



# Strengthening the independence of the Attorney General's Office of the Republic of Indonesia

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**Abstract.** In carrying out its functions, duties and authorities, the Attorney General Office of the Republic of Indonesia as a government agency that exercises state power in the field of prosecution must be able to realize legality, legal certainty, independence, objectivity, proportionality, fairness and efficiency. In fact, the Attorney General Office having challenge and potentially facing political interfere from other stakeholder. This research will focus on theme the independence of the Attorney General Office from political budgeting (the sub-theme of creating other legitimate revenue and manage budgeting independently). The other legitimate revenue may be originated from the legal related services (other than related to criminal case)), including to utilise such fund for rehabilitation and restoration purposes. The research method used is qualitative with type of socio-legal studies. This research is found and highlighted that the Attorney General Office potentially able to increase its revenue and having flexibility to manage it. There are three factors support this matter, namely (1) authority of the Attorney General Office are various and broad, (2) the Attorney General Office is a government agency that could establish a public service agency and (3) the purpose of fund could be utilised for rehabilitation and restoration purposes.

**Keywords:** Sub-Agency, Independency, Attorney General Office

## 1. Introduction

Attorney General is leader and highest person in charge for the Attorney General's Office who leads and controls the implementation of the duties, powers of the Attorney General, and other tasks assigned by state. In carrying out his duties, Article 18 of Law no. 16 of 2004 concerning the Attorney General of the Republic of Indonesia as amended by Law no. 11 of 2021 ("Law 16/2004") provides an Attorney General is assisted by a Deputy Attorney General who forms a unitary element of leadership and several Junior Attorney Generals as auxiliary elements of the leadership.

The Attorney General Office is part of judiciary power in Indonesia. Separation of powers governmental system through Indonesia constitutional law consist of a president is holding power for executive organisation, people consultative assembly that consist of member from house of representative and local council as the representatives of society (legislative) and a supreme court holding power for

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judiciary, including Attorney General. In addition, it is other power to check a budgeting and expenses of those high power, namely supreme auditor (*badan pemeriksa keuangan*). This separation power has been established since the independence of Indonesia from year of 1945.

Article 2 of Law 16/2004, the Attorney General shall carry out its task and function independently. The related independent function, Article 37 of Law 16/2004 provides the Attorney General must be responsible in carrying out the prosecution independently for the justice and conscience purpose. Attorney General's responsibility must be reported to President and House of Representatives in accordance with accountability principle on its function. Furthermore, the Attorney General office in Indonesia could not be separated as part of government organisation where its employee status as a civil servant. All cost and budgeting to implement its function are originated from the state budget and expenditure (*anggaran pendapatan dan belanja negara* or the "APBN"). The APBN process it involves various ministries (at least ministry of national development planning and ministry of finance) up to the House of Representatives. This process to obtain the allocated budget may open a conflict-of-interest matter in relation to the Attorney General function.[1]

Based on the above reporting and financial system, there are (at least) three (3) main institution/ power that potentially conflict to an independent role of the Attorney General, namely President, House of Representatives and Judges.

This journal will examine the role and functions of the Attorney General's Office in the Republic of Indonesia as part of judiciary power in order to achieve flexibility in budgeting. Such flexibility is assumed to establish more independence of Attorney General and provide more service to community.

## **2. Problems**

- a. What is the role and function of the Attorney General's Office in Indonesia to achieve flexibility in budgeting?
- b. What is the authority of the Attorney General's Office to improve its service to society and country in relation to the restorative justice?

## **3. Method**

The approach method used in this legal research is the statutory approach. This approach is carried out by analyzing the rules and regulations related to these legal issues. The data in this writing are secondary data, namely, laws and regulations, articles, and documents related to research material.

## 4. Discussion

### 4.1. What is the role and function of the Attorney General's Office in Indonesia to achieve flexibility in budgeting?

The Attorney General Office have general and specific authority. General authority is categorised into criminal, civil and state administration, public order, asset recoveries, intelligence law enforcement and other authority as mandated by other laws. In each sectors, various authorities has been given in order for the Attorney General Office conducting law enforcement.

