

Attorney and President Relationship in Independent Aspects of the Indonesian State System after Reform

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Abstract

The Attorney General's Office has a central position and a strategic role in a constitutional state because the Attorney General's Office acts as a filter between the investigation process and the examination process at trial; The position in the sense of the position and function of the Prosecutor's Office is very vulnerable to the state administration system or the style of government adopted. After the reform, the Prosecutor's Office underwent several changes in the system used. The method used by the researcher in this research is normative juridical with a descriptive analysis approach in the perspective of comparative historical politics. The discussion in this study uses a comparative political approach. This research provides an overview of the ideal concept of the Attorney General's Office in the state administration system of the Republic of Indonesia by placing the Prosecutor's Office with an independent nature that supports its duties and authorities in the field of prosecution both in theory and in fact. This must be regulated clearly and firmly in the constitution.

Keywords

relations; attorney general's office; president; post-reformation



I. Introduction

The Attorney General's Office of the Republic of Indonesia is a state institution that exercises state power, especially in the field of prosecution. As an agency that has the authority to enforce law and justice, the prosecutor's office is led by an Attorney General who is elected and responsible to the President. Referring to Law No. 16 of 2004 which replaced Law no. 5 of 1991 concerning the RI Attorney General's Office, the Attorney General's Office as one of the law enforcement agencies is required to be more instrumental in upholding the rule of law, protecting public interests, upholding human rights, and eradicating corruption, collusion and nepotism (Tutik, 2011). In the new Law on Prosecution, the Indonesian Prosecutor's Office as the state agency exercising state power in the field of prosecution must carry out its functions, duties, and authorities independently or independently, apart from the influence of government power and other powers (Napitupulu, 2013).

Concerns about intervention from the executive power to the prosecutor's office, because the appointment of the Attorney General is the prerogative of the President, this has led to the perspective of various circles of being determined that the prosecutor is no longer under the executive branch (Santoso, 2019). The idea of the existence of a prosecution system in state power is actually to provide an answer to independence in prosecution (Yusuf, 2019). These concerns assume that the prosecution should not be subordinated to executive power.

The Attorney General who is under the executive makes the prosecutor a tool of the executive itself, not as an instrument of the state. A prosecutor is accountable hierarchically to the prosecutor above him, and the Attorney General as the head of the prosecutor's office is also responsible to the President (Crouch, 2011). This position of the prosecutor led by the Attorney General makes it less effective for the prosecution in the law enforcement process depending on who holds the executive branch. Indonesia, which in its constitution states a constitutional state, is obliged to guarantee the implementation of the general principles of a rule of law. One of these principles is the existence of an independent judiciary (Said, 2017). The judiciary in a system of course includes the police, prosecutors and judges. The state guarantees the independence of the three law enforcement agencies (Wibowo, 2019).

This will allow the intervention of other parties in the prosecution policy. An essential change regarding the position of the Attorney General's Office of the Republic of Indonesia, namely in Law Number 15 of 1961 the Public Prosecutor's Office of the Republic of Indonesia is designated as a "state instrument", while in Law Number 5 of 1991 and in Law Number 16 of 2004 the Indonesian Prosecutor's Office is stipulated as a "government agency" (Variza, 2013). On the other hand, these three laws regulate the position of the Attorney General who is applied at the level of Minister of State and becomes Assistant President. In Law Number 15 Year 1961 Article 5, Law Number 5 Year 1991 Article 19, and Law Number 16 Year 2004 Article 19 paragraph (2) it is stated that the Attorney General is the Assistant to the President because he is appointed and dismissed by and responsible answer to the President (Pramita, 2015).

According to the ideal system, the prosecutor's office (Attorney General) is truly independent in carrying out its duties, however, it is necessary to increase the professionalism of the prosecutors themselves. Related to the dismissal of the Attorney General in Article 22 paragraph (1) letter d of Law Number 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office, it has created multiple interpretations so that it has no value of legal certainty. It is necessary to reposition the Attorney General's Office of the Republic of Indonesia so that it is completely separated from the executive body (Menchik, 2019).

Based on the description above, the researcher is interested in examining the position and relationship of the prosecutor and the central executive organ (President) in the aspects of the independence of Indonesian constitutional law after reform.

II. Research Methods

The method used is the juridical-normative method (legal research) with a problem approach through the statute approach, the case approach, and the legal principle approach, with primary legal materials and materials. Secondary law, as well as non-legal materials, then proceed with the analysis of legal materials. The literature review in the writing of this thesis is to discuss legal theory, theory of separation and division of power, as well as basic concepts of the constitutional system.

