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ABSTRACT

Objective: This study aims to analyze the position of the Prosecutor in Indonesia in the current state administration.

Method: With the formal legal method, data on the Prosecutor’s Office is comprehensively reviewed. Law Number 16 of 2004 which emphasizes the position of prosecutors as functional officials who are authorized by law to act as public prosecutors and executors of court decisions that have obtained permanent legal force and other powers based on the law.

Results and Discussion: The result of this research find that the Prosecutors’ Office is one of the pillars of the legal bureaucracy that is inseparable from the demands of the litigating community to carry out their duties more professionally and in favor of the truth. As far as it is remembered, the attorney general’s office in history has never felt so degenerated as it is today.

Originality/Value: Highlight and sharp criticism from the public, directed at him especially to the attorney general’s office, in the near future does not seem to be receding, even though some improvements have been made.

Keywords: Attorney General’s Office, independence, Republic of Indonesia State Administration System.

O CONCEITO IDEAL DA SELEÇÃO DA REPÚBLICA DA INDONÉSIA NO REGULAMENTO DA REPÚBLICA DA INDONÉSIA

RESUMO

Objetivo: Este estudo visa analisar a posição do Procurador na Indonésia na atual administração do Estado.

Método: Com o método legal formal, os dados do Ministério Público são revisados de forma abrangente. Lei número 16 de 2004, que enfatiza a posição dos promotores como funcionários funcionais que são autorizados por lei a atuar como promotores públicos e executores de decisões judiciais que obtiveram força legal permanente e outros poderes baseados na lei.

Resultados e Discussão: O resultado dessa pesquisa mostra que o Ministério Público é um dos pilares da burocracia legal inseparável das demandas da comunidade litigiosa de cumprir suas atribuições de forma mais profissional e em favor da verdade. Tanto quanto é lembrado, a procuradoria de história nunca se sentiu tão degenerada como é hoje.

Originalidade/valor: Destaque e crítica aguda do público, dirigida a ele especialmente para o gabinete do procurador-geral, no futuro próximo não parece estar diminuindo, mesmo que algumas melhorias tenham sido feitas.

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EL CONCEPTO IDEAL DE LA SELECCIÓN DE LA REPÚBLICA DE INDONESIA EN LA REGULACIÓN DE LA REPÚBLICA DE INDONESIA

RESUMEN

Objetivo: Este estudio tiene como objetivo analizar la posición del Fiscal en Indonesia en la actual administración estatal.

Método: Con el método jurídico formal, se examinan exhaustivamente los datos sobre la Fiscalía. La Ley Número 16 de 2004, que enfatiza la posición de los fiscales como funcionarios funcionales que están autorizados por ley para actuar como fiscales y ejecutores de decisiones judiciales que han obtenido fuerza legal permanente y otros poderes basados en la ley.

Resultados y discusión: El resultado de esta investigación encontró que la Fiscalía es uno de los pilares de la burocracia jurídica que es inseparable de las demandas de la comunidad litigante para llevar a cabo sus funciones de manera más profesional y a favor de la verdad. Por lo que se recuerda, la fiscalía general en la historia nunca se ha sentido tan degenerada como hoy.

Originalidad/Valor: Resaltar y críticas agudas del público, dirigidas especialmente a la Fiscalía General de la Nación, en un futuro próximo no parece estar retrocediendo, a pesar de que se han realizado algunas mejoras.

Palabras clave: Fiscalía General de la Nación, independencia, Sistema de Administración del Estado de la República de Indonesia.

1 INTRODUCTION

In the history of Indonesia since the colonial era of the Dutch East Indies, we know of an institution called officer van justitie, whose main task is to sue someone in court in a crime. The term prosecutor is generally used to translate the term officer van justitie, because in the sultanates in Java, this term is related to the activity of prosecuting someone suspected of committing a crime before the court, to be tried and made a decision whether or not wrong, even though the activity was carried out by the police or even the judge himself. The term new prosecutor was formally used during the Japanese occupation to replace the term officer van justitie for officers who prosecute cases in Japanese military government courts. Attorney General as a superior rank to public prosecutor’s office and naturally all public prosecutors’ office of the country has a specific position (Safraei & Kousha, 2017). Competitive elections determine the democratic legitimization of the exercise of public authority, and through this legitimizing criterion will be different from the non-competitive selection methods (Wojtasik, 2013).
At the beginning of independence, on August 19, 1945, the President of the Republic of Indonesia announced the appointment of the first Indonesian Attorney General, Mr. Gatot and announced the inauguration of the Chief Justice of the Supreme Court, Dr. Kusumah Atmadja. This inauguration was the inauguration of the two state officials, after the inauguration of the President and Vice President the day before, on August 18, 1945. Gatot took up the post, then was replaced by a more influential figure, namely Mr. Kasman Singodimedjo, who also serves as the Commander of the People's Security Front (BKR).

In the tradition of administering justice in the Dutch East Indies era, prosecutors did not merely deal with the prosecution of criminal cases in court. The provisions in the Herzeine Indonesich Reglement (HIR) that were expanded with the Stb Regerings Regulations of 1922 No. 522 mentioned the prosecutor's duties, besides being officer van justitie, he also became advocate and lands advocate representing the interests of the Dutch Indies Government in civil cases. In carrying out their duties as a public prosecutor or openbaar the prosecutor's clerk also does not merely accept the results of criminal case investigations submitted by the police, but has the authority to conduct further investigations to deepen the results of the investigations delegated, in order to sharpen the preparation of the indictment that they will submit to the court. When Indonesia became independent, the provisions in the HIR were updated to become the Renewed Indonesian Regulation (RIB) (Kansil, 1996).

