The Redefinition of Prosecution Power in Indonesia

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Abstract. The state should not be prevented from providing its citizens with legal protection. The state and society require law enforcement agencies to carry out prosecutions in all courts in the context of law enforcement and justice in the context of a democratic rule of law. This concept is also governed by the Ghana Constitution, which states that the Attorney General has the right to speak in all Ghanaian courts. Unfortunately, Indonesia's Prosecution Law and Draft Prosecutor Law limit the definition of prosecution to the criminal field. In fact, the Prosecutor's Office is given authority to convene in civil and state administrative cases under various existing laws. Prosecution is a process in which the Prosecutor's Office asks the judge to decide and try criminal and illegal acts. With such a prosecution structure, it is necessary to redefine the state's power in the field of prosecution, which is not limited to the criminal field, because the prosecution process is also known in the civil and administrative fields.

Keywords: Redefinition · State Power · Prosecution

1 Introduction

This essay expresses the author's worry that laws and regulations are restricting the actual state power being exercised by the Attorney General's Office of the Republic of Indonesia in the area of prosecution as a political output. The criminal field and the criminal case delegation procedure are the only components of prosecution that are separated. The fact that the Prosecutor's Office draft Law governs the same issue just makes this fear worse. Any legal matter or legal issue pertaining to the interests of the community and the state must be prosecuted by a law enforcement agency that represents the community and the state in court in the context of a democratic legal state. In interpreting the court, it is not only limited to criminal cases, but also to other cases, because the purpose of prosecution as part of law enforcement is to ensure law enforcement and justice. Indeed, prosecution is the state's power to sue or not sue in order to protect the interests of the state and society. The state should not be prevented from providing its citizens with legal protection.

Access to prosecution should not be interpreted solely as a process of law enforcement in the criminal field, because the essence of prosecution is to ensure the enforcement of the rule of law and justice. A prosecution process consists of civil and state administration lawsuits and applications. This is noticeable from the content and meaning of

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the lawsuit, application letter, and conclusion letter, which includes writing a petitum, which means to demand or ask a judge to try something. Not to mention, the Prosecutor's Office's authority is based on existing laws in the civil and state administration fields. This emphasizes the importance of prosecution not only in the criminal field, but also in carrying out prosecutions in all courts in Indonesia.

2 Literature Review

In order to obtain a complete, accurate, and based on Indonesian law enforcement politics, the authors are interested in defining state power in the field of prosecution that applies in Indonesia by releasing the character of positive legal norms that are thought to be shackled. As a result, the focus of this writing is on two problem formulations: 1) What is the authority of the Prosecutor's Office to convene in court under positive law? 2) What is the ideal definition of state power in the prosecutorial field in Indonesia?

3 Methodology

In addition to strengthening the Prosecutor's Office as a law enforcement organization with integrity, independence, and autonomy in carrying out prosecutions in all courts, the goal of this paper is to explain the ideal definition of state power in the field of prosecution and to provide alternate definitions that can be used in the Prosecutor's Bill, which is currently being considered. This is still being debated in the legislature.

4 Discussion

4.1 The Prosecutor's Office as the Executor of State Power in the Prosecutorial Field

Nothing is a coincidence. The expression of the nation's founding fathers during the procession of the appointment and inauguration of the Attorney General approximately 76 (seventy-six) years ago, to be precise on August 19, 1945, was not a celebration, but rather proof that the idea of state life based on law and democracy received priority in the thoughts and attention of the republic's founding fathers. In his mandate, President Ir. Soekarno stated, "…….. The establishment of a Special Service led by an Attorney General is to defend this newly born country against attacks from within and without for the sake of public order and peace." [1] This mandate legitimizes the Attorney General's position as the head of the Prosecutor's Office, strategically as a guardian of the newly formed Indonesian state's sustainability. The Prosecutor's Office is a part of the history of the Unitary State of the Republic of Indonesia, and it is an institution desired by the people in order to ensure the long-term viability of the newly independent state. Since then, there have been several laws and regulations governing the Prosecutor's Office's duties and functions [2], all of which have granted the Attorney General's Office permission to exercise state powers in the area of prosecution and other legal authorities.

