Creating an Independent and Independent Prosecutor's Office

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Abstract. The Sacred Court (MK) choice Number 49/PUU-VIII/2010, dated September 22, 2010, on the request for legal cycle presented by Prof. Dr. Yusril Ihza Mahendra, on Article 22 (1) letter d of Regulation Number 16 of 2004 concerning Examiner's Office of the Republic of Indonesia against the 1945 Constitution, ought to open the public's eyes to the way that the place of the Investigator's Office in the Indonesian constitution stays obscure. In the mean time, a few thoughts arose to situate the Examiner's Office as a free and free "state body", not an administration establishment under chief power or other power. So it is trusted that the Examiner's Office is free and autonomous, as in it isn't impacted or affected, in completing policing Indonesia.

Keywords: prosecutor's office; independent; independent

1 Introduction

The choice of the Sacred Court (MK) Number 49/PUU-VIII/2010 dated 22 September 2010 on the request for legal audit put together by Prof. Dr. Yusril Ihza Mahendra on Article 22 section (1) letter d of Regulation Number 16 of 2004 concerning the Examiner's Office of the Republic of Indonesia against the 1945 Constitution, ought to have the option to open the public's eyes that there is still vulnerability in regards to the place of the Examiner's Office in the Indonesian protected framework.

The choice of the Protected Court (MK) Number 49/PUU-VIII/2010 which is restrictively established, the Court expresses that Article 22 passage (1) letter d of Regulation Number 16 of 2004 concerning the Examiner's Office of the Republic of Indonesia (Investigator Regulation) has no power. restricting regulation. Article 22 Passage (1) of the General Lawyer's Regulation which manages the term of office of the Head legal officer, with the Established Court's choice not having restricting legitimate power for however long it isn't deciphered as "the term of office of the Overall Lawyer closes with the lapse of the term of office of the Leader of the Republic of Indonesia in one period along with the term of office of the individuals from the Bureau or excused during his term of office by the president in the period concerned. The choice depended on the thought that the Investigator's Office is an administration organization. In this way, the pioneer is the top of an administration organization which is deciphered as chief control.

The issue becomes fascinating thinking about that in one of its contemplations, the Sacred Court expressed that whether or not the arrangement of the Principal legal officer is situated as an authority inside the bureau or outside the bureau, the term of office of the Head legal

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officer ought to be under the period (term of office) of the President. All things considered, in light of the fact that the law doesn't direct this expressly, in the state organization practice its execution raises established issues that can bring about legitimate vulnerability (rechsonzekerheid).

Vulnerability with respect to the place of the Public Examiner's Office overall and the predetermined place of the Principal legal officer in the state organization framework makes uncertainty in policing. As an administration establishment that activities state power in the field of arraignment, in light of its situation, it suggests that the Examiner's Office is an organization inside the domain of chief power. In the mean time, whenever saw according to the point of view of the Examiner's Office in doing arraignments, it implies that the Examiner's Office is practicing legal power.

The force of the Examiner's Office in doing state power in the field of arraignment which is completed freely should be visible in the clarification of Article 2 section 1 of the Investigator's Regulation which expresses, "The Examiner's Office in completing its capabilities, obligations, and specialists is autonomous of the impact of government power and the impact of other powers [1].

Notwithstanding, in its execution, the Examiner's Regulation has put the Examiner's Office in an equivocal position. From one viewpoint, the Examiner's Office is expected to complete its capabilities and specialists autonomously, and then again, as an organization, it is situated under chief power (double commitment). The autonomy to do arraignments is powerless in the event that the public authority doesn't focus on maintaining law and order in Indonesia.

The Double Commitment in the end frequently raises questions about the objectivity of the Adhyaksa corps in pursuing significant choices, particularly those connected with the treatment of cases including the interests of the Public authority. Many individuals feel that it is unimaginable for the Examiner's Office in completing its capabilities, obligations, and specialists to be free of different controllers of force in light of the fact that the place of the Examiner's Office is under leader order.

No Head legal officer has at any point been named or excused simultaneously as a Bureau expression. In the interim, a few thoughts arose to situate the Examiner's Office as a free and free "state body", not an administration foundation under leader power or different powers. So it is trusted that the Examiner's Office is autonomous and free, as in it isn't impacted or affected, in completing policing Indonesia.

This paper will talk about how to reinforce the Examiner's Office so it is free and autonomous in doing policing.