Adding that, the Attorney General Office's authority includes implementing criminal statistics and healthcare in relation to the office, actively participating in a case of heavy human rights violation and certain social conflict for the purpose of justice, actively handling the criminal cases involves victim and witnesses and its rehabilitation, restitution and compensation, carrying out penal mediation and confiscating execution for the penalty payment, substitute of crime and restitution, providing information and verification to the proposed person to have official position, implementing other function in civil and/or criminal as mandated by law, proposing reconsideration of cases and tapping based on specific laws which is regulating on tapping for criminal action.

In particular/ specific authority, the Attorney General Office could stipulates and controlling the law enforcement policies and justice under its authority, effectively carry out law enforcement, waiving a case for the public purpose, proposing cassation, providing technical general legal consideration to the supreme court, prevent or ward off specific people for leaving or coming to Indonesia, coordinating, controlling and carrying out exploration, investigation and prosecution in criminal cases, as investigator, prosecutor and executor to the final and permanent court decision in relation to the heavy human right violation, delegating part of prosecution authority to the oditur general or general prosecutor and handling the criminal cases which impacts to the loss of economic state and may apply settlement fine in criminal economic case.

Based on broad authorities above, the Attorney General Office must have enough fund to conduct all of its authority. In contrary, Law 16/2004 never mention or guarantee this budgeting allocation provision. It should expressly stated in Law 16/2004 as the legal basis agreed by the Government of Indonesia and the House of Representatives.[2] Nevertheless, independence on the budgeting allocation have no limit on and to what activities must be covered. The "enough" perspective may be including to all activities and authorities of the Attorney General Office, including any criminal cases will be considered important to the state.

The following are historical data of budgeting in the past 5 years (2018 – 2022):

<b>Year</b>	<b>Budget (in thousand Rupiah)</b>
2018	6.386.605.675
2019	6.346.271.982
2020	6.996.809.443
2021	8.463.875.872
2022	10.109.965.844

Based on the above data, the budgeting for the Attorney General Office is increasing from year to year of 2018 to 2022. The budgeting increased is focused on development, procurement and improvement for facilities and infrastructure of the Attorney General Office. Meanwhile, the other important activities, namely assets recovery is budgeted of IDR 10 billion every year forecasting up to 2025. It is not seen the budgeting for program of restorative justice. However, the budgeting for the Attorney General Office from year of 2021 is increased due to broader activities included in the amendment of Law 16/2004 in 2021.

In Indonesia, Attorney General is appointed and dismissed by President of Republic of Indonesia. The Attorney General Office is part of executive or government and part of judiciary power or supreme court. Both condition of Attorney General and the office is having potential conflict of interest with the government interest. All cost and budgeting to implement The Attorney General Offices' function are originated from the APBN. The APBN mechanism in Indonesia is conducted every year for budgeting allocation, which is conducted by Ministry of Finance, and subject to approval of House of Representatives.

As comparison, in United States, local chief prosecutors in 45 states are elected (Perry 2006). They are appointed in Alaska, Connecticut, and New Jersey. Attorney General in Delaware and Rhode Island are responsible for prosecution throughout their states and appoint local prosecutors from within their office (Perry 2006). In the federal system, US attorneys are appointed on the basis of partisan and sometimes ideological criteria. American prosecutors sometimes openly and unashamedly take media reactions, public opinion, and political consideration into account when deciding what cases to prosecute and how to handle them.[3]

It is identified that the key defect in the existing criminal justice system as cozy attitude between prosecutor and politicians that is prosecutor lack independence from political bosses and the criminal element.[4] Prosecutorial independence is offset by limited, county-specific spheres of influence. An emerging dichotomy of American prosecution could neutralize prosecutor-driven reform. Urban prosecutors could send fewer people to prison, while rural prosecutors send more.[5]

In relation to the budgeting, there is a comparison between state prosecutorial budgets versus indigent defense budget in United States. Total operating budget of

state prosecutors' offices throughout the country was USD 5.8 billion, while states only spent USD 2.3 billion on public defense.[3]

With the conflict of interest in nature for the election of Attorney General and budgeting process, it is also possible that the Attorney General independently exercise its function and lesser politically driven. The Attorney General Office can be more independent in particular related to the budgeting issue where the Attorney General Office may have its source of income and manage it independently for the purpose of operational expenses.[6]

Compares to other ministry budget allocation, namely ministry of law and human rights, the Attorney General Office budgeting allocation is lower. Furthermore, the budgeting allocation for the Supreme Court of Indonesia is lower than the Attorney General Office. This condition will not optimizing the role of prosecutor and other law enforcement agency in Indonesia.[7]

In relation to executive authority, every ministry/ agency has a key performance indicator and commonly in line with the increased of revenue target. The revenue target of the Attorney General Office has been achieved more than determined within the last 2 (two) years. Such achievement should be in line with the increment of budgeting allocation to the Attorney General Office, however, it is not always every year. Revenue of the Attorney General Office is mainly originated from the law enforcement and auction of confiscated goods.

