



Reforming the Prosecutor's Role in the Constitutional System

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Abstract

Legal uncertainty regarding the independence of the prosecutor is caused by its position as part of the executive institution, but also has a function as a judicial institution. This research is a normative legal study that employs a statutory approach to assess the suitability of regulating the prosecutor's office, whether it operates as a standalone judicial institution or as a component of an executive institution. The legal materials used are primary and secondary. The data collection technique was carried out by literature study and then analyzed using the syllogism method. The research results show, *first*, that regulations still overlap because the prosecutor's office carries out a judicial function, but in other interpretations, it is still under executive power. *Second*, a model for reforming the prosecutor's office position based on the theory of separation and distribution of power is needed to guarantee its independence in the law enforcement process. Therefore, this research can help the Indonesian government clarify the prosecutor's office's authority as a manifestation of the independent division of power.

Keywords: Constitutional; Model; Position; Prosecutor; Reforming.



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Introduction

The problematic position of the prosecutor's office in the Indonesian government system, as part of the executive but also with functions close to the judiciary, creates challenges in maintaining the balance of power and independence (Rosita, 2018). This position becomes complex because the prosecutor's office carries out functions related to law and justice but remains under executive power. The prosecutor's office is an institution that is under the executive and is led by the attorney general, who the president appoints (Ramadhani, 2021). In this case, the prosecutor's office functions as a state apparatus that assists the President in carrying out state policies, especially law enforcement. However, the existence of the prosecutor's office under the executive creates a potential risk that this institution could be influenced by political interests or executive power in the law enforcement process. This can reduce objectivity and independence in conducting government operations' prosecution, investigation, and supervision (Bielen, 2024).

Meanwhile, the prosecutor's office plays a crucial role in the judiciary, particularly in the prosecution and investigation of criminal cases. As an

institution that brings charges against perpetrators of criminal acts, the prosecutor's office interacts directly with the courts in the justice system. This function raises questions about the prosecutor's office's independence, primarily because it falls under the executive branch (Nolasco Braaten & Chi-Fang Tsai, 2024). The dilemma arises when the policies of the government in power can influence the prosecutor's office, which has the authority to file charges in court. This can cause problems in maintaining the principles of fair and objective justice and hinder the achievement of justice, which should be free from political interference (Jackson et al., 2024).

The prosecutor's office classifies the prosecutor's office as one of the government institutions tasked with prosecuting. This indirectly places the prosecutor's office as part of the executive's jurisdiction. This gives rise to various interpretations regarding the actual position of the prosecutor's office in the constitutional system. Although efforts to increase the independence of the prosecutor's office have been made through amendments to the law, its existence as part of a government institution still raises doubts about the extent to which the prosecutor's office can work independently in carrying out its duties as a law enforcer (Saragih, 2017).

Even though the prosecutor's office is under the executive, the prosecutor's office is expected to remain independent in its functions. However, in practice, questions frequently arise about this independence. The prosecutor's office must ensure that the prosecution and investigation process is not influenced by pressure from other parties, especially the executive who has political power (Salsabila & Wahyudi, 2022). The independence of the prosecutor's office in carrying out its duties is essential to ensure that the prosecutor's office can carry out its functions without intervention, which will maintain public confidence in the justice system in Indonesia.

The Law on Prosecutors regulates prosecutorial arrangements, which are under the purview of criminal law. The Criminal Procedure Code does not grant prosecutors the authority to conduct investigations, making Indonesia the only country where prosecutors typically lack this authority, even in incidental cases. Apart from playing a role in criminal justice, the prosecutor's office also has other roles in law, civil law, and state administration, representing the state and government in civil and state administration cases. The prosecutor, as the executor of this authority, is given the authority to act as a public prosecutor and carry out court decisions and other authorities based on statutory provisions (Salsabila & Wahyudi, 2022).

