

Implications Of Filling The Position Of Attorney General By The President On The Independence Of The Prosecutor's Office In Carrying Out The Functions Of Judicial Power

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Abstrak: *This research aims to find out and understand the influence of the current mechanism for filling the position of Attorney General on the independence of the Prosecutor's Office in carrying out law enforcement functions. The research results show that The implementation of the mechanism for filling the position of Attorney General who is appointed and dismissed by the President has two consequences. Firstly, it opens up opportunities for intervention in the law enforcement function by the President, carried out with various motives and interests, thus affecting the independence of the law enforcement function of the Prosecutor's Office. The two positions of Attorney General were then held from non-Prosecutor professions and even held by political party cadres which influenced the impartiality and professionalism of the implementation of law enforcement functions by the Prosecutor's Office.*

Keywords : *Filling Positions, Prosecutor's Independence, Law Enforcement*

INTRODUCTION

World constitutional history, especially in Europe, initially placed the power of government in the hands of one strong man, or "rule of man." This pattern was applied in France through absolute monarchy, starting with King Henry IV, continued by King Louis XIII, and reached its peak during the time of King Louis XIV who was famous for the motto "le`tat est moi" (the state is me)¹. A similar pattern of government also occurred in the Netherlands under King Phillip II² and in England under King John Lackland. The concept of "rule of man" was influenced by the Renaissance teachings of Niccolo Machiavelli and Jean Bodin, which resulted in the king's power becoming absolute. As a result of the king's arbitrary actions, the people began to look for ways to limit the king's power. This inspired philosophers such as John Locke, Montesquieu, and Jean Jacques Rousseau to deny the absolute power of the king. Their thinking inspired the birth of the concept of the rule of law (rechstaat) in the 17th and 18th centuries, which emphasized that

¹ Mohammad Tahir Azhari, *Negara Hukum Suatu Studi Tentang Prinsip Prinsipnya Dilihat Dari Segi Hukum Islam, Implementasinya Pada Periode Negara Madinah dan Masa Kini*, Bulan Bintang, Jakarta, 1992, hlm 34.

² Pada tahun 1555 Raja Philip memerintah secara sewenang-wenang dengan menetapkan pajak baru secara sepihak, intoleransi terhadap umat beragama dan beragam penindasan yang juga melibatkan Gubernurnya Pangeran Alba, Lihat Christiaan de Jonge, *Apa Itu Calvinisme ?*, BPK Gunung Mulia, Jakarta, hlm 23.



the king's power should be limited and based on law. This concept shifted the “rule of man” to “rule by law,” where law became the basis of government.³⁴.

In Indonesia, the concept of the rule of law was included in the 1949 Constitution of the Republic of Indonesia (UUD RIS) and the 1950 Temporary Constitution (UUDS), but not explicitly in the 1945 Constitution. The affirmation of Indonesia as a state of law is only stated in Article 1 paragraph 3 of the 1945 Constitution as a result of the fourth amendment in 2002. The main pillar of this rule of law is an independent judicial power, free from executive influence. Since independence, judicial power in Indonesia was intended to be a branch of power separate from political institutions such as the MPR/DPR and the President, in accordance with the doctrine of trias politica. This principle was reinforced in the third amendment to the 1945 Constitution in 2001, which emphasized that the judicial power must be independent. Article 24 paragraph 1 of the 1945 Constitution states that the judicial power is an independent power to administer justice in order to uphold law and justice.

The position of the Prosecutor's Office in the Indonesian constitutional system is one of the state organs implementing the functions of judicial power, namely the prosecutorial power over all criminal cases and the power to investigate certain criminal cases of a special nature. However, efforts to realize the independence of the Prosecutor's Office as one of the executors of the functions of judicial power are still substantially constrained, especially regarding the arrangement for filling the position of Attorney General which is still the full authority of the President. The filling mechanism of the position hampers efforts to implement the independence of the Attorney General's Office in carrying out law enforcement functions, because the filling of the position of Attorney General by the President is practiced by placing the position of Attorney General as the executor of the judicial function as if it is subordinate to the position of the President who carries out the executive function. This constitutional reality appears as stated by Yusril Ihza Mahendra, where in the era of President Susilo Bambang Yudhoyono's administration Attorney General Hendarman Supandji always came to face or wrote a letter asking for “instructions” from the President if he wanted to name someone as a suspect⁵. Then during the reign of President B.J Habibie, Attorney General Andi Muhammad Ghalib, in investigating cases of Corruption, Collusion and Nepotism (KKN) against former President Suharto, always asked for instructions and approval from President B.J Habibie before conducting investigations or naming Suharto as a suspect⁶. Then during the reign of President Abdurrahman Wahid, Attorney General Marzuki Darusman was unable to complete the investigation of corruption cases related to the Texmaco textile company, not because he had the political support of President Abdurrahman Wahid, so the Attorney General's Office stopped the investigation in May 2000⁷.

