



## Implementation of The Prosecution Process in The Criminal Justice System

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### ABSTRACT

The Prosecutor's Office is an enforcer that plays a more role in law enforcement, protecting the public interest, upholding human rights, and eradicating corruption, collusion, and nepotism. The Prosecutor's Office is the only agency that exercises state power in charge of prosecution in law enforcement and justice in the general court environment. This study is to determine the criminal justice system in prosecution in Indonesia, how the criminal justice system in the application of prosecution in Indonesia and How is criminal responsibility as a criminal justice system through prosecution by the prosecutor. Normative juridical is the method used in this research. The study results show that the prosecution system must be guided by the principles adopted by countries in the world as the basis for prosecution. A public prosecutor is someone who is authorized by law to carry out prosecutions and carry out judges' decisions. This study concludes that the Prosecutor's Office of the Republic of Indonesia, as part of the judicial power, is pure and free from the intervention of political power by explicitly stating the Prosecutor's Office of the Republic of Indonesia in the articles of the 1945 Constitution or by revising Law No. 16 of 2004 concerning the Prosecutor's Office. The crime committed by the suspect will be reviewed by the public prosecutor, the public prosecutor has full authority in carrying out the prosecution. Suspected perpetrators of criminal acts will enter the criminal justice system when there is an arrest and then detained and brought to court so that they can be officially prosecuted.

### 1. Introduction

The Prosecutor's Office is a government institution that plays a role in law enforcement based on the laws and regulations set by the government. The Prosecutor's Office is an independent institution with an essential position reference in the criminal justice system. For this reason, the task of the Public Prosecutor is to prosecute suspects based on the fault.<sup>1,2</sup>

<sup>1</sup> Mozin, N. (2019). Peran Kejaksaan dalam Tahap Penuntutan terhadap Anak yang melakukan tindak Pidana (Studi Kasus Kejaksaan Gorontalo). *Jurnal Sosial Ekonomi dan Humaniora*..5(2). PP. 254.

The Prosecutor's Office is a law enforcer who must enforce the law, protect the public interest, enforce human rights, eradicate corruption, collusion, and nepotism. In carrying out its functions, the Public Prosecutor's Office has two cases in the general criminal section and cases in the particular criminal section. *Special criminal law* is a criminal law that regulates certain criminal acts, such as fiscal crimes<sup>3</sup>. Specific criminal cases include narcotics crimes, corruption, and money laundering. In contrast, general criminal law is a criminal law established by the central government that applies to legal subjects who violate criminal law prohibition. Criminal cases include violence due to fighting or persecution, rape, murder, theft, and fraud.

The development of legal needs in society and constitutional life, the Prosecutor's Law of 1961 was deemed no longer under the growth and development of the law. Then it was replaced by Law Number 5 of 1991 concerning the Prosecutor's Office of the Republic of Indonesia, which revoked the Prosecutors Act 1961. The reform of the Prosecutor's Law in 1991 aims to determine the position and role of the Prosecutor's Office so that it is more capable and authoritative in carrying out its authorities as a government institution. Article 2 paragraph (1) of the Prosecutor's Law of 1991 states that the Prosecutor's Office is the only government agency implementing state power that has duties and authorities in the field of prosecution in law enforcement and justice in the general court environment.

All judicial institutions in Indonesia are identically called Judicial Powers. According to Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia, Judicial Power is "an independent power to administer justice to uphold law and justice." The provisions of this article do not show any limitations regarding the judiciary's power. Provisions regarding other institutions whose functions are related to judicial power are stated in Article 38 paragraph (3) of the Law of the Republic of Indonesia Number 48 of 2009 concerning Judicial Power.

