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Reformulation of the Duties and Authorities of the Prosecutor's Commission in Indonesian Legislation

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ABSTRACT

Article 2 of Presidential Regulation No. 18/2011 on the Prosecutorial Commission states that the Commission is a non-structural institution that is independent in its tasks and authorities. Although it is under and responsible to the President, this commission acts as an external supervisor of the prosecutor's office, which is required due to frequent violations of ethical codes and abuse of authority by prosecutorial officials. The public is dissatisfied with case handling by the internal supervisor of the prosecutor's office, so the presence of the Prosecutor's Commission is expected. However, there is a discrepancy in the regulation of the Prosecutorial Commission. The commission, as an external supervisor, should be regulated by law to maintain a balance in constitutional law. In reality, the commission is only regulated through a Presidential Regulation, so it does not have the authority to summon and examine prosecution officials who have violated the code of ethics. This research aims to examine the duties and authorities of the Prosecutor's Commission based on existing regulations, and to reformulate policies so that its tasks and authorities are in accordance with its expected role as an external supervisor of the prosecutor's office. This research uses the normative juridical method, examining written law from various aspects such as theory, history, legal politics, and comparative national law. This research will also theoretically clarify the function of the prosecutor's office in society. The Prosecutorial Commission of the Republic of Indonesia is regulated by Presidential Regulation No. 18/2011, but its autonomy has not been fully recognized because it is still responsible to the President and can only provide recommendations. Policy reformulation is required by amending Article 38 of Law No. 16/2014 so that the Prosecutorial Commission is governed by a stronger special law, allowing it to perform its duties independently.

Keywords: *External Supervisor, Policy Reformulation, Prosecutorial Commission*

INTRODUCTION

Preventing abuse of power or violations of ethics by the prosecutor's office requires an independent supervisory body that is separate from the structure of the prosecutor's office. Therefore, the President established the Prosecutor's Commission as an external supervisor for the prosecutor's office in Indonesia. However, there is still a legal gap related to the establishment of the external supervisory commission, so the commission does not have a strong legal basis and clear independence. Legal issues related to the Prosecutorial Commission have occurred due to discrepancies in its regulation (Kalalo & Tjoneng, 2024a). One example is that the establishment of the Public Prosecution Service Commission is regulated in Law No. 11/2021, which is an amendment to Law No. 16/2004 on the Public Prosecution Service. Article 38 of the law states that the President may establish a commission to improve the performance of the Public Prosecution Service, with its composition and authority regulated by the President (Susilo Bambang Yudhoyono, 2011).

However, if we look at the hierarchy of regulations, the regulation of the Prosecutorial Commission should be conducted through a Government Regulation, not a Presidential Decree or Regulation. This has led to differences of scope and substance between Government Regulations and Presidential Regulations. Currently, the regulation of the Prosecutorial Commission is regulated in Presidential Regulation No. 18/2011, which is an improvement of Presidential Regulation No. 18/2005. The policy of establishment of the Prosecutorial Commission which is regulated through a Presidential Regulation means that the task of the Prosecutorial Commission is only for the President's interest. This can be seen in Presidential Regulation No. 18/2011 on the Prosecutorial Commission, particularly Article 2, which states as follows:

1. The Prosecutorial Commission is a non-structural institution that is independent in performing its duties and authorities.
2. The Prosecutorial Commission is under and directly responsible for the president.

The dominus litis principle authorizes the public prosecutor to control criminal cases, especially corruption cases. In Indonesian law, this principle is emphasized in Article 1 point 25 of Law No. 16/2004 on Public Prosecutions. Only public prosecutors are authorized to conduct prosecutions in criminal cases. However, there are still practices of bribery and other legal violations that undermine the law enforcement process. Strict supervision is needed to prevent prosecutors from being involved in scandals or corruption. The dominus litis principle is expected to make criminal law enforcement more effective and efficient (Kalalo & Tjoneng, 2024b). The Prosecutorial Commission was established through Presidential Regulation No. 18/2011 to monitor the

