



**RECONSTRUCTION OF THE MODEL FOR
FILLING THE POSITION OF ATTORNEY
GENERAL TO REALIZE AN
INDEPENDENT JOICE IN
LAW ENFORCEMENT**

Riki Musriza¹, Sukamto Satoto², Ardilafiza³

Correspondence : riky_zidane@yahoo.co.id

Abstract: This research aims to find out and understand 1) The position of the Prosecutor's Office and the Attorney General as independent law enforcers in the Indonesian constitutional system. 2) Implementation and implications of the current model for filling the position of Attorney General for the independence of the Prosecutor's Office in carrying out law enforcement functions. 3) The ideal model for filling the position of Attorney General in order to create an independent Prosecutor's Office in carrying out law enforcement functions. In this legal research, a statutory approach, a conceptual approach (analytical and conceptual approach), a case approach, a comparative approach and a historical approach are used by applying deductive and inductive reasoning. The research results show that: 1) The Prosecutor's Office is a government (executive) institution that has authority related to the function of judicial power (judiciary) in the Indonesian constitutional system. The Prosecutor's Office also has a strategic position as a state institution that is constitutionally important and has two functions at once, namely a government function and a law enforcement function (dual obligation) so that its independence must be guaranteed. 2) The implementation of the model for filling the position of Attorney General who is appointed and dismissed by the President is influenced by the authoritarian political configuration that occurred in the guided democracy era which seeks to eliminate the concept of separation of powers of state institutions which is contrary to the principles of the rule of law. The current model for filling the position of Attorney General has implications for law enforcement intervention by the President which is carried out with various motives and interests. Apart from that, the position

¹Doctoral Program Student of Law Faculty, Jambi University, Indonesia

²Professor of Law Faculty, Jambi University, Indonesia.

³ Doctor of Law Faculty, Bengkulu University , Indonesia.



of Attorney General was then held by non-Prosecutor professions and even by political party cadres. 3) The ideal model for filling the position of Attorney General includes first the requirements to become Attorney General which must be filled by professional prosecutors, whether active or retired. The second includes a mechanism for filling the position of Attorney General which involves the executive and legislative branches of power with elections through an ad hoc Selection Committee to create the principle of checks and balances between state institutions in realizing law enforcement that is free from power interference.

Keywords: Filling, Prosecutor's Office, Law Enforcement

Introduction

Legally normatively, it is stated that the Prosecutor's Office is a government institution whose function is related to judicial power which carries out state power in the field of prosecution and other authorities based on law. To guarantee its independence, the Prosecutor's Office, in carrying out its functions related to judicial power, exercises its powers independently. Apart from state powers in the field of prosecution, the Prosecutor's Office has other powers which are included in the judicial power subsystem in the field of criminal law enforcement, namely investigative powers and the power to implement court decisions which have permanent legal force. Meanwhile, other authorities outside the field of law enforcement as part of the government prosecutor's office based on law include acting as state attorney in civil and state administrative cases, participating in maintaining public order and tranquility, carrying out asset recovery, and carrying out law enforcement intelligence functions. This attribution of authority creates dualism regarding the existence of the Prosecutor's Office as a state institution. Looking at the position of the Prosecutor's Office, it is a state institution under executive power. Meanwhile, in terms of authority, the Prosecutor's Office is dominant in carrying out the function of law enforcement or judicial power.

In carrying out its function as law enforcer, the prosecutor's office has a central position in the Indonesian criminal justice system. Therefore, the independence of the Prosecutor's Office in carrying out its law enforcement function will have a major influence on the creation of independence of judicial power as a whole in order to guarantee the fulfillment of citizens' rights to the recognition of fair legal protection and certainty as well as equal treatment before the law.



The urgency for the independence of judicial institutions is also stated in various international legal instruments. Referring to the International Bar Association of Judicial Independence, the state is obliged to guarantee the independence of judicial institutions and place the existence of judicial functions (judiciary) apart from the control of government institutions (executive). Likewise, as stated in the international principles regarding the status and role of public prosecutors (The Status and Role of Prosecutors) as an implementation of the 1990 United Nations Guidelines on the Role of Prosecutors which encourages strengthening independence

In the state's efforts to realize the independence of judicial power, especially the Prosecutor's Office, in carrying out law enforcement functions, it has encountered several substantial obstacles. The first substantial obstacle is related to the model for filling the position of Attorney General which falls under the full authority of the President. The model for filling the position of Attorney General is implemented using a prerogative approach, where the President is given full authority to appoint and dismiss the Attorney General. This model for filling positions is considered not to be compatible with the institutional concept of the Prosecutor's Office which is directed at having independence in carrying out its law enforcement functions. Referring to the results of research by the United Nation Development Program (UNDP), the mechanism for filling leadership positions in independent law enforcement agencies, especially those with the authority to eradicate corruption, must be carried out through democratic, transparent and objective procedures. Meanwhile in Indonesia the mechanism for filling the position of Attorney General is carried out behind closed doors without any consideration or input from the public or other state institutions. Not to mention that in practice the model for filling public positions using the President's prerogative approach is often misused not to fulfill constitutional duties but simply for certain political goals.