III. Discussion

Conceptually, government agencies, state institutions, and state organs are held to carry out state functions and government functions in an actual way as a synergistic process (Prapanca, 2019). The relationship between the organs of a country is a cooperative relationship between institutions that are formed to carry out government and

state functions. Among these, there are several crucial functions, such as the function of making policies and regulations (legislative function), the function of implementing regulations or administering the government (executive function), and also the function of judging (judicial function) (Pribadi, 2015).

Following are the missions of the Republic of Indonesia Attorney's Institution: (1) Unifying the mindset, code of conduct and work procedures in enforcing the law; (2) Optimizing the eradication of corruption, colusion and nepotism, resolving human rights violations; and (3) Adjusting the system and management of services and law enforcement by taking into account religious norms, decency, decency by taking into account the sense of justice and human values in society. As an authorized body in enforcing law and justice, the AGO is led by the Attorney General who is a state official, leader and highest responsibility for the Attorney General's Office who leads, controls the implementation of duties and powers of the Republic of Indonesia Prosecutor's Office. The exercise of state power of the Attorney General's Office of the Republic of Indonesia is carried out by: (1) Attorney General's Office (national level); (2) High Prosecutor's Office (Provincial level); (3) Public Prosecutor's Office (district/city capital level) (Boemiya, 2012).

During the New Order era, apart from experiencing several changes in power, the Attorney General's Office also experienced several changes in leadership, organization and working procedures (Helmi, 2017). The first change of leadership took place on March 27, 1966, when the Minister/Attorney General Sutardhio was replaced by Brigadier General Sugih Arto, Assistant I Minister/Commander of the Army, a day before the dissolution of the Dwikora Cabinet which was refined and replaced with an improved Dwikora Cabinet. At that time, the AGO was under the coordination of the Deputy Prime Minister for Defense and Security who was concurrently Minister of the Army, Lt. Gen. Soeharto. After the change in leadership based on the Decree of the Deputy Prime Minister for Defense and Security No: KEP/A/16/1966 dated May 20, 1966, changes and updates were made to this institution, including: (1) The Minister or Attorney General directly leads the Ministry of Prosecutors assisted by three Deputy Ministers/Attorneys General, each in the fields of Intelligence/Operations, special and development, and a general supervisor (Inspector General); (2) In carrying out their duties, the three deputies and general supervisors are led and coordinated by the Minister or the Attorney General; (3) Under the deputies there are directorates for sections, bureaus and sections, while under general supervision there are only inspectorates (Aulia, 2019).

During the Reform Order era, apart from six changes of Attorney General in one period and addition of functions related to duties and powers, the Attorney General was again given the authority to conduct investigations and prosecutions against human rights violations with the issuance of Law No. 26 of 1999 concerning Human Rights Courts (HAM) Effendy, 2005).

Reducing the duties and powers of investigations and prosecutions related to Corruption Crimes with the formation of the KPK on December 29, 2003 based on Presidential Decree No. 266/M/2003 which is a follow-up to Law No. 30 of 2002 concerning the Corruption Eradication Commission, the situation and conditions faced by the Attorney General's Office in the Reformation Order period were not much different from the New Order period, however, Law No. 16 of 2004 concerning the Republic of Indonesia Attorney General's Office made a new contribution (Bernard, 2000).

Law No. 16 of 2004 also explains that the AGO is in a central position with a strategic role. In addition to the Public Prosecution Service, it also has a role as controlling the case process because only the Attorney General's Office can determine whether a case can be submitted to the Court or not based on valid evidence according to the Criminal

Procedure Code. The power of the AGO to investigate certain criminal acts is intended to accommodate several provisions of the law which give the Prosecutor's authority to carry out investigations, for example Law Number 26 of 2000 concerning Human Rights Courts, Law Number 31 of 1999 concerning Eradication of Crime Corruption as amended by Law Number 20 of 2001, and Law Number 30 of 2002 concerning the KPK. In the civil and state administration sector, the AGO has the authority for and on behalf of the state as a plaintiff or defendant which in its implementation not only provides consideration or defends the interests of the state or government, but also defends and protects the interests of the people (Sankri, 2003).

During the Reformation Period, the performance of the Indonesian government and law enforcement agencies received a lot of criticism, especially regarding the handling of corruption crimes. In addition, the Law on the Prosecution has also undergone changes, namely the promulgation of Law No. 16 of 2004 to replace Law No. 5 of 1991. Experts consider that this is a form of affirming the existence of an independent AGO and free from the influence of government power or other parties.

