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Legal Reconstruction of The Independence of The Public Prosecutor in The Integrated Criminal Justice System in Indonesia

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ABSTRACT
Constitutional uncertainty and regulatory ambiguity in the Law on the Prosecutor's Office in conjunction with the Law on the Prosecutor's Office Amendments (blurred norms) ultimately result in the unclear position of the prosecutor's office, namely the body related to judicial power (judicative realm) or even government power that is subordinate to the President's power (executive realm). The purpose of this study is to analyze (1) the independence of the public prosecutor's position in the current integrated criminal justice system in Indonesia; and (2) the legal reconstruction of the independence of public prosecutors in the integrated criminal justice system in Indonesia. The research method used is normative legal research. The results of this study indicate that (1) The independence of the public prosecutor's position in the integrated criminal justice system in Indonesia is currently not fully realized. The lack of regulation in the constitution makes the regulatory nature of the position of the Attorney General an open policy, or it can be determined by the legislators or other implementing regulations. The position of the Attorney General's Office, which is only recognized as a direct interpretation of Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, actually creates more ambiguity regarding the meaning of the Attorney General's Office of the Republic of Indonesia, both theoretically and in practice. Therefore, it is necessary to provide legal guarantees for prosecutors, especially the Attorney General, in carrying out their duties and authorities; and (2) The legal reconstruction of the independence of public prosecutors in the integrated criminal justice system in Indonesia begins with constitutional protection of the prosecutor's office. In carrying out the task of handling cases, prosecutors must have independence or autonomy and must be free from the influence of the leadership or other powers. This provision is to emphasize that prosecutors are essentially the same as judges, namely judicial service, not civil service. The ideal concept of the independence of the prosecutor's office in Indonesia's integrated criminal justice system is by placing the prosecutor's office as an independent state institution that is free from the influence of unauthorized parties. Broadly speaking,

independent agencies, like the prosecutor's office, are a separate branch of power outside the trias politica concept.

KEYWORDS
legal reconstruction, independence, public prosecutor, integrated criminal justice system

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Introduction

The development of law in Indonesia is still not seen as a medium for changing the order of life of society or what is known as law as a tool of social engineering which Mochtar Kusumaatmaja in the theory of development law translates as "law as a means of community renewal".[1] According to H.R. Otje Salman S and Eddy Damian in the theory of development law if it is applied in its application will be in accordance with the conditions and situation of a pluralistic Indonesian society. Dimensionally, the Theory of Development Law uses a frame of reference on the way of life of the Indonesian people and nation based on Pancasila, so the norms, principles, institutions, and rules contained in the Theory of Development Law are relatively already a dimension of the five Pancasila precepts.[2]

Legal development is not only aimed at law in the sense of positive law which is synonymous with statutory regulations. But also law in a broad sense, one of which includes legal development in the tourism sector. Legal development must be able to protect the tourism sector. The law must be able to provide a conducive situation for society in general and tourists in Indonesia in particular. If not, various conflicts of interest will arise which in the end will interfere with tourism development itself. As an example, one can see the connection between the problem of terrorism which is the "great enemy" of tourism and the problem of law enforcement, which actually starts with the issue of conflict of interest.[3] Apart from theorism, tourism is also tarnished by other crime cases such as cyberterrorism which is mostly carried out by foreign tourists, pedophilia cases of immigration violations, and so on. This condition shows that tourism is full of legal problems. Therefore, tourism development cannot be separated from legal issues which require an approach involving the prosecutor's office as law enforcers to make tourism in Indonesia more conducive to legal problems.

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[1] Mochtar Kusumaatmadja, 2003, *Teori Hukum dalam Pembangunan,* penerbit Alumni, Bandung, p.8-9.
[2] H.R. Otje Salman S. dan Eddy Damian, 2015, *Konsep-Konsep dalam Hukum Pembangunan: Kumpulan Karya Tulis, Prof. Dr. Mochtar Kusumaatmadja, SH. LL.M,* Penerbit Alumni, Bandung, p.42.
[3] Audrey Kurth Cronin & James M. Ludes, 2005, *Attacking Terrorism: Elements of a Grand Strategy*, Georgetown University Press, Washington, p.254.

On the other hand, in the current state institutional structure in Indonesia, there is an institution whose authority is not explicitly stated in the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution of the Republic of Indonesia), but which performs both executive and judicial functions simultaneously, namely the Attorney General's Office.[4] In terms of its position as a state institution, the Prosecutor's Office is an "institution that is in the executive power area, meanwhile, from the perspective of the Prosecutor's authority in carrying out prosecutions, it means that the Prosecutor's Office exercises judicial power, if the position of the Prosecutor's Office as a government institution is associated with the Prosecutor's authority in exercising state power in the field of prosecution independently, there can be contradictions in the arrangements (dual obligation)".