The term "state power" in this context refers to two (two) things: first, the authority granted to the prosecutor's office through the attorney general and the prosecutor in

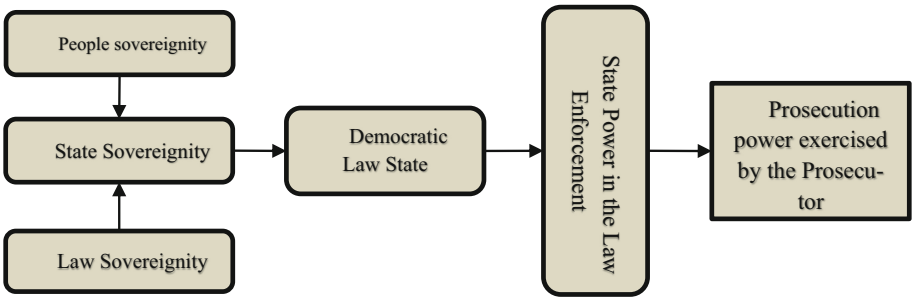

Fig. 1. The Prosecutor's Office's Relationship with the Democratic Law State.

his or her capacity as public prosecutor; and second, the fact that prosecution is a state power. The prosecution's power is inextricably linked to the concept of democratic rule of law that Indonesia has adopted [3]. To fulfill the public interest in access to justice, the community cedes some of its sovereignty to the state, and the law limits that power in the form of authority to prevent the state from arbitrarily wielding the power it has [4]. The authority granted by this law later becomes the legitimacy for state institutions to enforce the law, including the Attorney General's Office.

A democratic rule of law wants the state to be built on both a legal and a democratic system, with both performing complementary functions. The people give the state the authority to regulate, protect, and safeguard the security and property of its citizens in the criminal, civil, and administrative spheres. When people's interests are disturbed or violated as a result of crimes and unlawful acts that harm the state, society, and individuals, it is the state's responsibility to provide law enforcement against the perpetrators of these acts. The prosecution power wielded by the Prosecutor's Office is the authority granted by the people to enforce the law and protect the people's interests. The diagram below depicts the relationship between the Prosecutor's Office as a prosecution institution born from popular power (Fig. 1).

The Prosecutor's Office has the authority granted by the public to uphold the law and safeguard the rights of the people through prosecution. As a result, the state should not be restricted in exercising its noble obligations by having limited authority in the area of prosecution.

4.2 The Authority of the Prosecutor's Office in Indonesia

It is undeniable that Indonesia requires institutions that are experts in prosecuting for the sake of the state and society. This legal need is also used as a legal policy to grant the Prosecutor's Office authority to carry out prosecutions other than criminal prosecutions. The following are the powers attributed to the Prosecutor's Office by various existing laws and regulations to act in court on behalf of the state or government:

Criminal Law Sector: The ability to prosecute criminal cases has become a hallmark of the Prosecutor's Office in several countries, including Indonesia. The Prosecutor's Office, as a government institution, has the authority to prosecute criminal cases under

Law Number 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia (hereinafter referred to as the Prosecutor's Law). Similarly, Law No. 8 of 1981 on the Criminal Procedure Code (hereinafter referred to as the KUHAP) confers on the prosecutor the same authority as the public prosecutor. However, once again, in Indonesia, the definition of prosecution is limited to the process of delegating criminal cases. Although the prosecution function in the criminal field is normally separated from other functions at the pre-prosecution and investigation stage, the prosecution carried out by a prosecutor as a public prosecutor cannot be separated from the functions of investigation, investigation, pre-prosecution, implementation of judge's determination, proof and verification in trial, and other legal actions that support evidence as the core business of the prosecution function. The ratio legis is because the prosecutor is the one who will be held accountable for the series of actions in court, as the public prosecutor as postulated "actori incumbit onus probandi", which means that whoever accuses is the one who is required to prove [5]. As a result of the dominus litis principle, the prosecutor, as the public prosecutor, is referred to as the case's owner [6].

The Public Prosecutor, as an official charged with the burden of proof, will use the art of proof to prove the description of the defendant's guilt and unlawful acts as referred to in the indictment, which is prepared based on the case files resulting from the investigation. The public prosecutor still requires investigative actions, such as confiscation and searches, during the trial process. Similarly, legal remedies are part of the prosecution process because the public prosecutor is still trying to persuade the judge at this point. If the public prosecutor is successful in proving the defendant's guilt, the defendant must be found guilty and sentenced. If, on the other hand, the defendant is unable to prove his innocence, he must be released under the postulate "actore non prabante reus absilvutur" [7].