The reality of the relationship between the office of the President and the office of the Attorney General is certainly very contrary to the spirit of constitutional reform which wants to keep political influence away from filling positions related to judicial power. The hegemony of the President's power

³ Mirza Nasution, *Ilmu Negara*, Enam Media, Jakarta, 2020, hlm 35

⁴ Agussalim Andi Gandjong, *Ilmu Negara*, Gramedia, Jakarta, 2019, hlm 69.

⁵ Putusan Mahkamah Konstitusi Nomor: 49/PUU-VII/2010 tanggal 29 September 2010 hlm 21

⁶ Andi Muhammad Ghalib, *Menepis Badai Menegakkan Supermasi Hukum*, Dharmapena Nusantara, Jakarta, 2000, hlm 341-342

⁷ Vishnu Juwono, *Melawan Korupsi: Sejarah Pemberantasan Korupsi di Indonesia 1945-2014*, Kepustakaan Populer Gramedia, Jakarta, 2018, hlm 204



without a democratic filling procedure causes law enforcement by the Attorney General's Office to be strongly influenced by the goodwill and political will of the power holder. The mechanism for filling the position of Attorney General regulated in Article 19 paragraph 2 of the Prosecutor's Office Law creates legal conflicts with constitutional norms related to the rule of law and the independence of judicial power in Article 1 paragraph 3 and Article 24 paragraph 1 of the 1945 Constitution. Therefore, research is needed on how the implications of filling the position of Attorney General on the independence of the Attorney General's Office in carrying out law enforcement functions.

METHOD

This research takes the type of normative legal research, doctrinal research with prescriptive optics⁸ which looks at the purpose of law, the values of justice, the validity of legal rules, legal concepts and legal norms,⁹ with the object of study research on the mechanism for filling the position of Attorney General and its influence on the independence of the Prosecutor's Office in carrying out law enforcement duties. This research uses a statute approach, comparative approach, historical approach and conceptual approach.¹⁰ The statutory approach analyzes the regulation of the Attorney General's Office as a law enforcer. The comparative approach compares the role and filling of the position of Attorney General in various countries. The historical approach studies the position of the AGO and the Attorney General from the beginning of independence to the reform era. The conceptual approach constructs legal theories for analysis and understanding. Researchers will use primary legal materials, secondary legal materials, and tertiary legal materials, which are found in the Indonesian Attorney General's Office library and other libraries.

RESULTS AND DISCUSSION

A. The Practice of Presidential Intervention Against the Law Enforcement Function of the Prosecutor's Office

1. The Practice of Law Enforcement Intervention in the Old Order Era

a) The Foreign Minister Ruslan Abdul Ghani Case and the Schmidt Case.

During the Parliamentary Democracy (1950-1959) in the Old Order era, Attorney General Suprpto investigated the case of Foreign Minister Ruslan Abdul Ghani. The case stemmed from the trial of journalist Mochtar Lubis who was charged with insulting the government. In court, it was found that Hok Tay, a Chinese businessman, handed over 11,000 US dollars to Ruslan Abdul Ghani in 1956 during President Sukarno's working visit to Washington..¹¹

Attorney General Suprpto investigated the case of Foreign Minister Ruslan Abdul Ghani who was charged with taking dollar bills out of the country without permission. Deputy Attorney General Zainal Abidin indicted Ruslan, who was later sentenced by the Supreme Court to three months' imprisonment. President Sukarno, through Prime Minister Ali Sastroamidjoyo, intervened and asked for the case to be stopped on the grounds that the testimonies were balanced and the government was facing a rebellion in

⁸Bernard Arief Sidharta, *Refleksi Tentang Struktur Ilmu Hukum (Sebuah Penelitian Tentang Fondasi Kefilsafatan dan Sifat Keilmuan Ilmu Hukum Sebagai Landasan Pengembangan Ilmu Hukum Nasional Indonesia)*, Mandar Maju, Bandung, 2013, hlm 194

⁹Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2010, hlm 22

¹⁰Peter Mahmud Marzuki, *Penelitian Hukum...*, *Op.Cit*, halaman 133.

