

# Integrity and Authority of the Prosecutor's Role in Enforcing Corruption Crimes

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## Abstract

The authors examine issues related to the development of a normative model of the activities of public prosecutors in criminal proceedings and the ways in which such a model can influence the reform of the criminal process as a whole. Objectives: to analyze the impact of the model of the activities of public prosecutors on the successful achievement of the objectives of criminal proceedings and to propose reforms of the criminal justice system. This research uses legal modeling methods, statistical and sociological cognition methods, and legal comparison methods. Results and originality: The originality of the research is demonstrated by the fact that, for the first time, an attempt was made to determine the impact of the public prosecutor's activity model on the direction of criminal justice reform. The results of the study include the identification of the main factors influencing the construction of the legal model of the prosecutor's activity in the field of criminal proceedings, as well as the determination of the directions of influence of the model on the reform of the criminal justice system.

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## Keywords

public prosecutor; criminal prosecution; discretionary authority.

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The modern state faces new problems and challenges in every aspect of its operations, including the criminal justice system.<sup>2</sup> For proceduralists, the potential direction of criminal procedure reform is a natural subject of scientific inquiry. At the same time, the activities of public prosecutors, as important participants in the criminal justice process, have also been the focus of domestic and international scholars. In some countries, the

powers of public prosecutors in criminal proceedings are so broad that, according to scholars, they are responsible for "systemic failures, such as mass incarceration, widespread racial inequality in the justice system, and so on".

In this context, law enforcement cannot be narrowly defined as simply the implementation of laws or regulations. Law enforcement involves a values-rich aspect,

where the values or norms in a rule become the underlying basis for action. In this situation, law enforcement requires individuals who are intelligent, have integrity, are professional, and are subject to a strict code of ethics. The role of law enforcement becomes very important and central in the law enforcement process.<sup>3</sup>

In this situation, law enforcement can be explained as an entity or group that has the power to carry out the law in specific legal situations and problems. In short, law enforcers are considered as institutions that are legally authorized to carry out the law.<sup>4</sup> However, in practice, law enforcement often experiences obstacles due to the emphasis on enforcing rules and order (rules and order oriented). In fact, law enforcement should be interpreted as the application of legal values in society. In this context, law enforcement should be considered as a "value" that regulates law in society.<sup>5</sup>

Since the reform era that began in 1998, the administration of state administration in Indonesia has been politically characterized by a total change in the system of state and government administration based on the will of the people who want the rule of law, human rights and democracy to be upheld, as well as accelerated development aimed at improving the welfare of the community, and the comprehensive eradication of corruption, collusion and nepotism. During the next reform period, the State passed Law No. 31/1999 on the Eradication of Corruption. Significantly, Law No. 31/1999 gives priority to corruption crimes over general criminal cases, so that they are immediately transferred to the District Court.

Law enforcement efforts, legal investigations conducted by Civil Servant Investigators (PPNS), and the quality, professionalism, and validity of investigation results, especially in the inclusion of evidence, can have a substantial impact on the prosecution and judicial process. Article 30 Paragraph (1) letter

d of Law Number 16 Year 2004 on the Prosecutor's Office of the Republic of Indonesia outlines the duties and authority of the Prosecutor's Office: "To investigate certain criminal offenses in accordance with the law". In addition, the elucidation of Law No. 16/2004 on the Prosecutor's Office of the Republic of Indonesia states: "The authority in this provision is the authority stipulated for example in Law No. 26/2000 on Human Rights Courts and Law No. 31/1999 on the Eradication of Corruption as amended by Law No. 20/2001 jo. Law No. 30 of 2002 on the Eradication of the Crime of Corruption".

In carrying out its functions, duties and authorities, the prosecutor's office also has the authority to conduct investigations into certain criminal offenses.<sup>6</sup> This authority is regulated in law, among others; Law Number 31 of 1999 concerning the Eradication of Corruption as amended by Law Number 20 of 2001, and Law Number 30 of 2002 concerning the Corruption Eradication Commission which is regulated in the explanation of Law Number 16 of 2004 concerning the Prosecutor's Office.

In this case, law enforcement does not only focus on the law, but also considers aspects without involving legally authorized channels as a place where the law works and operates.<sup>7</sup> In addition, the development of a reform strategy requires an integrated approach, which should consider not only one area of legal regulation but also the entire organizational system and activities of the legal institution under study.

## Research Methods

The research methods used in this research are conceptual approach and law. The data source used in this research is secondary. Data analysis is done descriptively-qualitatively. The specification of this research uses descriptive analytics, which is describing data that aims to obtain a complete picture of certain legal

<sup>3</sup> Barda Nawawi Arief, *Beberapa Aspek Kebijakan Penegakan Dan Pengembangan Hukum Pidana* (Bandung: Citra Aditya Bakti, 1998).

