

INDEPENDENCE OF THE PROSECUTOR IN CONDUCTING PROSECUTIONS VIEWED FROM THE UNITED COMMAND PRINCIPLE

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Abstract

The independence of the prosecution is a universal principle within the framework of realizing a just and impartial criminal justice system. The European Status of Justice states that the government should establish measures to guarantee the independence of the prosecutorial power. Prosecutors are required to submit to legal authority and not to political power. Therefore, this study aims to examine the practice of making prosecution decisions in the Indonesian Prosecutor's Office. The qualitative study method was adopted with normative law, and data were collected through document study and interviews with Attorney officials. The results showed that the new prosecution independence arrangements aim to protect the Attorney General's institution from the influence or intervention of other powers. However, prosecutors did not yet have individual independence in their status as judicial officials (magistrates). This is in contrast to the practice in European countries, such as the Netherlands, which guarantee institutional and individual independence. Due to the influence of the military in the Indonesian Attorney General's office and a translation error, "een en ondeelbaar", which should be a legal standing, was mistranslated into the principle of command unity. Therefore, in making decisions/actions, prosecutors should report and seek approval from their superiors.

Keywords: Prosecutor, Independence of Prosecution, Unity of Command.

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Introduction

The European Union and Indonesia have a long history of good relation, which is reflected in the Framework Agreement on Comprehensive Partnership and Cooperation (PCA) that was signed in 2014. This agreement has provided a strong foundation for cooperation between the two parties. Politically, the European Union and Indonesia share the same principles, such as upholding human rights, which has further strengthened their relationship (Kementerian Luar Negeri Republik Indonesia, n.d.). In the world of law, the Indonesian legal system inherits Continental European traditions from the Netherlands. The Criminal Code and CPC have a Civil Law System style, with the characteristics of “the law is written down” and “arranged in a codified book”. Indonesia has only changed the CPC inherited from the Netherlands in 1981 (Riyanta, S. 2020)), while the Criminal Code was only amended in 2022.

As a state that has inherited the Continental European tradition, the role of prosecutors in establishing a just and impartial criminal justice system is essential. European countries are concerned about this problem because prosecutors are considered one of the democratic pillars. According to Langer and Sklansky, prosecutors have 4 main roles: (1) they are Representatives of Community Interests (Representative Democracy), (2) they promote democratic values, freedom, respect, and equality (Liberal Democracy), (3) prosecutors protect the interests of victims and society public (Participatory Democracy), and (4) they are an impartial and independent attorney upholding the principle of law (Legal Democracy) (Langer & Sklansky, 2017).

In the legal democracy context, independence does not only belong to the judiciary but should also be owned by the prosecution institution, in this case, the Attorney General’s Office. The international community acknowledges that prosecutors have a very important role in the criminal justice system. Furthermore, the independence of the Attorney General is an implementation of the universally applicable principle of equality before the law. There should be no difference in treatment based on factors such as ethnicity, religion, race, class, gender, political position, social status, educational status, and others that may lead to acts of discrimination. This principle of non-discrimination has become a universal principle regulated in the Universal Declaration of Human Rights. Every human has the same right to receive legal protection without discrimination (DUHAM, 1948). Indonesia has expressly adopted this principle in Law Number 48 of 2009 concerning Judicial Power (Wiwoho, J., & Sutopo, W. 2017).

Prosecutors are representatives of the state, community, and public interest, which act as law enforcers (UNODC & IAP 2014), as well as

guardians of Democracy. Therefore, the successful implementation of the criminal justice system cannot be separated from the prosecutor's role. An independent and impartial prosecution is an absolute requirement to create a just and dignified criminal justice system. The UN Guidelines on The Rule of Prosecutor states that the duties of the prosecutor should be independent and free from the intervention of any interests. They should adhere only to legal regulations, legal facts, evidence, and their conscience (United Nations, 1990).