¹¹Seri Buku Tempo, *Op Cit* hlm 57



Sumatra. Suprpto refused, stating that the number of witnesses was not decisive and that all difficulties were the responsibility of the government. President Sukarno tried to intervene directly by stating to Attorney General Suprpto that Ruslan Abdul Ghani was an honest and good man, and that even if only a small fine was imposed, it would damage Ruslan's career. Suprpto refused, stating that he did not see the public interest being damaged if the case went forward. Despite pressure from the Prime Minister and the President to have the case dismissed, Suprpto went ahead with the prosecution. When the trial began, the pressure disappeared¹². On April 1, 1959, towards the end of Parliamentary Democracy, Attorney General Suprpto was replaced by Attorney General Gatot Taruna Mihardja. This change occurred due to differences of opinion with President Sukarno regarding former Dutch guerrilla leader Schmidt. Suprpto released Schmidt after serving a 5-year prison sentence, which angered Sukarno. Sukarno asked Suprpto to continue to detain Schmidt, but Suprpto refused on the grounds of human rights¹³.

A. Smuggling cases at Tanjung Priok Port and Teluk Nibung port involving the Army.

After being sworn in, Attorney General Gatot Taruna Mihardja immediately investigated various smuggling cases, especially at the ports of Tanjung Priok and Teluk Nibung, which involved soldiers. Initially, the investigation only touched on low-ranking officers, but was later extended to high-ranking army military officials. Gatot's assertive attitude disturbed many parties, especially the army. On September 10, 1959, Gatot was arrested by the army on charges of being worried about causing disintegration. President Sukarno replaced him after considering the advice of Prime Minister Djuanda and Army Minister General A.H. Nasution. Gatot's case was later dropped by his successor, Attorney General R. Goenawan.

B. Surabaya Businessman Oesman's Unlicensed Warehouse Ownership Case

In 1963, during the Guided Democracy, Prosecutor Singgih, who would later become Attorney General in 1990, was summoned by his superior, Junior Attorney General Soenarjo Tirtonegoro. On President Sukarno's orders, Soenarjo arrested Surabaya businessman Oesman for preventing the President from marrying Haryati. Prosecutor Singgih went to Surabaya and ordered Prosecutor Sukardi to find fault with Oesman, who was later charged with economic crimes for owning a warehouse without a license.¹⁴

1. The Practice of Law Enforcement Intervention in the New Order Era

a. Diamond Smuggling Case Through Kemayoran Air Port Involving Relatives of President Soeharto's Wife

On April 19, 1966, Lieutenant General Soegih Arto became Attorney General replacing Brigadier General Soetardhio in the era of Guided Democracy after G 30 S. In 1979, the Prosecutor's Office revealed a diamond smuggling case at the Kemayoran Air Port, involving a perpetrator with a kinship

¹²Ibid hlm 53

¹³Djokomoeljo, *Kiat Andi Muhammad Ghalib Memeriksa KKN Soeharto Keluarga dan Kroninya, Raga Mukti Makmur*, Jakarta, 1999, hlm 3

¹⁴Rajab Ritonga dkk, *Singgih: Memoar Seorang Jaksa Agung*, Qualquita Communication, Jakarta, 2003, hlm 78-81.



with Ibu Tien. Soeharto ordered Soegih Arto to detain the perpetrator, but Soegih Arto misunderstood his order. As a result, Soegih Arto was replaced by Ali Said after the misunderstanding.¹⁵¹⁶

- b. The termination of Ibnu Sutowo's corruption case and President Suharto's protection of Bustanul Arifin in the Bulog corruption case.

