



## Protection of public prosecutors who maintain independence: A juridical study on the rejection of leadership intervention

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### Abstract

Prosecutors are functional officials authorized by law to act as public prosecutors and executors of court decisions that have obtained permanent legal force and other powers based on the Law. Public prosecutors are prosecutors who are authorized by Law 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia to conduct prosecutions and execute judges' decisions. However, it is often found that in the process of preparing indictments to prosecution in court, public prosecutors who are handling a case where the public highlights it will experience pressure and intervention from their superiors. This greatly affects the performance of a Public Prosecutor both in terms of the quality of the indictment and the judge's decision. So the purpose of this paper is to identify and examine the legal consequences for Public Prosecutors who refuse leadership intervention. The type of research used is normative legal research, the approach used is a statutory approach, conceptual approach, case approach. The technique of collecting legal materials through literature study and analyzed qualitatively. The results showed that the freedom of the Public Prosecutor in preparing the indictment originated from the authority of attribution because it was regulated in Article 14 letter d of the Criminal Procedure Code and Article 137 of the Criminal Procedure Code. In preparing the indictment, the Public Prosecutor must adhere to the principle of independence and be free from leadership intervention. The legal basis for the independence of the Public Prosecutor is contained in Article 8 of the Regulation of the Attorney General of the Republic of Indonesia No. PER-014/A/JA/11/2012 concerning the Code of Conduct for Prosecutors. The purpose of being given freedom and independence in the preparation of charges is to obtain legal certainty. The facts in the field are that there is still leadership intervention against the Public Prosecutor in the process of indictment to prosecution of cases that have public attention and affect the quality of the indictment and the judge's decision. Therefore, the Public Prosecutor as a functional official must be given special protection in carrying out his duties from leadership intervention to maintain the quality of the indictment and prosecution so that it has an impact on the judge's just decision.

**Keywords:** Protection of public prosecutors, independence, leadership intervention

### Introduction

A law enforcement process in an integrated justice system is an inseparable part of the law enforcement system. The criminal justice mechanism includes gradual activities starting from investigation, prosecution, examination at the court session, and implementation of the judge's decision carried out by the correctional institution. The process that works sequentially basically leads to a desired common goal. The whole process works in a system, so that each institution is a subsystem that is interconnected to influence one another. The division of power in the Criminal Justice System has five sub-systems, which include: 1) Police; 2) Prosecution; 3) Judiciary; 4) Correctional Institution; 5) Advocate.

As for several sub-systems of criminal justice, the Prosecutor's Office (Public Prosecutor) has a very important role in handling a criminal case, because the Prosecutor's Office is the party that has the authority to examine a case in the trial process before the Panel of Judges in carrying out law enforcement activities. The trial examination in Court will examine and assess data and facts as raw materials that have been presented at the investigation and prosecution stages. Therefore, it can be said that the results of the investigation will determine the smoothness and success of the handling and settlement of criminal cases as a whole.

The Prosecutor's Office of the Republic of Indonesia is regulated by legislation at a lower level than the

constitution, namely Law Number 16 of 2004, in Article 2 paragraph (1) of the law reads, "The Prosecutor's Office of the Republic of Indonesia, hereinafter in this Law referred to as the prosecutor's office, is a government agency that exercises state power in the field of prosecution and other authorities based on law". What can be emphasized from Article 2 paragraph (1) is that the AGO is a government institution, so that the position of the AGO in the Indonesian constitutional system is part of the executive power.

The position of the prosecutor's office as a law enforcer is not clearly and explicitly regulated in the 1945 Constitution of the Republic of Indonesia, but arrangements relating to the duties and authority of the prosecutor's office of the Republic of Indonesia are normatively obtained from several provisions of the law on the prosecutor's office as contained in Article 30 of Law No. 16 of 2004. Based on Article 30 of Law No. 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia, in the criminal field prosecutors have the duty and authority to conduct prosecutions. The Public Prosecutor has the authority to carry out prosecution of anyone charged with committing a criminal offense within his jurisdiction by submitting the case to the Court authorized to hear (Article 137 Jo 84 paragraph (1) KUHAP).

The authority of the Public Prosecutor is contained in Article 14 of the Criminal Procedure Code, one of which is Article 14 letter d of the Criminal Procedure Code which is

the legal basis for the Public Prosecutor because he has been given the authority by attribution in making a letter of accusation. The authority of the Public Prosecutor in making a letter of accusation is also regulated in Article 137 of the Criminal Procedure Code.

#### **Article 137 of the Criminal Procedure Code states**

“The Public Prosecutor shall prosecute every person suspected of committing a criminal offense within his jurisdiction by submitting the case to the court authorized to hear, the only person authorized to make an indictment is the public prosecutor”.