Although the Prosecutor's Office in many jurisdictions, for example, the Netherlands, is part of the executive branch, in imposing the prosecution function, this institution should be independent, and prosecutors are in the position of judicial officials (magistrates) who carry out the functions of judicial power. Therefore, the Prosecutor's Office and prosecutors have independence in carrying out these tasks. The exercise of the prosecution authority should be carried out independently and free from the interference of any powers, including the president as the head of government.

This study examines how the independence of prosecution is implemented in Indonesia. Some of the questions this study aims to answer include (1) Do prosecutors in Indonesia have independence in making decisions? (2) How is the independence of the prosecutor related to the militaristic culture within the Indonesian judiciary? (3) Does the hierarchical structure of the Prosecutor's Office influence their decisions? (4) How can the principle of *een en ondeelbaar* (the Prosecutor's Office be one and inseparable) which originates from the Continental European tradition, be interpreted in Indonesia? (5) how should Indonesia treat prosecutors?

Study Methods and Data Sources

The qualitative method was adopted with normative legal study, and data were collected through document study and interviews. The document collection technique used was secondary data, which emphasizes available data (using existing data). These legal were searched on the government's official website and went directly to the Prosecutor's Office. They include the 1945 Constitution of Indonesia, the law on the Prosecutor's Office, the Law on Criminal Procedure Law, the Law on Judicial Powers, Presidential Regulations on the Prosecutor's Commission, and the Prosecutor's Internal Regulations (including the Prosecutor General's Regulation). Other documents include Circular Letters of the Attorney General, Instructions of the Attorney General, Speeches by the Attorney General, and Handbooks for Prosecution of General Crime Cases of the Prosecutor's Office issued by the Attorney's Office. The guidelines issued by the

International Association of Prosecutors and UNODC were also examined as a comparison.

This study conducted an interview process to confirm the various secondary data obtained. Interviews are needed to clarify the results of the document study. Therefore, interviews were conducted with informants, including officials at the Attorney General's Office and the executive level (functional prosecutor). As a complement, interviews were also conducted with other parties, such as judges and academics, to enrich the results. To maintain the validity of the study results, the data collected were analyzed qualitatively with several stages of data analysis. Data relating to the independence of the prosecution is recorded. The regulation of the prosecution independence principle in Indonesian law was also analyzed. Furthermore, the implementation of the prosecutor's discretion in the decision-making of the prosecutors was examined. These activities were carried out to determine whether prosecutors in Indonesia have the independence of prosecution as outlined by the International Association of Prosecutors. Data analysis was also supported by the interview's results, which are presented descriptively. The data provided an overview of the independent position of Indonesian prosecution and the unity of command in decision-making.

Result and Discussion

In Indonesia, the judiciary is designed as an executive branch under the president (Pujiono, P., Waluyo, B., & Manthovani, R. 2020). The Attorney General is appointed and dismissed by the president. Furthermore, the appointment of the attorney general is not under the political control (Hamzah, 2014) of the legislature even though its constitutional structure is under the president. However, the Attorney General should be independent in carrying out prosecution tasks related to judicial power. As the head of the office, the Attorney General is responsible to the president in carrying out the tasks assigned by law. In carrying out the function of a state attorney, for example, the Attorney General's Office is not independent. This is because the office is indeed designed to represent the government in the civil and state administration fields in terms of experiencing legal problems. However, the Prosecutor's Office has full independence in carrying out the prosecution function related to judicial power. Therefore, the individual in charge and the highest leader in the field of prosecution is not the president but the Attorney General as the State's Highest Public Prosecutor.

1. Prosecutor's Independence Guarantee in Indonesian Law

The principle of the Attorney General's independence is well-known in positive Indonesian law. One of the factors behind the birth of the Prosecutor's Law was the public's desire to realize an independent prosecution (Interviewed with Jatna, 2022). Therefore, Article 2 of the Attorney/ Prosecutor Law explicitly states that exercising state power in the field of prosecution must be carried out independently. These norms have been updated in the Prosecutor's Law as the definition of the Attorney's institution has changed. In the latest law, the office is positioned as a government institution whose function is related to judicial power. This indicates that the Attorney General is structurally in the executive branch, which is under the president but carries out judicative functions, such as state power in the field of prosecution. Therefore, prosecutor independence applies specifically when the Prosecutor's Office carries out functions related to judicial power, namely prosecution tasks.