2 Problem of Study

The problem in this paper is about how to strengthen the Prosecutor's Office so that it is independent and independent in carrying out law enforcement.

3 Method and Approach

3.1 Method

The method used in writing this applied paper is the descriptive analytical method, namely by using data that clearly describes the problems directly in the field, then analyzing and concluding to reach a problem solution. The method of collecting data is through observation and literature study to obtain problem-solving in the preparation of this paper.

3.2 Approach

A socio-legal approach, i.e. a legal approach method used to study issues in legal and systematic terms, is used as a guide to rules that can be used as a basis for the analysis of emerging legal phenomena. The sociological approach is used to examine a problem in society or the community environment with the intent and purpose of obtaining facts, followed by finding problems, identifying problems, and finding solutions to problems.

4 Discussion

4.1 Duties and Powers of the Prosecutor

The obligations and specialists of the Examiner's Office in Regulation no. 16 of 2004 concerning the Head legal officer's Office of the Republic of Indonesia. as determined in Article 30, specifically:

1) In the lawbreaker field, the Examiner's Office has the accompanying obligations and specialists:
   a. Carry out prosecutions;
   b. Carry out judges' decisions and court decisions that have permanent legal force;
   c. Supervise the implementation of conditional criminal decisions, supervisory criminal decisions, and conditional decisions;
   d. Carry out investigations into certain criminal acts based on the law;
   e. Completing certain case files and aiming to carry out additional examinations before being transferred to the court which in its implementation is coordinated with investigators.
2) In the field of common and state organization, the Principal legal officer's Office with unique powers can act inside or outside the court for and in the interest of the state or government.
3) In the field of public order and peace, the Prosecutor's Office also organizes the following activities:
   a. Increasing public legal awareness;
   b. Security of law enforcement policies;
   c. Security of circulation of printed matter;
   d. Supervision the flow of beliefs that can harm society and the state;
   e. Prevention of abuse and/or blasphemy of religion;
   f. Research and development of criminal statistics law.

Moreover, Article 31 of Regulation no. 16 of 2004 affirms that the Examiner's Office might request that the adjudicator relegate a litigant to a clinic or mental consideration office,

or another suitable spot on the grounds that the individual concerned can't remain solitary or is brought about by things that can imperil others, the climate or himself. Article 32 of Regulation no. 16 of 2004 specifies that notwithstanding the obligations and specialists referenced in this regulation, the Examiner's Office might be allocated different obligations and specialists in view of the law. Besides, Article 33 specifies that in doing its obligations and specialists, the Examiner's Office keeps up with agreeable associations with regulation and equity authorization organizations and state organizations or different offices. Then Article 34 specifies that the Examiner's Office can give legitimate contemplations to other government establishments.

In the Republic of Indonesia, as well as in the Criminal Procedure Code, these duties and authorities are regulated. Based on this, an inventory of the authorities regulated in the KUHAP can be made as follows [2]:

a. Receiving warning from the examiner assuming the specialist has begun to explore an occasion which Depends on the arrangements in Article 30 section (1) of the Criminal Technique Code, we can see that the obligations and specialists of the Examiner's Office are to be sure extremely conclusive in demonstrating whether an individual or partnership is demonstrated to have carried out a crook act or not. no. Notwithstanding the obligations and specialists directed in Article 30 section (1) of the Criminal Technique Code, it is likewise workable for the Examiner's Office to be given sure obligations and specialists in view of regulations other than Regulation Number 16 of 2004 concerning the Investigator's Office of the Republic of Indonesia, for instance in Regulation Number 15 of 2003 concerning Psychological warfare Wrongdoing. This is directed in Article 32 of Regulation Number 16 of 2004 concerning the Examiner's Office of the Republic of Indonesia which states:
   "*Notwithstanding the obligations and specialists referenced in this Regulation, the Examiner's Office might be relegated different obligations and specialists in light of the law*".