An indictment is an act that formulates a criminal offense or the basis for an examination of a criminal case in court, and a judge as a law enforcer in assessing and considering what is stated in the indictment regarding whether or not the defendant has committed a criminal offense charged to him, in passing his decision. The indictment plays an important role in the process of a criminal case, because it is from an indictment that a public prosecutor begins all his duties as a representative of the State in proving that a person brought before the court is indeed guilty.

In order to improve the performance of the prosecutor, the prosecutor's office must make internal improvements so that the prosecutor can appear more "fresh" and professional. This professionalism is not only limited to improving the technical ability of the Prosecutor's Office at the micro/field level; the office is also required to fundamentally change its paradigm so that it truly represents the interests of victims and the justice-seeking community.

The indictment must be drafted with due regard to the requirements set out in the provisions of the Criminal Procedure Code. There are two requirements that must be met in the preparation of the indictment, namely formal requirements and material requirements. The formal requirements are regulated in Article 143 paragraph (2) letter a of the Criminal Procedure Code which includes the date and identity of the defendant in full such as full name, place of birth, age or date of birth, gender, nationality, place of residence, religion, and occupation. Meanwhile, the material requirements are regulated in Article 143 paragraph (2) letter b of the Criminal Procedure Code which states that the indictment must be prepared carefully, clearly and completely regarding the criminal offense committed by mentioning the time and place of the criminal offense, the elements of the criminal offense, information about the circumstances, and the article violated.

The Public Prosecutor has been given the authority to make an indictment which is regulated in the Law, namely Article 14 letter d of the Criminal Procedure Code and Article 137 of the Criminal Procedure Code. So that the authority obtained by the Public Prosecutor in carrying out his duties is derived from the authority of attribution. This means that the Public Prosecutor is given the freedom and independence to draft an indictment. The independence of the Public Prosecutor in this case the preparation of the indictment is contained in Article 8 of the Regulation of the Attorney General of the Republic of Indonesia No. PER-014/A/JA/11/2012 concerning the Code of Conduct for Prosecutors.

Article 8 of Regulation of the Attorney General of the Republic of Indonesia No. PER-014/A/JA/11/2012 on the Code of Conduct for Prosecutors:

1. Prosecutors shall carry out their duties, functions, and authorities:
  - a. independently regardless of the influence of government power or the influence of other powers; and
  - b. not be influenced by individual or group interests and public or media pressure.
2. Prosecutors are allowed to refuse superior orders that violate legal norms and to whom legal protection is given.
3. The refusal as referred to in paragraph (2) shall be submitted in writing to the person giving the order by stating the reasons, and copied to the superior giving the order.

However, the facts that occur in the field are often in the preparation of indictments the Public Prosecutor is intervened by his superiors or other parties so that it violates legal norms and the Public Prosecutor does not have freedom in preparing the indictment.

That on January 20, 2023 there was a police report with the name of the suspect MLG alias Gaol. After being submitted to the District Attorney's Office it turned out that the indictment made by the Public Prosecutor was considered vague, unclear, inaccurate, and incomplete so that it could be said that the indictment was problematic. After P-21, the name of the complainant who was originally JH alias Juli changed to RH alias Wawan. In addition, there is also an article that has changed from the original Article 335 of the Criminal Code on the crime of coercion committed by violence or threat of violence to Article 211 of the Criminal Code on obstruction of justice or obstruction of the judicial process refers to deliberate actions to obstruct, hinder, or interfere with the ongoing legal process and the suspect has never been questioned about the problem.

Based on the above background, the problem in this paper is what are the legal consequences if the Public Prosecutor refuses to be intervened by his leadership in the process of preparing indictments to prosecution.

#### **Research Method**

The type of legal research method used in this research is normative legal research method. The problem approach used is the statute approach and case approach. The material collection technique uses literature study.

#### **Results and Discussion**

##### **The Authority of the Public Prosecutor**

The role and power of the Public Prosecution Service also includes the implementation of activities such as maintaining law enforcement policies and increasing legal awareness in the community. Not only that, the Prosecutor's Office also oversees the circulation of printed matter, and oversees the flow of beliefs that can endanger society and the state. In addition, the Public Prosecution Service also takes steps to prevent the abuse or blasphemy of religion, and conducts research and development in the field of law and criminal statistics.

The public prosecutor determines the case based on the results of the investigation listed in the case file, whether it is complete or not. If the case file is complete, the public prosecutor will accept the submission of the suspect and evidence, then draft an indictment and send it to the court. However, if the file is incomplete, the public prosecutor will

provide instructions to the investigator to perfect the file so that it can be submitted to the court in accordance with the necessary requirements. Thus, the function of the public prosecutor in terms of evidence in court is the responsibility of the prosecutor as a public prosecutor. In the evidentiary system of criminal procedure law, almost all countries in the world set the burden of proof on the public prosecutor.