There are 2 consequences regarding the position of the Attorney as the executor of state power in the field of prosecution. First, as a government institution, the Attorney General's Office should support the political stance of the current administration, including carrying out the vision and mission set by the president. The Attorney General, in this case, is responsible to the president and should support the programs established by the President as Head of State and Government. Second, in carrying out the function of prosecution in the criminal justice system, the Attorney General's Office and the prosecutors are bound by legal principles, including independent prosecution. This means that their actions, attitudes, and decisions should be free and independent of any external powers or interests, including the government, in this case, the president (United Nations, 1990). There should be no intervention of the Public Prosecutor's Office in carrying out its function. This is because the prosecutor represents the interest of the state and society or the public. The state should guarantee that the Attorney General's Office and prosecutors are free from the intervention of any power as a form of responsibility to law, justice, and society (Interview, Asisten Khusus Jaksa Agung RI, 2021).

According to the concept of power separation, the independence of the Attorney General's Office is not related to the prosecutor's position, whether in the executive or judicial realm (Prasetyo, 2019). This is because, regardless of location, the most important factor is independence in carrying out the prosecution function. The prosecution function needs independence, manifested in an attitude of being impartial, non-discriminatory, and free from interference by any power (Jatna, 2021). Therefore, the Attorney General's Office

should be placed in an independent position, function, and authority to carry out its duties in upholding the law in order to realize a fair, independent, and independent trial by the concept of the rule of law.

The Attorney General's Office should act independently in carrying out prosecution and be free from the interference of any power, including political. However, in a country with an institution authorized to give special instructions to prosecutors, those instructions should be carried out transparently, consistently, and by the principle of independence (IAP, 1999). In the Indonesian context, for example, as an external supervisory body, the Prosecutor's Commission is not allowed to interfere with the smooth running of the prosecutor's official duties or affect its independence in carrying out prosecutions. This is expressly stated in Article 13 of Presidential Regulation Number 18 of 2011 concerning the Indonesian Prosecutor's Commission.

2. Independence of Individual Prosecutors

Independence is an absolute requirement for realizing a fair and impartial criminal justice system. It is one of the principles attached to judicial officials (magistrates). In the Indonesian Constitution, judicial power is directly linked to the principle of independence. Judicial power is independent in administering justice to uphold the law (UUD NRI,1945). In the context of prosecution, the prosecutor has full independence.

The prosecution is not only institutionally independent but also includes individual independence. In Indonesian law, the guarantee for the independence of the new prosecution is placed on the organization, which has not provided guarantees for individual prosecutors. This is stated in Article 2, paragraph (1) of the law on the Prosecutor's Office 11/2021, which places the "Attorney's Office" as an independent subject. In fact, in the IAP Guidelines, independence guarantees should also be given to para-prosecutors. As a professional, prosecutors (public prosecutors) only consider matters relating to the case such as evidence, legal facts, knowledge and beliefs, as well as aspects of the public interest. In the IAP Guidelines, prosecutors are allowed to refuse orders from superiors that are contrary to the law and their professional responsibilities. This is a hallmark of the independence of individual prosecutors. It also shows that prosecutors have discretion in carrying out its responsibility.

This independence can be seen in using the prosecutor's "black robe" in carrying out the prosecution duties. Their ranks and uniforms are closed by the "black toga". This is because prosecutors act as official of the judiciary since the prosecution is part of the judicial function, hence, it should not be bound by the administrative bureaucracy. They also act as public prosecutors representing the public interest when

carrying out prosecutions. Therefore, in carrying out these prosecutorial duties, the superiors of the prosecutor are in the law and public interest.