performance of prosecutors and prosecutorial employees. However, the regulations that regulated the Prosecutorial Commission became an obstruction in performing its duties. This research examines whether these regulations can improve the quality of prosecutors' performance in accordance with Article 38 of Law No. 16/2004. As a result, the current regulation is considered ineffective in improving the performance of prosecutors. Therefore, the regulation of the Prosecutorial Commission needs to be changed so that it can be more independent and effective as an external supervisory institution. This change is expected to improve the quality of supervision and performance of the Prosecutor's Office (Sibuea & Putri, 2020). The first statement emphasizes the importance of the dominus litis principle which provides full authority to public prosecutors in criminal cases, especially corruption. However, although this principle is expected to strengthen law enforcement, problems such as bribery and abuse of authority still occur in the field. The research gap here is the lack of studies that empirically evaluate the effectiveness of the dominus litis principle in preventing corrupt practices at the prosecution level and its implementation in concrete cases. The second statement focused on the role of the Prosecutorial Commission as an external supervisory institution, but acknowledged the regulatory constraints that limit its effectiveness. The research gap that emerges is the need for a more in-depth study of how current regulations hinder the performance of the Prosecutorial Commission, and detailed analysis of regulatory changes that can be more effective in improving the oversight function without creating conflicts of interest. Overall, the research gap is based on the need for more in-depth empirical research and regulatory studies to evaluate how the dominus litis principle and the role of the Prosecutorial Commission can optimally strengthen law enforcement in Indonesia.

Based on the description above, there are important legal issues that become the background of this research. There is a discrepancy in the making of regulations related to the Prosecutorial Commission, where the establishment of the Prosecutorial Commission should be regulated through a Government Regulation, but instead it is regulated through a Presidential Regulation. Referring to the background of this research, the objectives of this research that have been discussed include the duties and authorities of the Prosecutor's Commission of Indonesia based on the laws and regulations in Indonesia; and the policy of reformulation of the duties and authorities of the Prosecutor's Commission in the upcoming laws and regulations.

LITERATURE REVIEW

Theory of Authority

According to S.F. Marbun, authority is defined as the ability to perform public legal actions or, juridically, is the ability provided by law to establish legal relationships. This implies that any legal action taken by an institution or individual in a public capacity has to be based on a clear legal basis. However, if there is no legal authority, the action may be unlawful and may lead to legality issues (Klinik Hukum Perancangan Perundang-undangan Fakultas Hukum Unnes, 2024). In general, the principle of legality is one of the main pillars in the context of a legal state. This principle emphasizes that all forms of authority possessed by government institutions or public bodies must originate from laws and regulations. No authority can be exercised without a clear legal basis, because the principle of legality ensures that all actions taken by public institutions are in accordance with applicable laws.

The source of authority can be obtained through three methods, which are attribution, delegation, and mandate (Sunaryo & Karlina, 2019). Attribution is the granting of authority that is directly given by legislation to certain institutions. For example, the president's authority is directly regulated in the constitution. Delegation is the delegation of authority from one institution that has the original authority to another institution or party, usually accompanied by more detailed arrangements on that authority should be used. Meanwhile, a mandate is the granting of authority to a person or party to exercise the authority possessed by the mandate provider, but the responsibility remains with the mandate provider. In practice, these three methods ensure that every authority exercised by the government has a strong and targeted legal basis. However, it is important to note that without this system, the government can act arbitrarily and violate the rights of citizens, which is contrary to the principles of a legal state that prioritizes justice and legal certainty.

Hierarchy of Legal Norms Theory (Theorie von Stufenbau des Rechts)

The Theory of Hierarchy of Legal Norms or Theorie von Stufenbau des Rechts proposed by Hans Kelsen provides an understanding of the structure of norms in a country. According to Kelsen, law is a hierarchical system of norms. Each norm that applies in a country does not stand by itself, but has a hierarchical relationship with other norms (Kelsen, 2017). These norms are arranged from the lowest to the highest, with each lower norm must be sourced and based on a higher norm. According to Kelsen, this concept illustrates that legal norms are formed in layers. Lower norms derive legitimacy from higher norms, and so do higher norms, which derive validity from higher norms. This process continues until it reaches the highest norm, known as the grundnorm or basic norm. The grundnorm is the highest norm that forms the basis of the entire legal structure,

but cannot be further traced to its origins or framers. This is because the grundnorm is considered the unshakable foundation of a country's legal system.

In Kelsen's perspective, this concept of basic norms is an important element that distinguishes the legal system as structured. For example, Satjipto Rahardjo states that law as a system of norms provides a measure for every individual in society to behave in their social relations, both with other individuals and with their environment (Raharjo, 2014). The norms are not just technical instructions, but also represent the values that must be carried out in the context of state life. Furthermore, according to other experts such as Soetandyo Wignjosoebroto, this classification of norms indicates a close relationship between legal regulations that apply in a country. Legal norms cannot be separated from one another, and their validity is highly dependent on the relationship between the norms. In this context, the theory of hierarchy of legal norms provides a framework to understand whether laws and regulations in a country can be considered valid and binding. Thus, Kelsen's theory provides a strong basis in understanding how the legal system works as a whole, namely through the normative hierarchy that ensures that every legal regulation has a legitimate foundation and does not contradict the higher regulations above it.