In the context of the relationship between the President and the Attorney General, the current filling model also results in the position of Attorney General being under the influence of the President's power relations. This condition results in the law enforcement function of the Prosecutor's Office being under the control of the President. A clear example of the relationship between the President's power and the Attorney General's law enforcement authority, among others, according to Yusril Ihza Mahendra, during the era of President Susilo Bambang Yudhoyono's administration, Attorney General Hendarman Supandji always came to see or wrote a letter asking for "instructions" from the President if the person concerned wanted to designate someone as a suspect. Then, during the reign of President B.J. Habibie, Attorney General Andi Muhammad Ghalib, when investigating Corruption, Collusion and Nepotism (KKN) cases against



former President Suharto, always asked for instructions and approval from President B.J. Habibie before conducting an investigation or determining Suharto as a suspect. Then, during the administration of President Abdurrahman Wahid, Attorney General Marzuki Darusman was unable to complete the investigation into the criminal corruption case related to the Texmaco textile company, not because he received political support from President Abdurrahman Wahid, so the Prosecutor's Office stopped its investigation in May 2000.

The second substantial obstacle is related to the lack of legal certainty regarding the requirements for the position of Attorney General to be filled by an active professional prosecutor. The position of prosecutor is a legal profession. The legal profession is a profession to create a just order that allows humans to live a normal life. That the politics of national criminal law is in accordance with the objectives of the Indonesian state, namely to provide protection for society from crime as well as balance and harmony in life in society by taking into account the interests of society/state, victims and perpetrators. The existence of the prosecutor as dominus litis in the criminal justice system means that the prosecutor is the controller of the case that determines whether or not a case can go to court. The prosecutor's prosecutorial authority is also single (single prosecution system) as an implementation of the "een en ondelbaar" doctrine. The implementation of this doctrine places prosecutors as one and indivisible with the aim of maintaining unified prosecutorial policy which displays unique characteristics that are unified in the thinking, behavior and work procedures of the Prosecutor's Office in order to create legal certainty in the enforcement of criminal law. The combination of the absence of legal certainty for the Attorney General originates from professional prosecutors with the concept of prerogative rights in filling the position of Attorney General, creating a legal loophole for political parties to "use" the position of Attorney General as a tool of power, in line with the habit of political parties making Departments and Ministries as "cash cows".

In the context of the Indonesian government system, it adheres to a presidential system with a plural party system. In a multiparty presidential system, the President is often held hostage to the interests of political parties, so that in order to maintain the stability of his relationship with the legislative body, he is forced to negotiate the composition of the cabinet by dividing ministerial positions to be held by cadres or political party partisans. In such conditions the existence of political parties will pose a real threat to the professionalism and independence of the Prosecutor's Office in carrying out law enforcement functions. The position of Attorney General, whose filling mechanism is dominated by the President, will become the object of an exchange of interests to create a strong Presidential



system. The law enforcement function of the Prosecutor's Office will be degraded from its aim of providing protection and welfare of the community as mandated by the constitution.

Meanwhile, Mahfud MD, in his research on the influence of political configuration on law, found a push and pull relationship between politics and law which ultimately made law a variable that was influenced by politics because the political subsystem had a greater concentration of energy than law. If we have to deal with politics, then the law is in a weaker position. This fact is also apparent from the results of Vishnu Juwono's research on the legal political dimension of eradicating corruption by the Prosecutor's Office in the historical trajectory of the Indonesian presidential government which was strongly influenced by the President's political interests. An actual example of the President's political intervention in law enforcement is the acknowledgment by the Chairman of the Corruption Eradication Commission that President Joko Widodo intervened in the process of investigating the E-KTP corruption case involving Setya Novanto. Then the intervention of political parties through the DPR against the Constitutional Court by replacing constitutional judge Aswanto in the middle of his term of office because his attitude in the decision was not in line with the wishes of the authorities in enforcing the job creation law. According to Saldi Isra, this change is a form of unconstitutional action by the DPR which could damage the independence of the judiciary as the main bulwark of the rule of law.

The courage of the President and political parties to openly intervene in judicial power, as was done with the Corruption Eradication Commission and the Constitutional Court, does not rule out the possibility that this could also happen to the law enforcement function of the Prosecutor's Office. With the model for filling the position of Attorney General which is influenced by the hegemony of the President's power without going through democratic procedural arrangements, plus the lack of legal certainty regarding the requirements for a Professional Prosecutor to occupy the position of Attorney General, the law enforcement function carried out by the Prosecutor's Office is very much determined by good will, and the political will of the power holders. Such law enforcement practices are very dangerous for achieving the philosophical meaning of the birth of a democratic legal state which places law enforcement as the most important instrument for realizing the goals of the state as intended in the Preamble to the 1945 Constitution of the Republic of Indonesia, namely "to protect the entire Indonesian nation and all of Indonesia's bloodshed, and to promote general welfare, make the nation's life more intelligent, and participate in implementing world order based on freedom, eternal peace and social justice. The Prosecutor's Institution as part of a law enforcement institution



which should be free from interference from power is no longer immune to the diseases of power." as Lord Acton stated, "power tends to corrupt, absolute power corrupts absolutely" (power tends to corrupt, and absolute power tends to corrupt absolutely).