Elucidation of Article 38 paragraph (3) of the 2009 Judicial Powers Law above, what is meant by "other institutions" include the Police, Prosecutors, Advocates, and Correctional Institutions. From the explanation of the article, it is known that the position of the Prosecutor's Office is part of the judicial organ, but based on Article 2 paragraph (1) of the Prosecutor's Law of 1991 as described above, the Prosecutor's Office is the only government institution that exercises state power in the field of prosecution.<sup>4</sup> The debate about the use of social values as a measure in determining unlawful acts has been raised by Werner Menski. According to Menski, the positivistic view that

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<sup>2</sup> Weigend, T. (2012). A judge by another name? Comparatives on the role of the public prosecutors, in *The Prosecuto in Transnational perspective*. Oxford University Press.

<sup>3</sup> Aras Firdaus. (2018). Legal Protection of Children as a Victim Exploitation. In *International Conference of ASEAN Prespective and Policy (ICAP)* Universitas Pancabudi. PP. 270-275.

<sup>4</sup> Dian Rosita. (2018). Kedudukan Kejaksaan Sebagai Pelaksana Kekuasaan Negara Di Bidang Penuntutan Dalam Struktur Ketatanegaraan Indonesia. *Ius Constituendum*. Universitas Semarang. 3.PP.25-29.

assumes only state law as the only law that can resolve disputes in society is insufficient and unsatisfactory.<sup>5</sup> The use of state law to exclude other social institutions in determining whether or not an act is against the law is deemed inadequate and unsatisfactory. Menski's view is essentially more representative of the wishes and desires of the Indonesian people, who do not want a single measure in determining criminal acts.<sup>6</sup>

One of the criminal justice system components is the Prosecutor's Office. Based on Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, the Prosecutor's Office of the Republic of Indonesia is a government institution that exercises state power independently. The element of law enforcement in a prosecutor's legal system is part of a system. As stated by L.M. Friedman, quoted by Marwan Effendy, the legal system is composed of sub-systems in legal substance, legal structure, and legal culture. These three elements of the legal system determine whether a legal system can run well or not.<sup>7</sup>

The function of prosecutor is identical to its role in the field of prosecution. Judicial power is a domain of the prosecutor's office in carrying out its duties to uphold justice in actuality. However, another function of the prosecutor's office, namely to defend the government in cases in the civil sector or PTUN, implies that the prosecutor's office also has certain powers in executive power. Therefore, this study aims to find out. This study determines the criminal justice system in prosecution in Indonesia, how the criminal justice system in the application of prosecution in Indonesia, and how criminal responsibility as a criminal justice system through prosecution by the prosecutor.

## **2. Method**

This research is normative juridical, which aims to describe systematically, factually, and accurately a situation that is the object of research by basing research on normative legal provisions. The research sources used are secondary data. Secondary data is by collecting references related to the object or research material which includes: Primary legal materials in this study used Law no. 8 of 1981 concerning the Criminal Procedure Code.

## **3. Results**

### **3.1. The Criminal Justice System of Prosecution in Indonesia**

In Indonesia, one of the law enforcers is the Prosecutor's Office. The formation of the Prosecutor is based on Law no. 16 of 2004 concerning the Attorney General's Office. The law states that the highest power in the

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<sup>5</sup> Werner Menski. (2006). *Comparative Law in a Global Context The Lgal Systems of Asia and Africa*, 2th ed. *Cambridge University Press*. PP. 72.

<sup>6</sup> Tongat. (2015). *Rekonstruksi Politik Hukum Pidana Nasional (Telaah Kritis Larangan Analogi dalam Hukum Pidana)*. *Jurnal Konstitusi*. 12(3). PP. 534.

<sup>7</sup> Marwan Effendy. (2005). *Kejaksaan RI Posisi dan Fungsinya dari Perspektif Hukum*. Jakarta: Gramedia Pustaka Utama. PP. 1.

Prosecutor's Office is in the Attorney General's Office, namely the Attorney General himself. At the same time, a prosecutor is appointed and dismissed by the Attorney General, where the requirements to be appointed as a prosecutor are regulated in Law No. 16 of 2004 article 9. In carrying out their duties and functions, the Prosecutor acts on behalf of the state and is responsible according to the hierarchy. The prosecutor's function is one of the links in the law enforcement process in overcoming crimes or criminal acts that occur in society. This function cannot be separated from the process of investigation, investigation, prosecution, trial, and execution.