The regulation of the Attorney General's Office of the Republic of Indonesia implicitly in the 1945 Constitution of the Republic of Indonesia is considered contradictory to the essentiality of the Attorney General's Office of the Republic of Indonesia which has a central role in the criminal justice system in Indonesia, considering that the Attorney's Office plays a role in maintaining continuity or interrelation as well as being a filter between the investigative process and the examination process in court as well. acting as *executief ambtenaar*.[5] Some of the views of state constitutional law experts in Indonesia, the majority have views on the need for the Attorney General's Office to be regulated in the constitution.

The ambiguity of the Attorney General's Office does not only appear in its institutional context but based on Article 9 letter h of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (hereinafter referred to as the Prosecutor's Law) as amended by Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Republic of Indonesia's Prosecutor's Office (hereinafter referred to as the Amended Prosecutor's Law) states that the requirement for a Prosecutor is a Civil Servant. The status of the Prosecutor as a civil servant has the consequence that the management of the Prosecutor's staff management must be adjusted to Law Number 5 of 2014 concerning State Civil Apparatus (hereinafter referred to as the ASN Law). Even though in the explanation of the ASN Law itself, it is stated that ASN employees are entrusted with public service duties, government duties, and certain development tasks. Which of the three tasks does not explicitly state the existence of law enforcement duties, as

[4] Marwan Effendy, 2005, *Kejaksaan RI: Posisi dan Fungsinya dari Perspektif Hukum*, PT. Gramedia Pustaka Utama, Jakarta, p.55-66.
[5] *Ibid*.

the main task of the Prosecutor.

In the criminal justice system in Indonesia, the position of the Prosecutor's Office as the single public prosecutor (single prosecution system) as well as the sole executing agency for criminal decisions (*executive ambtenaar*) has been increasingly neglected in its development, bearing in mind that currently several other institutions also carry out the prosecution function. and executions but not controlled by the Attorney General, for example against Corruption Crimes committed by the Corruption Eradication Commission (KPK) as well as against perpetrators of crimes within the military court environment committed by the Military Court, High Military Court, and Indonesian National Armed Forces Court.

Furthermore, The Guidelines on the Role of the Prosecutor have provided direction that the main function of the Prosecutor or the Prosecutor's Office is to protect the public interest from acts of violation of the law that can damage the order of life in society, nation, and state, by carrying out prosecutions. against anyone suspected of having committed a crime before the court. In carrying out their duties, the Prosecutor or Prosecutor's Office does not act one-sidedly or objectively and avoids political, religious, social, cultural, racial, gender/all other discrimination. Therefore, the Prosecutors carrying out their duties must act professionally.

For this reason, it is necessary to reaffirm the principle of the Single Prosecution System in the criminal justice system in Indonesia, where it aims to avoid prosecution disparities. This is important to minimize the occurrence of confusion in law enforcement which can lead to injustice for justice seekers. The application of a single prosecution system also shows that there is one prosecution by the state as an embodiment of the present state which guarantees equality before the law for justice seekers.

Viewed from a philosophical aspect, the principle of *dominus litis* emphasizes that no other body has the right to prosecute other than the Public Prosecutor, which is absolute and monopolistic. The Public Prosecutor is the only institution that owns and monopolizes the prosecution and settlement of criminal cases. The Attorney General's Office as controller of the case process (Dominus Litis), has a central position in law enforcement because only the Attorney General's institution can determine whether a case can be submitted to the Court or not based on valid evidence according to the Criminal Procedure Code. Apart from being a person with Dominus Litis, the Attorney General's Office is also the only executing agency

for criminal decisions (*executive ambtenaar*).[6]

The legal issues or problems that will be raised in this study are related to the ambiguity of the position of the judiciary in the realm of judicial power or in the realm of executive power which actually creates problems. Viewed from the point of view of its position as a state institution, the judiciary is an institution that is within the realm of executive power. Meanwhile, when viewed from the perspective of the prosecutor's authority in carrying out prosecutions, it means that the prosecutor's office exercises judicial power. If the position of the prosecutor's office as a government institution is related to the authority of the attorney's office in exercising state power in the field of prosecution independently, there may be a contradiction in its arrangements *(dual obligation)*.[7] This problem must be resolved immediately, through this research will be reconstructed the independence law of public prosecutors in the integrated criminal justice system in Indonesia. The final result of this research is the discovery of a reconstruction of the provisions in the Prosecutor's Law which guarantees the independence of the Public Prosecutor in enforcing criminal law in an integrated criminal justice system.