Even though we were independent and had a constitution that was ratified on August 18, 1945, and had become the Attorney General, at the beginning of independence, Indonesia did not have its own laws and regulations governing the position, duties and authority of the prosecutor's office. To overcome this legal vacuum, our Government continues to use the old regulations passed down by the Dutch East Indies Government. The legal basis for using the colonial inheritance regulation is the provision of Article II of the Transitional Provisions of the 1945 Constitution which states that all state bodies and existing regulations are still in effect immediately, as long as new ones have not been established according to this Basic Law.

2 THEORETICAL FRAMEWORK

The Prosecutor's Office is a state body (staatsorgan) that existed before independence, as well as its rules. So, the Attorney General's Office of the Republic of Indonesia, basically continued what had been regulated in the Indische Staatsregeling, namely a kind of constitution of the colonial country, the Dutch East Indies, which placed the Attorney General's Office next to the Supreme Court. While administratively, both the prosecutor's office and the court are
under the Ministry of Justice. That is why, in a PPKI (Indonesian Independence Preparatory Committee) meeting on August 19, Professor Soepomo reported that the scope of the Ministry of Justice's tasks to be formed was to deal with matters of court administration, the prosecutor's office, prison, marriage, divorce and reconciliation and the handling of waqf issues and zakat. Whereas the legal basis for the Prosecutor's Office to carry out its duties and authority, as I have said, is entirely based on the Herzeine Indonesich Reglement (HIR) which was expanded with Regering Regulations Stb 1922 No. 522. The HIR was later changed to RIB (Indonesian Updated Regulations) (R. Abdoel Djamali, 1996).

The provisions in the Indische Staatsregeling which regulates the position of the Prosecutor's Office, are basically the same as the provisions in the Dutch Constitution. The Netherlands has a Parliamentary system of government. In theory, the Dutch constitution indeed separates the duties of the executive body with the judiciary. But in tradition in the Netherlands, all judges and prosecutors are civil servants (R. Abdoel Djamali, 1996). Structurally the organization, personnel and finances of both prosecutors and courts are under Ministrie van Justititie (Ministry of Justice). But functionally in carrying out their duties and authorities in the field of judiciary, prosecutors and judges are independent. So, there is indeed a confusion of the prosecutor's position in the Dutch system, which is between two sides, between the executive and the judiciary. The same pattern as in the Netherlands, we continue not only based on the Indische Staatsregeling, but we also continue when we enact Law No. 19 of 1948 concerning the Composition and Position of the Judiciary and Prosecutor Agencies.

In Dutch constitutional law, the Attorney General is appointed by the Prime Minister at the suggestion of the Minister of Justice. Candidates for Attorney General are drawn from career officials based on their skills, experience and abilities. The Attorney General's office is not a political position. Because the prosecutor's duties are directly related to the court, then in the Dutch tradition, the Attorney General is referred to as the Attorney General (Hoofd Officer van Justititie) at the Supreme Court (Hooge Raad). This pattern, followed consistently in the Dutch East Indies, and continued to be practiced until 1958, when Prime Minister Juanda began to pave the way to release the prosecutor's relationship with the court, and began to place the prosecutor as an institution entirely under the executive. In the Law of the Republic of Indonesia (RIS) No. 1 of 1950 concerning the Composition, Power and Way of the Indonesian Supreme Court, the pattern of placing the Attorney General in the Supreme Court continues. Article 2 of the Law says the Supreme Court is a Prosecutor General and two Deputy Attorney General. A slight change occurred in the recruitment process of the Attorney General and the Deputy Attorney General, who in the Dutch tradition were appointed by the Prime Minister at
the proposal of the Minister of Justice, in this law appointed by the President, who in practice carried out at the Prime Minister's proposal. As we understand, the Constitution of the United States of Indonesia adheres to the Parliamentary system. The existence of this ambiguous prosecutor's office between the executive and the judiciary only ended in 1959, when the 1945 Constitution was reinstated through the Presidential Decree on July 5, 1959 (Tresna, 1978).

Although the first Attorney General, as the author has explained, was appointed on August 19, 1945, this institution has not been able to work normally, due to the revolutionary situation and the independence war that lasted until the end of 1949. The Prosecutor's Office could only improve itself after the re-establishment of the Unitary State. The Republic of Indonesia succeeded the Republic of the United States of Indonesia on August 17, 1950. The new Unitary State Government was led by Mohammad Natsir as its Prime Minister. One of the Natsir Cabinet programs is to achieve consolidation and perfect the composition of government and form a unified state apparatus. The judiciary, which was uncertain during the War of Independence, was re-consolidated by Natsir.

To realize his program of perfecting the government structure and forming the rounded state equipment, Natsir appointed Mr. Wongsonegoro Chairperson of the Greater Indonesia Party and known as Javanese mysticism became Minister of Justice. PM Natsir, then suggested to the President to appoint Mr. Soeprapto became the Attorney General at the Supreme Court of the Republic of Indonesia, on December 28, 1950. Natsir also fixed the judicial bodies and submitted the names of prospective judges to the DPR, which finally agreed to appoint Dr. Mr. Wirjono Prodjodikuro became Chief of the Supreme Court. This is the beginning of the Prosecutor's Office and judicial bodies working normally in the history of the Indonesian constitutional system. Mr. Soeprapto who laid the foundations of the Prosecutor's Office, which is still remembered today, so that the statue was erected in front of the Indonesian Attorney General's Office in Kebayoran Baru, South Jakarta (Tresna, 1978).

