiman". Jurnal MMH, Jilid 41 No 1 Januari 2012, p. 224.

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