Based on this description, it can be concluded that the model for filling the position of Attorney General which is normatively regulated in Article 19 paragraph 2 and Article 20 of Law No. 11/2021 gives rise to a conflict of law with constitutional legal norms regarding the regulation of the characteristics of the rule of law and the independence of judicial power. contained in Article 1 paragraph 3 and Article 24 paragraph 1 of the 1945 Constitution of the Republic of Indonesia. So referring to the background of this problem prompted the author to conduct research regarding: Reconstruction of the Model for Filling the Position of Attorney General to Create an Independent Prosecutor's Office in Carrying Out Law Enforcement Functions.

From the description above, it can be drawn the formulation of the problem as follows:

1. What is the position of the Prosecutor's Office as an independent law enforcer in the Indonesian constitutional system?
2. What is the implementation and influence of the current model for filling the position of Attorney General on the independence of the Prosecutor's Office in carrying out law enforcement functions?
3. What is the ideal model for filling the position of Attorney General to create an independent Prosecutor's Office in carrying out law enforcement functions?

Methods

This study uses a normative juridical approach. In this case, the nature of descriptive analytical research is used with a holistic (holistic) approach. The system means a unit that is arranged in an orderly manner over the following parts and details in such a way as to achieve a definite goal. The pattern of research and study of applied law and the environment aims to know and understand the Wisdom in the regulation of environmental problems legally. The pattern of comprehensive research on environmental law with special attention to and taking into account the conditions and requirements that are typical of life in Indonesia, both in terms of the natural physical environment and in terms of aspects of the



built environment (socio-political), in order to be able to find forms and corks of environmental law that are specifically suited to Indonesia's needs, so that it can stand as Indonesia's national system in the field of environmental law and spatial planning.

This uses a statutory approach, a comparative approach, a historical approach and a conceptual approach. The statutory approach is used to analyze statutory regulations that regulate the position, duties and functions of the Prosecutor's Office as a law enforcement agency. A comparative approach is used to analyze the role and position of prosecutors and models for filling the position of attorney general in various countries. The historical approach is used to understand the position of the Prosecutor's Office and Attorney General in the Indonesian constitutional system since the early days of independence, the liberal democracy period, the guided democracy period, the New Order era, up to the reform era. The three conceptual approaches depart from the views and doctrines that develop in legal science. In this research, it is explained that building concepts in the study of law is basically an activity to construct theories, which will be used to analyze and understand them.

Researchers will use primary legal materials, secondary legal materials, and tertiary legal materials, which are found in the Indonesian Attorney General's library and other libraries. Primary legal materials, including:

- 1) The 1945 Constitution of the Republic of Indonesia.
- 2) Constitution of the United Republic of Indonesia
- 3) Law of the United Republic of Indonesia Number 7 of 1950 concerning Amendments to the Provisional Constitution of the United Republic of Indonesia to Become the Provisional Constitution of the Republic of Indonesia
- 4) Law Number 1 of 1950 concerning the Structure of Powers and Court Procedures of the Supreme Court
- 5) Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia.
- 6) Law Number 14 of 1970 concerning Basic Provisions of Judicial Power.
- 7) Law Number 14 of 1985 concerning the Supreme Court.
- 8) Law Number 15 of 1961 concerning Basic Provisions for the Prosecutor's Office.
- 9) Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia
- 10) Law Number 18 of 2011 concerning Amendments to Law Number 22 of 2004 concerning the Judicial Commission.



- 11) Law Number 18 of 2013 concerning Prevention and Eradication of Forestry Crime.
- 12) Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission.
- 13) Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia
- 14) Law Number 22 of 2004 concerning the Judicial Commission
- 15) Law Number 24 of 2003 concerning the Constitutional Court.
- 16) Law Number 26 of 2000 concerning Human Rights Courts
- 17) Law Number 28 of 1999 concerning the Implementation of a Clean State Free of Corruption, Collusion and Nepotism
- 18) Law Number 3 of 2009 concerning Second Amendment to Law Number 14 of 1985 concerning the Supreme Court.
- 19) Law Number 30 of 2002 concerning the Corruption Eradication Commission.
- 20) Law Number 31 of 1997 concerning Military Justice.
- 21) Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Eradication of Corruption Crimes
- 22) Law Number 34 of 2004 concerning the Indonesian National Army.
- 23) Law Number 4 of 2014 concerning Stipulation of Government Regulations in Lieu of Law Number 1 of 2013 concerning the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court Becomes Law.
- 24) Law Number 48 of 2009 concerning Judicial Power
- 25) Law Number 5 of 1991 concerning the Prosecutor's Office of the Republic of Indonesia.
- 26) Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court.
- 27) Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP)
- 28) Law Number 8 of 2010 concerning Prevention and Eradication of the Crime of Money Laundering
- 29) Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court.
- 30) Presidential Decree Law Number 11 of 1963 concerning Eradication of Subversive Activities
- 31) Law of the Republic of Indonesia Number 19 of 1948 concerning the Composition and Powers of Judicial Bodies
- 32) Law of the Republic of Indonesia Number 19 of 1948 concerning the Composition and Powers of Judicial Bodies
- 33) Law of the Republic of Indonesia Number 7 of 1947 concerning the Composition and Powers of the Supreme Court and the Attorney General's Office