Law No. 16 of 2004 article 2 paragraph (1) regarding the Republic of Indonesia Prosecutor's Office states that "the Republic of Indonesia Prosecutor's Office is a government institution that exercises state power in the field of prosecution as well as other powers based on law." As the controller of the case process, the AGO has a central position in law enforcement, because only the Attorney General's office can determine whether a case can be submitted to court or not based on valid evidence according to the Criminal Procedure Code. The prosecutor's office is also the only institution to implement criminal decisions. Therefore, the Law on the Prosecutor's Office (Law No. 16/2004) is seen as stronger in determining the position and role of the Attorney General's Office of the Republic of Indonesia as a government institution exercising state power in the field of prosecution. In addition, the duties and functions of the AGO must be carried out independently, which means that apart from the influence of government power and the influence of other powers, this has not been realized in reality. This provision aims to protect the prosecutor's profession in carrying out his professional duties, however this independent function has not yet been realized because the AGO is still under the executive (Swingly, 2015).

In the history of Indonesian administration there have been several dismissals of the Attorney General which are considered unusual because the dismissals were made before the Attorney General's term ended. This explains how the role of the executive is very big and influential on the prosecutor's organs.

First, President Soekarno dismissed Attorney General Soeprapto on April 1, 1959 and Goenawan in 1962 for no apparent reason. Many legal observers suspect that the dismissal of the two attorneys general is related to the investigation of ministers in the Dwikora Cabinet who are suspected of committing corruption.

Second, transcript of the recorded conversation between President B.J Habibie and Attorney General Andi Muhammad Ghalib was released. In the conversation, the President seemed to have arranged efforts to investigate suspected corruption crimes committed by former President Soeharto. At that time, it was seen that the investigation by the prosecutor of former President Soeharto was merely a formality and there was no intention of increasing the investigation to the level of investigation.

Third, B.J. Habbie dismissed Attorney General A. Soedjono C. Atmonegoro. Attorney General A. Soedjono C. Atmonegoro only served for 3 (three) months, and at that time was investigating the alleged case of the former President Soeharto. The public

viewed Soedjono's dismissal as being very political and with a background of certain interests (Asri, 2016).

In theory, there is power in law. And the law can only run if there is power. If each stands alone, then the entry into force will be insidental, not able to last long. The law is imperfect, if it does not contain power in itself because it will become a "powerless law" for the guarantee and protection of the interests of the regulated society. So power is treated for the enactment of the law.

During this reform period, the Attorney General's Office received assistance from various new institutions to share roles and responsibilities. The presence of these new institutions with specific responsibilities should be viewed positively as partners of the Prosecutor's Office in fighting corruption, but they face many obstacles, such as: (1) Sophisticated modus operandi; (2) Protection of perpetrators from corps, superiors, or friends; (3) Objects that are complicated because they are related to various regulations; (4) Difficulty gathering various preliminary evidence; (5) Human resource management; (6) Different perceptions and interpretations among existing law enforcement agencies; (7) Inadequate facilities and infrastructure; and (7) Physical and psychological terror, threats, negative news against law enforcement officials.

But on the other hand, law does have power and can only be implemented if there is power. If each one stands alone, then the entry into force will be insidental, it will not be able to last for a long time. So power is treated for the enactment of the law. At the practical level, the function of the Attorney General's Office in enforcing the law is seen not as the executor of state power, but as an extension of the power of the authorities to take action against the people or society. Martin Basiang said that the public's stare could not be fully blamed considering the position of the Prosecutor's Office was declared by law as a government institution carrying out prosecutions. As long as the position of the Attorney Office is not the executor of state power in the field of law enforcement, the sharp spotlight and oblique accusations against the handling of a case will forever be considered to have political nuances.

In Law Number 15 of 1961 concerning the Principles of the Attorney General's Office of the Republic of Indonesia, it is stated that the prosecutor is an apparatus of the law enforcing state which primarily functions as a public prosecutor and carries out its duties to always uphold people's human rights and state law. According to this law, the prosecutor's office is carried out by the minister / attorney general. However, in Article 5 paragraph (1) it is stated that the implementation of the duties of the Department of the Prosecutor's Office is not as a Department which is led by the Minister. Only the position of the Attorney General is equal to the minister, namely the Attorney General is appointed and dismissed by the President. From the provisions described above, it is clear that the position of the Prosecutor is classified as executive power.