<sup>4</sup> Afrhezan Irvansyah, "Penegakan Hukum Pidana Melalui Kebijakan Penghentian Penuntutan Berdasarkan Keadilan Restoratif," *Katalog* 1, No. 2 (2021): 1-19.

<sup>5</sup> Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2010).

<sup>6</sup> K. Saleh, H. Zia, And A. Muflihin, "Kode Etik Profesi Jaksa Yang Berintegritas Berdasarkan Perja Nomor: Per-067/A/Ja/07/2007 Ttg Kode Perilaku Jaksa," *Datin Law Jurnal* 1, No. 2 (October 28, 2020).

<sup>7</sup> Abdulkadir Muhammad, *Hukum Dan Penelitian Hukum* (Bandung: Pt. Citra Aditya Bakti, 2004).

events that occur in society in order to be analyzed based on relevant rules.

## Research Results and Analysis

### The Role of Prosecutors in Law Enforcement in Indonesia

In this regard, prosecutors play an important role in maintaining the rule of law in Indonesia.<sup>8</sup> In Bagir Manan's opinion, the concrete implementation of legal values is not merely about the supremacy and monopoly of a particular organization.<sup>9</sup> This view is understandable because usually law enforcement is associated with the role of judges in the process of law discovery. In this situation, the concrete values of the law become the responsibility of all law enforcers. The involvement and cooperation of law enforcement officers has great significance in the criminal justice system as it relates to the effectiveness and substance in the delivery of justice for the community.<sup>10</sup> The role of the police and prosecutors in law enforcement is very important in clarifying a legal issue so that it can be maximally utilized by the community. This point is emphasized in Section III of the Prosecutor's Office Law, which highlights the duties and powers of the prosecutor's office covering the fields of civil, criminal, state administration, as well as public order. The Public Prosecution Service has an obligation to provide justice for the community based on its various duties and powers, particularly in relation to law enforcement.

The Public Prosecution Service is a government agency responsible for prosecuting criminal cases and enforcing legal decisions.<sup>11</sup> However, the role and authority of the Public Prosecution Service is much broader than just prosecution and enforcement of court decisions. Justice for the community depends heavily on the ability of the Public Prosecution Service to carry out the duties and authority granted by law enforcement. As a public

prosecutor, you are expected to understand and comprehend the entire investigation process, from the opening statement to the indictment. Prosecutors should have theoretical and applied expertise in the law. An accurate theoretical and conceptual understanding of the law is the foundation of legal knowledge, which in turn facilitates the analysis of actual legal reality.<sup>12</sup>

The role of public prosecutor is an important role for prosecutors, especially in criminal cases. This is related to the function of the Prosecutor's Office as one of the branches of the justice system. The role of the Public Prosecution Service is regulated in Article 24 paragraph 3 of the 1945 Constitution of the Republic of Indonesia. The article highlights the fact that specific legislation has been enacted to make provisions for the judiciary. The Public Prosecution Service, in accordance with its duties and functions, is one of the state institutions that exercise judicial power. There are at least three ways to look at the claim that the duties of the AGO are related to the judicial branch: First, Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which regulates institutions related to the functions of judicial power, is located in Chapter IX which regulates judicial power, based on systematic interpretation and the principle of "titulus est lex, duprica est lex", which emphasizes that the title of the chapter has relevance to the article and its substance. Therefore, the traits and characteristics associated with judicial power can be found in every institution that performs judicial functions. In this context, the Public Prosecutor's Office is considered a branch of government that has judicial power, and shares some of the same characteristics and responsibilities as the courts.

Secondly, judicial power is significantly different from executive and legislative power.<sup>13</sup> The judicial power should be autonomous from the legislative and executive branches as it is the only branch that has the

<sup>8</sup> D. Saputra Et Al., "Peran Jaksa Dalam Sistem Peradilan Di Indonesia," *Halu Oleo Law Review* 6, No. 2 (September 29, 2022): 218–37.

<sup>9</sup> Jimly Asshiddiqie, *Pengantar Ilmu Hukum Tata Negara* (Jakarta: Pt Rajagrafindo Persada, 2014).

<sup>10</sup> Hamzah, *Hukum Acara Pidana Indonesia*.

<sup>11</sup> R. Satriyo, "Peranan Jaksa Dalam Pelaksanaan Peradilan Pidana Di Indonesia," *Jurnal Hukum & Pembangunan* 21, No. 1 (February 24, 1991): 17.