Prosecutors are bound by the principle of “een en ondeelbaar en de procureur general aan het hoofd”, meaning that “the Prosecutor’s Office is inseparable and the Attorney General is at its peak”. However, this does not mean that prosecutors do not have “individual independence” in handling cases. The Attorney General, as the Supreme Public Prosecutor, and the leadership of the Attorney General’s Office has to ensure that the actions of the prosecutor are by the procedural law and guidelines set by the Prosecutor’s Office. The Attorney General has the authority to determine the prosecution policy and also supervise the prosecutors, whether their actions are by applicable law or not.

In the Netherlands, the Attorney General established a general prosecution policy. For example, there is an area where theft crimes are rife, hence, the Attorney General issues a policy, and the perpetrators of theft are prosecuted with the threat of maximum punishment. This policy is general and should be implemented by prosecutors in the area. This authority does not mean that the Attorney General can intervene in the handling of a case. However, the Attorney General can reprimand and punish prosecutors who do not carry out their duties properly (Fachrizal Affandi, 2022).

In the IAP Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors, it is stated that to guarantee an independent professional responsibility of prosecutors, they should be protected from arbitrary actions. Prosecutors should also be allowed to object to orders that violate the provisions of the law or conflict with their professional standards or ethics (UNODC & IAP, 2014). Therefore, prosecutors should always maintain the rights of the individual and the effectiveness of the criminal justice system in carrying out prosecution tasks.

3. Prosecutor Independence vs Unity of Command

Indonesian law guarantees that prosecutors have discretion in every stage of criminal justice, including when to apply coercion, prosecute, drop cases for technical reasons (simple drops), submit high and low criminal charges, and file free demands, as well as claims that cannot be accepted. However, the problem is that at the Prosecutor’s Office, a legal culture (read: internal regulations) requires prosecutors to seek approval from their superiors before taking action. Prosecutors who handle cases do not have discretion because the final decision rests with their leaders.

In determining the substance of criminal charges, for example, prosecutors must report and ask for approval in stages about what charges will be read out in court. Those who hear cases (public prosecutors) should ask for opinions from their superiors, such as the types of sanctions and recommendations on the severity/lightness of criminal charges. In practice, this reporting activity is commonly referred to as RENTUT (Sequence Plan) (Pedoman Tuntutan, 2019). This Sequence Plan is based on the principle of “een en ondeelbaar” which requires every prosecutor who handles a case to report and seek approval from superiors. Its obligation began in 1985 through the Attorney General’s Circular Letter Number 09 of 1985, which was made to exercise control of criminal cases to avoid disparities in prosecution (Hasani & Afandi, 2015). This plan still exists in the Prosecutor’s Office till date. In the latest Guidelines for Handling General Crime Cases (2019), prosecutors are still required to submit prosecution plans to their leader.

In comparison, the crown of a judge and a prosecutor are “decision” and “letter of claim (requisitor)”, respectively, but the decision-making is different between the two professions. As a magistrate, judges have full independence in deciding cases, including even the most junior judges. This is certainly different from the decision made by the prosecutor. With the institutionalization of this charge plan, prosecutors should consult and seek approval from leadership in stages while making decisions. Furthermore, the independence of prosecutors in Indonesia is limited by the internal policies of the Attorney institution. The institutionalization of this prosecution plan can also open up opportunities for superior intervention to subordinates, even though, as a magistrate, prosecutors should be independent (Hasani & Afandi, 2015).

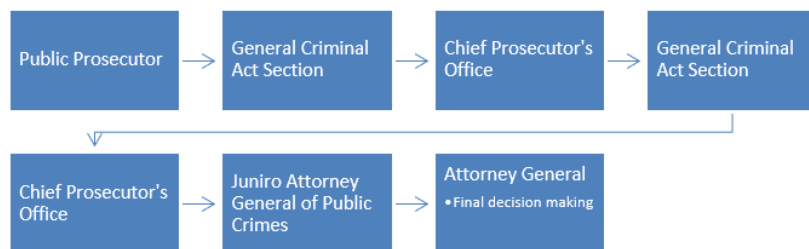
In the activities, there should be reporting to superiors, including the Action Plan to the leadership based on the doctrine that “only the Attorney General has the authority to conduct actual prosecution”. The Attorney General as the leader and highest person in charge, lead and controls the implementation of the Attorney General’s Office duties and powers. Prosecutors exercise a portion of the authority that belongs to the Attorney General when they conduct prosecution. This is stated in the Prosecutor’s Law: “the Attorney General delegates part of the prosecution’s authority to the Public Prosecutor”.