Soeprapto began to reform the organizational structure of the prosecutor's office both at the central and regional levels, in a new atmosphere, namely the re-establishment of the Republic of Indonesia. Recognizing the shortcomings of the regulation regarding the Attorney General's duties and authority to carry out further investigations as stipulated in the RIB, Attorney General Mr. Soeprapto formed a Directorate under the Attorney General's Office, which is called the Central Investigation Department (DRP), which is tasked with monitoring, analyzing and gathering information, which covers various activities in society, namely politics, religion, faith flow and abroad (Kansil, 2008). In general, it was impressed that the authority of the DRP was almost the same as that of the Politiek Inlichten Dienst (PID), the Dutch colonial
intelligence agency whose task was to monitor potentially subversive activities and could threaten the security stability of the Colonial government.

With intelligence collected by the directorate, the Prosecutor's Office was able to work effectively in eradicating smuggling, which was carried out by Army officers, and exposed the political conspiracy carried out by Sultan Hamid II, Sultan of Pontianak, known to be pro-Dutch, with Captain Westerling committing the genocide in West Java and South Sulawesi. The Prosecutors' Office managed to uncover the conspiracy, and brought Sultan Hamid to justice, who had been appointed as a minister in the RIS Cabinet. The Attorney's intelligence authority was so great, and his courage to indict the police, military officers and accused Asa Bafagih, a prominent journalist, caused prosecutors' institutions to be disliked including by President Sukarno and Army Chief of Staff Colonel Abdul Haris Nasution. Mr. Soeprapto wants to make the Prosecutors' Office an independent state institution, free from any interference in carrying out its duties.

Prime Minister Natsir, known for being honest and clean, agreed with Mr. Soeprapto. But the Natsir Cabinet ruled not too long ago. When the parliamentary system of government was deemed a failure towards the end of 1950, President Sukarno, with military support, tried to build a more centralized system of government with centralization of power in the hands of the President. The failure of the Constituent Assembly to draw up a new constitution, the upheavals in the region that culminated with the founding of the PRRI and Permesta, further accelerated the process of concentration of power. Soeprapto's efforts to enforce the law failed. He was considered too Dutch in carrying out his duties and was not revolutionary in spirit as Sukarno wanted. He was dismissed ahead of the Presidential Decree of July 5, 1959.

Under the decree of the 1945 Constitution, the desire to build a centralized government is increasingly open. Soekarno's slogan, the “Revolution Is Not Completed” requires a strong government to be able to utilize all state institutions to become revolutionary forces. Only a week after the decree, July 13, 1959, President Sukarno formed a new cabinet with a Presidential pattern called the Working Cabinet I. In this cabinet, President Sukarno appointed Mr. Gatot Tarunamihardja as Minister / Attorney General. This was the first time a shift in the position of the prosecutor's office and the position of the Attorney General, who had been ambiguous because of following the Dutch tradition, became more assertive: The Prosecutor's Office was part of the executive sphere. Attorney General is a member of the cabinet as the Minister / Attorney General (Kansil, 2008).

Related to the development of the country's changing conditions towards a better direction, it should be supported. The leadership of this country is added by its officials, as
well as people who work hard, honestly and unconditionally are a necessity. This also applies in the world of justice in line with the development of the world of crime, so the professionalism of law enforcement officials who are willing to work hard, honestly, selflessly is the answer to the development of crime.

Today the level of public confidence in the world of justice is very low. This can be seen with the rise of demonstrations in court, increasing numbers of vigilante actions and the number of reports to the supervisor of the relevant judicial institution. This phenomenon is thus the implication of the inability of the judiciary to work properly caused by the system and person.

In the criminal justice system the role of the prosecutor is very central because the prosecutor's office is an institution that determines whether a person must be examined by a court or not. The prosecutor also determines whether a person will be sentenced or not through the quality of the indictment and the demands made.

Associated with Indonesia as a rule of law cannot be realized if state power is still absolute or unlimited, because in the understanding of the rule of law there is a belief that state power must be exercised on the basis of good and fair law (Franz, 2003). So the rule of law can be understood, that the relationship between the ruling and governed is not based on mere power, but based on an objective norm that binds the ruling party. As for what is meant by objective norms is law that not only applies formally but is also maintained when dealing with legal ideas (Franz, 2003).

To be considered a rule of law, a country must have the characteristics of a rule of law. One characteristic of the rule of law is the separation of powers that will be regulated in the constitution. The separation and distribution of power aims to prevent the concentration of power in one hand and to create a balance of power that ensures that functions are carried out optimally, and at the same time prevents executive power from taking experts to other power functions (Franz, 2003). In addition, according to M. Elizabeth Magill, the separation of powers in constitutional provisions can be understood as a way to control state power by separating them into three different powers, and providing guarantees of such separation (Magill, 2001).

Thought about the theory of state power as explained, does not provide an explanation of where the Prosecutor's Office is (the implementing agency for the prosecution power). In the opinion of Beneč Štefan by observing the history of the theory of Separation of powers from that of Montesquieu, it states that Montesquieu in his theory of Separation of powers does not explain where the prosecution system branch is located. Although in the 14th century, the
Royal Prosecutor in France was a public official representing the king, to protect his ownership rights and as a prosecutor in the event of a crime (Beneč, 2003).

The official who carries out the criminal prosecution in the Indonesian criminal law system is called the Prosecutor (Marwan, 2005). The word prosecutor comes from the name of a legal official in the Majapahit kingdom called adhyaksa (Marwan, 2005). Adhyaksa is the name of the position held by Gajah Mada during the Majapahit kingdom whose function was more similar to that of judges in the modern law enforcement system (Marwan, 2005).