Theory of the Legal System

The legal system is a complex entity and consists of various components that interact with each other. According to Mochtar Kusumaatmadja, the legal system is composed of a number of subsystems that are its components, such as principles, legal methods, legal institutions, and the processes of realizing principles in reality (Aulia, 2019). Legal principles and rules act as guidelines in regulating community behavior, while legal institutions play a role in ensuring that the law can be enforced. The process of realizing the law in reality is the aspect that determines whether the law functions properly in the field. These three components support each other and form a legal system that operates effectively.

In Friedman's perspective, a legal system is not just written rules or the institutions that operate them, but also a complex organism in which there is interaction between structure, substance and legal culture (Friedman, 2018). The legal structure, which consists of law enforcement institutions, legal substance, which includes regulations and policies, and legal culture, which reflects the values and attitudes of society towards the law, all contribute to determining whether the legal system can produce justice. Furthermore, Friedmann states that one of the main functions of the legal system is to distribute and maintain values that are considered right by society, which refers to justice. The legal system, in his perspective, must be able to fulfill the needs of society when it comes to justice, where the social and moral values embraced by society are reflected in the laws applied. Mochtar Kusumaatmadja substantively agrees with Friedman's

perspective that the components of the legal system must be interrelated and work together to realize the final goal of law, which is the creation of justice in society.

Justice as the final objective of the legal system is not only reflected in theory, but also in practice. An effective legal system is one that is able to integrate all these elements so as to create a balance between existing rules, law enforcement agencies, and values that develop in society. Thus, both Mochtar and Friedman emphasize the importance of synergy between legal structure, substance and culture in creating the justice desired by society.

Theory of Public Policy

According to Nicholas Henry, there are several models in public policy formulation, one of which is the Institutional Formulation Model. This model focuses on the important role of government institutions in the policy-making process. The policies produced in this model are fully under the control of government institutions, which act as the main actors in policy formulation (Muadi et al., 2016). The policy formulation process in the Institutional Formulation Model involves the active activities of these institutions. Henry explains that policies are not only the result of formal decisions, but also a whole process of activities conducted by various parties within government institutions. In this case, the role of government institutions is very significant because they are the ones who have full control over the policy formulation process.

Furthermore, Henry explained that the policies that have been formulated by government institutions reflect the various administrative activities that have been conducted by them. This process involves information gathering, problem analysis, and decision-making, all of which are focused on the public interest. Thus, the resulting policies are the result of the collective efforts of various parties in government institutions, who work together to formulate the best solutions to the problems faced by society. According to Muadi et al (2016) perspective, this model represents how policy is the result of an organized bureaucratic process. Every step in policy formulation, from problem identification to policy implementation, is part of the responsibility of government agencies. It puts these institutions as the main actors who have an important role in determining the direction of public policy. Therefore, the Institutional Formulation Model described by Henry shows how important the role of government institutions is in policy formulation. Policies are not just the result of one decision, but the result of a process that involves many parties within government institutions.

RESEARCH METHODOLOGY

This research uses a normative juridical approach, an approach that focuses on the study of applicable legal norms. The focus is on examining laws and regulations relating to the duties and authority of the Prosecutorial Commission. This approach is important to analyze the current regulations that need to be changed or reformulated to ensure more effective law enforcement in the future. This research is classified as descriptive analytical research, which aims to describe and analyze the state of the duties and authorities of the Prosecutorial Commission based on the prevailing laws and regulations. In addition, this research is also evaluative because it will critically examine the existing provisions and propose reformulation as needed. There are 2 sources of data in this research, including as follows (1) primary data in this research is obtained from interviews with legal experts, officials of the Prosecutor's Commission, and legal practitioners involved in the formulation and implementation of the duties and authority of the Prosecutor's Commission; (2) secondary data consists of applicable laws and regulations in Indonesia, such as Laws, Government Regulations, and Presidential Regulations related to the Prosecutor's Commission. In addition, data will also be obtained from literature, scientific journals, and other relevant legal documents. Furthermore, the data collection technique in this research uses a literature study, which is used to collect secondary data from various relevant legal literature, laws and regulations, scientific journals, books, and other documents related to the duties and powers of the Prosecutor's Commission. The data obtained will be analyzed qualitatively, namely through an in-depth understanding of the applicable laws and legal theories. The analysis is conducted by describing and evaluating existing regulations, then preparing recommendations for the necessary reforms. The results of the analysis will be presented in a descriptive and argumentative form, with an emphasis on aspects of legal reform needed to improve the effectiveness of the duties and authorities of the Prosecutorial Commission.