In the Attorney General’s Internal Regulations, in principle, the delegation of control over the prosecution authority is given to the Head of the District Attorney and the High Court (Pedoman, 2019). When case handling is carried out at the District Attorney’s Office, prosecutors in charge should seek approval from the Head of the General Crimes Section and the District Attorney as the final decision

maker. However, in important cases that attract attention in the regions, plans for prosecution should be submitted to the Head of the High Prosecutor's Office through the Assistant for General Crimes as the final decision maker. Meanwhile, for important national-scale cases, plans for prosecution should be submitted to the Attorney General's Office and officials (Junior Attorney General for General Crimes/Attorney General) who make the final decision. This indicates that the final action taken by the prosecutor handling the case is their leader's decision. While the prosecutor in charge of the case may offer their opinion on the charging decision, it is ultimately the responsibility of their superior, such as the Head of the District Attorney or the High Court, to make the final determination (Head of the District Attorney, Head of the High Prosecutor's Office, or the Attorney General).

The Attorney General is directly in control when filing conditional criminal (probation), acquittal, or waived charges. This indicates that when the prosecutors who handle cases wish to file charges, they need to obtain approval from the Attorney General, the country's highest public prosecutor. The submission of charges are carried out in stages, starting from the Head of the General Crimes Section, District Attorney, Assistant for General Crimes at the High Prosecutor's Office, Head of the High Prosecutor's Office, Deputy Attorney General for General Crimes, and ending at the Attorney General of Indonesia. This bureaucratic chain is long, such that it is very rare for prosecutors to file these types of charges.

Figure 1. Control of Trial Claims, Former Claims, and Release Claims



The bureaucratic chain of command described above bears striking similarities to the principle of command unity in the military, wherein subordinates act as the embodiment of orders issued by their superiors. Prosecutors do not have full independence because to make coercive measures, such as when to detain, prosecute, stop, or set aside cases, and any actions related to the authority of prosecutors, they are required to seek should be with the approval of their leaders. Suppose there is a difference of opinion between the prosecutor conducting the trial and the chief who makes the decision. Therefore, prosecutors in Indonesia cannot exercise their discretion. The decision

taken by prosecutors, such as charges read out before the court, are the opinions of those who have received approval from their superiors.

The existence of a militaristic culture within the Attorney General's organization was inseparable from the strong military influence at that time. For example, during the time of Attorney General Gunawan, prosecutors were asked to wear uniforms and rank like military members (Kejaksaan RI, 2022), which is still in effect. The normal authority began to be felt during the time of Burhanudin (2019-2023) when case control was no longer centralized at the Attorney General's Office. Burhanuddin delegated prosecution authority to the Head of the State Attorney and for cases that have attracted regional attention to the Head of the High Court. This indicates that the Head of the District Attorney, as the operational controller, has the discretion to decide the continuation of a case, including the need for legal action against a court decision (Pedoman, 2019). This is excepted for cases whose control is the authority of the Head of the High Prosecutor's Office or the Attorney General.