Along with having the power to bring charges, the public prosecutor also has the power to stop them if there is insufficient evidence, the incident does not prove to be a crime, or the case is closed legally due to the death of the suspect, ne bis in dem, abolition, or reconciliation. It also regulates special powers that are only owned by the Attorney General (exclusive authority) at this stage of prosecution, such as setting aside cases in the public interest or seponering and making cassation in the interests of law to the Supreme Court in criminal, civil, and state administrative cases. The phrase "public interest in seponering" refers to the interests of the state, the nation, and the general public. The Attorney General may only use the concept of opportunity after taking into account the recommendations and viewpoints of the state authority agencies involved in the case. Meanwhile, legal interest refers to the reasons for filing a cassation in general without causing harm to the convict/defendant.

Because of the attribution authority granted to the Prosecutor's Office, as well as the Attorney General's sole authority in carrying out prosecutions or not prosecuting, the Prosecutor's Office occupies a central position in the criminal justice system. Prosecution in the criminal field essentially means the public prosecutor's action of asking the judge to impose a sentence on the defendant who is considered to have committed a crime or the public prosecutor's action of not prosecuting based on legal reasons determined by legislation.

Civil Law Sector: The Public Prosecutor's Office's authority in the civil sector is governed by Article 30 paragraph (2) of the Law on the Prosecutor's Office, which states that the Prosecutor's Office has special powers. According to this, both inside and outside of court, the prosecutor's office may act on behalf of the state or government. The Prosecutor's Office's authority in the civil sphere is executed by the State Attorney General. The Prosecutor's Office's civil sector authority is based on whether or not special powers are granted by the government or state/regional-owned enterprises, as stated in the formulation of Article 30 paragraph 2 of the Prosecutor's Law. The Prosecutor's Law states that the state, government, or BUMN are not required to hire a State Attorney in civil and state administrative cases, but they "can" do so because the word "can" appears in Article 30 paragraph (2) jo. To resolve the civil interests of the government as the granter of special powers, the State Attor-ney's role as a special power of attorney for the government or other legal entities under the government includes actions both in and out of court. Legal assistance, as it is used in practice, describes the actions taken by the Prosecutor's Office through the State Attorney with special authority.

Furthermore, there is attribution authority granted by law outside the Prosecutor's Law to the Prosecutor's Office through state attorneys in the civil sector to file: a) civil lawsuits in corruption cases whose investigations have been terminated due to insufficient evidence, despite the fact that state financial losses have already occurred; b) civil lawsuits in cases of criminal acts of corruption; c) Civil lawsuits in cases of criminal acts of corruption whose prosecution was terminated because the defendant died, despite the fact that the state had suffered financial losses; d) Civil lawsuits against convicts/heirs of criminal acts of corruption on their assets suspected of being the proceeds of criminal acts of corruption that have not been confiscated after a court decision has permanent force. e) An application for annulment of marriage that does not meet legal requirements; f) An application for bankruptcy of a legal entity; g) An application for cancellation of registration of trademark rights and patents; h) Application for the dissolution of limited liability companies and foundations; i) Civil lawsuits for payment of replacement money; j) Request that the Heritage Hall be ordered to investigate the assets and interests of a person who leaves his residence without appointing a representative; k) Application for a father/mother to be released from his authority as a parent; l) Application for the dismissal of a guardian of a minor; and m) Application for the appointment of a replacement administrator if the heir administrator dies. Law enforcement is the term used to describe a series of actions taken by the prosecutor's office through the state attorney's attorney, specifically the task of the state attorney's attorney to file a lawsuit or application to the court in the civil sector as specified by laws and regulations in order to maintain legal order, legal certainty, and protect the interests of the state and government, as well as rights. In essence, state attorneys carry out law enforcement in the context of legal subjects both people and businesses implementing laws and regulations.