Based on the description stated above, it can be stated that constitutional uncertainty and regulatory ambiguity in the Prosecutor's Law in conjunction with the Amended Prosecutor's Law (blurring norms) ultimately result in unclear positions of the prosecutor's office, namely the body related to judicial power (judicial domain) or even governmental power which is position as a subordinate of the power of the President (executive realm). It is further said, that the blurring of norms of this kind is none other than related to the prosecution authority possessed by the prosecutor's office. This problem with the prosecutor's authority in the field of prosecution can be seen when the prosecutor's office as the only state institution entrusted with prosecution authority deals directly (vis a vis) with the ambivalence of the prosecutor's position which is between the realm of executive power or the realm of judicial power. Whereas the prosecutor's office as controller of the case process *(dominus litis*) has a central and strategic position in law enforcement because only the prosecutor's office can determine whether a case can be brought to court or not based on valid evidence.

Based on the background of the problems described above, the formulation of the problem in this research can be put forward in the research questions (1) How is the independence of the public prosecutor's position in the current integrated criminal justice

[6] Marwan Effendy, *op.cit*, p.68.
[7] *Ibid*.

system in Indonesia? and (2) How is the legal reconstruction of the independence of the public prosecutor in the integrated criminal justice system in Indonesia?

Research Methods

The research method used in this research is normative legal research. Normative legal research is research conducted by examining the laws and regulations that apply or apply to a particular legal issue. Normative legal research examines law from an internal perspective with the object of research being legal norms.[8] Normative research is often referred to as doctrinal research, namely research whose object of study is documents of laws and regulations and library materials Normative legal research is also called research that is focused on examining the application of rules or norms in positive law.[9] .. According to I Made Pasek Diantha, normative legal research has a role in defending the critical aspects of his legal science as a normative science.[10]

Discussion

Independence Position of Public Prosecutor in The Current Integrated Criminal Justice System in Indonesia

As it is understood that the emergence of the concept of division of powers in a rule of law is a form of effort to create an attitude of mutual supervision between one state institution and another within the framework of the principle of Checks and Balances, it is definitely important here to present a discussion on the independence of the Republic of Indonesia's Prosecutor's Office. This is intended to find out how the position and role of the Indonesian Attorney General's office in carrying out its functions in the context of upholding the law (law enforcement). Regarding this, Daniel S. Lev, as quoted by Surachman and Maringka, described that political dynamics affect the level of independence of this profession so political intervention hinders the professionalism of prosecutors. This obstacle stems from the position of the judiciary in the constitutional system of the Republic of Indonesia.[11]

Regarding this independence, it is basically divided into 2 (two) aspects, namely; (1) institutional (institutional) independence; and (2) functional independence. Institutional

[8] I Made Pasek Diantha, 2017, *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Prenada Media Group, Jakarta, p.12.
[9] Johny Ibrahim, 2012, *Teori dan Metodologi Penelitian Hukum Normatif*, Banyumedia, Malang, p.295.
[10] I Made Pasek Diantha, *op.cit*, p.12.
[11] RM. Surachman dan Jan S. Maringka, 2015, *Peran Jaksa dalam Sistem Peradilan Pidana di Kawasan Asia Pasifik,* Sinar Grafika, Jakarta, p.19.

independence means that the Attorney General is placed in an institutionally independent position.[12] The Attorney General's Office is in a position that is institutionally independent and free from any power. Then, Functional Independence is that the Prosecutor can be free and independent in carrying out his duties to prosecute or not prosecute. Both, both institutional independence and functional independence are very important things. It is said that because the position of the prosecutor's office in the governance system can affect their independence and professionalism in carrying out all their duties and authorities, it is necessary to pay attention to the placement of the prosecutor's office so that an honest trial can be created without intervention from any party.[13]

Therefore, based on Article 19 paragraph (2) of the Prosecutor's Law jo. Article 22 of the Amended Attorney Law can be concluded that the Attorney General is not independent. This is because the Attorney General is appointed and dismissed by the President. Such a position of the Attorney General can lead to 2 (two) problems which in the literature are called "*dual obligations*" and "conflicting loyalties". Apart from that, the single dominance of the President in determining the position of Attorney General is very different in the process of determining the members of the Supreme Audit Agency (BPK), the Supreme Court (MA), and the Corruption Eradication Commission (KPK), which are judicial institutions. The determination of members of the three state institutions is not only dominated by one institution. Rather it involves the President and the House of Representatives (DPR).[14]

