

Legal Analysis of the Participation of the Prosecutor Agency in Eradication of Narcotics Crime

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Abstract.

The purpose of this study is to examine and analyze the juridical implications of the role of the Prosecutor's Office in the eradication of narcotics. In this paper, the writer uses the normative juridical method with the specifications of analytical descriptive writing. Article 1 paragraph (3) of Act No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia states that the action of the public prosecutor is to delegate the case to the competent district court in matters and according to the method stipulated in the criminal procedure law with a request to be examined and decided by a judge at court. The public prosecutor is a prosecutor who is authorized by law to carry out prosecutions and carry out judges' decisions. A prosecutor at the High Prosecutor's Office or at the Attorney General's Office can sue a person if he or she is first appointed to the District Attorney's Office in whose jurisdiction the offense is committed.

Keywords: Eradication; Narcotics; Prosecutor.

1. Introduction

The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as "the 1945 Constitution of the Republic of Indonesia") describes legal actions for all Indonesian citizens, as in Article 1 paragraph 3 that the State of Indonesia is a legal state (*rechstaat*), and does not based on state power (*machstaat*).¹ This means that the law does not depend on people's behavior but has its own normative character and nature so that the law can control people's behavior (*Sui Generis*).² This means that all aspects of national and state life must be based on applicable legal provisions. The law that applies as a system can play a good and right role in the community if the implementation instrument is equipped with a role in a field of law enforcement. One of these roles is the Prosecutor's Office of the Republic of Indonesia.³

¹Sulistiyawan Doni Ardiyanto. (2020). Eko Soponyono and Achmad Sulchan, *Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination*. Jurnal Daulat Hukum, 3(1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8409/4067>

²Sri Praptini, Sri Kusriyah, and Aryani Witasari. (2019). *Constitution and Constitutionalism of Indonesia*, Jurnal Internasional Daulat Hukum, 2(1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4149/2897>

³Ahmad Firmanto Prasedyomukti and Rakhmat Bowo Suharto. (2018). *The Role of Judicial Commission on Supervision of Judge's Crime in Indonesia*. Jurnal Daulat Hukum, 1(4), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/3931/2793>

Based on Pancasila and the 1945 Constitution, the enforcement of law and justice is one of the absolute requirements in achieving national goals.⁴ One of the pillars of the Government that functions in realizing national goals is the Prosecutor of the Republic of Indonesia who is given the task, function, and authority as a Public Prosecutor.

To realize the role and principles of the rule of law, it is very necessary to have laws and regulations or legal norms, as well as professional and disciplined law enforcement officials supported by legal facilities and infrastructure as well as community legal behavior. Thus, the State of Law is obliged to have law enforcement institutions or apparatus with integrity in this regard. One of them is the Prosecutor's Office of the Republic of Indonesia, beside which there are several other law enforcement officers who universally carry out their duties to enforce the law. The Prosecutor's Office of the Republic of Indonesia was born at the same time as the proclamation of Indonesian independence. After the promulgation of Act No. 15 of 1961 dated June 30, 1961 concerning the Basic provisions of the Prosecutor's Office, it was only then that it became an independent State Institution. At the beginning of its status as a Department.⁵

Act No. 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (abbreviated as UU Prosecutor) was promulgated on July 26, 2004 to further strengthen the position and role of the Prosecutor's Office of the Republic of Indonesia as a government institution that exercises state power in the field of prosecution. . The existence of the prosecutor's office is desired as a law enforcement agency in the field of prosecution to create a sense of justice, legal certainty, and the usefulness of law in the life of society, nation and state.⁶ Law and law enforcement are some of the law enforcement factors that cannot be ignored because if they are ignored it will cause the expected law enforcement to not be achieved.⁷

In today's era of globalization, more and more people know about openness in all fields and interactions with others. Abuse, drug trafficking is a national and international problem. The increasing number of people in Indonesia, which is increasing over time and the development of science, technology, can affect the development of an increasingly modern society today, both positively and negatively, and if you observe how fast today's society changes.