The Prosecutor's Office of the Republic of Indonesia, as a government institution that exercises state power in the field of prosecution, must be free from the influence of any party's power. The prosecution is carried out independently regardless of government power and the influence of other powers. As one of the law enforcement agencies, the Prosecutor's Office is required to play a greater role in upholding the rule of law, protecting the public interest, enforcing human rights, and eradicating corruption.<sup>8</sup>

Romli Atmasasmita stated that the criminal justice system as law enforcement or law enforcement contains legal aspects that focus on operationalizing laws and regulations to tackle crime and achieve legal certainty. On the other hand, if the definition of the criminal justice system is seen as part of the implementation of social defense related to the goal of realizing community welfare, then the criminal justice system contains social aspects that emphasize usefulness.<sup>9</sup>

The Prosecutor's Office is one of the law enforcement institutions whose position is in executive power as a State Attorney. The prosecutor's office includes preventive and repressive functions in the criminal field and state attorneys in civil and state administration. Preventive functions are increasing public legal awareness, securing law enforcement policies, securing the circulation of printed matter, monitoring religious beliefs, preventing and abusing and desecrating religion, and researching and developing law and criminal statistics. In its repressive function, the prosecutor's office conducts prosecutions in criminal cases, carries out judges' decisions and court decisions, supervises the implementation of parole, and completes specific case files originating from Police investigators or PNS Investigators (PPNS).<sup>1011</sup>

The prosecution system is one component of the criminal justice system. The prosecution system is guided by the principles adopted by countries globally as the basis for prosecuting. These principles are the principle of legality and

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<sup>8</sup> Hartanti, Evi. (2005). *Tindak Pidana Korupsi*. Jakarta: Sinar Grafika. PP. 123.

<sup>9</sup> Romli Atasasmita. (2010). *Sistem Peradilan Pidana Kontemporer*. Jakarta: Kencana Prenada Media Group. PP. 4.

<sup>10</sup> Berlian, B., & Firdaus, A. Good Governance Melalui Kebijakan Berbasis Bukti Reformulasi Sistem Peradilan Pidana Nasional Jakarta. *Jurnal Yuridis*. 9(1). 27-36.

<sup>11</sup> Pasal 31 - 34, Undang-Undang No. 16 Tahun 2004 tentang Kejaksaan Republik Indonesia

the principle of opportunity. Public prosecutors carry out prosecutors, and public prosecutors are authorized by this law to carry out prosecutions and carry out judge decisions and carry out prosecutions, carrying out judges' decisions and court decisions that have obtained executive ambtenaar.<sup>12</sup>

### 3.2. The Criminal Justice System of Prosecution in Indonesia

The Prosecutor's Office is a tool of the state for law enforcement, protectors, and community protectors who are obliged to maintain the rule of law. The Prosecutor's Office thus acts as a law enforcer<sup>13</sup>. Every law enforcer sociologically has a position and role as a law enforcer. A specific role can be described in the following elements:

- a. The ideal role;
- b. The role that should be;
- c. Roles that are considered by oneself;
- d. The actual role performed<sup>14</sup>

Under the Criminal Procedure Code, the Prosecutor is not authorized to carry out case investigations because this is the authority of the police and certain civil servants. Indonesia adheres to a closed system, which means that the Prosecutor conducts investigations, even if in an incidental sense, in severe cases, especially in terms of evidence and technical juridical problems. Indonesia may be the only country in the world that adheres to a closed system and a sharp separation between investigation and prosecution. Although in practice, the Prosecutor is still authorized to carry out investigations, in exceptional cases, in the economic field (Law No. 7 of 1955 concerning Investigation, Prosecution, and Judiciary of Economic Crimes).<sup>15</sup>