- 34) Government Regulation in Lieu of Law Number 1 of 2013 concerning the Second Amendment to Law Number 24 of 2003 concerning the Constitutional Court.
- 35) Constitutional Court Decision Number 29/PUU-XIV/2016 dated 14 November 2016.
- 36) Constitutional Court Decision Number 49/PUU-VII/2010 dated 03 September 2010
- 37) Constitutional Court Decision Number 6-13-20/PUU-VIII/2010 dated 13 October 2010.
- 38) Constitutional Court Decision Number 61/PUU-XIX/2021 dated 25 January 2022.
- 39) Decree of the President of the Republic of Indonesia Number 204 of 1960 concerning the Establishment of the Prosecutor's Department.
- 40) United Nations Guidelines On The Role Of Prosecutors (UN Guidelines on the Role of Prosecutors adopted at the 8th Crime Prevention Congress in Havana Cuba 27 August-7 September 1990

Meanwhile, the secondary legal materials used in this research are legal materials that provide explanations of primary legal materials, including: Minutes of Discussion on Amendments to the 1945 Constitution, Draft Law on the Prosecutor's Office, decisions of the Constitutional Court and other relevant decisions with research objects, research results that are relevant to the problem under study, including writings or articles published in journals, autobiographical books of Attorneys General, scientific works presented at scientific meetings, academic texts on laws and regulations of the Prosecutor's Office and etc. Meanwhile, tertiary legal materials are materials that provide instructions and explanations for primary and secondary legal materials, including dictionaries and encyclopedias.

Result / Discussion

1. The position of the Prosecutor's Office as an independent law enforcer in the Indonesian constitutional system

In accordance with the provisions of the law, prosecutors are juridically responsible for convicts, while correctional institutions are responsible for providing guidance and physical supervision of convicts. The implementation of court executions that have legal force must still be carried out thoroughly, not only in the implementation of criminal sanctions, including the death penalty, imprisonment, but also fines, court costs and evidence. The execution of the court is carried out by the



prosecutor immediately after the court decision has permanent legal force. Postponement of the implementation of court decisions that have obtained legal force can still be carried out based on law by paying attention to religious norms, politeness, decency and human values that live in society, such as convicts who are heavily pregnant, seriously ill and so on.

Next, the final criminal subsystem is legal action. Legal efforts are the efforts of the parties in the criminal system to correct and rectify the errors contained in the decisions that have been handed down, for the sake of upholding the law, truth and justice. In theory and practice there are two known, namely ordinary legal remedies and extraordinary legal remedies. Ordinary legal remedies consist of appeals and cassation, while extraordinary legal remedies are judicial review (PK) and cassation for legal purposes (KDKH). The differences between the two types of legal remedies include the following:

- 1) Ordinary legal measures are taken against court decisions which do not yet have permanent legal force, while extraordinary legal measures are taken against court decisions which already have permanent legal force.
- 2) Ordinary legal efforts do not require special conditions or certain conditions, while extraordinary legal efforts can only be submitted, with special conditions or certain conditions.
- 3) Ordinary legal remedies are not always directed to the Supreme Court, while extraordinary legal remedies are submitted to the Supreme Court and examined and decided by the Supreme Court as the first and final institution.

Based on the Judicial Power Law, prosecutors as parties in the criminal system are given attribution of authority to carry out all types of legal measures, both ordinary and extraordinary. Including the extraordinary legal effort of PK, according to Ali Mukartono, although based on the Constitutional Court's decision, the authority of PK by prosecutors in Article 30C letter h of the Prosecutor's Law has been declared unconstitutional, but systematically the sentence acts to cancel the authority of prosecutors to allow PK in the Law on Judicial Powers and in the Criminal Procedure Code. In Article 263 paragraph 2 of the Criminal Procedure Code, it is stated that PK charges can be carried out if in the decision the act charged has been declared proven but has not been followed by a conviction. If the interpretation is carried out systematically, the only party interested in proposing legal action against such a punishment is the prosecutor because it is impossible for such a punishment to be submitted to PK legal action by the defendant.



Regarding the authority of KDKH's extraordinary legal efforts, the Attorney General, for the sake of legal interests, regarding all decisions that have obtained permanent legal force from courts other than the Supreme Court, can request a cassation once by the Attorney General. However, the cassation decision for legal purposes must not harm the interested parties. According to Lamintang, the aim of conveying the KDKH legal action by the Attorney General is solely to ensure unity or equality in the judiciary. There are reasons why the Attorney General may request a cassation for legal purposes against the court decisions as intended if the Attorney General knows that:

- 1) A legal regulation has not been implemented or has been applied improperly;
- 2) The method of adjudication has not been carried out in accordance with the provisions of the law; or
- 3) The court has exceeded the limits of its authority.