Conversely, in civil and common law states, "prosecutor independence" as a professional profession is important. In a civil law state, there is a tendency for prosecutors to be placed as part of the judiciary and enjoy individual independence. They can also function as an integral part of the judicial hierarchy. Meanwhile, in the common law tradition, where the prosecution agency is an executive branch, prosecutors can enjoy a significant degree of independence and are guided by internal rules and regulations that govern the implementation of policies and other powers (UNODC & IAP, 2014). The Netherlands government (executive) authority to order the prosecutor's office is limited to implementing law enforcement policies. The government cannot technically intervene in the handling of a case. This is because of the judicial power scope, which should maintain its independence. Therefore, prosecutors are not officers of the Minister of Justice, even though the Prosecutor's Office (Openbaar Ministerie) in the Netherlands is under the Minister of Justice (De Doelder, 2000). When carrying out their duties and exercising authority, the public prosecutor is considered a judicial official (Magistrate). This was the case in Indonesia during the Dutch East Indies era as stipulated in Article 56 RO jo., 83c, and 77 HIR. Before the Attorney General's Office became part of the executive in Indonesia, the corps of prosecutors was the same as the judges, indicating that they are both Magistrates. Moreover, when referring to the history of the Indonesian Attorney General's Office following the Continental European tradition, until before the 1st Indonesian President, Bung Karno placed the office fully under executive authority. The Attorney General was always part of the Supreme Court. Since before

independence, it has been known as “Attorney General at the Supreme Court” or Procureur General bij het Hooggerichtshof (Alhumami, 2015).

Prosecutors’ organizations with a hierarchical structure are preferred because it is easier to ensure effectiveness and consistency. However, a hierarchical organization does not mean that prosecutors do not have individual independence. As a professional, prosecutions are carried out based on evidence, legal facts, knowledge, and beliefs. In the IAP Guidelines, prosecutors are allowed to refuse orders from superiors that are contrary to the law and their professional responsibilities. This is a hallmark of the individual prosecutor’s independence in a hierarchical system. It also shows that the prosecutor has discretion in carrying out prosecutorial duties.

4. Mistakes in Translating the Principle of Een En Ondeelbaar

To have legitimacy, the principle of command unity is connected with een en ondeelbaar, which means “the Prosecutor’s Office is one and inseparable”. It is related to the “legal standing” of the prosecutor in court, not the principle of command unity (Jatna, 2021). The principle of een en ondeelbaar emphasizes that the prosecutor is one unit. Therefore, prosecutors can be replaced when they cannot continue the trial without examining the case all over again (Hamzah, 2014). The Attorney General’s principle of een en ondeelbaar with a military background at that time, was translated into Unity of Command (Jatna, 2021). This is described in the Attorney General’s Circular Letter Number SE-003/JA/8/1988 concerning Guidelines for Criminal Prosecution, which translates “een en ondeelbaar” into the principle of command unity. The letter states that one of the purposes of the guidelines was to “realize a unified prosecution policy, in line with the principle of the Attorney General’s Office, which is one and cannot be separated”. The regulation also intends to avoid disparities in criminal charges for similar cases from one region to another. Therefore, the implementation of the prosecutor’s duties, specifically in taking criminal charges, should be with the permission of their leaders.

The principle of een en ondeelbaar (military version) has been firmly rooted in the Attorney General’s Office. Moreover, the een en ondeelbaar principle is also formulated in the 16/2004 and 11/2021 Prosecutor’s Law. This law states that “the Prosecutor’s Office is one and cannot be separated”. According to the Law on the Prosecutor’s Office, this principle aims to “create a single foundation in carrying out the duties and unity of the Attorney General’s policies hence being able to display unified characteristics in the mindset, behavior, and work procedures of the Attorney General’s Office”. According to Fachrizal Afandi, the principle of the Attorney General’s Office is one and cannot be separated with consequences. Hasani & Afandi (2015)

stated that “the Attorney General controls law enforcement policies in a centralized manner towards all Prosecutors in all jurisdictions of Indonesia” (Hasani & Afandi, 2015).

The military culture within the Prosecutor’s Office results in the treatment of prosecutors as soldiers. They must seek approval from their superiors before exercising their discretion and are expected to win every case in court, even when their actions contradict procedural law (Afandi, 2021). This pressure leads prosecutors to persist in charging and prosecuting cases, even with weak or insufficient evidence. Suppose the judge decides to acquit, then the prosecutors’ condition worsens, and they are deemed unable to carry out their duties properly (Interview with prosecutor 1, 2022). However, criminal procedural law is a dialectical process to seek material truth (Jatna, 2021). When the prosecutors cannot prove the defendant’s guilt in court, they should request an acquittal for the sake of justice (Sudirdja, 2021). Due to the functional differentiation principle between prosecution and investigation, prosecutors are not involved in the evidence-gathering process. Therefore, they cannot ensure that the evidence is obtained legally during the investigation stage.