Independence by the prosecutor's office is needed in an effort to enforce the law with integrity and restore public confidence in the current poor law enforcement system in Indonesia. Independence itself means freedom, independence, or not being under the control/supervision of other institutions.<sup>16</sup> Lawrence M. Friedman divides the various components in shaping legal culture into three parts: structure, substance and culture.<sup>17</sup> The existence of dual obligations that occur requires a reconstruction of the substance to make the prosecutor's agency independent and free. In the prosecutor's office culture, legal awareness is needed from the prosecutor,

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<sup>12</sup> Pasal 30 ayat (1) UU Kejaksaan Republik Indonesia

<sup>13</sup> Fithri, B. S., & Wahyuni, W. S. (2021). Restorative justice approach in crime of humiliation through social media. *Veteran Law Review*. 4(2). PP. 143-156.

<sup>14</sup> Soerjono Soekanto. (2002). *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Indonesia: PT. Raja Grafindo Persada. PP. 23.

<sup>15</sup> Lilik Mulyadi. (2010). *Hukum Acara Pidana Suatu Tinjauan Khusus; Terhadap Surat Dakwaan, Eksepsi dan Putusan Peradilan*. Bandung: Citra Adytia Bakti. PP. 47-48.

<sup>16</sup> Arief, B. N. (2019). *Kapita Selekta Hukum Pidana Tentang Sistem Peradilan Pidana Terpadu*. Semarang: Bahan Penerbit Universitas Diponegoro. PP. 36.

<sup>17</sup> Jainah, Z. O. (2011). Membangun Budaya Hukum Masyarakat Penegak Hukum dalam Pemberantasan Tindak Pidana Narkotika. *Keadilan Progresif*. 2(2). 123-136.



starting from binding legal regulations and legislators and implementing sanctions.<sup>18</sup>

Accountability for a person in criminal law does not only mean that it is legal to impose a sentence on that person but it can be fully believed that it is in the right place to ask for accountability for the crime he has committed. Roeslan Saleh stated that talking about criminal responsibility cannot be separated from one or two aspects that must be viewed from philosophical perspectives. One of them is justice, so the discussion about criminal responsibility will give a more exact contour. Criminal responsibility as a matter of criminal law is intertwined with justice as a matter of philosophy.<sup>19</sup>

Suspected perpetrators of criminal acts will enter the criminal justice system when there is an arrest and then detained and brought to court so that they can be officially prosecuted. Arrests can be made verbally, without touching or physically subduing the suspect. If the suspect does not resist while being taken into custody, no force should be used. Resistance allows the police to use reasonable force in self-defense and carry out arrests.<sup>20</sup>

The public prosecutor determines the specific criminal charges imposed on the suspect and the suspect's legal counsel. The public prosecutor relied on the information contained in the police report to establish a prosecution in the case. The public prosecutor has full authority in carrying out prosecutions. Formal claims made by public prosecutors may differ from police reports. Prosecutors need to thoroughly evaluate the state's evidentiary legal strength, especially if the case is brought to trial. Whereas the police are only authorized to make arrests based on fundamental reasons where the standard of evidence required by the court is evidence without a doubt in every criminal prosecution.<sup>21</sup>

The public prosecutor must convince the judge that there is a fundamental reason to believe that the defendant committed a crime. To prove a probable cause, the public prosecutor must present evidence relating to the accused's guilt and the results of police investigations.<sup>22</sup>

### **3.3. Accountability as a Criminal Justice System Through Prosecution by the Prosecutor**

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<sup>18</sup> Al-Azhar, H. F. (2019). Rekonstruksi Konseptual Peradilan sebagai Revitalisasi Kekuasaan Kehakiman dalam Sistem Ketatanegaraan Indonesia. *Volkgeist: Jurnal Ilmu Hukum dan Konstitusi*. 2(1). 39-51.

<sup>19</sup> Roeslan Saleh. (1982). *Pikiran-pikiran Tentang Pertanggungjawaban Pidana*. Jakarta: Ghalia Indonesia. PP .10.