In 1974, Pertamina under President Director Ibnu Sutowo suffered huge losses due to corruption and projects unrelated to Pertamina's main business, leading to debts reaching USD 10.5 billion. Attorney General Ali Said conducted an investigation and prepared a file for the court, but in May 1980, President Suharto ordered the termination of the case for no apparent reason. On May 21, 1980, Minister of State Secretary Sudharmono announced in the House of Representatives that Ibnu Sutowo's corruption case had been terminated due to insufficient evidence for criminal prosecution.¹⁷

In 1977, an investigation into the corruption of the head of the East Kalimantan Bulog agency, Budiadji, revealed Rp 7.6 billion in corruption involving a number of Bulog officials including Bustanul Arifin. However, President Suharto through Sudharmono asked Attorney General Ali Said not to deepen the investigation into Bustanul Arifin for no apparent reason.¹⁸

- c. Various Cases of Subversion Crimes Motivated by the President's Political Interests.

During the Old Order era, President Sukarno implemented the Manifesto Politik (MANIPOL), which opposed the separation of powers and emphasized the State Policy Guidelines (GBHN) as the official guidelines for completing the revolution. This manifesto characterized political thinking that sharply distinguished between "friends" and "opponents of the revolution", with the belief that political opponents always committed subversion to obstruct the goals of the revolution.¹⁹ As a response, a regulation to eradicate subversion activities was established in Law 11/PNPS/1963, which in the Suharto era became a flexible instrument to take action against those deemed to oppose the President's political interests.²⁰

Controversy over Law 11/PNPS/1963 began early on, with the Supreme Court giving different rulings on the political requirements in subversion cases. The law gave the Attorney General broad powers to investigate and prosecute subversion cases, often used as a tool of power to suppress President Soeharto's political opponents²¹²². Attorney General Singgih was instructed by President Suharto to use this law

¹⁵Panda Nababan, *Lahir Sebagai Petarung Sebuah Otobiografi, Buku Satu: Menunggang Gelombang*, PT. Mahkamah Keadilan Indonesia, Jakarta, 2022, hlm 255

¹⁶*Ibid* hlm 257

¹⁷Panda Nababan *Op Cit* hlm 266-267

¹⁸Panda Nababan *Op Cit* hlm 285

¹⁹Adnan Buyung Nasution, *Sekedar Tinjauan Mengenai Undang-Undang Nomor 11/PNPS/1963 tentang Pemberantasan Kegiatan Subversi*, Makalah disampaikan dalam kegiatan di Gedung Kebangkitan Nasional 26 Agustus 1978, hlm 485, diunduh [file:///C:/Users/ACER/Downloads/SEKEDAR TINJAUAN MENGENAI UNDANGUNDANG NO11PNPS19 2 31129 060024.pdf](file:///C:/Users/ACER/Downloads/SEKEDAR%20TINJAUAN%20MENGENAI%20UNDANGUNDANG%20NO11PNPS19%2031129%20060024.pdf) tanggal 10 Desember 2023

²⁰Adnan Buyung Nasution, *Sekedar Tinjauan... Op Cit*

²¹Djokomoeljo, *Catatan Peristiwa Menarik Mengulas Kasus Kasus Subversi*, Sumber Ilmu Jaya, Jakarta, 1997, hlm 276

²²Lihat Pasal 5 Undang-Undang Penetapan Presiden Nomor 11 Tahun 1963 tentang Pemberantasan Kegiatan Subversi

without hesitation in dealing with cases deemed to hinder development²³. Notable cases include the prosecution of Muktar Pakpahan for his criticism of the New Order government in his book "Portrait of the Indonesian State"²⁴.

Sri Bintang Pamungkas, founder of PUDI²⁵ faced subversion charges for his political activities against the Soeharto regime, including rejecting the 1997 elections and running for President. He was sentenced to prison for disrupting political stability²⁶. Later, Budiman Sudjatmiko of the PRD, along with other activists, was arrested and tried for allegedly masterminding the riot at the PDI DPP office, although only Budiman was tried while the other attackers were not.²⁷

1. The Practice of Law Enforcement Intervention in the Reform Era
 - a. President Habibie's intervention in the investigation of former President Soeharto's corruption case.