On account of the indictment, the Public Investigator will go about as the Public Investigator in the wake of getting the dossier or the consequences of the examination from the agent, following designating one of the examiners to study and look at it, then, at that point, the aftereffects of the exploration are submitted to the Top of the Lead prosecutor's Office (KAJARI). A few things should be viewed as in the arraignment cycle, to be specific [3]:

1) Return the case file to the investigator because it is not complete with instructions to be carried out by the investigator (pre-prosecution)
2) Merging or splitting files
3) The results of the investigation are complete but there is insufficient evidence or the incident is not a criminal act and it is recommended that the prosecution be discontinued. If the suggestion is approved, a decision letter is issued. The decision letter can be submitted for pretrial.
4) The investigation results are complete and can be submitted to the District Court. In this case, KAJARI issues a letter of appointment for the Public Prosecution. The public prosecutor makes a letter of indictment and after the indictment is completed then a letter delegating the case is made to the District Court.
   a) Receive case files from investigators in the first and second stages as referred to in Article 8 paragraph (3) letters a and b. in the case of a brief examination, the case file is received directly from the assistant investigator [4].
   b) Hold a pre-prosecution [4].

c) Provide extended detention [4], carry out house arrest [4], city detention [4], and change the type of detention [4].
d) At the request of the suspect or defendant to hold a detention suspension and may revoke the suspension if the suspect or defendant violates the specified conditions [4].
e) Conducting auction sales of confiscated objects that are quickly damaged or dangerous because it is impossible to keep them until the court's decision on the case has permanent legal force or secures it in the presence of the suspect or his proxies [4].
f) Prohibiting or reducing the freedom of relations between legal advisors and suspects as a result of abuse of their rights [4] and supervising the relationship between legal advisors and suspects without hearing the contents of the conversation [4] and in the case of crimes against the state, security can hear the contents of the conversation. [4]
g) Requesting a pretrial to be carried out to the Head of the District Court to accept whether or not a termination of an investigation by an investigator is valid. The purpose of this article is to enforce law, justice, and truth through horizontal supervision.
h) In the case of connectivity because the criminal case must be tried by a court within the general court environment, the public prosecutor accepts the submission of the case from the military prosecutor and then becomes the basis for submitting the case to the competent court [4].
i) Determine the attitude of whether a case file has met the requirements or not to be transferred to the court [4].
j) Taking other actions, including examining the identity of the suspect, and the evidence by taking strict attention to the limits of authority and function between investigators, public prosecutors, and courts [4].
k) If the public prosecutor thinks that the investigation results of prosecution can be carried out, then as soon as possible he shall make an indictment [4].
l) Make a letter of determination to terminate the prosecution [4].
m) Continuing the prosecution of the suspect who was discontinued due to new reasons [4].
n) Merging cases and making them into one indictment [4].
o) Hold a prosecution split (splitting) against a case file containing several criminal acts committed by several suspects [4].
p) Delegating the case to the district court accompanied by a letter of indictment and case files [4].
q) Make a letter of the indictment [4].
r) to complete or discontinue the prosecution, the public prosecutor may amend the indictment before the court sets a trial day or at least seven days before the trial begins [4].

4.2 Strengthening the Prosecutor's Office through Constitutional Amendments

The hypothesis of established regulation started to get consideration and grown quickly when the Indonesian country entered the change period. One of the standards of the change period is the flood of democratization. A majority rule government has given space to requests for change, the two requests connected with the standards of state organization, state establishments, and the connection between the state and residents. A majority rules

government likewise permits scholarly opportunity and independence to look at different hypotheses that bring forth decisions for frameworks and state designs to oblige these requests.

These requests cover numerous angles. The current administrative and institutional structure as indicated by sure protected regulation around then, was presently not by the improvement of goals and individuals' lives. Then again, different hypothetical examinations have arisen and give new option administrative and institutional structures. Accordingly, positive sacred regulation has encountered "desacralization." Beforehand irrefutable things were likewise tested. Different requests for changes prompted requests for changes to the 1945 Constitution which in the two orders before the change, in particular the Old Request (1959-1967) and the New Request (1967-1998) ought not be addressed, and could be considered against the state.

Of the four amendments to the 1945 Constitution, namely from the first (1999) to the last, namely the fourth (2002), many changes in the material of the 1945 Constitution have changed, both changes in formulation, changes in location, as well as new provisions, including:

1. Number of Chapters, from 16 to 22 Chapters, removed one (Chapter IV).
2. The number of articles, from 37 Articles, 4 Articles of Transitional Rules, and one Additional Rule, became 73 Articles (36 new Articles), 3 Articles of Transitional Rules, and 2 Additional Rules. There are only a few articles that have unchanged, namely: Article 4, Article 10, Article 12, Article 25, Article 29, and Article 35 (6 articles). Article 22 and Article 36 did not change the formulation, but received additional articles.