The issue of the independence of the prosecutor's office is also a serious concern by legal experts, because the law on the prosecutor's office mentions the prosecution as an instrument of government. Apart from that, the Attorney General can be appointed and dismissed by the President, so that by itself the AGO is not independent. To resolve this problem, Andi Hamzah stated that the Law on the Prosecutor's Office must guarantee the independence of the prosecutor's office, so that the AGO can prosecute anyone without government intervention.

Independence is a state or condition free from dependence, submission, control, or restriction from other parties. According to the notion of freedom, it can be defined as freedom or a state of freedom, or it can also be interpreted as the human ability to regulate his behavior and life according to his own will without being restricted or hindered. This

freedom can and is often limited by internal weakness (psychic, moral) or by external constraints or coercion which can be legitimate (freedom of others and social order) or illegitimate (dictatorial). The independent nature of the organs of the Prosecutor's Office, namely being free from dependence, submission, control, or restriction from other parties (Nugroho, 2019).

Independence itself includes the following matters: (1) Personal judicial independence, namely independence from peer management, leadership and the judicial institution itself; (2) Substantial independence (substantive judicial), namely independence in examining and deciding a case solely to uphold truth and justice in accordance with legal principles; (3) Institutional independence (institutional judicial independence), namely the independence of the judiciary from intervention from other state and government institutions in deciding a case; and (4) Internal independence, namely the independence of the judiciary to self-regulate judicial personnel interests including recruitment, transfer, promotion, payroll, years of service and retirement (Saputra, 2015).

Law and law enforcement are some of the factors of law enforcement that cannot be ignored because if they are ignored it will result in not achieving the expected law enforcement. The independence of the Attorney General's Office contains at least two things, namely: (1) The Attorney General's Office of the Republic of Indonesia, as a separate institution, is affirmed in the constitution, bearing in mind that for the sake of independence itself and its constitutional nature as it carries out its duties of authority on behalf of the state; (2) Re-inserting the prosecutor's office in the Supreme Court, considering the function of the prosecutor's office related to judicial power. So that the prosecutor's office is no longer a government institution, but falls within the realm of judicial power absolutely. As well as to avoid any contradiction between the position of the prosecutor's office and its function that has a judicial function.

To change the position of the prosecutor from the executive power to the judicial power can be done in two ways, namely: First, amending the provisions of the 1945 Constitution, by including the prosecutor in the Constitution in the chapter of the judicial power with the Supreme Court, the Constitutional Court and the Judicial Commission. Thus, it is clear that the position of the prosecutor is in the realm of judicial power, and it also regulates the supervision of the prosecutor by the Judicial Commission. Changing the prosecutor's office through amendments or amendments to the constitution has a long process and time. However, if the AGO is directly regulated by the constitution, this institution is very strong in its position as a judicial institution (Ampriyanti, 2016). Second, amending the Law on the Prosecution, namely Law no. 16 of 2004 concerning the Attorney General's Office to place the Attorney General in the judiciary states that other bodies whose functions are related to judicial powers are regulated in Law. The provisions of this article are further explained in Law no. 48 of 2009 concerning Judicial Powers contained in chapter V In terms of authority, the prosecutor's office has the main task of carrying out prosecutions and other tasks such as conducting investigations, investigating certain specialties, and executing cases with permanent legal force (Simanjuntak, 2018). This task is related to the function of judicial power as stated in Law no. 48 of 2009 concerning Judicial Power, namely the function of conducting investigations, investigations, prosecutions and implementation of judges' decisions, providing legal services and settling cases outside the court.

Thus, it is desirable to change the prosecutor's law, this is so that the AGO can stand independently and be free from executive power. Based on several previous prosecutorial laws, it is true that the position of the Prosecutor is in the executive realm and filling and dismissing the Attorney General is the President's prerogative. This made several

Attorneys General dismissed by the President during his time with unclear reasons. This dismissal was an indication that the Attorney General was investigating cases deemed to have disturbed the President's power (Chalil, 2016).

IV. Conclusion

Our country adopts a presidential system under the 1945 Constitution, both before and after the amendments, as well as Law no. 16 of 2004 that the Prosecutor's Office is a government institution that is within the realm of executive power. The President also has the prerogative to appoint and dismiss the Attorney General. However, the power of the President needs to be limited in the mechanism for appointing and dismissing prosecutors in order to avoid abuse of authority. The independence of the judiciary must be carried out in order to prevent the rights and powers of the Attorney General's Office in enforcing the law from being subordinated by the executive.

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