#### **Prosecutors have the Following Authorities**

- a. receive and examine investigation case files from investigators or assistant investigators;
- b. to conduct pre-prosecution if there are deficiencies in the investigation by taking into account the provisions of Article 110 paragraph (3) and paragraph (4), by providing instructions in the context of improving the investigation from the investigator;
- c. grant an extension of detention, conduct detention or continued detention and or change the status of detention after the case has been submitted by the investigator;
- d. make an indictment;
- e. submitting the case to the court
- f. giving notice to the defendant of the date and time of the trial accompanied by a summons, both to the defendant and to witnesses, to appear at the hearing that has been determined;
- g. conduct prosecution;
- h. close the case in the interest of the law;
- i. take other actions within the scope of duties and responsibilities as a public prosecutor according to the provisions of this law;
- j. execute the judge's decision.

#### **The Prosecutorial Authority is Divided into Three, as Follows**

1. **Pre-prosecution stage:** activities starting from the examination of the case file, giving an opinion whether or not the case file is complete, and extending detention.
2. **Prosecution stage:** includes receiving case files, conducting further detention or not, making indictments, submitting cases to the court, notifying the day of the hearing accompanied by a summons, submitting a letter of indictment.
3. **Execution stage:** implementation of the judge's decision and verdict on both the suspect and the evidence.

#### **Legal Consequences for Public Prosecutors When Refusing to Intervene in the Preparation of Indictments**

Article 1 point 1 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia stipulates that a prosecutor is a functional official authorized by this law to act as a public prosecutor and executor of court decisions that have obtained legal force and other powers under the law. The Prosecutor's Office of the Republic of Indonesia as a state government agency that exercises state power in the field of prosecution must be free from the influence of the power of any party, which is carried out independently regardless of the influence of government power and the influence of other powers. The AGO as one of the law enforcement agencies is required to play a greater

role in upholding the rule of law, protecting the public interest, upholding human rights and eradicating corruption, collusion and nepotism (KKN). According to the provisions of Chapter I on General Provisions, Article 1 point 6 of the Criminal Procedure Code states that:

1. Prosecutors are officials authorized by this Law to act as public prosecutors and execute court decisions that have obtained permanent legal force.
2. A public prosecutor is a prosecutor who is authorized by this Law to conduct prosecutions and execute judicial decisions.

Meanwhile, Law Number 16 of 2004 also distinguishes the definition of Prosecutor and Public Prosecutor, namely:

1. Prosecutors are functional officials authorized by law to act as public prosecutors and executors of court decisions that have obtained permanent legal force and other powers under the law.
2. Public Prosecutor is a prosecutor authorized by this Law to conduct prosecutions and execute judges' decisions.

The Public Prosecutor has duties and authority based on Article 14 of the Criminal Procedure Code, one of which is Article 14 of the Criminal Procedure Code letter d, namely making a letter of accusation at the prosecution stage. The authority of the Public Prosecutor to be free and independent is also regulated in Article 137 of the Criminal Procedure Code, namely the Public Prosecutor prosecutes every person suspected of committing a criminal offense within his jurisdiction by submitting the case to a court authorized to hear, the only one authorized to make an indictment is the public prosecutor. With the legal basis possessed, the Public Prosecutor is truly given freedom and independence in the preparation of indictments regardless of interference from superiors or other parties.

In the preparation of an indictment there are 2 requirements, namely formal requirements and material requirements. Based on Article 143 paragraph (2) a and Article 143 paragraph (2) b, a formal requirement is a requirement that does not yet concern the case material but still revolves around the identity of the defendant such as the indictment dated and signed by the public prosecutor / prosecutor, and the full name, place of birth, age or date of birth, gender, nationality, place of residence, religion and occupation of the suspect. Meanwhile, the material requirement is a requirement that concerns the case material charged to the defendant such as a careful, clear and complete description of the criminal offense charged, as well as mentioning the time and place where the criminal offense was committed (*tempus delicti locus delicti*).

The preparation of indictments that take into account formal and material requirements requires concentration, precision, and a deep understanding of the tasks involved in preparing indictments, which are carried out independently by public prosecutors. The independence of prosecutors in drafting indictments is regulated in Regulation of the Attorney General of the Republic of Indonesia No. PER-014/A/JA/11/2012 concerning the Code of Conduct for Prosecutors. Article 8 of Regulation of the Attorney General of the Republic of Indonesia No. PER-014/A/JA/11/2012 concerning the Code of Conduct for Prosecutors states that:

1. Prosecutors shall carry out their duties, functions, and authorities:
  - a. independently, free from the influence of government power or other powers; and
  - b. without being influenced by individual or group interests, public pressure, or the media.
2. Prosecutors are justified in refusing orders from superiors that violate legal norms and are granted legal protection.
3. The refusal referred to in paragraph (2) shall be communicated in writing to the person issuing the order, stating the reasons, and copied to the superior of the person issuing the order.