The attribution authority granted to the Prosecutor's Office through the Attorney General's Office is based on statutory regulations other than the Prosecutor's Law and is different from the formulation of Article 30 paragraph (2) of the Prosecutor's Law in that it can be used without a special power of attorney. This is a result of the use of this authority in relation to law enforcement. In addition, when referring to the provisions of Article 34 of Law Number 31 of 1999 on the Eradication of Criminal Acts of Corruption, which states that, in the context of recovering state financial losses as part of the state's

interest, state attorneys can file a civil lawsuit [8] then based on the postulate of "ubi eadem ratio ibi idem lex, et de similibus idem et judicium" which means if there are the same things, for the same legal reasons, then the same law applies, In the interest of recovering other state losses, such as environmental losses and losses due to forest destruction, as part of the state's interest, the Attorney General's Office through the state attorney general may also file a civil suit for the state interest without special powers. In the civil sector, the Prosecutor's action through the Attorney General means that the state attorney's attorney asks the judge to make decision on the defendant/respondent who is suspected of committing an unlawful act and in the context of recovering state financial losses.

State Administration Sector: In keeping with Article 30 paragraph 2 of the Prosecution Law, which grants the Prosecutor's Office responsibility not only in the civil sector but also in the area of state administration, the Prosecutor's Office has the specific authority to act for and on behalf of the state or government both within and outside of the court. State attorneys carry out the prosecutor's authority in the field of state administration. Speaking of state administration, at least as it relates to the subject of the state administrative dispute, the State Administrative Decree. Indeed, according to the State Administrative Court's Procedural Law, the government is the defendant who issues the KTUN. Thus, when representing the government, the State Attorney acts as a defendant/defendant of intervention, including when the Prosecutor's Office becomes a defendant.

In addition to the authority to convene at the State Administrative Court, the Attorney General's Office may convene at the Constitutional Court through the Attorney General. If a political party adheres to communism/marxism/leninism, commits actions and the consequences of their actions that are contrary to the constitution, the government, represented by the President, may appoint the Attorney General to act as the applicant's sole legal standing in submitting the dissolution of the political party to the Constitutional Court. The KTUN, which was later revoked in the appeal for the dissolution of political parties at the Constitutional Court, is the legal justification for the Minister of Law and Human Rights' Decree that recognizes political parties as legal entities of political parties. In the event that a political party violates the Constitution, the Attorney General may submit a petition to the Constitutional Court asking that the party be disbanded and have its legal entity status revoked. The petition must be submitted no later than 7 (seven) working days after the decision is made, and it must be published in the State Gazette of the Republic of Indonesia no later than 14 (fourteen) days after the decision, disbanding of the right to life of political parties and the use of party symbols throughout Indonesia, dismissal of all members of the People's Legislative Assembly and Regional People's Representative Council who come from disbanded political parties, prohibition of former administrators of disbanded political parties from carrying out political activities, as well as expropriation by the state of the assets of political parties. Which was disbanded. The request made by the Attorney General is to uphold the constitution and save democracy (saving democracy).

4.3 The Ideal Definition of Prosecution Power in Indonesia

In the interest of the state and law enforcement, it is emphasized that the prosecutor's office can bring criminal charges alongside lawsuits or applications in civil and state administrative cases. This is due to the prosecutor's office's power in the legal, administrative, and criminal realms. The prosecutor's office has authority under the Prosecutor's Law and current statutory provisions. It is becoming clear that the prosecutor's office is expected by the state to act in order to defend the state's interests by carrying out investigations, lawsuits, and demands. Crimes committed in the criminal realm may be prosecuted by the prosecutor's office. The public prosecutor, acting on behalf of the prosecutor's office, will ask the judge to find the defendant guilty of the alleged crime. The prosecutor's office has the right to bring a civil lawsuit or make an application for compensation for an illegal act. The Prosecutor's Office, through the state attorney's attorney, filed a lawsuit or application asking the judge to rule that the defendant committed an unlawful act and compensate for the loss the defendant's unlawful act caused. The Prosecutor's Office has the authority to ask the Constitutional Court to dissolve a political party in matters of state administration. The Prosecutor's Office, through the Attorney General, has asked the Constitutional Court to dissolve a political party because it adheres to communism/marxism/lenimism, commits actions and the consequences of their actions that are contrary to the Constitution.