The ambiguity of the position of the prosecutor's office in the realm of judicial power or in the realm of executive power is what actually creates problems. Viewed from the point of view of its position as a state institution, the judiciary is an institution that is within the realm of executive power. Meanwhile, when viewed from the perspective of the prosecutor's authority in carrying out prosecutions, it means that the prosecutor's office exercises judicial power. If the position of the prosecutor's office as a government institution is related to the authority of the attorney's office in exercising state power in the field of prosecution independently, there may be a contradiction in its arrangements *(dual obligation).*[15]

Moreover, the state constitution does not clearly and firmly regulate the position of the Attorney General's Office in the Indonesian constitutional system. The position of the prosecutor's office was only agreed upon as a direct interpretation of the provisions in

[12] Ahmad Andriadi, 2015, "Kedudukan Kejaksaan Dalam Sistem Ketatanegaraan Republik Indonesia (Telaah Kritis terhadap Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia)", *Jurnal Hukum Amanna Gappa,* Vol.2, No. 2, p.80-81.
[13] *Ibid.*
[14] *Ibid.*
[15] Marwan Effendy, *op.cit.,* p.125.

Chapter XI Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which reads: "Other bodies whose functions are related to judicial power are regulated by law". Even this status quo seems to be perpetuated by the state. Of the four amendments to the constitution, the position of the prosecutor's office was not accommodated at all and was later included in the constitution. In fact, the strategic role of law enforcement agencies in the constitutional system and efforts to realize the rule of law principle in the constitutional system is crucial. Therefore, the existence of state institutions that exercise judicial power is included as the main state organ (auxiliary organ). In fact, this judiciary institution was actually known before the Republic was established and proclaimed by Soekarno. Because of this constitutional uncertainty and regulatory ambiguity in the Prosecutor's Law jo. The Prosecutor's Law Amended which ultimately resulted in the unclear position of the prosecutor's office, namely the body related to judicial power or even governmental power which is subordinate to the President's power.

It is further said, that this kind of juridical commotion is none other than related to the prosecutor's authority to prosecute. The problem of the prosecutor's authority in the field of prosecution can be seen when the prosecutor's office as the only state institution entrusted with prosecution authority deals directly (vis a vis) with the ambivalence of the position of the prosecutor's office which is between judicial or executive power. Even though the prosecutor's office as controller of the case process (*dominus litis*) has a central and strategic position in law enforcement because only the prosecutor's office can determine whether a case can be brought to court or not based on valid evidence according to criminal procedure law.[16]

However, at a practical level what is happening is the dysfunctionalization of the prosecutor's office in prosecuting criminal cases, especially if those involved in the case are people who are in political circles and have access to power. The principle of the balance of power (checks and balances) between the three axes of power (executive, legislative, judicial) and the principle of the rule of law seem to be rendered barren and powerless. Therefore, among the three branches of power, there is no attitude of watching over each other, testing each other.

The concept of division of powers in a rule of law is a form of effort to create an attitude of mutual supervision between one state institution and another within the framework of the Check and Balances principle. This is intended to find out how the position and role of the Indonesian Attorney General's office in carrying out its functions in

[16] *Ibid,* p.105.

the context of upholding the law (law enforcement). Regarding this, Daniel S. Lev described that political dynamics affect the level of independence of this profession so political intervention hinders the professionalism of prosecutors. This obstacle stems from the position of the judiciary in the constitutional system of the Republic of Indonesia.[17]

Regarding this independence, it is basically divided into 2 (two) aspects, namely; (1) institutional (institutional) independence; and (2) functional independence. Institutional independence means that the Attorney General is placed in an institutionally independent position.[18] The Attorney General's Office is in a position that is institutionally independent and free from any power. Then, Functional Independence is that the Prosecutor can be free and independent in carrying out his duties to prosecute or not prosecute. Both, both institutional independence and functional independence are very important things. It is said that because the position of the prosecutor's office in the governance system can affect their independence and professionalism in carrying out all their duties and authorities, it is necessary to pay attention to the placement of the prosecutor's office so that an honest trial can be created without intervention from any party.[19]

The independence of law enforcement agencies will prevent the occurrence of deviations in the function of law enforcement agencies (and justice) as a tool to maintain power by certain regimes. Seeing this, the strategic role of law enforcement agencies in the constitutional system and realizing the rule of law principle is crucial so that the oversight function becomes balanced in the principle of distribution of power applied in a country. This kind of situation ultimately creates the principle of checks and balances between state institutions. This means that, in the relationship between state institutions there is an attitude of mutual supervision, testing each other so that each state institution exceeds the limits of the powers that have been determined.