Prosecutors in the Indonesian criminal justice system are organized in a state institution called the Attorney General's Office of the Republic of Indonesia. The Attorney General's Office of the Republic of Indonesia is led by the Attorney General. The Attorney General is a high-ranking legal official and acts as a guardian of the public interest (Pope, 2003). The Attorney General is the controller of law and justice enforcement policies within the scope of duties and authorities of the Prosecutors' Office. The Attorney General's authority is exercised with the principle of the Prosecutor's Office as a whole and not inseparable (Law Regulation No. 16 of 2004) so that the Attorney General controls the policy of law enforcement and justice with a centralized pattern towards all Prosecutors in all jurisdictions of the Republic of Indonesia.

In carrying out its functions in the criminal justice system the duties and functions of the Prosecutor are set out in Articles 14 and 15 of the Criminal Procedure Code. Prosecutors with a very dominant function as dominus litis, controlling the case process that determines whether a person can be declared a defendant and submitted to the Court based on legal evidence according to the law, and as an executive ambtenaar executor of the determination and decision of the court in criminal cases (Hamzah, 1984).

In addition to the duties and authorities of the Prosecutor as the public prosecutor the Prosecutor also plays a role in the field of public order and peace (Undang – Undang Nomor 16 Tahun 2004). In addition, prosecutors with special powers of attorney can act both outside and in court for and on behalf of the state or government in civil cases and state administration. In addition, the Attorney General's Office of the Republic of Indonesia also acts as an investigator in a number of specific criminal acts as regulated in the law.

But the prosecutor's office in exercising his authority often gets various forms of intervention from the power. The forms of intervention that caused the controversy included the imposition of serious crimes against H.R. Dharsono, A.M. Fatwa and Sri Bintang Pamungkas who were charged with subversion were only in words, the application of Judicial Review that was contrary to the law (KUHAP) which was heavier than the previous criminal
(formerly a free verdict). The Criminal Code does not know the PK against a free ruling. Another concrete example is the conviction of the PDI who defended the office in the 27 July 1906 incident, while the invaders were not prosecuted and several other cases (Hamzah, 2003). These cases are concrete examples of political intervention in law enforcement (Arief, 1996).

So important is the position of the prosecutor for the process of law enforcement that this institution must be filled by people who are professional and have high integrity. The existence of a prosecutorial institution in Indonesia is regulated in Law Number 6 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. The law states that the authority to carry out state power in the field of prosecution is carried out by the prosecutor's office. In addition to playing a role in criminal justice, the prosecutor's office also has other roles in the field of law, civil and state administration, namely representing the State and government in civil and TUN cases. The prosecutor as the executor of that authority is given the authority to act as a public prosecutor and carry out court decisions and other authorities based on statutory provisions.

3 METHODOLOGY

3.1 THEORY USED

In the opinion of Friedmann, whether or not a successful law enforcement process depends on:

1. Legal substance
   Legal substance is the whole principle of law, legal norms and legal rules, both written and unwritten, including court decisions.

2. Legal structure
   The legal structure is the whole law enforcement institution, along with its officials. Which includes: the police with its police, the attorney's office with the prosecutors, the lawyer's offices with his lawyers, and the court with his judges.

3. Legal culture
   Legal culture is the habits, opinions, ways of thinking, and ways of acting, both from law enforcers and from citizens. Substance and Apparatus alone is not enough for the operation of the legal system. Therefore, Lawrence M. Friedmann stressed the importance of Legal Culture (Lily & Ira, 2001).
The authority of the prosecutor as a drafting investigator uses the theory of authority as the basis for writing. Theory of Authority is the formal power that comes from the power granted by the Act or legislative from executive or administrative power. FPCL Toner believes that government authority in this regard is considered as the ability to implement positive law, and thus can create legal relations between government and citizens Country. Therefore authority theory is divided into 2 (two) ways, namely with attribution and delegation processes.

1. Attribution

Attribution is an authority attached to a position. Authority owned by a government organ in carrying out its government is based on the authority made by the makers of the law. This attribution refers to the original authority on the basis of the constitution (UUD) or statutory regulations.

2. Delegation of Authority

Delegation of authority is the transfer of part of the authority of a superior officer to the subordinate to assist in carrying out his duties and obligations to be able to act on his own.

a. Delegation is the authority that comes from delegating an organ of government to another organ on the basis of laws and regulations.

b. Mandate is authority originating from the process or procedure of delegation from a higher official or body to a lower official (Ridwan, 2007).

C. The Ideal Concept of the Republic of Indonesia Attorney's Office in the Indonesian Administrative System.

Article 24 paragraph (1) of the 1945 Constitution prior to the amendment confirms that the judicial authority is exercised by the Supreme Court and other judicial bodies according to the law. Furthermore, in the explanation that judicial power is independent power, free from the influence of government power.

From the formulation above, it can be seen that the 1945 Constitution did not initially provide a definition of what is meant by judicial authority, Article 24 of the 1945 Constitution only emphasized which body was assigned the task / authority to exercise or implement judicial power. Likewise the explanation in Article 24 does not provide a definition of judicial authority, but only confirms the nature, position and existence of judicial authority, namely as an independent and independent power.

So the 1945 Constitution (original) initially did not set limits on the understanding of judicial power. The limitations on the understanding of judicial authority only came after the issuance of Law Number 14 of 1970 concerning the Principle of Judicial Power which has now
been amended based on Law Number 35 of 1999, and finally replaced by Law Number 4 of 2004.