<sup>20</sup> Gerald D. Robin. (1987). *Introduction to the Criminal Justice System*. New York: HARPER & ROW. PP. 28-29.

<sup>21</sup> *Ibid.*, PP. 30.

<sup>22</sup> Livingston Hall. (1996). *Modern Criminal Procedure*. St. Paul: West Publishing Company. PP. 64.

The legal responsibility of one person for the wrongful acts of another. In short, *vicarious liability* is often defined as "surrogate responsibility." Roeslan Saleh, in his book, recognizes the existence of vicarious liability as an exception to the principle of guilt. Roeslan Saleh argues that, in general, a person is responsible for his actions. However, there is what is called vicarious liability. People are responsible for the actions of others. The rule of law determines who is seen as a responsible actor.<sup>2324</sup> The principle of no crime without mistake is thus a fundamental principle in holding the maker accountable for committing a crime. This principle is also the basis for imposing a sentence on the maker.<sup>25</sup>

The principle of "no crime without guilt" (*nulla poena sine*) culpa is generally recognized as a general principle in various countries. However, there are few criminal codes in various countries that explicitly formulate this principle. Referring to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, the Prosecutor's Office, as one of the law enforcement agencies, is required to play a more significant role in upholding the rule of law, protecting public interests, upholding human rights, and eradicating corruption, collusion, and nepotism. The Prosecutor's Office is in a central position with a strategic role in strengthening the nation's resilience. The Prosecutor's Office is the controller of the case process (*dominus litis*) because only the Prosecutor's Office can determine whether a case/case can be submitted to the Court or not based on valid evidence according to the Criminal Procedure Code<sup>26</sup>.

Law Number 8 of 1981 concerning the Criminal Procedure Code Article 1 point 6 letters a and b in conjunction with Article 13 thus makes it clear that the public prosecutor is a prosecutor, while the prosecutor is not necessarily a public prosecutor. The prosecutor's role as a public prosecutor in law enforcement is undoubtedly in the corridor of prosecution. As for the preparation of prosecution actions or often known as the Pre Prosecution stage, the duties and authorities of the Public Prosecutor can be detailed as follows:

- a. Based on Article 109 paragraph (1) of the Criminal Procedure Code, the prosecutor receives notification from investigators or civil servants investigators and assists investigators if an investigation into an event that constitutes a criminal act is commonly referred to as SPDP (Notice of Investigation Commencement) has been started.

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<sup>23</sup> Firdaus, A., Syaputra, M. Y. A., & Dirkareshza, R. (2022). Optimalisasi Good Corporate Governance Penguatan Bumh Dalam Perlindungan Keuangan Negara. *Mahadi: Indonesia Journal of Law*. 1(1).

<sup>24</sup> Roeslan Saleh. (1983). *Suatu Reorientasi dalam Hukum Pidana*. Jakarta: Aksara Baru. PP. 32.

<sup>25</sup> Departemen Kehakiman RI, Penjelasan Naskah Rancangan KUHP. Tahun 2004/2005.

<sup>26</sup> Yuliantini, N. P. R. (2019). Legal Protection For Victims Of Criminal Violations (Case Study Of Violence Against Children In Buleleng District). *Veteran Law Review*. 2(2). PP.30-41.