Moreover, it is said:[20]

"Centralistic prosecution procedures. In accordance with the basic doctrine of *een en ondeelbaar*, the effect is to oblige every Public Prosecutor to submit a plan of the prosecution to his superiors. The pattern of planning charges actually opens up opportunities for superiors to intervene on subordinates, even though as a prosecutor one has to be independent. In contrast to judges whose independence is guaranteed to give decisions, the

[17] Elvi Hasani, 2016, "Penegakan Profesionalisme Jaksa melalui Independensi dan Kode Etik: Upaya Pemberdayaan Sumber Daya Manusia di Kejaksaan yang Berintegritas", *Paper,* Universitas Indonesia, Jakarta, p.43
[18] Ahmad Andriadi, *op.cit.,* p.44-45.
[19] *Ibid*, p.47.
[20] *Ibid.*

prosecutor's authority to file charges at trial is not guaranteed. Prosecutors must consult and obtain approval from their superiors in stages depending on the type of crime in carrying out the prosecution process".

The obligation to plan criminal charges makes prosecutors no longer independent in carrying out their duties and functions. In fact, this obligation to prosecute (*rentut*) has existed since 1985 through the Attorney General's Circular Letter (SEJA) Number: SE-009/JA/12/1985 concerning Guidelines for Criminal Prosecution. Initially, the pattern of sequence only applied to the types of criminal acts determined by the Attorney General's Office, but this has changed over time. For general crimes, this compulsory obligation can also be found to date in the Attorney General's Regulation 036/A/JA/09/2011 concerning Standard Operational Procedures for Handling General Criminal Cases (hereinafter referred to as PERJA 036/A/JA/09/2011).

Furthermore, it is said, the process of selecting and appointing the leadership of a state institution is also an important indicator for creating independence. The process of appointment and dismissal is included in the selection and appointment process indicator. In the International Bar Association of Judicial Independence in the Judges and Executive chapter in article 5, the point is expressly stated as follows: The Executive shall not have control over judicial functions. The executive should not have control over the functioning of the judiciary recognized as a principle of international law. The executive intervention will have implications for the freedom of the judiciary in upholding law and justice.[21]

Meanwhile, Article 19 of the Law on the Prosecutor's Office, which regulates the presence of the Attorney General, states that:

(1) The Attorney General is a state official.

(2) The Attorney General is appointed and dismissed by the President.

With the position of the Attorney General being appointed and dismissed by the President, the Attorney General is not independent. What is meant by independent here is the position of the Attorney General who is independent and free from the influence of any party. This is because many facts show that in the handling of a case (case), the prosecutor's office is very vulnerable to intervention by the executive power. The position of the Attorney General's Office is actually not something that has just happened, but if one traces its history, the Attorney General's Office was indeed born from an executive biological mother, so the Attorney General's Office is often used as a tool for those in power to legitimize their interests.

[21] *Ibid*, p. 48.

Politically, the Attorney General is a minister. In a presidential system, ministers are assistants to the president and are fully responsible for the president. The President at any time with the power he has can control the power of criminal prosecution. Not only the Attorney General but even all Prosecutors in Indonesia. Bearing in mind that the prosecutor is one and inseparable (*een en ondelbaar*) and the prosecutor carries out the prosecution and is responsible through the hierarchical channel to the Attorney General.

The independence of the Prosecutor's Office was not successfully adopted in the 1945 Constitution of the Republic of Indonesia. When the draft for amendments to Chapter IX concerning Judicial Powers, the idea was widely developed to include arrangements regarding the prosecutor's office in it, but in the end it failed because no agreement was reached. Because the provisions regarding the principle of independence are only abstract in nature, their implementation in the field is highly dependent on the commitment of the President and the Attorney General themselves.

The next weakness is the dismissal of the Attorney General. In Article 22 of the Prosecutor's Law, it is stated as follows:

(1) The Attorney General is honorably dismissed from his position because:

a. die;

b. own request;

c. constant physical or mental illness;

d. end of the term of office;

e. no longer meets one of the requirements as referred to in Article 21.

(2) The honorable discharge as referred to in paragraph (1) shall be stipulated by Presidential Decree.

In Article 22 paragraph (1) letter d of the Amended Attorney Law it is stated explicitly that the Attorney General stops when his term of office ends. However, in the elucidation of this article, there is no detailed explanation of the term of office of the Attorney General. This situation has the potential to eliminate the independence of the prosecution power. The Attorney General can be dismissed at any time depending on the wishes of the President.