The Attorney General Office revenue in 2021 has surpassed target up to 191%, or almost double from the determined target. The revenue source is mostly originated from the auction of confiscated good of criminal cases. The trend of revenue is increasing compare to the same period in year 2020. By the increased revenue every year, it is possible for the Attorney General Office to manage some of its revenue independently and the other to be delivered to the state account.

The Attorney General is acting as budget user (*pengguna anggaran*) in the Attorney General Office. As the budget user, the Attorney General is authorized to prepare an implementing document, appoint officer in charge to collect and manage state revenue, carry out any action that cause expenses, appoint officer in charge to verify any payment, use state assets, supervise budget implementation and prepare financial statement. Minister of Finance is acting as state general treasury who has broader authority than the budget user. The budget user is preparing a plan of budgeting from APBN to be submitted to Minister of Finance.[8]

Under Indonesia treasury law, it is possible for ministry/ agency managing some of their revenue and could be directly used for the operational expenses. This flexibility is limited to a form of agency which serves public services to the society. The flexibility is given for public service that have continuity service to the society. The form of agency is a public service agency (*badan layanan umum*).[9] The public service agency operates as working unit of ministry/ agency to provide public service based on delegation of authority from the head of ministry/ agency.

The public service agency is part of the organisation in order to achieve the goal of ministry/ agency, therefore, the legal status for the public service agency is

inseparable from its ministry/ agency. Such agency shall direct and provide the service to have benefit impact which supporting fiscal and economic stability without prioritizing any money profit. The public service agency could provide public services in healthcare, education and/or other sector namely to manage area/ certain zone for the purpose to improve economic of the society. The public service agency may also provide services in managing special fund in order to increase economic and/or services to the society in the form of investment, revolving fund and education endowment fund.

In the context of the Attorney General Office, it is understood that the investigation, prosecution and related to defend the state must not be part of services of the public service agency. However, the potential public services that might be provided could be public educational/ certification program, general assistance on civil and/or state administrative area to the ministry/ agency/ relevant party, data and information provision of personal background check, healthcare provision, information technology related and managing the confiscated goods. In addition, this special agency may also become a think tank in the Attorney General office in order to develop and support best practices, including to work on issues that will improve the criminal justice system.[10]

In relation to the public educational/ certification program, it is in line with the task of the Attorney General Office on improvement of society legal awareness, and legal and criminal statistic research and development. The public educational/ certification program may cover certification on anti-corruption or anti money laundering practices, role of public prosecution service in corruption crime, how to prevent corruption and other similar criminal action.[11] As for the legal and criminal statistic research and development, it could be potential data mining to be provided for investor and/or other relevant interested party. It could potentially bring additional revenue in selling research data to the public, including provide background check data.[12]

Healthcare provision is one of task and authority of the Attorney General Office as provided in Article 30C of Law 16/2004. Although the program of the Attorney General Office have not included yet in the mid-term national plan 2020 – 2024, it is one of potential revenue that can be increased of the Attorney General Office. The healthcare facility shall mainly serve the attorneys and subsequently serves the society.

As for the confiscation asset, the confiscation can be conducted through different types of proceedings criminal, civil or administrative. Criminal confiscation followed by the confiscation order can be part of the sentence or be adjoined in the following proceedings, designed to determine and apply the ensuing sanctions. Civil confiscation happens within civil proceedings, which have different evidentiary standards and rules from criminal proceedings. Administrative confiscation occurs when a judicial decision is not necessary to confiscate specific assets or value amounts. It is more commonly associated with the enforcement of customs laws, drug trafficking and cross-border transportation of currency.[13]

In Indonesia, confiscated goods is received by the Attorney General Office's work unit from investigators from the national police/special prosecutor/military, are stored in the Attorney General Office's confiscated goods/seized goods building or at the RUPBASAN. Furthermore, asset maintenance is carried out since the Attorney General Office confiscation stage or since confiscated assets were handed over to their responsibilities by investigators to the prosecutor (second stage of submission). The maintenance of confiscated assets is carried out in accordance with the goods characteristic for the purpose to keep the goods not damaged/destroyed/destroyed and not changed in terms of amount/volume, type, shape and nature (Chapter IV Appendix 1 Attorney Regulation 27/2014). Furthermore, in releasing state assets (Chapter VI Appendix 1 Attorney Regulation 27/2014), it can be sold through a direct sales, auction, grant and exchange.