This can cause a lot of crime to occur in society where unemployment is rampant so that in various ways it can be done to get what he wants. One of them is about narcotics abuse, where people take advantage of people to buy and sell these illegal drugs. The current condition is very concerning, judging from the increasing prevalence

⁴Adhe Ismail Ananda, (2021), *Constitutionalism Concept in Implementation of Indonesian Staten Administration*. Jurnal Daulat Hukum, 4(2), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/15696/5559>

⁵Prakoso Djoko dan Murtika Ketut. (1987). *Mengenal Lembaga Kejaksaan di Indonesia*. Jakarta: PT Bina Aksara, p.1.

⁶Yesmil Anwar and Adang. (2009). *Sistem Peradilan Pidana, Konsep, Komponen & Pelaksanaannya Dalam Penegakan Hukum di Indonesia*. Bandung, Widya Padjadjaran, p. 189.

⁷Soerjono Soekanto. (1983). *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali, p. 5.

of narcotics abuse, therefore law enforcement officials should immediately deal with it seriously and take firm action.⁸

The Prosecutor's Office of the Republic of Indonesia as a Government institution that exercises state power in the field of prosecution and other authorities based on the law, is free from the influence of any party's power. One of the areas of law in carrying out the duties of the Prosecutor's Office according to Article 30 paragraph (1) letter b of the Prosecutor's Law is to prosecute and implement (executors) court decisions that have permanent legal force related to narcotics crimes. Act No. 35 of 2009 concerning Narcotics (abbreviated as Law on Narcotics) lays the foundation for the Prosecutor's Office to play a role in carrying out its duties in the field of prosecution which cannot be separated from the Criminal Justice System.

Based on the above background, the purpose of this paper is to study and juridical analysis implications for the role of the Prosecutor's Office in the eradication of narcotics.

2. Research Methods

To conduct a study in this paper, the author uses a normative juridical approach or a written legal approach (statutory approach).⁹The specifications of the writing were carried out using a descriptive analytical approach. The data used for this writing is secondary data. The main data collection method used in the literature study is secondary data obtained from literature books, laws and regulations, as well as the opinions of legal experts. The data that has been obtained is then analyzed by qualitative analysis.

3. Result and Discussion

3.1. Juridical Implications for the Role of the Prosecutor's Office in the Eradication of Narcotics

Law According to JHA Loeman, it has been accepted by the general view that after all the law is closely related to society, the law is merely a psychosocial event. According to Bellfroid, law is a legal gift that applies in a society to regulate the order that is based on the power that exists in that society.¹⁰

The term crime comes from a term known in Dutch criminal law, namely *Strafbaar feit*. *Strafbaar feit* consists of three words, namely *straf*, *baar* and *feit*. *Straf* is translated into criminal and legal. *Baar* translated can or may. *Feit* translates acts, events, violations and deeds.¹¹ According to Moeljatno, a criminal act is an act that is prohibited by a rule of law, the prohibition is accompanied by threats (sanctions) in the form of certain crimes for anyone who violates the prohibition.¹²

⁸Moh.Taufik Makarao, Sushasril, H.Moh.Zakky. (2003). *Tindak Pidana Narkotika*. Jakarta: Ghalia Indonesia, p.4.

⁹Soemitro. (1998). *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta, Ghalia Indonesia, p. 24

¹⁰Muhamad Said Is. (2015). *Pengantar Ilmu Hukum*. Jakarta: Prenada Media, p.56.

¹¹Adami Chazawi. (2007). *Pelajaran Hukum Pidana 1*. Jakarta: PT. Raja Grafindo, p.65

¹²Ismu Gunadi and Jonaedi Efendi. (2014). *Hukum Pidana*. Jakarta: Kencana, p.39

It should be noted that in the implementation of the Criminal Law, the public prosecutor has an important role in law enforcement. This can be seen in the criminal justice process where the public prosecutor is located in the extension of the results of the investigation. The role of the Prosecutor is actualized as a functional official in carrying out prosecutions. In carrying out this task and authority, the Prosecutor acts on behalf of the State and is responsible according to hierarchical channels.