On May 20, 1998, President Suharto resigned from office amidst economic and political turmoil that included massive demonstrations. B.J. Habibie rose to become President, beginning the Reformation era. President Habibie issued Presidential Instruction Number 30/1998 to investigate allegations of Corruption, Collusion and Nepotism involving Suharto and his cronies. The Attorney General at the time, Soedjono C. Atmonegoro, was active in investigating Suharto's corruption cases. He cooperated with NGOs and assigned three Junior Attorney Generals to collect evidence related to Suharto's wealth and policies that allegedly violated the law. Samsu Djalal from intelligence, Antonisu Sujata from special crimes, and Seohandjono from civil and state administration, each responsible for a different aspect of the investigation.²⁸

In 1998, Attorney General Soedjono C. Atmonegoro proposed reforms to make the AGO more independent and less influenced by the executive. He even spoke openly to President Habibie, stating the importance of the independence of the AGO so that even the president could be investigated if there were allegations of criminal acts. However, the President replaced him with Lieutenant General Andi Muhammad Ghalib on June 15, 1998, who was not serious in investigating former President Soeharto's corruption.²⁹ Ghalib was even criticized for his examination of Soeharto as a "political charade"³⁰. Public pressure and evidence of receiving money eventually led the President to replace Ghalib with Marzuki

²³Rajab Ritonga dkk, *Op Cit* hlm 238.

²⁴<https://nasional.kompas.com/read/2021/03/22/10195151/profil-mendiang-muchtar-pakpahan-tokoh-buruh-yang-kerap-dipenjara-di-era?page=all> diunduh pada tanggal 10 Desember 2023.

²⁵Sri Bintang Pamungkas, *Ganti Rezim Ganti Sistim Pergulatan Menguasai Nusantara*, El Bisma, Jakarta, 2014 hlm 43.

²⁶Sri Bintang Pamungkas, *Op Cit* hlm 55.

²⁷Budiman Sudjatmiko dan Kisah di balik Vonis 13 Tahun Penjara...", <https://nasional.kompas.com/read/2023/07/21/05150021/budiman-sudjatmiko-dan-kisah-di-balik-vonis-13-tahun-penjara-diunduh> pada tanggal 10 Desember 2023

²⁸Djokomoelyo, *Proses Peradilan Soeharto*, PT Raga Mukti Makmur, Jakarta, 2001, hlm 34-35

²⁹Djokomoelyo, *Proses Peradilan Soeharto Op Cit*

³⁰Pusat Data dan Analisis Tempo, *B.J. Habibie dan Bocoran Telpon Jaksa Agung Andi M. Ghalib*, Tempo Publishing, Jakarta, 2019, hlm 14.

Darusman. However, the handling of Soeharto's corruption cases was also unsuccessful under Marzuki Darusman's leadership.³¹.

- b. President Abdurrahman Wahid used the Attorney General to maintain his power

After rejecting President B.J. Habibie's accountability on October 20, 1999, the MPR appointed Abdurrahman Wahid as President.³² The conflict between President Gus Dur and the DPR culminated in the dissolution of the DPR through a Decree that was not widely supported. This resulted in the filing of a right of inquiry and impeachment proceedings against Gus Dur in July 2001. During this tense period, Attorney General Marzuki Darusman investigated corruption cases involving political figures opposed to the President³³. On June 6, 2021, President Gus Dur replaced Attorney General Marzuki Darusman with Baharuddin Lopa, who then conducted investigations against political figures such as Arifin Panigoro, Akbar Tanjung, and Nurdin Halid, alleging involvement in corruption and political maneuvers to bring down Gus Dur.³⁴.

- c. President Megawati Sukarnoputri's intervention in the handling of the Bulog non-budgetary fund corruption case.

After the fall of President Gus Dur, Megawati Sukarnoputri became the fifth President of Indonesia after a Special Session of the MPR in 2001.³⁵. One of the focuses of his administration was the case of alleged misuse of Bulog non-budgetary funds amounting to Rp. 40 billion. The case involved Akbar Tandjung, then Chairman of the Golkar Party Central Leadership Council, as well as Dadang Sukandar and Winfried Simatupang.³⁶. The detention of Akbar Tandjung by Attorney General M.A. Rachman a few days before the investigation process was considered to have political motives, related to the dynamics between the President and Parliament at the time.³⁷.

- d. Intervention of President Susilo Bambang Yudhoyono in the Corruption Case of KPK Leaders Bibit S Riyanto-Chandra Hamzah and Corruption Case of Hotel Tiara Medan Construction by PT CGN.