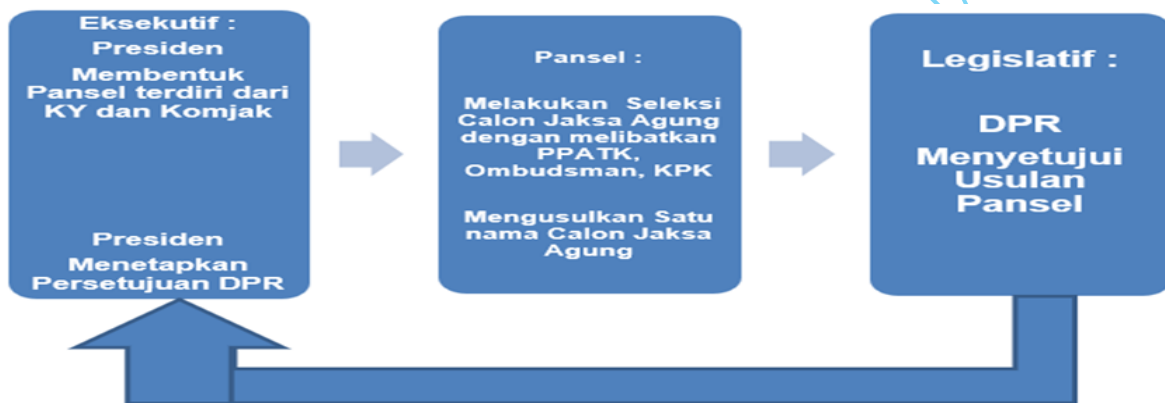
KDKH can only be issued 1 (one) time by the Attorney General for the entire highest general income due to his appointment with no time limit for filing. KDKH's legal efforts cannot eliminate and eliminate legal efforts to review a case. In its history, KDKH has only been carried out once, namely for legal efforts to straighten out pre-trial decisions that were deemed to have exceeded its authority. In 1989 the KDKH legal remedy was used by Attorney General Sukarton Marmosujono for a pre-trial decision granting a pre-trial confiscation where in the Criminal Procedure Code itself at that time whether the confiscation was legal or not was not included in the object of the pre-trial. The KDKH submitted by the Attorney General at that time aimed to correct this conclusion and to clarify whether confiscation was a pretrial object or not. At the Attorney General's request, Ma

Considering that the process of filling the position of Attorney General is carried out within the same framework to maintain the independence of the Prosecutor's Office, the mechanism for filling the position of Attorney General must be equal to the mechanism for filling the position of Supreme Court Judge or Constitutional Judge. As Zainal Arifin Mochtar believes, independence basically has to be realized in two ways. First, independence in making legal decisions and second, institutional independence. According to P H. Lane, there are six standards for judicial independence; non-political judicial appointment, in guaranteed tenure and salary of the judges, in executive and legislative non-interference with court proceedings or office holders, in budgetary and administrative autonomy. From the Non-Political Judicial appointment aspect, it is hoped that in the selection process there will be no political process. Therefore, selection is carried out using a more accurate model and a political model



is given at the approval stage. By reducing the role of the DPR to just providing approval, it will reduce the possibility of political party intervention in the law enforcement function of the Prosecutor's Office in the future.

Then, after the candidate for Attorney General is approved by the DPR, the name of the candidate for Attorney General is submitted to the President. The President then in his capacity as Head of State determines the candidate who has been approved by the DPR as the elected Attorney General and appoints him for a five-year term in line with the cabinet term. The mechanism for filling the position of Attorney General can be seen from the following graph:



In addition, to strengthen the independence of the Attorney General, it is necessary to reconstruct the articles relating to the President's authority to dismiss the Attorney General during his term of office. Considering historical experience in constitutional matters, the authority to dismiss the Attorney General in the middle of his term of office provides a legal loophole for the President to intervene in the law enforcement function of the Prosecutor's Office. By reconstructing the model for filling the position of Attorney General which involves the executive and legislative branches of power and using an ad hoc Pansel, it is hoped that the position of the Attorney General will be free from interference from other powers so that independent law enforcement can be achieved in accordance with the goals of the state.

2. The implementation and influence of the current model for filling the position of Attorney General on the independence of the Prosecutor's Office in carrying out law enforcement functions



The Prosecutor's Office as a law enforcement agency is obliged to carry out its duties independently and professionally. As a law enforcer, a professional prosecutor must have the criteria of being a human being who is balanced in terms of integrity and competence. To achieve this balance, the requirements must be comprehensive, involving good moral and ethical capacity, sufficient knowledge and understanding of the legal field and adequate skills in enforcing the law. Therefore, the requirements for serving as Attorney General have been reconstructed as follows:

- 1) Active prosecutor or retired prosecutor with a minimum rank of Principal Prosecutor (IV/E)
- 2) Fear of God Almighty;
- 3) Maximum age of 65 (sixty five) years at the time of appointment
- 4) Physically and mentally healthy
- 5) Never been convicted based on a court decision that has permanent legal force for committing a criminal offense that is punishable by imprisonment for 5 (five) years or more;
- 6) Never been sentenced to temporary dismissal due to violating the Prosecutor's code of ethics and/or code of conduct;
- 7) Never been and is not currently registered as a member and/or administrator of a political party.
- 8) Minimum doctorate in Law
- 9) Experienced in holding positions as Head of the District Prosecutor's Office, and/or Head of the High Prosecutor's Office.