Furthermore, these various changes can be grouped as follows:

1. Changes like the transfer of power. For example, the transfer of power to form laws which according to the original provisions, the power to make laws rests with the president, now the power to make laws is in the DPR.
2. Changes that are affirming the limitation of power. For example, the President and Vice President can only hold office for a maximum of two consecutive terms.
3. Changes that are balancing power. For example, in matters relating to the granting of amnesty, abolition, the appointment of ambassadors, and the acceptance of representatives of foreign countries, the government must heed the opinion of the DPR.
4. Detailed changes or confirmation of existing provisions. For example, all members of the DPR are elected through general elections, this principle is already in the Constitution, but so far it has not been implemented properly.
5. Additional changes as something new. For example, chapters on defense and security, chapters on General Elections, chapters on BPK, and others.
6. Changes that eliminate unnecessary things. For example, the abolition of Elucidation in the 1945 Constitution.
7. Changes that build a new paradigm. For example, in forming the law on the implementation of autonomy.

From these various changes, it is unfortunate that the position of the Prosecutor's Office, which plays a central position within the framework of the criminal justice system, has not received attention as one of the basic things that need to be regulated in the constitution. Moreover, for example, when compared to the position of the Indonesian National Police which has been regulated in the chapter on defense and security.

In its development, various dynamics emerged after the 4th amendment of the 1945 Constitution in 2002, the debate re-emerged on whether it was necessary to re-do the amendment of the 1945 Constitution. Regarding this, according to Prof. Mahfud MD [5], there are three groups or currents in considering whether or not the fifth amendment is necessary. First, groups or currents that want to return to the original 1945 Constitution; Second, groups

or currents who want to maintain the current amendments to the Constitution and; Third, groups or currents who wish to make further changes or amendments in this convention are called the Fifth Amendment.

The first stream was driven or followed by several figures, especially several retired TNI soldiers who from the beginning had sworn to become “Sapta Margaris” who were loyal to Pancasila and the 1945 Constitution. There were not many supporters of this trend, but they were still there, even at a seminar held by Watimpres members on On April 3, 2008, there are still those who regret the amendment to the 1945 Constitution. The reason is that the amendment to the 1945 Constitution has gone too far, betrayed the mandate and work of the founders or founding fathers, divided the Unitary State of the Republic of Indonesia, was in a hurry and did not absorb the aspirations of the people proportionally.

The second stream is generally followed by (members) of political parties that have dominant seats in the DPR and MPR, especially those who were formerly members of the MPR Ad Hoc Committee which was missioned by discussing changes to the 1945 Constitution from 1999 to 2002. According to them, further changes were made. it does not need to be done because the current amendments have absorbed and compromised all the aspirations that developed in society at that time. In addition, making changes to the Law will require a very large amount of energy, and whatever the result, there will be some who will question it; If it is changed again, there will surely be some who question the results.

The third stream is the strongest current because it is supported by almost all groups, ranging from legal and political academics in universities, constitutional study institutions, legal and constitutional activist NGOs, members of the Constitutional Commission, and several large mass organizations. The reason is that in reality, the 1945 Constitution of the Republic of Indonesia contained several weaknesses that must be corrected so that further amendments are reasonable demand.

Prof. Mahfud himself positioned himself as a follower of the third sect, namely that further amendments to the 1945 Constitution are still needed. This is based on the understanding that there is no unchanged constitution. The Constitution, wherever and whenever, is the result that was agreed upon based on the need at the time it was made so that when the "poleksosbud" situation changes, the resultant can also be changed. Therefore, the average constitutional change in the world takes effect no later than 30 (thirty) years. The main thing in the effort to change the constitution is to make a new political agreement (resultant) because there are new developments. After all, there are important things that have been missed or because problems (lack) have been found in the existing or current constitution.

Concerning the discourse above, and the need to guarantee the position of the Attorney General and the Attorney General, it is necessary to make a fifth amendment to the 1945 Constitution. One of the important agendas is to include strengthening the guarantee of the independence of the Attorney General's Office in the law enforcement function. It needs to be done as a logical consequence of the choice of the legislators who have placed the Prosecutor's Office in a dual obligation position, namely on the one hand as a law enforcement agency related to judicial functions and on the other hand as a government agency responsible to the President as head of government.

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