After being elected President in 2004, SBY was the first directly elected President in the Reformation era.³⁸. During his administration, there was an investigation into a corruption case involving Akbar Tandjung regarding the alleged misuse of funds for Medan's Tiara Hotel by PT

³¹Djokomoelyo, *Proses Peradilan...Op Cit* hlm 194

³²<https://www.suara.com/news/2019/09/12/201545/detik-detik-bj-habibie-diteriaki-saat-sidang-mpr-1999-pimpinan-amien-rais?page=all> diunduh pada tanggal 10 Desember 2023.

³³Virdika Rizky Utama, *Menjerat Gus Dur*, Numedia Digital Indonesia, Jakarta, 2019, hlm 221

³⁴Pusat Data dan Analisis Tempo, *Polemik Dualisme Kapolri Era Presiden Abdurrahman Wahid*, Tempo Publishing, Jakarta, 2019, hlm 22-23.

³⁵https://id.wikipedia.org/wiki/Megawati_Soekarnoputri diunduh pada tanggal 17 Desember 2023

³⁶Kodrat Wahyu Dewanto dkk, *Akbar Tandjung Tidak Layak Jadi Terdakwa*, Central for Economic and Social Development Studies, Jakarta, 2002, hlm 5.

³⁷https://www.saldiisra.web.id/index.php/tulisan/artikel-koran/11-artikelkompas/349_penahanan_akbar_tandjung.html diunduh pada 17 Desember 2023.

³⁸https://id.wikipedia.org/wiki/Susilo_Bambang_Yudhoyono diunduh pada tanggal 10 Desember 2023

Citra Graha Nusantara.³⁹ Surya Paloh, who owns the Media Group, was linked to the case, and there was political intervention to stop further investigation.⁴⁰ In 2009, a controversial case involving two KPK leaders, Bibit Samad Riyanto and Chandra Hamzah, was filed against them for alleged abuse of power.⁴¹ Although the case was submitted to the court, President SBY proposed an out-of-court settlement, which was then carried out with the termination of prosecution by the AGO after public pressure and recommendations from TIM 8 formed by the President himself.

The termination of the prosecution of Bibit and Chandra by the South Jakarta District Attorney's Office was overturned by a pretrial ruling filed by Anggodo Widjojo. On January 25, 2011, Attorney General Basrief Arief issued a seponering decision to set aside the case in the public interest, arguing that continuing the case to court would disrupt the KPK's corruption eradication process. The existence of Team 8, formed by President SBY, has become controversial as it has no clear juridical and constitutional basis.⁴²

- e. President Joko Widodo's intervention in the handling of the case of KPK leaders Abraham Samad and Bambang Widjojanto and the case of KPK investigator Novel Baswedan

After the end of SBY's presidency, Joko Widodo (Jokowi) has served as President of Indonesia since October 20, 2014, and was re-elected in 2019.⁴³ In Jokowi's first term, two KPK leaders, Abraham Samad,⁴⁴ an Bambang Widjojanto and KPK investigator Novel Baswedan, were named as suspects in a case allegedly related to the conflict between the KPK and the National Police.⁴⁵ Jokowi ordered the Attorney General and Chief of Police to resolve the case. The AGO finally discontinued the prosecution of Novel Baswedan on February 22, 2016⁴⁶ and Attorney General H.M. Prasetyo seponering the cases of Abraham Samad and Bambang Widjojanto on March 3, 2016, in order to maintain the spirit of corruption eradication.⁴⁷

Based on the description above, it can be concluded that in the history of Indonesian state administration, there are three patterns of law enforcement intervention carried out by the President through the Attorney General. First, law enforcement intervention is directed to implement the President's personal interests. Second, law enforcement intervention to maintain power and protect his cronies. Third, law enforcement intervention to implement public interest. The first and second patterns of intervention are

³⁹<https://nasional.tempo.co/read/59809/uang-seharusnya-untuk-pembangunan-hotel-tiara-medan> diunduh pada tanggal 10 Desember 2023

⁴⁰Panda Nababan, *Op Cit* hlm 328-329.