Based on these requirements, the position of Attorney General must be filled by professional prosecutors, both active and retired. Providing opportunities for retired prosecutors to continue to register as Attorney General aims to implement the principle of openness. The principle of limited transparency is applied so that the more candidates for Attorney General who register will of course be better at determining the choice of candidate for Attorney General. Remembering that there are still many retired prosecutors who have the integrity and capability to become Attorney General. However, the special openness of retired prosecutors is also limited to a maximum age of 65 years to maintain the performance of the Attorney General as a law enforcement position which has complex authority and heavy responsibilities that require excellent physical and mental readiness.



In addition, these requirements are prepared by taking into account the principle of balance between integrity and competence of human resources. Competency is defined as individual character that can be measured and determined by demonstrating certain behavior and work performance in a person. Therefore, there are elements related to competency, including knowledge, understanding attitudes, values, talents, abilities and interests. These elements were then narrowed down into three elements known as professionalism traits, namely knowledge, skill and attitude. In an effort to realize the Prosecutor's Office as an independent and professional law enforcement institution, the reconstruction of the requirements to become Attorney General accommodates requirements based on the professionalism traits that leaders must have to be able to move the organization.

The urgency of the requirement to fill the position of Attorney General by a professional prosecutor is to create the principle of equality and balance of abilities and expertise as law enforcers. As explained in the previous chapter, normatively, there is a disparity in the requirements between placing someone as a prosecutor and placing someone in the position of Attorney General. There is a need to guarantee equality of requirements for occupying the position of prosecutor and the position of Attorney General. Considering that the Attorney General is the person in charge of the law enforcement function in the Prosecutor's Office, the prospective Attorney General must have the same human resource standards as the human resource standards of the prosecutor profession that he or she will lead. Bearing in mind the specificity of the bureaucratic structure of the Prosecutor's Office which adheres to a single prosecution system which is based on the doctrine "the prosecutor is one and inseparable" (een en on deelbaar) which requires the existence of a unified system of thinking, behavior and work procedures. Apart from that, the experience of Attorney Generals from outside the prosecutor's profession shows weaknesses in understanding the law and applying it in practice resulting in uncertainty in law enforcement which ultimately also gives rise to injustice due to violations of the principle of equality in the law (equality before the law). Apart from that, it is also to prevent weaknesses in the process of developing the Prosecutor's organization by the Attorney General due to ignorance of the culture and resources of the Prosecutor's Office, especially in assessing position placement and managing career paths in the Prosecutor's Office. Structural positions in the Prosecutor's Office are filled using mechanisms that are not measurable and ignore qualifications, competence and performance in placing a prosecutor in a particular position. In fact, a good human resource management mechanism will be very influential in supporting the performance of the Prosecutor's Office as expected by justice seekers.



The knowledge aspect is the result of knowing, and occurs after people sense a particular object. Knowledge or cognitive is a very important domain in shaping a person's actions. The philosophical foundations of someone who holds a Doctor of Law degree are a requirement to occupy the position of Attorney General because doctor of law graduates are required to have the competency to master scientific philosophy in the field of law. An understanding of legal philosophy is needed considering that in carrying out one's duties and authority one must explore the human values that live in society. Exploring the values that live in society will be easier if someone has explored the depth and breadth of legal science through doctoral education.

Apart from that, there needs to be equality of education between Supreme Court Justices and Constitutional Justices with at least a Doctorate degree. Bearing in mind that there is institutional functional equality between the Prosecutor's Office, the Supreme Court and the Constitutional Court, which both have an important constitutional position (constitutional importance). The equality of educational requirements is expected to create intellectual balance between the Attorney General, Supreme Judges and Constitutional Judges so that in carrying out the relationship pattern in the justice system, quality judicial processes and judicial products are created that have fair legal certainty in accordance with justice seekers.

The skills aspect means the development of knowledge obtained through training and experience by carrying out several tasks. Skills are divided into 4 (four) categories, namely: Basic literacy skills, namely basic skills that every person must have, such as reading, writing, arithmetic and listening; Technical skills are technical skills obtained through learning in the technical field such as operating computers and other digital tools; Interpersonal skills are the skills of each person in communicating with each other, such as listening to someone, giving opinions and working as a team; Problem solving is a person's skill in solving problems using logic.

A person who holds the position of Prosecutor must have attended the Prosecutor Formation Training Education (PPPJ) because PPJ is a type of basic functional education and training for the prosecutor profession. To be appointed as a prosecutor a person must have the status of a civil servant at the Prosecutor's Office. To become a civil servant or what is now called a State Civil Apparatus (ASN), you begin by taking a series of tough and complex tests and the obligation to pass as a prospective prosecutor with an initial position as a prosecution analyst. After graduating as an ASN, undergoing practice as a prospective prosecutor for two years, you are required to take part in the Education and Training for the Formation



of Prosecutors (PPJ Training) for 8 (eight) months which also begins with a test to be accepted as a PPPJ Training participant. During the PPPJ training, participants receive comprehensive legal material (criminal, civil,

3. The ideal model for filling the position of Attorney General to create an independent Prosecutor's Office in carrying out law enforcement functions

In an effort to reconstruct the model for filling the position of Attorney General, the design for involvement of the branches of power will include the executive and legislative branches of power, in a balanced and proportional manner. The meaning of balance is intended so that each state institution in the process of implementing the position filling mechanism has a balanced proportion of authority so that no one has absolute power. Meanwhile, proportional emphasizes the principle of balance between rights and obligations for each State Official involved in the mechanism for filling positions. Referring to Logemaan's theory which classifies job filling models, the model that will be applied is a combination of selection methods and appointment methods.