The settlement of cases according to the Criminal Procedure Code adheres to a system called integrated criminal justice. In this system, the process of resolving criminal cases goes through certain stages. Each stage is handled by a different official or officer, but each supports the process of resolving criminal cases. The implementation of justice consists of several components, such as investigations (Act No. 2 of 2002 and Act No. 3 of 2010), prosecution (Act No. 4 of 2009), courts (Act No. 48 of 2009), and correctional institutions (Act No. 48 of 2009). No. 12 of 1995).

The position of the prosecutor in criminal justice in Indonesia has shifted in line with the shift in his duties and authorities. In relation to criminal justice, the duties and authorities of the prosecutor's office are regulated in the criminal procedure law, namely Act No. 8 of 1981 (KUHP), while in relation to the institution itself it is regulated in Act No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. Each of these laws and regulations is in principle the result of the development of the previous regulations.¹³ Investigations and investigations are carried out by investigators. After the investigation is complete, the case file is sent to the prosecutor's office for research on the case file by the public prosecutor.

In the perspective of the criminal justice system, the process of law enforcement power in the field of criminal law includes all authorities/powers in enforcing criminal law which are carried out through investigative powers, prosecution powers, adjudicating powers and correctional powers.

The existence of the Prosecutor's Office of the Republic of Indonesia in law enforcement efforts cannot be ignored. Because, in addition to normatively there are those who regulate it, also at the factual level, the community wants law enforcement agencies or officials in the field of prosecution to really play a role so that a sense of justice, legal certainty, and legal benefits are realized in the life of society, nation and state.¹⁴ In line with the role of the Prosecutor's Office in the field of prosecution, one of the important principles of the rule of law is the guarantee of equality for everyone before the law (equality before the law) so that everyone has the right to recognition, guarantees, protection, and fair legal certainty, as well as fair treatment equal before the law.

Regarding the role of the prosecutor as a public prosecutor, at least it is manifested in the quick and appropriate completion of tasks/pre-prosecution stages, preparation of indictments, case delegation, trial, criminal prosecution and legal remedies as well as other legal processes that surround it. Act No. 16 of 2004 concerning the Prosecutor's Office lays down the task of the prosecutor's office to

¹³Yudi Kristiana. (2006). *Independensi Kejaksaan Dalam Penyidikan Korupsi*. Bandung, PT Citra Aditya, p.51

¹⁴Soerjono Soekanto. Op.cit, p.5

uphold the rule of law. The Prosecutor's Office in carrying out and carrying out its duties as law enforcement must have professional abilities and also need to be accompanied by a commendable mental attitude. The basis and essence of the Prosecutor's Office in implementing it in terms of facilities and infrastructure is seen in Tri Karma Adhyaksa. The Tri Krama Adhyaksa Prosecutor's Doctrine is a guideline that animates every citizen of the Prosecutor's Office which is manifested in a commendable and mental attitude. As a public official.

The prosecution stage is basically divided into two, namely the pre-prosecution stage and the prosecution stage itself which is manifested by the preparation of an indictment and delegation to the court accompanied by a request to examine the case submitted to the court. Law enforcement activities in the integrated criminal justice system are the initial stage of the case handling process, namely investigation. If an investigation is carried out, it turns out that there is sufficient evidence that a person is strongly suspected of having committed a criminal act, followed by conducting an investigation. Investigations and investigations are carried out by investigators. After the investigation is complete, the case file is sent to the prosecutor's office for research on the case file by the prosecutor/public prosecutor.

That the task of the Prosecutor is divided into several stages of resolving criminal cases, which move from the initial consideration phase to the implementation of the judge's decision which has permanent legal force so that at any level, the Prosecutor cannot be separated from the public's view. Therefore, the role of the Prosecutor's Office in law enforcement needs to be optimized. Changes that occur in the Law on the Prosecutor's Office of the Republic of Indonesia from Act No. 5 of 1991 became Act No. 16 of 2004 is intended to further strengthen the position and role of the Prosecutor's Office as a state government institution that exercises state power in the field of human rights prosecution, free from the influence of the power of any party, namely that which is carried out independently regardless of the influence of government power and the influence of other powers.