⁴¹O.C. Kaligis, *Pembatasan Kekuasaan Presiden Dalam Penegakan Hukum dalam Antologi Tulisan Ilmu Hukum Jilid 11*, PT Alumni, Bandung, 205, hlm 266-267

⁴²O.C. Kaligis, *Korupsi Bibit dan Chandra*, Indonesia Against Injustice, Jakarta, 2010, hlm 537

⁴³https://id.wikipedia.org/wiki/Joko_Widodo diunduh pada tanggal 10 Desember 2023

⁴⁴https://www.bbc.com/indonesia/berita_indonesia/2015/02/150217_samad_kpk_tersangka diunduh pada tanggal 14 Desember 2023

⁴⁵<https://www.liputan6.com/news/read/2224260/polri-ungkap-kronologi-kasus-novel-baswedan-saat-di-bengkulu> diunduh pada tanggal 14 Desember 2023.

⁴⁶<https://nasional.tempo.co/read/747023/kejaksaan-agung-hentikan-kasus-novel-baswedan> diunduh pada tanggal 14 Desember 2023

⁴⁷<https://www.hukumonline.com/berita/a/kejaksaan-seponering-perkara-samad-bw--kpk--ini-menggembirakan-lt56d81f5f69d99/> diunduh pada tanggal 14 Desember 2023

forms of negative intervention with elements of abuse of power that contradict the principle of a free and impartial court and the principle of separation of powers between the branches of judicial power. The pattern of intervention is clearly contrary to the philosophy of the birth of a democratic state of law based on resistance to the concept of a state based on rule by man and the concept of a state based on mere power (machstaat). Moreover, to smooth the intervention, the President also abused his power in changing the position of Attorney General by removing the Attorney General who could not compromise with the interests of the authorities.

While the third intervention pattern is a positive intervention carried out for the purpose of legal expediency. However, the mechanism in carrying out the intervention taken by the President is contrary to the constitution. Considering that constitutionally the President is the executor of government power (executive) not judicial power (judiciary). Although the 1945 Constitution applies the concept of separation of powers with checks and balances or distribution of powers. The attribution of authority to the President has been regulated and limited in the Constitution. The President is only given the power to control the judicial power at the post-adjudication stage through the granting of clemency, amnesty, rehabilitation and abolition. The President's intervention at the pre-adjudication stage (investigation, prosecution), despite its positive purpose, is still contrary to the principle of legality (due process of law) in a state of law. Ideally, whether or not an investigation is valid, whether or not an allegation is proven constitutionally must be decided through a proper judicial mechanism, not through a political mechanism without a constitutional basis. Such intervention is also contrary to the Standards of Professional Responsibility and Statement of Essentials Duty and Rights of Prosecutors agreed by the World Association of Prosecutors that general or specific instructions to prosecutors by other institutions outside the Prosecutor's Office must be carried out in a transparent manner in accordance with applicable laws and regulations.⁴⁸

B. The Practice of Filling the Position of Attorney General Ignores the Principles of Independence and Impartiality of the Law Enforcement Function.

One of the characteristics of a democratic state based on law (demokratische rechstaat) or a democratic state based on law (constitutional democracy) is the existence of an independent and impartial judicial power.⁴⁹ The first principle of independence itself in the judicial process is manifested in the freedom and independence of the bearers of the functions of judicial power both individually and as an institution from various influences either by subtle, pressure, coercion, violence, or retaliation due to certain political, economic, or government interests.⁵⁰

The second very important principle is impartiality. In practice, impartiality itself means impartiality, neutrality, and an attitude without bias and without prejudice in examining, adjudicating. This principle is intended to prevent conflicts of interest, partisanship, and maintain the honor and authority of the court.⁵¹

The universal importance of the principles of fair trial, for a fair and impartial trial is set out in the International Covenant on Civil and Political Rights (ICCPR) detailing that:

⁴⁸Lihat Pasal 2 butir 2.2 dan butir 2.3 *Standards of Professional Responsibility and Statement of Essentials Duty and Rights of Prosecutors* RM Surachman dan Jan Marinka, *Op Cit* hlm 130

⁴⁹Jimly Asshidiqie, *Pokok-Pokok Hukum... Op Cit* hlm 530

⁵⁰*Ibid*

⁵¹Jimly Asshidiqie, *Pokok-Pokok Hukum... Op Cit* hlm 531

“...everyone shall have the right to a fair and public hearing, by a competent, independent and impartial tribunal constituted in accordance with law...”⁵²