In Article 1 of Law No. 14/1970 in conjunction with Law No. 35/1999 it is stated that: Judicial power is the power of an independent state to administer justice in order to enforce law and justice based on Pancasila, for the implementation of the State of Law of the Republic of Indonesia.

Furthermore, in article 2 it is emphasized, that: The organizer of the judicial power listed in article 1 is handed over to the judicial bodies and determined by law, with the main task of receiving, examining and judging, as well as completing every case resolved to him.

The formulation is then included in the amendment to Article 24 of the 1945 Constitution the 3rd amendment (November 9, 2001) which confirms the following: 1) Judicial power is an independent power to administer justice to uphold law and justice; 2) Judicial power is exercised by a Supreme Court and a judicial body that is subordinate to the general court, the religious court environment, the military court, the state administration court, and by a Constitutional Court

Noting the editorial of the formulation above, it can be concluded that the Judicial Authority Law No. 14/1970, Juncto Law No. 35/1999 and Law No. 4/2004 and the 1945 Constitution (amendments) emphasize and emphasize the notion of judicial power in a narrow sense. This can be seen from the editors above who put forward the notion of judicial power as the power of an independent state to administer justice so judicial power is identified with judicial or judicial authority. Thus the Law on Judicial Authority and the 1945 Constitution (Amendment) only limits the power of the judiciary in the narrow sense, namely the power to enforce law and justice in the judicial bodies.

Limitation of the definition of judicial power in the narrow sense according to Barda Nawawi Arief should be re-examined because essentially the power of justice is the power of the state in enforcing the law. So the power of justice is synonymous with the power to enforce the law or the power of law enforcement.

The essence of such understanding is actually revealed also in the formulation of Article 1 of Law No. 14/1970 Juncto Law No. 35/1999 concerning Judicial Power, namely in the last sentence which reads:

To uphold law and justice based on Pancasila, for the sake of the implementation of the rule of law of the Republic of Indonesia. Only unfortunately the sentence was not formulated as the essence of the definition of judicial authority, but instead was formulated as the objective of the holding of justice.
According to Barda Nawawi Arief, that goal is actually the essence of judicial authority. Therefore, it can be concluded that the authority of the judiciary as the power to uphold law and justice for the implementation of the rule of law of the Republic of Indonesia (Arief, 2008).

With the broad understanding of judicial power as stated above, judicial power can be interpreted not only as judicial power, but can be interpreted as the power to enforce the law in a law enforcement process.

In the perspective of an integrated criminal justice system (SPP) the power of the judiciary in the field of criminal law covers all authorities in enforcing criminal law, namely the power of investigation, the power of prosecution, the power of prosecuting and the power of the implementation of decisions / crimes. The Attorney General's Office of the Republic of Indonesia is an institution that exercises state power in the field of criminal prosecution.

From the explanation above, it can be concluded that the attorney's office is essentially an integral part of the judicial authority. The Prosecutor's Office as explained in the previous chapter plays an important role in criminal law enforcement. The Prosecutors' Office plays a role in every stage of the criminal justice system.

As the executor of judicial power, the independence of the prosecutor's office must also be manifested in his role in exercising the power of criminal prosecution. Judicial independence must be extended not only to judicial power. Independent judicial power will have no meaning if it only exists in one of the subsystems, namely the power to judge.

In addition, based on several meetings there are important things, namely the existence of the prosecution system in carrying out its role in a country so that it can run well, must be adapted to the culture and history of each country. The Prosecutors' Office as part of executive power is influenced by political and cultural factors of the past history.

In the historical trajectory of Indonesian state administration, the existence of the prosecutor's office as part of the executive is influenced by the history of Indonesian law enforcement which always gets intervention from the authorities. Since the time before the authority of the prosecutor as a law enforcement official was recognized as having a strategic role in the criminal law enforcement system.

The role of the prosecutor is always sought to be politicized for certain political interests. The AGO's past as an executive institution has been proven to have brought the history of law enforcement in Indonesia into an enforcement that is full of the interests of the authorities. As noted in the previous chapter, there were many facts about the efforts of the authorities to intervene in law enforcement by the prosecutors.
In a cultural perspective, putting the Attorney General as a cabinet member or ministerial level official also greatly influences the independence of the Prosecutors' Office.

As stated by Denny Indrayana, the occupation that was experienced by the Indonesian people for centuries created a culture of Indonesian society that was very reckless towards the leadership. The feudalistic character is also experienced by law enforcers such as the Police and the Prosecutors' Office are structurally assisting the president in the cabinet. So that putting the Prosecutors and Police as part of the executive caused congestion in law enforcement in Indonesia.

4 RESULTS AND DISCUSSIONS

The Prosecutors' Office must be repositioned from its position as an executive institution. In addition, Andi Hamzah also suggested that the law regarding the Prosecutor's Office which places the Attorney General's Office as a tool of the government must be replaced with a new law. The Prosecutors' Office must be part of the Supreme Court as a judicial authority whose independence is not interfered with by the executive power. This means that Andi Hamzah believes that the prosecutor's office must be within the scope of judicial authority, not within the authority of the government (Hamzah, 2000).

Whereas Harkristuti Harkrisnowo said that the prosecutor's office had to be independent, Harkristuti did not mention the independence of the Attorney General. In his opinion, the Prosecutor's Office as a law enforcement tool must be formulated firmly in the 1945 Constitution and his organic law for the independence of the Prosecutor's Office (Harkrisnowo, 2000).