Determination of duties and authorities by law against a particular institution or institution becomes a legal right that must be carried out, especially for the Prosecutor's Office. Soerjono Soekanto, said that, "A right that has been established in a social order to determine policies, to determine decisions on important issues to resolve conflicts". In Article 2 paragraph (1) of Act No. 16 of 2004 it is stated that the Prosecutor's Office of the Republic of Indonesia, hereinafter referred to as the Prosecutor's Office, is a government institution that exercises state power in the field of prosecution and other authorities based on the law.

In carrying out the duties and authorities of the Prosecutor's Office of the Republic of Indonesia as a government institution that carries out state power in the field of prosecution, it must be able to realize legal certainty, legal order, justice and truth based on the law and respect religious norms, decency, morality, and must explore values of humanity, law, and justice that live in society. The main task of the Prosecutor's Office in the Indonesian criminal justice system is prosecution, and on the other hand, prosecution is the sole authority that is held only by the Prosecutor's Office and not by other institutions. Determination of duties and authorities by law

against a particular institution or institution becomes a legal right that must be carried out, especially for the Prosecutor's Office.

Narcotics crimes are threatened with high and severe penalties for which the maximum possible sentence for the defendant, namely the death penalty in addition to imprisonment and a fine. Considering that narcotics crime is included in a special type of crime, criminal threats against it can be imposed cumulatively by imposing 2 main types of crime at once, for example imprisonment and a fine or a death penalty and a fine.¹⁵ The imposition of two main sentences at the same time is not possible so that no punishment is imposed in the form of imprisonment and fines because the Criminal Code only requires one of the principal crimes.¹⁶

In this case, the role of the Prosecutor's Office as law enforcement is an element that cannot be separated from the Criminal Justice System, where narcotics abuse as a criminal act is the object of law enforcement implementation and this is stated in the Criminal Procedure Code, the Prosecutor's Law, and Narcotics Law for the implications of the role of the Prosecutor's Office in eradicating narcotics crimes through its duties and functions in terms of prosecution and in terms of judicial intelligence. For this reason, the correlation between the role of the Prosecutor's Office and a role theory is that in general, the role is a condition in which a person exercises his rights and obligations in a system or organization. The roles are further divided into:

- A non-native role is a role performed by a person or institution based on a set of non that applies in people's lives;
- The ideal role is the role performed by a person or institution based on ideal values or which should be carried out in accordance with his position in a system;
- A factual role is a role performed by a person or institution that is based on concrete reality in the field or real social life.¹⁷

The use of legal remedies, including criminal law, is one of the efforts that can be used in overcoming social problems, especially in law enforcement. However, besides that it must be based on the aim of achieving the welfare of society in general. However, this legal policy is also included in the field of social policy, namely all rational efforts to achieve public welfare.

4. Conclusion

One of the main tasks of the Prosecutor's Office, namely carrying out prosecutions is regulated in Article 1 paragraph (3) of Act No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia which states that the public prosecutor's actions are to delegate cases to the competent district court in terms of and according to the method regulated in the procedural law with a request to be examined and decided by a judge in a court session. In this case, the role of the

¹⁵Defry Dwi Irmawan and Anis Mashdurohaturun. (2018). *Disparities Criminal Case Against Judge's Decision In Crime Of Narcotics Abuse Viewed From The Purpose Of Criminal Law*. Jurnal Daulat Hukum, 1(4), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4141/2891>

¹⁶Muhammad Yamin. (2012). *Tindak Pidana Khusus*. Bandung, Pustaka Setia, p.175

¹⁷Soerjono Soekanto. (2002). *Sosiologi Suatu Pengantar*. Jakarta, Rajawali Press, p.242