Moreover, the process of appointing the Attorney General which only involves the President has actually reduced the importance of the Prosecutor as a party representing the public interest in law enforcement. As a legal officer who represents the public interest, the Attorney General is described by Tjeerd Sleeswijk Visser as a person who has an honest personality, has no political interests, and has high moral and ethical standards. The

Attorney General is also a figure who is respected by the community and acts on behalf of the community. What Tjeerd Sleeswijk Visser described proves that this position has a very important meaning for law enforcement.

Based on Article 19 paragraph (2) Jo. Article 22 of the Amended Attorney Law can be concluded that the Attorney General is not independent. This is because the Attorney General is appointed and dismissed by the President. Such a position of the Attorney General can cause 2 (two) problems which in the literature are called "dual obligations" and "conflicting loyalties". Apart from that, the single dominance of the President in determining the position of Attorney General is very different in the process of determining the members of the Supreme Audit Agency (BPK), the Supreme Court (MA), and the Corruption Eradication Commission (KPK), which incidentally are judicial institutions. The determination of members of the three state institutions is not only dominated by one institution. Rather it involves the President and the DPR. Even specifically for the position of chief justice at the Supreme Court, the selection process for his position involves the Judicial Commission. Likewise in determining the leadership of the institution. The Chief Justice of the Supreme Court is directly elected by the Supreme Court justices as well as the BPK. Meanwhile, the chairman of the KPK is determined by a majority vote in the process of selecting members in the DPR. This is what distinguishes the Attorney General's Office from other state institutions in contrast, even though all of them fall into the category of auxiliary organs of the state.[22]

Based on the discussion above, it can be concluded that the independence of the public prosecutor's position in the integrated criminal justice system in Indonesia is currently not fully realized. The lack of regulation in the constitution makes the regulatory nature of the position of the Attorney General an open policy, or it can be determined by the legislators or other implementing regulations. This has had an impact on the frequent changes in the position of the Attorney General's Office, that is, for a time they were under the Ministry, they were also outside the Ministry but remained in executive power, some even said that they were once under judicial power because their existence was attached to the court. Thus, the position of the Prosecutor's Office is highly dependent on the political climate. This condition is very unfavorable in the effort to form an independent Attorney General's Office. The position of the Attorney General's Office of the Republic of Indonesia in executive power does not need to be changed as long as it is understood to be outside the Ministry as it is today. This condition is caused by the Attorney General's Office of the

[22] *Ibid.*

Republic of Indonesia which has two roles at once, namely not only as a public prosecutor but also can act on behalf of the government, especially in the civil and administrative fields. It is this second role that makes the position of the Attorney General of the Republic of Indonesia still needed to be in the realm of executive power. The independence of the judiciary is not solely seen from its position. Therefore, what needs to be done now is to minimize or even eliminate opportunities for other powers to be able to intervene in the Indonesian Attorney General's Office, including the President. What can be done is to provide guarantees to prosecutors, especially the Attorney General, legally in carrying out their duties and authorities. The most crucial guarantee relates to the appointment of the Attorney General, which should not only fall under the authority of the President as chief executive. There must be checks and balances carried out, namely by involving the DPR in its appointment. Therefore the urgency to include arrangements regarding the Attorney General's Office of the Republic of Indonesia in the constitution needs to be realized. The provisions added relate to guarantees of independence for the Prosecutor and Attorney General, which mainly regulates the appointment of the Attorney General by the President with the approval of the House of Representatives (DPR).

Legal Reconstruction of The Independence of The Public Prosecutor in The Integrated Criminal Justice System In Indonesia

The legal reconstruction of the independence of the Public Prosecutor in the integrated criminal justice system in Indonesia will result in the concept of the independence of the public prosecutor in the future (*ius constituendum*) in handling criminal cases. The placement of the position of the Attorney General, be it under the executive, judicial, or even legislative power, is in fact based on the system of government adopted by a country and the historical background of the country's establishment. As Indonesia also adheres to a presidential system of government, the position of the Attorney General's Office is more or less influenced by the style of this government system. Regarding this, Yusril Ilham Mahendra said:[23]

"Both theoretically and practically, there is no uniformity regarding the existence of a prosecution system. The existence of a prosecution system is more influenced by the legal tradition of "legal culture" and the history of a country. According to András Zs. Varga social and political conditions in a country will shape the country's prosecution system.

[23] Yuzril Ilham Mahendra, 2016, *Memaknai Independensi Kejaksaan di Indonesia (Kekuasaan Penuntutan)*, Raja Grafinda Persada, Jakarta, p.35.

There is no perfect prosecution system, each system has its advantages and disadvantages".