Recognizing that the power of prosecution is part of judicial power, the notion of judicial power set out in the 1945 Constitution amendments becomes very necessary to be reviewed. Authority in the field of criminal law enforcement is in fact in an integrated criminal law enforcement system. This integration gives mutual influence and control over each other to institutions that are in the criminal law enforcement system.

Therefore it is necessary to put the power of investigation, the power of prosecution in the chapter of the Judicial Power in the 1945 Constitution if a fifth amendment will be held in the future.

Related to the Independence of the Prosecutor's Office, at the beginning of its formation, all of the Prosecutors' institutions in both the eastern and western parts of the world were not independent. This means that a Prosecutor who handled the prosecution was not free from the
influence of the powers around him, especially the authority of the King / Ruler who gave him the task. In other words it can be agreed that in the beginning the attorney's institution was born from the womb of the king's power (executive) (http://gugumridho.wordpress.com). Now that countries have developed into modern law states, the question of whether the prosecutor's institution should be located still cannot be answered conclusively. The state administration practices of democratic countries in the world also cannot answer this question completely and even add to vague answers. When looking at the position of prosecutors' institutions in various parts of the world, we are increasingly confused because there is no uniform practice. It turns out that there are prosecutors' institutions in various parts of the world that place the Prosecutors' Office under the Executive, Legislative and Judiciary.

Prosecutors who are positioned as executives, for example, can be found in France, the Netherlands Chech Republic, Japan, and including Indonesia. This type of prosecutor's office is also known as the France Prosecution Service model. It is so named because it was indeed France who spearheaded the Prosecutor's position placed under the executive. From France passed down to the Netherlands, as well as from the Netherlands down to Indonesia through the dark history of colonialism. Although it sounds strange, there are also prosecutors' institutions that are placed under the Legislature / Parliament. This model can be found in the countries of Hungary and Macedonia. In Hungary, for example, the Prosecutor's Office is held accountable to Parliament and is required to report regularly the activities of the Prosecutor's Office to Parliament. The report is debated in parliament and the Attorney General must answer all questions that arise. Finally, the Prosecutors' Office is part of the judicial or judicial authority. Prosecutors who were placed as part of judicial authority can be found in the Italian and Bulgarian prosecutors. In Italy, for example, the constitution clearly states that judicial power is exercised by magistrates consisting of judges and prosecutors. Likewise prosecutors in Bulgaria, in the aftermath of the socialist state's confusion, Bulgaria modeled on the system used in Italy, namely the Prosecutor's Office which was previously placed under the executive was transferred to the judiciary (Peter, 2004). With the variety of prosecutors' positions around the world, the question of the ideal prosecutor's location has also not been answered. In essence, there is not a single view that requires the Prosecutor's Office to be placed in which branch of power, whether executive, legislative or judicial. Even the latest developments have constitutional interests (constitutional importance) to establish a fourth pillar of power that is independent and stands alone outside the previous three powers. This fourth power is the pillar that functions as an external control for the three previous pillars. This fourth pillar can consist
of Prosecutors’ Institutions, Judicial Commissions, and Ombudsmen (Relationship between the Public Prosecutor and the Minister of Justice).

The question of independence must actually be divided into two aspects, namely; (1) institutional independence (institutional) and (2) functional independence. Independence institutionally means that the prosecutor's office is placed in an institutionally independent position. The Prosecutors' Office should be better placed independently institutionally and free from any power. But the most important thing from the issue of independence is not institutional independence but functional independence. Functional independence is that the Prosecutor can be free and independent in carrying out his duties to prosecute or not demand.

As stated above, if the AGO is not institutionally independent, it is not a problem, as long as the prosecutor is functionally free to carry out its functions without intervention. However, if it is considered, if it is considered that the position of the prosecutor's office in the structure of the government system can affect his independence and professionalism in carrying out all his duties and authorities, then it is also necessary to pay attention to the placement of the prosecutorial institution so that honest justice can be created without intervention from any party. The prosecutor's position as an executive institution is maintained until the reform order, whereas one of the legal reform agendas is reforming legal institutions and laws. The prosecutor's position in article 24 paragraph (3) of the 1945 Constitution is only to be made as bodies related to judicial authority.

The position and authority of the prosecutor's office in the 1945 Constitution are not explicitly mentioned as an integral part of the judicial power. Whereas in the international constitutional position of the judiciary must be guaranteed by the Constitution. The United Nations Basic Principles on Independence of the Judiciary issued by the 1985 UN General Assembly in article 1 states: The independence of the court must be guaranteed by the state and the constitution or state law.

It is the duty of all government institutions and others to respect and observe judicial independence. Judicial independence must be guaranteed by the State and enshrined in the Constitution or state law. It is the duty of all governments and other institutions to respect and observe judicial independence (Ardila, 2010). The regulation of the prosecutor's office in the constitution of a country is not a new thing, because it turns out that in this world there are almost 90 (ninety) countries that regulate the Attorney’s institution and / or the Attorney General in the constitution.

Basically, in the principle of the rule of law the existence of judicial power is a power that aims to oversee the running of the government so that it continues to run on the legal...
framework. The existence of an independent judicial authority is a guarantee for the rule of law. The independence of law enforcement agencies will avoid any deviation from the function of law enforcement and justice institutions as a means of maintaining power by a certain regime. Seeing this, the strategic role of law enforcement agencies in the constitutional system and realizing the rule of law is crucial. Therefore the existence of state institutions that exercise judicial power is included in the category as the main state organ (auxiliary organ).