The Code of Conduct for Prosecutors guarantees the independence of public prosecutors in carrying out their duties. However, in practice, it is often found that public prosecutors are interfered with by their superiors or other parties in the preparation of indictments, resulting in the content of the indictment being problematic and violating legal norms. An example of this is the police report with the name of the suspect MLG alias Gaol. The indictment prepared by the public prosecutor was deemed vague, unclear, inaccurate, and incomplete, and could therefore be considered problematic. This was because after P-21, the name of the reporter, which was originally JH alias Juli, changed to RH alias Wawan. The charge also changed from Article 335 of the Criminal Code to Article 211 of the Criminal Code. The change in the complainant's name and the charge indicates the intervention of superiors or other parties, resulting in the indictment becoming problematic.

Based on Article 8 paragraph (2), it is stated that: "Prosecutors are justified in refusing orders from superiors that violate legal norms and are afforded legal protection." The right to refuse unlawful intervention by superiors is regulated in the Attorney General's Regulation on the Code of Conduct for Prosecutors. Public prosecutors may report to the Deputy Attorney General for Supervision (JAM-Was), which is the internal supervisory body of the Attorney General's Office. One of the duties and powers of JAM-Was is to conduct internal supervision within the Attorney General's Office. The purpose of all efforts and actions carried out by JAM-Was is to determine and measure the compliance of tasks and activities stipulated in the Attorney General's Regulation No. PER-014/A/JA/11/2012 on the Code of Conduct for Prosecutors with the actual conditions, whether they are in compliance or not. However, the oversight conducted by JAM-Was, which is a structural component of the Attorney General's Office, is highly limited, as it is only based at the central level and does not exist in the High Prosecutor's Offices or District Prosecutor's Offices in each region.

In this case, if the Public Prosecutor exercises his right to refuse intervention by a superior who violates the law at the District Attorney's Office level in accordance with Article 8 paragraph (2) of the Attorney General's Regulation No. PER-014/A/JA/11/2012 on the Code of Conduct for Prosecutors, the legal consequences faced by the Public Prosecutor will threaten his own position in performing his duties because the final point of the Public Prosecutor's report returns to his superior at the District Prosecutor's Office level.

Protection for public prosecutors in terms of guaranteeing their independence in preparing indictments is regulated in

Regulation of the Attorney General of the Republic of Indonesia No. PER-014/A/JA/11/2012 concerning the Code of Conduct for Prosecutors. Article 8(2) states that: "Prosecutors are entitled to refuse orders from superiors that violate legal norms, and they are granted legal protection." Legal protection is protection provided to prosecutors by the Prosecutor's Office so that they are not held liable for their actions in carrying out their professional duties. In Law No. 11 of 2021 amending Law No. 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia and Regulation of the Attorney General of the Republic of Indonesia No. PER-014/A/JA/11/2012 on the Code of Conduct for Prosecutors, there is no provision for the legal protection that public prosecutors require if they refuse to be interfered with by their superiors.

Based on Article 5 letter c of the Attorney General of the Republic of Indonesia Regulation No. PER-014/A/JA/11/2012 concerning the Code of Conduct for Prosecutors, it is stated that: "Prosecutors, in carrying out their professional duties, are entitled to physical protection, including for their families, by the competent authorities if their personal safety is threatened as a result of the performance of their duties and functions in accordance with applicable regulations." And Article 8A(2) of Law No. 11 of 2021 amending Law No. 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia stipulates that: "The state protection referred to in paragraph (1) is provided upon the Prosecutor's Office's request to the National Police of the Republic of Indonesia." However, in this case, if the Public Prosecutor refuses the intervention of his superior, the legal basis for the legal protection of his profession as a Public Prosecutor is unclear.

### Conclusion

Based on the above description, the author concludes that the legal consequences for public prosecutors who refuse to be involved in the preparation of indictments are that they will jeopardize their own position in carrying out their duties, because ultimately public prosecutors report back to their superiors at the District Attorney's Office or High Court. This is because the internal oversight of the Indonesian Attorney General's Office is carried out by the Deputy Attorney General for Supervision (JAM-Was), who is part of the Attorney General's Office located at the central level. JAM-Was is a very limited entity that is only located at the central level and does not exist in the High Prosecutor's Offices and District Prosecutor's Offices in each region throughout Indonesia. Protection for public prosecutors in terms of guaranteeing their independence in preparing indictments is regulated in the Code of Conduct for Prosecutors.

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