Despite changes to the Law on the Prosecutor's Office in the Indonesian constitutional system, the position of the prosecutor's office within the constitutional framework remains uncertain, particularly in relation to its relationship with the judiciary and executive powers. The changes made in Law Number 11 of 2021 have become a point of debate and uncertainty. Despite the amendment's intention to enhance the prosecutor's office's



independence, the regulated position still casts doubt on whether the prosecutor's office will adopt a more judicial role or continue to operate under executive power (I Made Agus Mahendra Iswara, 2020).

This gives rise to various interpretations regarding the actual position of the prosecutor's office in the constitutional system. Despite legal amendments aimed at enhancing the prosecutor's office's independence, its status as a government institution continues to cast doubt on its ability to independently carry out its law enforcement duties (Rouhani et al., 2024). The constitutional system clearly recognizes the prosecutor's office, despite its status as an independent law enforcement institution. On one hand, the President's decision, based on the Attorney General's recommendation, determines the appointment process, which involves government decisions and regulations, as well as the possibility of dismissal. This means that the prosecutor's office is a quasi-institution in the executive domain because the prosecutor's office is a state apparatus; if the prosecutor's office is said to be a state apparatus in this article, it means that he carries out full executive functions.

Montesquieu, in the theory of separation of powers, explains that the separation of state power into branches that are completely separate from each other (Hidayah et al., 2024). Each branch of power has apparent authority and duties; no branch can intervene or control other branches. The main focus is to completely separate the executive, legislative, and judicial powers, ensuring strict independence to prevent any abuse of power (Zhan & Qiao, 2024). The aim is to ensure that each branch of power functions independently without interference from other branches. In other words, this theory aims to separate power so that no branch of it is dominant or too strong.

Theoretically, the state system is also known as the theory of division of power. This theory emphasizes the horizontal distribution of state power between state institutions, aiming to create a more efficient system so that power is not concentrated in one institution or individual (Carey et al., 2024). The main focus is dividing power between state institutions, such as the executive, legislative, and judiciary, to clarify each institution's functions and authority. The aim is to create a more efficient distribution of power so that there is no abuse of power by ensuring that power is not concentrated in one party. The division of powers ensures that institutions can function independently and supervise each other (checks and balances) (Zhao et al., 2024). For example, the constitution gives authority to each institution (the President, the People's Representative Council, and the Supreme Court) to carry out its functions, with limits on their powers to avoid overlap.

Previous research by Melcarne (2022) explains that, to avoid misinterpretation, separating powers between the executive, legislative, and judiciary is necessary—a fundamental principle in the Indonesian government system that aims to prevent the concentration of power in one institution or individual. The prosecutor's office, which is under the

executive and has a role closely related to the judiciary, presents tensions between this separation of powers. As an institution involved in law enforcement, the judiciary may find itself in a conflict between fulfilling its responsibilities under the executive and upholding justice without succumbing to political influence (Melcarne et al., 2022).

Previous research by Nolasco and Chi-Fang (2024) explains that the dilemma of the position of the prosecutor's office in the Indonesian government system lies in how this institution must maintain its independence in carrying out prosecutorial and investigative duties while remaining under executive control. The prosecutor's office needs to maintain integrity and objectivity and ensure that political power does not influence its functions to create the fairest possible justice for society. As part of the executive, the judiciary faces challenges in terms of accountability and supervision. Although the prosecutor's office is supposed to act as an independent law enforcer, its entanglement with executive power sometimes results in inadequate supervision. To maintain justice, there needs to be a transparent monitoring mechanism so that the prosecutor's office can carry out its duties transparently and free from political interference (Nolasco Braaten & Chi-Fang Tsai, 2024).

The prosecutor's office still carries out its functions as usual, namely upholding law and justice, which operates in the field of investigation, investigation, and prosecution; therefore, according to some experts and professors of constitutional law, the Indonesian Prosecutor's Office is a quasi-judicial institution because it carries out part of the function of judicial power. Moreover, it is an independent institution. Therefore, the background to this problem highlights the need for further study regarding the position of the prosecutor's office in the Indonesian constitutional system after Law Number 11 of 2021. This position is necessary to ensure that the prosecutor's office can carry out its duties effectively, independently, and by the principles of democracy and the supremacy of law to maintain justice in Indonesia.