As a major state organ, the source of judicial authority attribution should be clearly regulated in the constitution. The attribution of authority held by the Supreme Court and the Supreme Audit Board is explicitly regulated in the 1945 Constitution. The direct attribution of the constitution places the existence of the Supreme Court and the Supreme Audit Board on the same level as the executive and legislative institutions. So that the supervisory function held by the Supreme Court and the Supreme Audit Agency is balanced in the principle of the distribution of power that is applied in the Indonesian state. This situation creates checks and balances between state institutions. As an institution that is equally born and gets the attribution of authority from the constitution, the hierarchy of the Supreme Court and BPK is not lower than the President (Executive) and the DPR (Legislative). On the other hand, Article 2 of Law Number 16 of 2004 concerning the Prosecutor's Office stated that the Prosecutor's Office is a government institution that exercises state power in the field of prosecution as well as other authorities based on the law. Government power in the 1945 Constitution is defined as government power in the narrow sense that is as the power of the President. In the indicators contained in the process of selecting and appointing the leadership of a judicial institution is an important indicator for creating independence. The appointment and dismissal process is included in the selection and appointment process indicator. In the International Bar Association of Judicial Independence in the Judges and Executive chapter in article 5 the point is expressly stated as follows: The Executive shall not have control over judicial functions. The executive must not have control over the functioning of the judiciary recognized as a principle of international law. Executive intervention will have implications for the freedom of functioning of the judiciary in upholding law and justice.

In Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia regulates the existence of the Attorney General. Article 19 states that 1) the Attorney General is a state official. 2) The Attorney General is appointed and dismissed by the President.

With the position of the Attorney General who is appointed and dismissed by the President, the Attorney General is not Independent. Politically, the Attorney General is a minister. In a presidential system the minister is a presidential aide and has full responsibility
for the President. The President then at any time with the power he has can control the power of criminal prosecution. Not only the Attorney General in fact all the Prosecutors in Indonesia. Because the prosecutor is one and inseparable and the prosecutor conducts prosecution and is responsible through a hierarchical channel to the Attorney General. Many facts show that in handling a case of the Attorney General’s Office is very vulnerable to intervention by the executive power. One of the things that attracted attention was the distribution of transcripts of the recorded conversations of President B.J Habibie to Attorney General Andi Muhammad Ghalib. During the conversation the President was seen regulating efforts to investigate the alleged corruption crime committed by former President Suharto. When it was seen that the examination by the prosecutor’s office against former President Suharto was merely a formality and there was no intention of raising the examination to the level of investigation.

The third weakness is regarding the dismissal of the Attorney General. In Article 22 paragraph (1) it is stated: Attorney General is honorably dismissed from his position because: 1) died; 2) own request; 3) persistent physical or spiritual pain; 4) term of office ends; 5) no longer fulfills one of the conditions referred to in Article 21. At point d it is stated that the Attorney General stops when his term of office expires. However, in the explanation of this article there is no detailed explanation of the term of office of the Attorney General. This situation has the potential to eliminate the independence of the prosecution power. The Attorney General can be dismissed at any time depending on the wishes of the President. The process of appointing a Attorney General that only involves the President actually reduces the importance of the Prosecutor as a party representing the public interest in law enforcement. As a legal representative representing the public interests of the Attorney General, described by Tjeerd Sleeswijk Visser as someone who has an honest personality, has no political interests, has a high moral and ethical standard. The attorney general is also a figure that is respected by the community and acts on behalf of the community. What is described by Tjeerd Sleeswijk Visser proves that the position has a very important meaning for law enforcement (Tjeerd, 2005).

According to Suhadibroto, the important role of the Attorney General resulted in the Attorney General having to be independent and professional. The importance of this has even become a serious thought by the international community. At the meeting of the Attorney General in Seoul, South Korea in September 1990 which was attended by 25 countries throughout the Asia Pacific, producing criteria for an independent and professional Attorney General, namely that the Attorney General was (Tjeerd, 2005):

1) Attorney general is man of Law
2) Independent attorney general generates economic prosperity, promotion of welfare, political stability and development of democracy.

3) The Attorney General is the chief legal officer;

4) The Attorney General is not subjects to the direction or control of any other person or authority. He is essentially a man of law.

The above criteria position the Attorney General independently and not under the control of any institution or authority. In this case, the Attorney General is even referred to as a man of law or in other words the Attorney General is a true legal servant (Tjeerd, 2005). Therefore, based on Article 19 paragraph (20) jo Article 22 of Law Number 16 of 2004 it can be concluded that the Attorney General is not Independent. This is because the president is appointed and dismissed by the President. The position of the Attorney General as such can lead to two problems which in litterateur are called dual obligation and conflicting loyalties.

In Government science, the Attorney General as a subordinate of the President must be able to do 3 (three) things (Marwan, 2005), namely:

1) Describe instructions, instructions and several other policies from the President.

2) Conduct instructions, instructions and various policies of the President that have been described.

3) Securing instructions, instructions and various policies of the President which have been implemented temporarily. Based on Article 19 paragraph (20) jo Article 22 of Law Number 16 of 2004 it can be concluded that the Attorney General is not Independent. This is because the president is appointed and dismissed by the President. The President's sole dominance in determining the position of Attorney General is very different in the process of determining the members of the Supreme Audit Board (BPK), the Supreme Court (MA), and the Corruption Eradication Commission (KPK) which incidentally is a judicial institution. The determination of the members of the three state institutions is not only dominated by one institution. But it involves the President and Parliament. Specifically for the position of Chief Justice at the Supreme Court, the process of selecting his position involved the Judicial Commission.