The selection method is carried out by establishing a temporary (ad hoc) institution because the change of position of the Attorney General is in accordance with the periodic term of office. The President carried out the formation of an ad hoc institution by forming it consisting of a combination of members of the Judicial Commission (KY) and the Prosecutor's Commission (Kojak). The scope of the task and authority of the panel committee is to carry out the following selection stages:

- 1) accept registration,
- 2) carry out administrative selection,
- 3) carry out due diligence,
- 4) approval determination,
- 5) submission of selection results to the DPR.

Comition Independet involvement as the selection committee is based on the philosophy that judicial power, especially in the field of criminal law, operates as an integrated system. So the independence of judicial power must include the independence of every institution that has attribution of authority as implementing sub-systems in integrated criminal law enforcement. So the role of the Comition Independet in realizing independent judicial power is interpreted more broadly with its involvement.



Historically, the Indonesian Prosecutor's model originates from the French public prosecution system (*ministrie publique*) which originates from the concept of the king's attorney (*procureur du roi*). In the XIV century, France formed an institution called the *Ministrie Publique* and the *Procureur du Roi* as its executive officer. When France colonized the Netherlands, this system was implemented in the Netherlands with the enactment of the *code d'instruction criminelle* in 1811 and *Ministerie Publique* was translated as *Openbaare Ministerie*. When the Dutch came to colonize the Dutch East Indies, this legal system was also brought in through the application of the principles of concordance and legal singleness (*eenheidsbeginsel*). Based on this context, it can be concluded that a country's legal systems can influence each other.

As has been emphasized, one of the aims of comparing legal systems is to find an ideal and good legal system in accordance with the legal system in a country. Comparative law is very important in relation to legal harmonization, that is, deliberately making legal regulations in two or more legal systems more similar. Comparative law is also very important in relation to combining laws, that is, deliberately incorporating legal regulations that are identical in both systems. law or more. The process of merging the legal systems is not an easy job. This difficulty is not only due to the many differences of opinion, but also due to a lack of understanding of each other's legal thinking and legal concepts. Therefore, this is where comparative law will be very useful, despite all the difficulties that arise related to harmonizing and combining legal systems. Each country certainly has a variety of national experiences. This condition of diversity creates different systems in each country, including filling state administrator positions.

In international studies, almost all countries in the world with various legal systems have institutions such as the Prosecutor's Office in their constitutional systems. Prosecutors in all their forms and positions in various corners of the world have almost the same important role, especially in the field of administering criminal justice. Regarding its central role in law enforcement, a comparison will be made of the position of the Prosecutor's Office in several countries, namely the United States, the Netherlands, Germany and the Philippines. That the selection of these countries was based on the similarity of their government system with Indonesia, namely Presidential (United States, Brazil) and the similarity of their legal system with Indonesia, namely the civil law system (Russia, Spain). The objects that will be compared are the position of the Prosecutor's Office in the state administration system and the mechanism for filling leadership positions in the Prosecutor's Office.



Conclusion

The Prosecutor's Office is a government institution whose functions are related to judicial power. Normatively, as a government institution (executive), the Prosecutor's Office has two functions (dual function), on the one hand it has authority in the executive sector, but on the other hand it also dominantly carries out functions related to judicial power. Looking from the functional aspect, the existence of the Prosecutor's Office in carrying out law enforcement functions, although it does not have a clear existence in the constitution, but because of its complete and comprehensive authority in law enforcement, is included in the category of state institutions that have an important constitutional position (constitutional importance). With this position, the Prosecutor's Office in carrying out its law enforcement function is obliged to carry out its powers regardless of interference from other branches of power because it will have broad implications for fulfilling citizens' rights to recognition, protection and fair legal certainty, as well as equal treatment before the law. which is a characteristic of a democratic rule of law state.

The implementation of the model for filling the position of Attorney General which is dominated by the President's power as administrator of executive power has not been able to guarantee the independence of the Prosecutor's Office as a professional law enforcement institution, especially from the aspect of the requirements to become Attorney General which are still open. Then, from the aspect of the implications of filling the position of Attorney General by the President, it is often misused to intervene in law enforcement which is carried out with various patterns and motivations. Then, in the course of constitutional history, the position of Attorney General became dominantly held by non-professional prosecutors and even gave room for political party cadres to occupy the position of Attorney General.

Based on a comparison of models for filling the position of Attorney General in several countries and a comparison of filling positions for independent state institutions that have law enforcement functions, there are similarities in the model for filling positions, the mechanism of which involves more than one branch of power and there are regulations on requirements for filling positions that balance the integrity and capabilities of candidates. . Therefore, to realize an independent Prosecutor's Office in carrying out law enforcement functions, it is necessary to reconstruct the model for filling the position of Attorney General. Reconstruction first includes the requirements to become Attorney General which must be filled by professional prosecutors, either active prosecutors or retired prosecutors. The second includes a mechanism for filling the position of Attorney General which involves the executive and legislative branches of power with elections through an ad hoc Selection Committee to create the principle of checks and



balances between state institutions in realizing law enforcement that is free from interference from power.