The public service agency of the Attorney General Office could manage the confiscated goods and cooperate with other stakeholder in selling the goods in accordance with laws and regulations. This is given that the public service agency can cooperate with other institution and receives revenue from the cooperation. Generally, the public service agency is able to receive revenue resulting from a service tariff (from the provided public service) and cooperation with third party. Such revenue could be used directly by the public service agency to implement its task and function in accordance with the public service agency's budgeting plan. The direct use of revenue for the public service agency's expenses is consist of employment, goods and capital expenditure.

#### **4.2. What is the authority of the Attorney General's Office to improve its service to society and country in relation to the restorative justice?**

The public service agencies fund could also be alternative in establishing a special fund for rehabilitation of the law enforcement.[14] It is in line with national program on changing direction from retributive criminal court system to restorative/rehabilitate court system. The special fund for rehabilitation could be given to the victim, witness and/or environmental rehabilitation. The public service agency, on its flexibility, could be the engine in managing this fund in achieving such national program.

The national program on restorative justice in Indonesia have not established comprehensively in Indonesia. It is understood that restorative justice is concerned with harm reparation, not punishment. In contrast to the formality of a court procedure, restorative models rely on a comparatively informal procedure, such as a conference procedure. A facilitator leads the restorative conference, guiding attendees through a discussion of the harmful act(s) in question, including explanations for and implications of the crime(s), as well as sanctions necessary to rectify the harm caused (Wenzeletal., 2008). "Successful" restorative procedures have been defined in many ways, including positive victim and offender evaluations, offender reintegration and reduced recidivism, and public perceptions of appropriate justice. Sherman and Strang's (2007) meta-analysis of 36 direct comparisons of restorative versus conventional criminal justice responses led the authors to conclude that restorative

procedures enhanced perceptions of process satisfaction for both victims and offenders.[15]

Some principles urgent to adopt in restorative justice procedure is non-domination. The active part of this value is empowerment. Empowerment means preventing the state from 'stealing conflicts from people who want to hang on to those conflicts and learn from working them through in their own way. Empowerment should trump other restorative justice values like forgiveness, healing and apology, important as they are. This means that if stakeholders in an injustice wish to respond in a retributive way, taking empowerment seriously requires that they be allowed to opt for a retributive resolution to the injustice rather than a restorative outcome. Participants are not empowered to shout and intimidate in restorative justice processes because the empowerment of the one is then purchased at the price of the domination of the many. Respectful listening is thus also a fundamental restorative justice value. Respectful listening is indeed integral to empowerment for reasons.[16] Current situation, the restorative justice in Indonesia is limitedly apply only to the criminal cases in relation to children.

## **5. Conclusion**

- a. In order to achieve flexibility in budgeting for the Attorney General Office, it is assumed that the Attorney General Office need to expand its services to community by establishing a public service agency, an agency of which could provide non-litigation services to the society and collect revenues from the services. Such revenue could be used directly by the public service agency to implement its task and function in accordance with the public service agency's budgeting plan. The direct use of revenue for the public service agency's expenses is consist of employment, goods and capital expenditure.

With such additional revenue to the Attorney General Office, it could be assumed that Attorney General Office could provide more budget for its operational authorities of the Attorney General Office especially for handling the criminal cases as well as to funding its other authorities more independently.

- b. One of the Attorney General authority is to actively handling the criminal cases involving victim and witness and its rehabilitation. By additional revenues generated from the public service agency, the Attorney General Office may implement such rehabilitation authority, including the restorative program to more victims and witnesses. It is in line with national program on changing direction from retributive criminal court system to restorative/rehabilitate court system. The special fund for rehabilitation could be given to the victim, witness and/or environmental rehabilitation.



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