Prosecutor's Office as law enforcement is an element that cannot be separated from the Criminal Justice System, where narcotics abuse as a criminal act is the object of law enforcement implementation and this is stated in the Criminal Procedure Code. It is hoped that the Prosecutor's Office in carrying out its role must dare to exercise discretion in accordance with applicable regulations, break through the rules by prioritizing reason, uphold human rights, public interest, and justice in prosecuting Narcotics cases because Narcotics issues involve the public interest. It is also hoped that the Narcotics Law gives authority to the Prosecutor's Office to also act as investigators as this is regulated in special laws such as the Anti-Corruption Law. By making the Prosecutor's Office act as an investigator, the public prosecutor can get the actual facts on the ground, making it easier for the public prosecutor to defend his evidence at trial and can also distinguish the facts in alternative charges.

5. References

Journals:

- [1] Adhe Ismail Ananda, (2021), *Constitutionalism Concept in Implementation of Indonesian Staten Administration*. Jurnal Daulat Hukum, 4(2), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/15696/5559>
- [2] Ahmad Firmanto Prasedyomukti and Rakhmat Bowo Suharto. (2018). *The Role of Judicial Commission on Supervision of Judge's Crime in Indonesia*. Jurnal Daulat Hukum, 1(4), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/3931/2793>
- [3] Defry Dwi Irmawan and Anis Mashdurohatun. (2018). *Disparities Criminal Case Against Judge's Decision In Crime Of Narcotics Abuse Viewed From The Purpose Of Criminal Law*. Jurnal Daulat Hukum, 1(4), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4141/2891>
- [4] Sri Praptini, Sri Kusriyah, and Aryani Witasari. (2019). *Constitution and Constitutionalism of Indonesia*, Jurnal Internasional Daulat Hukum, 2(1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/4149/2897>
- [5] Sulistiyawan Doni Ardiyanto. (2020). Eko Sopyono and Achmad Sulchan, *Judgment Considerations Policy in Decree of the Court Criminal Statement Based On Criminal Destination*. Jurnal Daulat Hukum, 3(1), url: <http://jurnal.unissula.ac.id/index.php/RH/article/view/8409/4067>

Books:

- [1] Adami Chazawi. (2007). *Pelajaran Hukum Pidana 1*. Jakarta: PT. Raja Grafindo,
- [2] Ismu Gunadi and Jonaedi Efendi. (2014). *Hukum Pidana*. Jakarta: Kencana
- [3] Moh.Taufik Makarao, Sushasril, H.Moh.Zakky. (2003). *Tindak Pidana Narkotika*. Jakarta: Ghalia Indonesia
- [4] Muhamad Said Is. (2015). *Pengantar Ilmu Hukum*. Jakarta: Prenada Media
- [5] Muhammad Yamin. (2012). *Tindak Pidana Khusus*. Bandung, Pustaka Setia
- [6] O.C.Kaligis. (2006). *Pengawasan Terhadap Jaksa Selaku Penyidik Tindak Pidana Khusus Dalam Pemberantasan Korupsi*. Jakarta: P.T.Alumni
- [7] Prakoso Djoko dan Murtika Ketut. (1987). *Mengenal Lembaga Kejaksaan di Indonesia*. Jakarta: PT Bina Aksara

- [8] Soemitro. (1998). *Metodologi Penelitian Hukum dan Jurimetri*, Jakarta, Ghalia Indonesia
- [9] Soerjono Soekanto. (1983). *Faktor-Faktor yang Mempengaruhi Penegakan Hukum*. Jakarta: Rajawali
- [10] Soerjono Soekanto. (2002). *Sosiologi Suatu Pengantar*. Jakarta, Rajawali Press
- [11] Yesmil Anwar and Adang. (2009). *Sistem Peradilan Pidana, Konsep, Komponen & Pelaksanaannya Dalam Penegakan Hukum di Indonesia*. Bandung, Widya Padjadjaran
- [12] Yudi Kristiana. (2006). *Independensi Kejaksaan Dalam Penyidikan Korupsi*. Bandung, PT Citra Aditya