The unity of command policy influences the prosecutors’ attitude toward court decisions. Whether prosecutors “accept the decision” or “declare legal remedies (appeal/cassation)”, it depends on their superior’s approval. Prosecutors cannot make decisions without their leaders’ consent. In court, they typically take a “wait and see” approach (Interview with prosecutor 1, 2022), using that time to seek approval from their superiors. Ultimately, it is at the discretion of the prosecutor’s leader to accept the court’s decision or file legal remedies. This is because the Attorney General, as the highest public prosecutor in the country, has the authority to establish prosecution policies, including pursuing remedies in a particular case

According to this study, the implementation of the command principle unity has resulted in a disparity between the independence of prosecutors and judges. Prosecutors become completely independent in carrying out their duties and exercising their discretion. This is not consistent with the universal principles outlined in the UN Guidelines on the Role of Prosecutors or with the resolution of the meeting “The European Status of Justice,” which stated that the government should create instruments to ensure the independence of prosecutorial power. Prosecutors should be independent and subject to political powers when carrying out their duties. They should only be subject to legal authority (Hasani & Afandi, 2015).

As a comparison, the police were given the authority to prosecute in the past, commonly referred to as “police prosecutors”. However, this caused problems with the principle of prosecutorial independence

because the work culture emphasizes the bureaucratic relationship between superiors and subordinates. Consequently, the police carrying out the prosecution may receive hierarchical orders or suggestions from officials (police hierarchy) or other colleagues. As a result, police prosecutors may lack independence in carrying out their duties and face challenges in deciding when to prosecute cases that are not in the public interest, as they may be influenced by hierarchy. This situation may affect public trust in the prosecution institution. Several countries have attempted to “abolish” police prosecution in various ways, including delegating prosecution authority to the police on behalf of the public prosecutor (UNODC & IAP, 2014). In contrast, the work culture of the Indonesian Public Prosecutor’s Office applies a hierarchical structure mechanism in which superiors have full power over inferior prosecutors. It can be concluded that the decisions/actions of prosecutors are personifications from the orders of their superiors.

5. Prosecution Accountability

Prosecutor independence is one of the most important features in the prosecution process, but it coexists with the concept of accountability. Absolute independence without accountability is prone to creating arbitrary decisions or actions (abuse of power). Therefore, independence and accountability are not opposite concepts but complement each other. Accountability plays a crucial role in implementing prosecution authority, such as maintaining and increasing public trust and confidence in the criminal justice system. Therefore, every decision taken should be accountable to the litigants.

While prosecutors have discretion in their decision-making, their independence does not mean they are completely autonomous and not accountable to anyone. As professionals, they are bound by obligations to the state, institutions, professional bodies, and society (PERJA 014/2012). In Indonesia, prosecutors are expected to demonstrate their loyalty to Pancasila and the 1945 Constitution by always acting in accordance with applicable laws while respecting the norms that exist in society, such as religion, decency, and difficulty. Moreover, loyalty to the state should be shown by ensuring that discretion always respects human rights.

Prosecutors also have responsibilities and obligations to the institution where they work. They are bound by guidelines issued by the Attorney General’s Office. In Indonesia, the Tri Krama Adhyaksa doctrine serves as the guiding principle for all prosecutorial actions (Kepja 30/1988 & Insja 2/2021). This doctrine is established through the decision of the Attorney General of Indonesia, which becomes a written legal rule obeyed by all personnel in the office. All Adhyaksa personnel are expected to study and live by the three tenets of Satya, Adhi, and

Wicaksana. Satya means “Loyalty that stems from an honesty sense, both towards the God, oneself, family, and fellow humans”. Adhi means “Perfection in carrying out tasks and primarily involves a responsibility towards God, family, and fellow humans”. Meanwhile, Wicaksana means “Wisdom in words and deeds, specifically in carrying out tasks and authorities” (Badiklat, 2019). Prosecutors also should uphold their occupational oaths and comply with every established official regulation.