Acknowledgements

Strong political commitment between state administrators is needed to create an independent Prosecutor's Office in carrying out more comprehensive law enforcement functions. Reconstructing the model for filling the position of Attorney General is only one solution to the problem of releasing interference from law enforcement powers by the Prosecutor's Office. In order to strengthen the Prosecutor's Office, there are many other issues related to independence which can be used as objects of further research, including the constitutional position of the Prosecutor's Office in the 1945 Constitution as a substantial strengthening, reconstruction of the bureaucratic structure of the Prosecutor's Office to be more progressive, changes in the legal culture of the Prosecutor's personnel to continue to improve their integrity and competence in the framework for carrying out law enforcement that supports the realization of the legal fulfillment of citizens' rights to recognition, protection and fair legal certainty, as well as equal treatment before the law which is the characteristic of a democratic rule of law.

References

- Agus Mulyana, "Determination of the Anniversary of the Attorney General's Office: History of the Formation of Government and Institutional Functions" Focus Group Discussion Determination of the Birthday of the Attorney General's Office of the Republic of Indonesia which was held on June 26 2023.
- Agussalim Andi Gandjong, National Science, Gramedia, Jakarta, 2019,
- Ali Mukartono, Legal Reconstruction of the Implementation of Criminal Acts of Collusion and Nepotism in Indonesia, Kencana, Jakarta, 2022
- Anwar Arifin, Political Science Perspective, Jakarta: Rajawali Press, 2015.
- Asep.N.Mulyana, Ambiguity of the Prosecutor's Profession in the State Civil Service, Rajawali Press, Depok, 2021
- Bahder Johan Nasution, Legal Research Methods, Second printing, Mandar Maju, Bandung, 2016,



- Cekli Setya Pratiwi et al, General Explanation of the Principles of Good Government (AUPB), Institute for Research and Advocacy for Judicial Independence (LeIP), Jakarta, 2021
- Dumaria Simanjuntak, Development and Theory of Filling Leadership Positions at the Financial Audit Agency (BPK) from Time to Time, Leutika Prio, Yogyakarta, 2020.
- Hamka Hendra Noer, The Non-Neutrality of the Indonesian Bureaucracy: A Study of the Bary Order to the Reformation Order, PT. Elek Media Komputindo, Jakarta, 2014.
- Kennet Newton and Jan W. Van Det, Comparison of Political Systems, Bandung: Nusamedia, 2016.
- King Faisal Sulaiman, Legal Politics of Judicial Power, UII Press, Yogyakarta, 2017.
- Miftah Thoha, Bureaucracy and Politics in Indonesia, Jakarta: Raja Grafindo Persada, 2016.
- Muhammad Junaidi, Prosecutor's Office in the State Constitutional System, Suluh Media Yogyakarta, 2018.
- Muh. Ibnu Fajar Rahim, Principles of Prosecution Law (Back To The Principle), Guepedia, Jakarta, 2023,
- Panda Nababan, Born as a Fighter An Autobiography, Book One: Riding the Waves, PT. Indonesian Court of Justice, Jakarta, 2022
- Tempo Data and Analysis Center, BJ Habibie and Attorney General Andi M. Ghalib's Telephone Leaks, Tempo Publishing, Jakarta, 2019
- Rendy Adiwilaga et al, Indonesian Government System, Deepublish, Jakarta, 2018
- Saldi Isra, State Institutions Concepts of History, Authority and Constitutional Dynamics, Rajawali Press, Depok, 2020
- Sri Bintang Pamungkas, Change Regime Change System Struggle to Dominate the Archipelago, El Bisma, Jakarta, 2014
- Ruslan Renggong et al, Human Rights in National Legal Perspective, Prenada Media, Jakarta, 2021,



Law Journal Borobudur International
Vol 1 No 1, June 2024

ISSN: 2809-9664

Thomas Tokan Pureklolon, State of Law in Political Thinking, PT. Kanisius, Jakarta, 2020

Tempo Book Series, Liberal Democracy Struggle: 1950-1959, Golden or Black Age, Gramedia, Jakarta, 2019,

Sudikno Mertokusumo, The Discovery of Law: An Introduction, Cahaya Atma Pustaka, Yogyakarta, 2014

Sunaryati Hartono, Legal Research in Indonesia at the End of the 20th Century, Bandung: Alumni, 1994.

Sugeng Riyanta, Institutional Model of the Prosecutor's Office as a Professional and Independent State Institution in Handling Corruption Crime Cases, UNS Press, Surakarta, 2021.

Virdika Rizky Utama, Ensnaring Gus Dur, Numedia Digital Indonesia, Jakarta, 2019

Zainal Arifin Mochtar, Independent State Institutions, Development Dynamics and the Urgency of Restructuring Post-Constitutional Amendments, Rajawali Press, Depok, 2018.

Zainal Arifin Mochtar-Eddy OS Hairiej, Basics of Legal Science: Understanding the Rules, Theories, Principles and Philosophy of Law, Red White Publishing, Jakarta, 2021.