<sup>12</sup> Saputra Et Al., "Peran Jaksa Dalam Sistem Peradilan Di Indonesia."

<sup>13</sup> B. Darmono, "Reformasi Hukum Tata Negara Indonesia: Perubahan Kekuasaan Eksekutif, Legislatif Dan Yudikatif Berdasarkan Amandemen Undang-Undang Dasar 1945," *Jurnal Hukum & Pembangunan* 37, No. 4 (December 21, 2007): 594.

authority to interpret and enforce the law.<sup>14</sup> The prosecutor's responsibilities also include tasks related to the judiciary, therefore his office has a special character derived from its independence and autonomy from other judicial organizations. This implies that the judicial power is free and separate from the other branches of government. Third, there is a clear distinction between the judicial power and the institutions that support it, regardless of their independence.<sup>15</sup>

When discussing the independence of the judiciary, it is important to distinguish between the judiciary itself and the independence of the institutions that support it. The independence of the judiciary extends to all areas of operation, including finance, although other organizations performing similar tasks do not enjoy the same degree of autonomy. Judiciary-related institutions are, therefore, only autonomous in the sense that they can carry out their responsibilities without interference from other parts of government; which remain financially and administratively dependent on those branches. While it is true that the prosecutor enjoys autonomy within the scope of his or her responsibilities, this autonomy does not extend to the areas of finance and administration, where it remains dependent on other levels of government.<sup>16</sup>

Article 1 paragraph 1 of the Prosecutor's Law emphasizes the functional nature of prosecutors, which means that prosecutors must act professionally in carrying out their duties, especially in terms of being public prosecutors and executing court decisions. In addition, Article 2 paragraph (2) of the Prosecutor's Office Law emphasizes that prosecutors must act independently. In addition, the professionalism of prosecutors is also related to the ethical aspects of carrying out their duties, which indicates that prosecutors have a code of ethics that must be followed to remain professional in carrying out their duties.

Taking these factors into account, it can be concluded that prosecutors have a free professional orientation, which is based on the

law and the applicable code of ethics in the profession. In the field of law enforcement, prosecutors may also consider approaches that do not involve legally authorized channels that can assist in their duties as law enforcers. In these situations, the difference between prosecutors and judges is clear. Judges only have the authority to examine legal facts by considering legal principles, concepts and principles, while prosecutors act in the field and deal directly with people's legal practices. To maximize the law enforcement function, prosecutors must understand the approach without involving official legal channels. Therefore, Indonesian law enforcement prosecutors have distinct characteristics and traits, in that they are administratively subordinate to executive power, but functionally remain autonomous from state power. In addition, in order for prosecutors to carry out their law enforcement duties as effectively as possible in society, they should focus on their duties in the field, which requires them to understand the non-legal aspects and certain parts of social reality.

### **Integrity and Authority of Prosecutors in Investigating Corruption Offenders**

In principle, the legal basis that authorizes the prosecutor's office to investigate perpetrators of corruption consists of:<sup>17</sup>

The Public Prosecution Service of the Republic of Indonesia is governed by Law No. 16/2004.

The authority of the prosecutor's office in conducting investigations against perpetrators of corruption is based on Law Number 20/2001 which is an amendment to Law Number 31/1999 concerning the Eradication of Corruption.

This authority stems from the prosecutor's ability to conduct investigations against perpetrators of corruption, as outlined in Law No. 16/2004 governing the Prosecutor's Office of the Republic of Indonesia.

Prosecutors are defined as "functional officials authorized by law to act as public prosecutors

<sup>14</sup> Asshiddiqie, Pengantar Ilmu Hukum Tata Negara.

<sup>15</sup> Darmono, "Reformasi Hukum Tata Negara Indonesia: Perubahan Kekuasaan Eksekutif, Legislatif Dan Yudikatif Berdasarkan Amandemen Undang-Undang Dasar 1945."

<sup>16</sup> C.S.T Kansil, Pengantar Ilmu Hukum Dan Tata Hukum Indonesia (Jakarta: Balai Pustaka, 1989).

<sup>17</sup> N. M. Sari And I. N. Budiana, "Limitatif Kewenangan Jaksa Penuntut Umum Dalam Tindak Pidana Korupsi," Kertha Semaya: Journal Ilmu Hukum 8, No. 9 (August 17, 2020): 1324.

and executors of court decisions that have obtained permanent legal force, as well as having other powers determined by law," in accordance with Article 1 point 1 of Law Number 16 of 2004 concerning Prosecutors. The Prosecutor's Office of the Republic of Indonesia is a government agency that exercises state power in the field of prosecution and has other powers stipulated in law, in accordance with Article 2 paragraph 1 of Law Number 16 of 2004 concerning the Prosecutor's Office, including the functions of the prosecutor's office, namely preventive and repressive aspects in the criminal field as well as State lawyers in the civil and state administrative fields.