Likewise, in determining the leadership of the institution. The Chief Justice of the Supreme Court is directly elected by the justices as well. CPC. While the head of the KPK is determined by the majority vote in the process of selecting members in the DPR. B. The ideal concept of the Republic of Indonesia Attorney's Office in the constitutional system of the Republic of Indonesia. Article 24 paragraph (1) of the 1945 Constitution prior to the amendment confirms that the judicial authority is exercised by the Supreme Court and other
judicial bodies according to the law. Furthermore, in the explanation that judicial power is independent power, free from the influence of government power.

From the formulation above, it can be seen that the 1945 Constitution did not initially provide a definition of what is meant by judicial authority, Article 24 of the 1945 Constitution only emphasized which body was assigned the task / authority to exercise or implement judicial power. Likewise the explanation in Article 24 does not provide a definition of judicial authority, but only confirms the nature, position and existence of judicial authority, namely as an independent and independent power.

So the 1945 Constitution (original) initially did not set limits on the understanding of judicial power. The limitations on the understanding of judicial authority only came after the issuance of Law Number 14 of 1970 concerning the Principal Judicial Power which has been amended today under Law Number 35 of 1999, and finally replaced by Law Number 4 of 2004.

54 In Article 1 Law No. 14/1970 jo Law No. 35/1999 emphasized that: Judicial power is the power of an independent state to administer justice in order to enforce law and justice based on Pancasila, for the implementation of the State of Law of the Republic of Indonesia. Furthermore, in article 2 it is emphasized, that: The organizer of the judicial power listed in article 1 is handed over to the judiciary bodies and is determined by law, with the main task of receiving, examining and adjudicating, and completing every case resolved to him. The formulation is then included in the amendment to Article 24 of the 1945 Constitution the 3rd amendment (November 9, 2001) which confirms the following:

1) Judicial power is an independent power to administer justice to uphold law and justice.

2) Judicial power is exercised by a Supreme Court and a judicial body that is subordinate to the general court, the religious court environment, the military court, the state administration court, and by a Constitutional Court. Law No14 / 1970 Juncto Law No. 35/1999 and Law 55 No4 / 2004 and the 1945 Constitution (amendments) emphasize and emphasize the notion of judicial power in a narrow sense.

This can be seen from the editors above who put forward the notion of judicial power as the power of an independent state to administer justice so judicial power is identified with judicial or judicial authority. Thus the Law on Judicial Authority and the 1945 Constitution (Amendment) only limits the power of the judiciary in the narrow sense, namely the power to enforce law and justice in the judicial bodies.

Limitation of the definition of judicial power in the narrow sense according to Barda Nawawi Arief should be re-examined because essentially the power of justice is the power of the state in enforcing the law. So the power of justice is synonymous with the power to enforce
the law or the power of law enforcement. The nature of such an understanding is actually also revealed in the formulation of Article 1 of Law No. 14/1970 Juncto Law No. 35/1999 concerning Judicial Power, namely in the last sentence which reads: To uphold law and justice based on Pancasila, for the implementation of the rule of law of the Republic of Indonesia. Only unfortunately the sentence was not formulated as the essence of the definition of judicial authority, but instead was formulated as the objective of the holding of justice.

According to Barda Nawawi Arief, that goal is actually the essence of judicial authority. Therefore, it can be concluded that the authority of the judiciary as the power to uphold law and justice for the implementation of the rule of law of the Republic of Indonesia (Arief, 2008). With the broad understanding of judicial power as stated above, judicial power can be interpreted not only as judicial power, but can be interpreted as the power to enforce the law in a law enforcement process. In the perspective of an integrated criminal justice system (SPP) the power of the judiciary in the field of criminal law covers all authorities in enforcing criminal law, namely the power of investigation, the power of prosecution, the power of prosecuting and the power of the implementation of decisions / crimes. The Attorney General's Office of the Republic of Indonesia is an institution that exercises state power in the field of criminal prosecution.

From the explanation above, it can be concluded that the attorney's office is essentially an integral part of the judicial authority. The Prosecutor's Office as explained in the previous chapter plays an important role in criminal law enforcement. The Prosecutors' Office plays a role in every stage of the criminal justice system. As the executor of judicial power, the independence of the prosecutor's office must also be manifested in his role in exercising the power of criminal prosecution.

Judicial independence must be extended not only to judicial power. Independent judicial power will have no meaning if it only exists in one of the subsystems, namely the power to judge. In addition, based on several meetings there are important things, namely the existence of the prosecution system in carrying out its role in a country so that it can run well, must be adapted to the culture and history of each country.

Whereas Harkristuti Harkrisnowo said that the prosecutor's office must be independent, Harkristuti did not mention the independence of the Attorney General. In his opinion, the Prosecutor's Office as a law enforcement tool must be formulated firmly in the 1945 Constitution and his organic law for the independence of the Prosecutor's Office (Harkrisnowo, 2000).
Recognizing that the power of prosecution is part of judicial power, the notion of judicial power set out in the 1945 Constitution amendments becomes very necessary to be reviewed. Authority in the field of criminal law enforcement is in fact in an integrated criminal law enforcement system. This integration gives mutual influence and control over each other to institutions that are in the criminal law enforcement system. Therefore it is necessary to put the power of investigation, the power of prosecution in the chapter of the Judicial Power in the 1945 Constitution if a fifth amendment will be held in the future.

5 CONCLUSION

The Ideal Concept of the Republic of Indonesia's Attorney's Office in the Indonesian Constitutional System where the Attorney General's Office must be repositioned from its position as an executive institution. The Prosecutor's Office as a tool of the government must be replaced in the law, the Prosecutor's Office must be part of the Supreme Court as an independent judicial power not interfered by the executive power.

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