Past historical experience, which also underlies the birth of the Republic of Indonesia's Attorney General's Office, was motivated by the revolutionary atmosphere that was built by President Soekarno after the Presidential Decree of 5 July 1959, which ultimately passed the first Law on the Prosecutor's Office in the history of our independence, namely Law Number 15 of 1961 concerning Provisions - Main Provisions of the Attorney General's Office of the Republic of Indonesia (hereinafter referred to as Law No. 15 of 1961). This law states that the prosecutor's office is not only an instrument of the state for enforcing the law, but in the context of settling the Revolution, the attorney's office is an instrument of the revolution, whose main task is to act as a "public prosecutor".[24]

In particular, in their preamble, the Government and the DPR agree that the Attorney General's Office is not "a tool of the government", but "a tool of the state". However, in formulating Law No. 15 of 1961, the President and the DPR apparently did not use the provisions of Chapter IX Article 24 and Article 25 of the 1945 Constitution of the Republic of Indonesia which regulates Judicial Power in their considerations. Implicitly this illustrates that from the start the President and the DPR did not view the Attorney General's Office as an organ that lies within the judicial domain, as the President has appointed Ministers/Attorney Generals as cabinet members. The article used instead is Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states "All citizens have the same position in law and government and are obliged to uphold that law and government without any exceptions". Consistent with the opinion that the judiciary institution is not part of the organs of judicial power, the provisions of Article 5 Letter a of Law No. 15 of 1961 say "The implementation of the duties of the Department of Prosecutors is carried out by the Minister". If the Attorney General's Office is a government department headed by a Minister, then the President himself has the authority to appoint and dismiss the Attorney General in a Presidential system of government. This provision actually constitutes legitimacy for what the President had done in appointing the Attorney General as a cabinet member minister 2 (two) years earlier. This provision also eliminates the provisions in the Indische Staatsregeling (IS), HIR, and RIB. The Attorney General is no longer appointed by the Minister of Justice with the approval of the Prime Minister but is directly appointed by the President.[25]

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[24] Yusril Ihza Mahendra, 2015, *Kedudukan Kejaksaan Dan Posisi Jaksa Agung Dalam Sistem Presidensial Di Bawah UUD 1945*, Airlangga Press, Jakarta, p.62.
[25] *Ibid.*

Thus it can be understood that since its emergence, the Attorney General's Office of the Republic of Indonesia was indeed born as the biological child of the executive and is directed as a tool of the authorities to legitimize power. The constitutional atmosphere at that time forced the President to place the Indonesian Attorney General's Office under executive power. Historical experience at least shows that the Attorney General's Office is a tool of the authorities in law enforcement. The case of Lt. Gen. (Purn) H.R. Dharsono, one of those who contributed to the New Order rulers, the former Military Commander of Siliwangi and the Secretary General of ASEAN, had to be brought to court by the Attorney General's Office because he was considered contradictory and endangered the position of the authorities.[26]

Furthermore, placing the Attorney General as a cabinet member or ministerial-level official also affects the independence of the Attorney General's office. As stated by Denny Indrayana, colonialism experienced by the Indonesian people for centuries has created a culture of Indonesian society that is very inferior (*ewuh pakewuh*) towards leaders. This feudalistic character is also experienced by law enforcement officials such as the Police and the Attorney General's Office, who are structurally the president's assistants in the cabinet. So that putting the Attorney General and the Police as part of the executive has caused a bottleneck in law enforcement in Indonesia. The Attorney General's Office must be repositioned from its position as an executive agency. Regarding this, Marwan Effendy said:[27]

"It can be said that the Prosecutor's Law places the Prosecutor's Office in an ambiguous position. On the one hand, the Attorney General's Office is required to carry out its functions, duties, and authorities independently, on the other hand, the Attorney General's Office is shackled because its position is under executive power. This is where, among other things, lies the weakness of the regulation of this law. If the government (President) is truly committed to upholding the rule of law in Indonesia, it will not be a problem if the Attorney General's Office remains in the executive sphere, as long as the Attorney General's Office is empowered with wide and large but proportional authority and responsibility. If the government does not have such a commitment, it would be better if the Attorney General's Office, as a law enforcement institution, is positioned as an independent and independent "state body"-not a government institution-which is not under executive power, nor under other powers. , so that the Attorney General's Office is independent and

[26] Marwan Effendy, *op.cit,* p.106.
[27] Marwan Effendy, *op.cit,* p.126.

independent, in the sense that it is not influenced and or influenced, in carrying out law enforcement in Indonesia.