The repressive function includes the completion of certain case files made by Police Investigators or Civil Servant Investigators (PPNS), execution of judges and court decisions, supervision of the implementation of parole decisions, and prosecution of criminal cases.<sup>18</sup> Based on Article 1 point 6 of Law Number 8 of 1981 concerning the Criminal Procedure Code:

The law authorizes prosecutors to act as public prosecutors and execute court orders that have permanent legal force;

Public prosecutors have the authority granted by this law to conduct prosecutions and execute court decisions; and

In terms of prosecuting criminal cases and executing judicial orders, the Public Prosecution Service acts as an independent and integral branch of government. The Public Prosecution Service also has the responsibility and jurisdiction to investigate and prosecute certain crimes as required by law.

As the holder of state power in the field of prosecution, the Public Prosecutor's Office carries out criminal prosecution in addition to being authorized to conduct investigations into certain criminal acts, including investigations into perpetrators of corruption, as stipulated in Article 30 of Law Number 16 of 2004 concerning the Public Prosecutor's Office of the Republic of Indonesia letter d. Based on Article 30 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, the Prosecutor's Office

has the following responsibilities and authorities:

1. Pursue legal action;
2. Implementing court decisions that have been legally enforceable and court orders;
3. Supervise the implementation of conditional sentences, supervision sentences, and parole sentences;
4. Conducting investigations into certain violations of the law; and
5. Completing certain case files and conducting additional examinations for that purpose before being submitted to the court in coordination with investigators.

The definition of legal action as explained in Article 1 point 2 of Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP) states that investigation is a series of actions carried out by investigators in accordance with the provisions of this law. These actions aim to seek and collect evidence that can clearly explain the criminal offense that occurred and to identify the suspect involved in the criminal offense.

The authority of the Public Prosecutor's Office in conducting investigations is based on the provisions of Article 30 of Law Number 16 of 2004 concerning the Public Prosecutor's Office of the Republic of Indonesia. This article states that the Public Prosecutor's Office has the authority to conduct investigations into certain criminal acts in accordance with the provisions of the law. This legal basis is the legal basis that legitimizes the authority of the Public Prosecutor's Office granted by Law Number 31 of 1999 concerning the Eradication of Corruption which has been amended by Law Number 20 of 2001 and Law Number 30 of 2002 concerning the Corruption Eradication Commission. In addition, Article 26 of the Law explains that the Public Prosecutor's Office has the authority as an investigator in corruption crimes. Investigation, prosecution, and examination in court related to criminal acts of corruption are carried out in accordance with the applicable criminal procedure law, unless specifically regulated in the law.

Thus, it can be concluded that in the Indonesian criminal justice system, no other party has control over the AGO as an

<sup>18</sup> S. Sutrisno, "Efektifitas Jaksa Pengacara Negara Dalam Upaya Pemulihan Keuangan Negara/Daerah Sebagai Akibat Tindak Pidana

Korupsi Di Kejaksaan Negeri Purwokerto," *Jurnal Idea Hukum* 4, No. 2 (October 17, 2018).

investigator and public prosecutor in corruption cases.<sup>19</sup> Therefore, the interpretation given by the Attorney General's Office regarding Article 26 relating to the investigation and prosecution of corruption crimes is clear and correct. According to the provisions of Article 26 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia regarding the Investigation and Prosecution of Corruption, prosecutors have the authority to conduct investigations and investigations, including investigations into certain criminal acts in accordance with the provisions of the law, especially against perpetrators of corruption.<sup>20</sup> In addition, in accordance with Article 30 paragraph (1) letter a and paragraph (1) letter d of Law Number 16 of 2004 concerning Prosecutors, prosecutors also have the authority to prosecute corruption crimes. In this case, it can be clearly stated that the prosecutor has the authority to investigate, prosecute, and examine in court certain criminal offenses regulated outside the Criminal Code (KUHP). Therefore, prosecutors have the authority to investigate certain criminal offenses, as described in Article 30 of Law Number 16/2004 concerning Prosecutors, including the authority to investigate corruption.