Looking at the anatomy of the prosecution, lawsuit, and application, and despite the fact that each has its own procedural law, they all lead to a request for a judge to try. The request is a claim that is made to the judge. Thus, prosecution should not be interpreted solely as a process of enforcing the rule of law and justice in the criminal field, because the essence of prosecution is to ensure the rule of law and justice. Suits and petitions in civil, state administration, and constitutional courts constitute the prosecution process. This can be seen in lawsuits, petitions, and conclusions where the word petitum means "demanding or asking a judge for something to be tried." As a result, the scope of prosecution is not limited to the criminal field, but can also include prosecutions in all courts. This is depicted in Fig. 2.

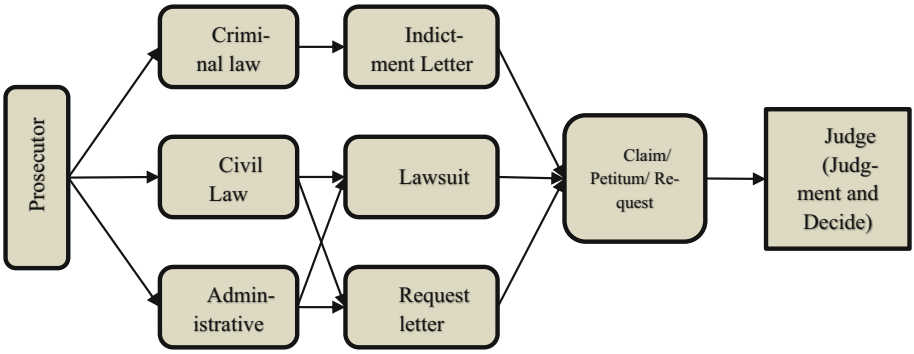

Fig. 2. The Authority of the Prosecutor's Office in Prosecuting in Criminal, Civil, and State Administration sector.

The formulation of the authority to prosecute in all courts can also be found in Ghana's Constitution, in Article 88 number (6), which states that "the Attorney-General shall have audience in all courts in Ghana," which means that the Attorney General can speak in all courts in Ghana. The authorities of the Ghanaian Prosecutor's Office and the authorities of the Indonesian Prosecutor's Office are similar in that they have the authority to prosecute criminal, civil, and state administrative cases. This is also what underpins the Attorney General's exclusive authority to file an appeal in the interests of the law as an extraordinary legal remedy not only in criminal cases, but also in civil and state administrative cases. This normative series bolsters the argument that the Prosecutor's Office has the authority to prosecute in all courts on behalf of the state. In fact, prosecution must be interpreted as the Prosecutor's decision to prosecute or not prosecute in all courts. The state should not be prevented from enforcing the law and providing the community with legal protection. Because this runs counter to the stated purpose of the state, which is to enforce the law and protect the interests of the community.

In addition, in the perspective of a single prosecution system, the Prosecutor's Office is the only institution authorized to prosecute [8], so that the prosecution carried out by the state through the government in court, must coordinate with the Attorney General as the highest public prosecutor. This can be seen in the prosecution of criminal cases. With the new Corruption Eradication Commission Law and the establishment of the Young Attorney General's Organization for Military Crime, then the prosecution in the criminal field will run in harmony and coordination, under the Attorney General. This should also be done in government prosecutions in the fields of civil and state administration. The goal of implementing the single prosecution system is to create a just prosecution, that is, a prosecution that adheres to the principles of equality before the law and non-discrimination, so that there is no disparity in prosecution.

The prosecutor's office's ability to assist the government with legal matters with special powers both inside and outside of court is not in the least bit diminished by the prosecutions it has conducted in the areas of criminal, civil, and state administrative law. The prosecutor's office, as a government entity, has the power to help the government accomplish the state's objectives because the government's interests are also the state's interests. Similarly, the Prosecutor's Office's position in the executive does not eliminate the Prosecutor's Office's independence and independence to carry out prosecutions on behalf of the state rather than the government. Prosecution is a state power granted to the Prosecutor's Office to enforce the law and protect the state's and society's interests.

5 Conclusion

Based on the discussion, it is possible to conclude that the Prosecutor's Office has the authority under positive law to carry out prosecutions in the criminal, civil, and state administrative fields. Prosecution power is the state's ability to sue or not sue in all courts. The prosecution power's purpose is to enforce the law and safeguard the interests of the state and society. As a result, it is hoped that the Prosecution Bill, which is currently being debated in the legislature, will include such a definition of prosecution and will not limit the scope of prosecution to only the criminal field, but will also include the civil and state administrative fields.

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