Apart from that, Andi Hamzah also suggested that the law regarding the Attorney General's Office which places the Prosecutor's Office as a tool of the government should be replaced with a new law. The Attorney General's Office must become part of the Supreme Court as an independent judicial power not to be interfered with by the executive power. This means that Andi Hamzah believes that the prosecutor's office must be within the jurisdiction of the judiciary, not within the power of the government. While Harkristuti Harkrisnowo said that the Attorney General's Office must be independent, Harkristuti did not mention the independence of the Attorney General. In his opinion, the Attorney General's Office as a tool for law enforcement must be redefined strictly in the 1945 Constitution of the Republic of Indonesia and its organic laws for the sake of the independence of the Attorney General's Office.[28]

In line with the matters above, in the context of the constitutional system, ideally, the position and functions of the Attorney General's Office of the Republic of Indonesia must be strictly regulated in the Constitution or Constitution and in organic laws. As has been done by most ASEAN countries, especially the Brunei Darussalam Constitution which has clearly and firmly regulated the role and position of the Attorney General. This arrangement shows that the Attorney General's Office is an integral part of the constitutional system (system) of law, as an apparatus that has duties and responsibilities in the field of law enforcement in Indonesia. In other words, the position and functions of the Indonesian Attorney General's Office should be strictly regulated in the 1945 Constitution of the Republic of Indonesia, just like the Indonesian Police and the Judiciary Body. In this way, the position of the Attorney General's Office of the Republic of Indonesia, both institutionally and functionally, will become independent. Moreover, the placement of the Prosecutor's office in the constitution which will later become the constitutional basis (legality) will create institutional independence that cannot be intervened by any party or authority, indirectly this will also develop an independent legal culture. functionally for the Public Prosecutor, especially in his authority in the field of prosecution of a criminal case.

Based on the discussion above, it can be concluded that the legal reconstruction of the independence of public prosecutors in the integrated criminal justice system in Indonesia begins with providing constitutional protection for the prosecutor's office. In carrying out the task of handling cases, prosecutors must have independence or autonomy

[28] *Ibid,* p.58-59.

and must be free from the influence of the leadership or other powers, there is no presentation before the trial and there is no 'Prosecution Plan (Rentut). The constitution should state the prosecutor's office as the executive body of the judiciary along with the courts. This provision is to emphasize that prosecutors are essentially the same as judges, namely judicial service, not civil service. This is necessary so that in carrying out their duties a prosecutor has autonomy or independence so that when there is intervention from any party, including from his superiors, he is able to refuse it. The end result of the process of building the independence of the Public Prosecutor is the ideal concept of the independence of the prosecutor in the criminal justice system. The ideal concept of the independence of the prosecutor's office in the Indonesian criminal justice system is by placing the prosecutor's office as an independent state institution that is free from the influence of unauthorized parties. Broadly speaking, independent agencies, like the prosecutor's office, are a separate branch of power outside the trias politica concept

Conclusion

Based on the discussion that has been described above, it can be concluded the following matters:

1. The independence of the position of the public prosecutor in the integrated criminal justice system in Indonesia is currently not fully realized. The lack of regulation in the constitution makes the regulatory nature of the position of the Attorney General an open policy, or it can be determined by the legislators or other implementing regulations. The position of the Attorney General's Office, which is only recognized as a direct interpretation of Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, actually creates more ambiguity regarding the meaning of the Attorney General's Office of the Republic of Indonesia, both theoretically and in practice. Therefore, it is necessary to provide legal guarantees for prosecutors, especially the Attorney General, in carrying out their duties and authority. The most crucial guarantee relates to the appointment of the Attorney General, which should not only fall under the authority of the President as chief executive. There must be checks and balances carried out, namely by involving the DPR in its appointment.
2. The legal reconstruction of the independence of public prosecutors in the integrated criminal justice system in Indonesia begins with providing constitutional protection for the prosecutor's office. In carrying out the task of handling cases, prosecutors

must have independence or autonomy and must be free from the influence of the leadership or other powers. This provision is to emphasize that prosecutors are essentially the same as judges, namely judicial service, not civil service. This is necessary so that in carrying out their duties a prosecutor has autonomy or independence so that when there is intervention from any party, including from his superiors, he is able to refuse it. The end result of the process of legal reconstruction of the independence of the public prosecutor in the integrated criminal justice system in Indonesia is the ideal concept of the independence of the prosecutor in the integrated criminal justice system. The ideal concept of the independence of the prosecutor's office in Indonesia's integrated criminal justice system is by placing the prosecutor's office as an independent state institution that is free from the influence of unauthorized parties. Broadly speaking, independent agencies, like the prosecutor's office, are a separate branch of power outside the trias politica concept.

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