What is very important is the credibility of the Prosecutor in legitimizing the Prosecutor's authority to investigate corruption. Integrity refers to the sincere, impartial, and untainted nature of an authorized person or institution.<sup>21</sup> In the context of the Attorney General's Office, gaining legitimacy to investigate corruption depends on the integrity of the Prosecutor. In many countries, including Indonesia, the AGO is the law enforcement agency authorized to investigate corruption. Prosecutors must adhere to high standards of ethics and professionalism to maintain their reputation. The following is evidence of the integrity of the

Prosecutor in legitimizing the Prosecutor's authority to investigate corruption:<sup>22</sup>

1. Independence: Prosecutors must operate independently, unaffected by political pressure or personal interests, and must act in accordance with the law and the facts, without discrimination or attempts to influence the outcome of the investigation.
2. Transparency: Prosecutors should carry out their duties transparently, providing the public with sufficient information about the investigation process and legal actions taken. This transparency will increase public confidence in the Prosecutor's Office and the criminal justice system.
3. Accountability: Prosecutors must be accountable for their actions and decisions during corruption investigations. To the extent required to disclose their actions to superiors and face legal consequences if they violate the law or ethical standards.

Prosecutor integrity also includes treating suspects and related parties fairly and without discrimination.<sup>23</sup> To that end, it must not privilege or disadvantage a person based on background, social status, or particular interests. Prosecutors must investigate corruption crimes with a high level of accuracy and objectivity.<sup>24</sup> To that end, it is mandatory to obtain solid evidence and take appropriate investigative measures. The Prosecutor's decision must be based on the law and facts, not on personal preferences or vested interests. The integrity of the Prosecutor in authorizing the AGO's authority to investigate corruption is critical to maintaining public trust and ensuring due process. Therefore, Prosecutors must adhere to the principles of honesty and professionalism to fulfill their responsibilities.

## Conclusion

Law Number 16/2004 on the Prosecutor's Office, Law Number 31/1999 on the Eradication of Corruption which has been amended by Law

<sup>19</sup> Sari And Budiana, "Limitatif Kewenangan Jaksa Penuntut Umum Dalam Tindak Pidana Korupsi."

<sup>20</sup> I. G. N. Yulio Mahendra Putra And I. G. A. Stefani Ratna Maharani, "Problematika Kewenangan Dwi Fungsi Jaksa Menangani Tindak Pidana Korupsi Dalam Prespektif Sistem Peradilan Pidana," *Kertha Semaya: Journal Ilmu Hukum* 10, No. 9 (July 11, 2022): 2003.

<sup>21</sup> Saleh, Zia, And Muflihini, "Kode Etik Profesi Jaksa Yang Berintegritas Berdasarkan Perja Nomor: Per-067/A/Ja/07/2007 Ttg Kode Perilaku Jaksa."

<sup>22</sup> M. A. S. Lebang And R. Kastru, "Perbandingan Antara Peran Jaksa Di Indonesia Dengan Peran Jaksa Di Daerah Administrasi Khusus Macao Dalam Sistem Peradilan Pidana," *Jurnal Cahaya Keadilan* 9, No. 2 (November 27, 2021): 1-15.

<sup>23</sup> Sutrisno, "Efektifitas Jaksa Pengacara Negara Dalam Upaya Pemulihan Keuangan Negara/Daerah Sebagai Akibat Tindak Pidana Korupsi Di Kejaksaan Negeri Purwokerto."

<sup>24</sup> S. Marwiyah, "Dekonstruksi Akar Korupsi Dari Pola Kemitraan Antara Jaksa Dengan Pimpinan Daerah," *Yurispruden* 1, No. 1 (January 24, 2018): 47.

Number 20/2001, and the Criminal Procedure Code (KUHP), are the legal basis that regulates the investigation of corruption crimes by prosecutors. Article 30 of Law Number 16/2004 on the Prosecutor's Office stipulates the duties and powers of the Prosecutor's Office, including in letter d paragraph one, which includes investigations into certain criminal offenses. Therefore, to maintain public trust and ensure a fair legal process, the legitimacy of the Prosecutor's authority to investigate corruption crimes must be upheld. Therefore, Accuracy and objectivity, Nondiscrimination, Accountability, Transparency, and Independence are characteristics that demonstrate the integrity of the Prosecutor in legitimizing the authority of the Prosecutor's Office in investigating corruption crimes. The application of investigative authority by the Prosecutor against the perpetrators of corruption crimes for alleged corruption crimes is essentially a procedure carried out in accordance with Criminal Procedure Code Articles 183 and 184 regarding the acquisition of evidence to prove the existence of a criminal offense. Given the prevalence of corruption crimes, the prosecutor's office must continue to improve coordination strategies with the Corruption Eradication Commission (KPK) so that efforts to eradicate corruption crimes become more efficient and effective.

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