- b. Based on article 110 paragraph (1) of the Criminal Procedure Code, when an investigator has completed an investigation, the investigator must immediately submit the case file to the public prosecutor. Furthermore, if it is related to the provisions of Article 138 paragraph (1) of the Criminal Procedure Code, the public prosecutor immediately studies and examines the case files, such as:
  1. Learning is whether the criminal act suspected of the suspect has met the elements and has met the proof requirements. So what is being examined is the material of the case.
  2. Examining is whether investigators have met all formal requirements in making case files, which include, among other things, the identity of the suspect, the locus, and the crime scene, as well as the administrative completeness of all actions taken by the investigator at the time of the investigation.
- c. The pre-prosecution is under Article 14 letter b of the Criminal Procedure Code by taking into account the provisions of Article 110 paragraphs (3) and (4) as well as the provisions of Article 138 paragraphs (1) and (2) of the Criminal Procedure Code. If the public prosecutor believes that the investigation results are incomplete (P-18), the public prosecutor immediately returns the case file to the investigator accompanied by instructions for completion (P-19). In this case, the investigator is obliged to immediately carry out additional investigations as directed by the public prosecutor under Article 110 paragraphs (2) and (3) of the Criminal Procedure Code.
- d. Suppose the case file has been completed as directed, then according to Article 139 of the Criminal Procedure Code. In that case, the public prosecutor immediately determines whether a case file has met the requirements or not to be transferred to the court (P-21).
- e. Carry out other actions within the duties and responsibilities as a public prosecutor under Article 14 letter I of the Criminal Procedure Code. According to the article's explanation, what is meant by "other actions" is to examine the suspect's identity and the evidence.
- f. Based on Article 140 paragraph (1) of the Criminal Procedure Code, the public prosecutor believes that a prosecution can be carried out from the investigation results. The public prosecution shall immediately prepare an indictment to transfer the case to the court for trial immediately.
- g. Based on Article 8 paragraph (3) letter b of the Criminal Procedure Code, the public prosecutor accepts responsibility for the case files, suspects, and evidence. The process of handing over the suspect's responsibilities is called Phase 2. The public prosecutor examines the suspect in Article 20 paragraph (2) of the Criminal Procedure Code. The duties and authorities of the Public Prosecutor in the prosecution process include the following:
  1. Based on Article 143 paragraph (1) of the Criminal Procedure Code, the public prosecutor delegates the case to the District Court with a request to immediately try the case accompanied by an indictment.



2. Proving the indictment made with valid evidence as referred to in Article 184 paragraph (1) of the Criminal Procedure Code. The public prosecutor is obliged to present the defendant with witnesses, experts, and evidence before the trial for examination.
3. Based on Article 182 paragraph (1) letter a, the public prosecutor shall file a criminal charge after the examination is declared complete.
4. If the charge against the accused, the panel of judges believes that a criminal act has occurred and the defendant is guilty of committing it, the judges shall render a decision. The decision is legally binding if the defendant and the public prosecutor later accept (Eintracht). The prosecutor carries out the decision (execution) based on Article 270 of the Criminal Procedure Code. The prosecutor carries out the decision (execution).
5. If the defendant and the public prosecutor do not accept the decision, the defendant and the public prosecutor can take legal action. Legal remedies for appeal based on Article 233 of the Criminal Procedure Code and legal remedies for cassation based on Article 244 of the Criminal Procedure Code.
6. Article 140 paragraph (2) of the Criminal Procedure Code states that the public prosecutor can stop the prosecution by issuing the SKPP (letter for the termination of prosecution). Because there is not enough evidence in the case, the incident is not a criminal act, or the case is closed for the sake of the law. The SKPP is notified of the suspect, and if he is detained, the suspect must be issued immediately. Derivatives of the letter must be submitted to the suspect or his family, legal advisors, prison officials, investigators, and judges. The public prosecutor can sue the suspect if a new reason is later found. The new reason is a novum (new evidence).

The Attorney General has explicitly the authority to determine law enforcement policies, streamline the law enforcement process, set aside cases in the public interest, and file an appeal to the Supreme Court.

#### **4. Conclusion**

The criminal justice system as law enforcement contains legal aspects that focus on operationalizing statutory regulations. The position of the Prosecutor's Office, which is institutionally under executive power and legally under the jurisdiction of the judiciary, makes the Public Prosecutor's Office vulnerable to intervention by other powers. The Prosecutor's Office of the Republic of Indonesia, as part of the judicial power which is pure and free from interference from political power, is expressly stated in the Articles of the 1945 Constitution of the Republic of Indonesia or by revising Law Number 16 of 2004 concerning the Prosecutor's Office.

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