As a professional, prosecutors are members of an organization bound by regulations. They are obligated to their profession by upholding honor and dignity through a professional, independent, honest, and fair attitude. Compliance with the profession also needs to be shown through an attitude that avoids potential conflicts of interest. Therefore, prosecutors are not allowed to handle cases with personal or family interests. Furthermore, accountability should be demonstrated to ensure that perpetrators, witnesses, and victims are informed of their rights during the criminal justice process.

Last, prosecutors are obligated to the public to provide excellent service in implementing criminal justice processes by prioritizing simple, fast, and inexpensive justice principles. However, the implementation of these principles should be balanced with respect, attitude, and upholding the supremacy of the law, as well as basic human rights. According to previous studies, in the context of prosecution or non-prosecution, the decisions should be made transparently and accessible to the public. Decisions to dismiss cases should be accessible to the public as an accountability form for prosecutors as professionals. It shows that prosecutor independence is bound and limited by their obligations as professionals, and the public can read their decisions.

Prosecutors, as judicial officers (magistrates), are also responsible within certain limits, given that the court’s actions or decisions become the examination subject. The prosecutor’s discretion in adjudication is usually directly related to pretrial institutions (pretrial/judge commissioner). The prosecutor’s decision or action in taking detention discretion, case termination (simple drop), and dismissal (public interest drop) become the examination object by these institutions. In other states, such as the Netherlands and France, victims can object to the decision to prosecute for public interest reasons (seponering/public interest drop). The validity of forced measures in Indonesia and case termination for legal reasons (simple drop) becomes the examination object by pretrial institutions. Likewise, case dismissal that fall under the Attorney General’s authority (Deponering) is exempted. The opportunity to test the prosecutor’s discretion is carried out to provide an opportunity for

dissatisfied members of the public (victims) with the prosecutor's decision. Consequently, the court is able to determine whether the action or decision was taken for legal and public interest reasons or because of irrelevant factors.

Institutionally, the Attorney General's Office is accountable to the executive and legislative branches of the government. Therefore, in the institutional context, the Attorney General's Office may be accountable for its decisions or actions by making reports or answering questions (UNODC & IAP, 2014). In the financial field, the Attorney General's Office is accountable to the Indonesian Audit Board for all expenses incurred to support the execution of their duties. To the parliament, the office is a working partner of the Commission III of the House of Representatives, Indonesia. They conduct working meetings related to performance reports and answer questions pertaining to certain issues. However, it should be noted that its accountability to the executive and legislative branches should not diminish the Prosecutor Independence principle guaranteed by law. The executive (President) and legislative are not permitted to instruct or compel the Attorney General's Office/Prosecutors to disclose truly confidential information. Finally, the Attorney General's Office is fully independent of any authority in its prosecution duties.

Conclusion

The concept of prosecution in Indonesia has not yet fully guaranteed independence for prosecutors. Although institutional independence is present, individual prosecutors do not enjoy complete independence in their role as judicial officers. This is due to bureaucratic chains and the misunderstanding of "een en ondeelbaar", mistranslated as the "unity of command" principle. The unity of command principle in Indonesia prevent prosecutors from exercising complete discretion, as decisions regarding detention, prosecution, and any other actions require the approval of their superiors. In cases where there is a difference of opinion between the prosecuting Attorney and their superiors who make the final decisions, the decision of the superiors will be used. Therefore, prosecutors in Indonesia cannot make their own discretionary decisions.

Prosecutors should ideally have individual independence in resolving a case. They should also be free from the influence of anyone, including their superiors. Furthermore, they can reject orders from superiors contrary to the law or their professional standards. As those who understand the anatomy of the case, prosecutors are qualified to determine which charges should be brought and what recommendations to presented to the judge. However, this

independence should be balanced with accountability. Prosecutors must be able to account for every decision/action they take by legal and public interests.

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