Methodology

This research is normative legal research, analyzing statutory regulations, legal doctrine, and legal principles that apply in the legal system related to the existence of the prosecutor's position in the Indonesian government administration. This research methodology uses a statutory approach to determine the suitability of the prosecutor's office as a pure judicial institution or as part of the executive institution. The primary legal source materials used are statutory regulations. Meanwhile, secondary legal materials such as journal articles, books, reports, etc. are used. Data collection techniques were carried out using library research and then analyzed using the syllogism method (Khushal & Aynalem, 2009).



Results and Discussion

Regulating the Prosecutor's Role in Indonesia's Constitutional System

Indonesia's regulation as a rule of law state can be seen from both the ideal and the factual levels, namely, how Indonesian constitutional laws should comply with the rules of the rule of law in regulating national and state life from a legal aspect (Yulistiyowati et al., 2017). In the theory of division of power (*trias politica*), Montesquieu explains that the Indonesian government system divides state authority into three institutional branches: legislative, executive, and judicial. The executive institution is the big brother of power responsible for implementing laws and government policies (Ruhenda et al., 2020). In Indonesia, the president leads the executive as both the Head of State and the Head of Government. The president has the authority to make important domestic and foreign policy decisions. The legislative institution is a branch of power that functions to create, change, and cancel laws (Suparman, 2023). In Indonesia, the legislature consists of two institutions: the People's Representative Council and the Regional Representative Council. The House of Representatives is responsible for forming laws, supervising the executive, and budgeting. The Regional Representative Council considers matters relating to the region.

A judicial institution is a branch of power that enforces the law by adjudicating cases brought before it. The judiciary in Indonesia consists of the Supreme Court, the highest court, and various court institutions below it, such as district courts and high courts (Rishan, 2016). Other special institutions include the Constitutional Court, which reviews unconstitutional laws. These three branches of power function independently but monitor each other to ensure no abuse of power. This separation of powers aims to maintain balance and prevent tyranny or oppression by one branch of power (Sanjaya, 2018).

The Indonesian constitution does not explicitly mention the position of the prosecutor's office. Despite this, the prosecutor's office continues to play a crucial role as a law enforcement officer in every constitutional system. The Law on the Prosecutor's Office of the Republic of Indonesia governs the regulations of the prosecutor's office in Indonesia (Ferdika et al., 2022). The law states that the prosecutor's office carries out the authority to exercise state power in the field of prosecution. In addition to its role in criminal justice, the prosecutor's office also represents the state and government in civil and administrative cases. The prosecutor's office serves as a state institution, exercising state power through law enforcement, particularly in the field of prosecution. Still, in practice, interactions based on legal relations often give rise to disputes, whether seen in criminal law, civil law, or state administration.

The prosecutor's position in criminal law and criminal procedure is public prosecutor. The prosecutor determines whether a person can be prosecuted and even executes sentences for defendants after the decision of the panel of judges at the trial (Chi et al., 2024). Thus, from the perspective of criminal justice interests, the prosecutor's office is an important, vital, and strategic

institution for law enforcement in Indonesia. The prosecutor's office is also considered the controller of the case process because only it can determine whether a case can be transferred to court; besides that, the prosecutor's office is also the only institution that implements criminal decisions (Dong et al., 2024).

The position of the prosecutor's office in civil law and state administration is that the prosecutor has the authority for and on behalf of the state or government as a plaintiff or defendant who, in his implementation, not only provides considerations or defends the interests of the state or government but also defends and protects the interests of the people (Yu et al., 2024). So, the prosecutor's office is not only a public prosecutor; in handling civil and state administrative cases, it acts as a legal representative or representative of the government, a legal entity with an extraordinary power of attorney, carrying out its duties both inside and outside the court for and on behalf of the government and country.