RESULT AND DISCUSSION

Implementation of theory in analyzing the duties and authority of the Prosecutor's Commission based on laws and regulations. In implementing the theory to analyze legal issues related to the duties and authority of the Prosecutorial Commission, the researcher uses several theories to analyze and answer problems related to the duties and authority of the Prosecutorial Commission based on laws and regulations.

In investigating the issue of the duties and authorities of the Prosecutorial Commission in the legislation, an analysis of authority and authority needs to be comprehended. Authority is a legal authority granted by law, such as legislative and executive or administrative authority. Meanwhile, authority is the capacity to

perform public legal acts. Under law, the terms authority and power must be used in the context of public law, with a distinction between authority (authority, gezag) and power (competence, bevoegdheid). According to S.F. Marbun, authority means the ability to perform public legal acts or the ability to act granted by applicable laws. Authority can be obtained through three ways, namely attribution, delegation, and mandate. In terms of the duties and authority of the Prosecutorial Commission as an external supervisor, this authority is regulated in Presidential Regulation No. 18/2011.

Supervision and inspection are integral to the establishment of the Prosecutorial Commission or other institutions with similar functions as external supervisors. Supervision is defined as an examination or control by a higher party over a lower party. According to M. Manullang, supervision is the process of determining the work that has been completed, assessing it, and correcting it if the implementation of the work is in accordance with the original plan. External supervision is monitoring conducted by an external party that is independent and free from intervention. The Hierarchy of Legal Norms Theory (Stufenbau Theorie) by Hans Kelsen explains that legislation in a country consists of hierarchical legal norms. According to Kelsen, law is a system of norms, where lower norms apply and derive from higher norms, until they stop at the basic norm (Grundnorm) which cannot be traced to its origin.

In analyzing the duties and authorities of the Indonesian Prosecutorial Commission based on legislation, there are several important considerations. First, from a juridical aspect, the Prosecutorial Commission was previously regulated by Presidential Regulation No. 18/2005. The Commission is independent and free from the intervention of any authority, but is directly responsible to the President. However, in conducting its duties as an external supervisor, there are conflicts with other supervisory institutions, especially in the context of supervision of civil servants, including prosecutors. This has reduced the effectiveness of the Prosecutorial Commission as a supervisory institution.

Although theoretically, the authority granted to the Prosecutorial Commission by the President makes the commission seem independent, in reality it is subordinated to the President, which means that the independence of the commission is questionable. The commission's responsibility to the President potentially creates a conflict between the principles of independence and subordination to the executive. From a sociological basis, the purpose of establishing the Prosecutorial Commission is creating a strong sense of justice and preventing corruption. However, the public still prefers to report to internal supervisors because the Prosecutorial Commission is considered slow and ineffective in following up reports. In addition, internal supervisors often protect the prosecutorial institution itself, resulting in problems related to legal certainty and a sense of justice. Based on these problems, it is necessary to reformulate the duties and authorities of the Prosecutorial Commission, especially in higher

legislation such as laws, so that the Prosecutorial Commission has a stronger and more independent position in performing its function as an external supervisor.

CONCLUSION

The duties and authorities of the Prosecutorial Commission of the Republic of Indonesia are regulated by Presidential Regulation No. 18/2011, which aims to create justice in society in accordance with the principles of a legal state. Although independent, the Commission is still responsible to the President, so its independence has not been fully recognized. The Commission's role as an external supervisor is also not yet optimal because it can only provide recommendations to internal supervisors, which causes dependence on the Prosecutor General's Office and the process of justice becomes delayed.

Policy reformulation of the Prosecutorial Commission is urgently needed to strengthen its independence and autonomy. This can be achieved by amending Article 38 of Law No. 16/2014, so that the Prosecutorial Commission is governed by a special law that is stronger than a Presidential Regulation. Parliament is expected to use its right of initiative to propose this change, so that the Commission can conduct its duties without interference and ensure the public is protected from abuse of power.

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