Differences in the interpretation of the prosecutor's authority in the Law on the Prosecutor's Office, which encompasses criminal, civil, and state administration law, as well as the field of public order and welfare, warrant criticism, as does the prosecutor's office's position within the Indonesian constitutional system. *Firstly*, Yusril Ihza Mahendra clarified that although the prosecutor's office shares a connection with judicial power, subordinating it to the judiciary is not entirely suitable (Husaini & Askar, 2020). If look at the philosophical value of criminal law, criminal law is part of public law. The issue arises from a conflict of interest between those who violate norms and the interests of the general public, with the government acting as the representative of the public in enforcing the law. Therefore, the prosecutor serves as a representative of the government, prosecuting those who violate these norms. In addition to prosecuting, the prosecutor's duties also include advising the state on legal issues related to civil law, state administration, and correctional institutions, all of which fall under the purview of executive power (Mufrohim & Herawati, 2020). Therefore, the prosecutor's role is to act as a representative of the government and prosecute those who violate these norms. In addition to prosecuting, the prosecutor also serves as an advisor to the state when it encounters legal issues related to civil law or state administration, ensuring that correctional institutions remain within their jurisdiction.

Bagir Manan stated that the prosecutor's office is a government body. Therefore, the prosecutor's office's leader serves as the head of a government body, implying that the term "government body" refers to executive power (Mufrohim & Herawati, 2020). The next issue is how the prosecutor's office, as a law enforcement institution, can operate independently in its role as a law enforcer. This is due to its position within the government, which creates a contradiction. On the one hand, the prosecutor's office is part of the executive domain, under the president, who holds the ultimate authority. On the other hand, the prosecutor's office must carry out its functions, duties, and authority as a law enforcement institution. The independence of the prosecutor's office guarantees that the office, in carrying out prosecutions, must be free from the influence or power of other parties, including the



government. Despite being in the executive realm, the prosecutor's office's role is limited to its institutional role. In its role as a public prosecutor, the prosecutor's office operates independently.

Second, judicial power, Andi Hamzah asserted that a new law must replace the current one, which views the prosecutor's office as a government instrument. The Supreme Court must include the Prosecutor's Office as an independent judicial power, free from executive interference. This entails arguing that the prosecutor's office should fall under the purview of judicial power, not the government's power. Harkriastuti Harkrisnowo said that the prosecutor's office must be independent. In his opinion, the prosecutor's office as a law enforcement tool must be reformulated firmly in the constitution and organic laws for the sake of the independence of the prosecutor's office (Annisa, 2021).

Given that prosecutorial power is a component of judicial power, it is crucial to revisit the definition of judicial power as stated in the amended Constitution. Judicial power in the field of criminal law enforcement, in reality, resides in an integrated criminal law enforcement system. This integration provides mutual influence and control over the institutions within the criminal law enforcement system. Therefore, to implement the amendment in the future, the Judicial Powers chapter in the Constitution must include investigative and prosecutorial powers.

Model for Reforming the Prosecutor's Role in Indonesia's Constitution

Based on the Indonesian constitution, the prosecutor's office is under executive power. However, the position of the prosecutor's office as a law enforcement agency that exercises judicial power raises questions regarding its independence. Various changes in the constitutional system in Indonesia have indeed resulted in multiple developments within the prosecutor's office. Starting at the beginning of independence, which placed the position of the prosecutor's office under the coordination line of the department of justice and the issuance of the law on the prosecutor's office, which stated that the prosecutor's office was a law enforcement tool of the state and an instrument of the revolution that had the task of being a public prosecutor (Appludnopsanji & Pujiyono, 2020).

The reform of the position of the prosecutor's office in the Indonesian constitutional system following the amendment to the Prosecutor's Law shows an effort to clarify and strengthen the role of the Prosecutor's Office in the state's legal system while maintaining its independence even though it remains under the executive. Strengthening the authority, supervision, and guarantee of the independence of the prosecutor's office is expected to encourage this institution to be more professional, transparent, and accountable in carrying out its duties as a law enforcer. Amendments to the Prosecutor's Law, as reflected in Law Number 11 of 2021 concerning the Prosecutor's Office, illustrate reform efforts to address the dynamics of

constitutional development and the need for more transparent and accountable justice (Ustmani et al., 2023).

Many people debate whether the prosecutor's office, as a law enforcement institution, belongs in the judicial domain, but in practice, constitutional law places it in the executive domain. According to the law, the prosecutor's office is one of the bodies whose functions are related to judicial power, so many people think that the prosecutor's office should be in the judicial realm and the position of the prosecutor's office should be free from executive influence. Despite this, the constitution's provisions do not mandate the inclusion of these "other bodies" in the judiciary, but rather stipulate that the law regulates their provisions. Meanwhile, in the law regulating the prosecutor's office, it is emphasized that the prosecutor's office is a government institution that exercises state power in prosecution and other authorities based on law (Gusman, 2024).

The prosecutor's office continues to experience gradual development and dynamics over time, as does the renewal of the government system (Zheng et al., 2024). The prosecutor's office, as an institution in law enforcement, must maintain its independence. This means that law enforcement institutions must be free from interference from outside parties. This independence aims to ensure that the law enforcement process operates fairly, honestly, and transparently, thereby presenting the true objectives of the law. The prosecutor's office must uphold the principles of law enforcement, namely the presumption of innocence and assuming equality before the law (Xue et al., 2023).

The prosecutor's office occupies a central position and has a strategic function in the law enforcement process. In the Indonesian justice system, it is the prosecutor who determines whether the court should examine someone or not. The quality of the indictment and the demands made by prosecutors also determine whether someone will receive a sentence or not. The regulation of the Indonesian Prosecutor's Office implicit in the Constitution is considered to be contradictory to the essentiality of the Indonesian Prosecutor's Office, which has a central role in the criminal justice system in Indonesia, where the Prosecutor's Office plays a role in maintaining continuity or interrelation as well as acting as a filter between the investigation process and the examination process at trial. This article emphasizes that the prosecutor's office, being a government institution, holds a position within the Indonesian state administration (Suherman, 2019).

A country does not have uniformity; each country has a different model. Even the prosecutor's office, which is an adaptation of the Dutch prosecutor's office, exhibits differences. In continental European countries, the prosecutor's office is associated with the theory of separation of powers, leading to the emergence of several models. 1) The prosecution system is part of the executive under the Minister of Justice and the Head of Government. A model like this is called the French model (French Prosecutions model). Other countries like the Czech Republic, the



Netherlands, England, and Indonesia have embraced this system; it features a prosecution system that operates independently from the executive power and is answerable to parliament. This model can be found in countries such as Hungary, the Slovak Republic, and Macedonia; 3) The prosecution system is part of judicial power (the judiciary). This model is found in countries including Italy and Bulgaria (Palmisano & Sacchi, 2024).

All the models above are only functional in finding answers to which of the three can create an ideal prosecutor's office. The ideal sought here is a prosecutor's office that is both institutionally and functionally independent. Independent means there is no threat or interference from the power of other state institutions. This independence is called external institutional independence. With that in mind, the main aspects in reforming the position of the prosecutor's office following the amendments to the Law on Prosecutors are as follows: *first*, changes to the organizational structure and authority. The reform of the Prosecutor's Law changes the organizational structure and authority of the Prosecutor's Office, which is not only limited to the functions of prosecution and investigation but also expands the scope of the prosecutor's duties in various fields of law. After the amendment, the prosecutor's office received additional authority in civil and state administration matters. The prosecutor's office can now act as the state's legal advisor and resolve disputes involving the state or government. There is greater emphasis on the prosecutor's office playing an active role in investigating and prosecuting criminal acts and ensuring the smooth running of justice. The existence of the prosecutor's office in this realm aims to maintain justice in society as a whole (Liu, 2023).

Second, the independence and independence of the prosecutor's office. One of the essential things in reform is the emphasis on the autonomy and independence of the prosecutor's office in carrying out law enforcement duties. Although the prosecutor's office remains under the executive (under the President), the amendment law provides a stronger guarantee of independence to ensure that the prosecutor's office is not influenced by executive power or political pressure in the prosecution and investigation process. The Prosecutor's Office must be more transparent and accountable in exercising its authority, and the monitoring mechanism for its actions must be strengthened. In this case, supervision of the prosecutor's office can be carried out by institutions such as the Prosecutor's Commission and the community itself to ensure no abuse of authority.

Third, the prosecutor's office holds a significant position within the Indonesian government system. Despite carrying out functions closely related to the judiciary, the Prosecutor's Office's position under the executive often remained ambiguous before the amendment. The reforms resulting from the amendment to the Prosecutor's Law clarify the position of the Prosecutor's Office in the context of the separation of powers and the system of checks and balances, which are fundamental principles in the rule of law. Although the prosecutor's office remains under the executive, the

amendment provides more explicit regulations regarding its role in the Indonesian government structure. In addition to implementing executive policies, the prosecutor's office prioritizes objectivity to safeguard the state's and society's legal interests. In this reform, the prosecutor's office remains closely connected with the judiciary regarding prosecution and investigation but with more significant guarantees of independence. The position of the Prosecutor's Office as part of the criminal justice system is becoming more apparent by strengthening the functions of prosecution, investigation, and supervision of the ongoing legal process (Hayo & Voigt, 2023).

Fourth, strengthening the supervisory function. One of the key elements in reform is strengthening the oversight mechanism for the prosecutor's office to ensure that this institution works in a transparent, accountable manner and is free from political or power intervention that could damage the integrity of the justice system. As an external supervisory institution, the Prosecutor's Commission assumes a more assertive role in overseeing the Prosecutor's Office's performance, including the supervision of the Attorney General and other levels within the Prosecutor's Office. This is an effort to prevent potential abuse of authority in the legal process. The prosecutor's office itself is given the responsibility to carry out internal supervision of its actions to ensure that the implementation of its duties is always within the legal corridors (Yang et al., 2023).

However, the reforms carried out through amendments to the Prosecutor's Law bring challenges for this institution in facing the constitutional and legal dynamics in Indonesia. Although the amendments have emphasized the independence of the Prosecutor's Office, the biggest challenge is maintaining its independence in practice, considering that there is still a structural relationship with the executive. The prosecutor's office must ensure that in carrying out its duties, no external influences damage objectivity. The hope is that the prosecutor's office continues to increase its capacity and professionalism in carrying out broader tasks, especially in the civil and state administration fields, which the prosecutor's office may not fully master.

Therefore, the reform of the Prosecutor's Office's position in the Indonesian constitutional system, following the amendment to the Prosecutor's Law, demonstrates an effort to clarify and strengthen the Prosecutor's Office's role in the state's legal system, while maintaining its independence, even though it remains under the executive branch. Strengthening the authority, supervision, and guarantee of the independence of the Prosecutor's Office is expected to encourage this institution to be more professional, transparent, and accountable in carrying out its duties as a law enforcer. However, the biggest challenge is ensuring that even though it is under the executive branch, the Prosecutor's Office remains free from political interference and can carry out its duties fairly and objectively to achieve justice for the Indonesian people.



Conclusion

Regulations on the position of the prosecutor's office in the Indonesian constitutional system still show that, *first*, the regulations still overlap because the prosecutor's office carries out a judicial function as a law enforcement officer as part of the Supreme Court, which should be independent and not interfered with by other powers. However, there are differences in interpretation, such as the prosecutor's office still being under executive power, so there are concerns that this will affect the independence of the prosecutor's office in the law enforcement process. *Second*, a model for reforming the position of the prosecutor's office based on the theory of separation and division of power is needed to ensure changes in organizational structure and more effective authority, increase the independence of the prosecutor's office, clarify the position of the prosecutor's office in the Indonesian government system, and strengthen the supervisory function. So, the Indonesian government can clarify the authority of the prosecutor's office as a manifestation of the independent division of power.

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