Constitutionally, the independent judicial power to uphold law and justice is exercised by the Supreme Court and its subordinate judicial bodies, as well as the Constitutional Court. In addition, other bodies related to judicial power are also recognized, such as the police, prosecutors, advocates, and correctional institutions. The principle of impartiality of the judicial power cannot be separated from the independence of the prosecution power to guarantee the rights of citizens to recognition, protection, fair legal certainty, and equal treatment before the law in the criminal justice process. In particular, prosecutors as the main link in the criminal justice system based on the resolution of the Commission on Crime Prevention and Criminal Justice of the UN Economic and Social Council in Vienna on April 14-18, 2008 must behave professionally, consistently, independently and impartially. In order to implement the principle of impartiality in exercising their authority, prosecutors must:

1. carry out their functions impartially;
2. not be influenced by individual or group interests and public or media pressure and should have regard only to the public interest;
3. act objectively;
4. consider all relevant circumstances, regardless of whether they are favorable or unfavorable to the suspect;
5. in accordance with local law or the requirements of a fair trial, endeavor to ensure that necessary and reasonable measures to bring a case to light have been taken and the results disclosed, whether leading to the guilt or innocence of the suspect;
6. always seek the truth and assist the court to arrive at the truth and to deliver justice to the public, victims and defendants in accordance with the law and the dictates of justice..⁵³

The position of the Attorney General as the head of a government institution indicates that this position is under the executive power. The prerogative of the President in filling the position of Attorney General is an independent privilege granted by the Constitution within the scope of government power. Although the prerogative is absolute and cannot be contested by other state institutions, its implementation still requires restrictions through checks and balances mechanisms..⁵⁴

Since the beginning of independence until the reform era, the requirements to become Attorney General included integrity, authority, honesty, justice, and impeccable behavior. This requirement is very open and creates legal uncertainty because the assessment is subjective by the President without a transparent and accountable comparison mechanism. In addition, the existing juridical technical requirements only require a Bachelor of Laws diploma, providing an opportunity for anyone to be appointed as Attorney General..⁵⁵

⁵²Lihat Pasal 14 <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> diunduh pada hari Kamis tanggal 16 Mei 2024

⁵³Lihat *United Nations Economic and Social Council Commission on Crime Prevention and Criminal Justice* diunduh: [https://www.iap-association.org/getattachment/Resources/Documentation/IAP-Standards-\(1\)/UN-Resolution/UN-Resolution-IAP-Standards-draft-as-approved-1.pdf.aspx](https://www.iap-association.org/getattachment/Resources/Documentation/IAP-Standards-(1)/UN-Resolution/UN-Resolution-IAP-Standards-draft-as-approved-1.pdf.aspx) Kamis 16 Mei 2023

⁵⁴Pertimbangan Mahkamah Konstitusi dalam Putusan Nomor 30/PUU-XXI/2023 hlm 243-244

⁵⁵Untuk dapat diangkat menjadi Jaksa Agung harus memenuhi syarat sebagai berikut: a. Warga Negara Indonesia; b. Bertakwa kepada Tuhan Yang Maha Esa; c. Setia kepada Pancasila dan Undang-Undang Dasar Negara Republik Indonesia Tahun 1945; d. Berijazah paling rendah Sarjana Hukum; e. Sehat jasmani dan rohani; dan f. Berintegritas, berwibawa, jujur, adil, dan berkelakuan tidak tercela.”

To become a prosecutor, in addition to having a law degree and being a civil servant, one must also pass the education and training for the formation of prosecutors.⁵⁶ In fact, from the aspect of authority and responsibility based on the principle of single prosecution, the Attorney General will be the leader of the supervisors and controllers of the prosecutors in the prosecutor's office or military court.

Compare these requirements with the requirements to hold the positions of Commander of the Indonesian National Defense Forces (TNI) and Chief of the Indonesian National Police (Kapolri), both of which are government institutions that have important constitutional positions that should be managed professionally and avoid practical political interests. The leadership of the Police and TNI institutions are limitingly regulated to only be filled by active police officers.⁵⁷ and active TNI officers.⁵⁸ The existence of these closed requirements effectively closes the gap for political party cadres to lead the TNI and Polri. Given that there is an explicit prohibition on members of the TNI⁵⁹ and members of the National Police⁶⁰ to become involved as a member of a political party.

The position of Attorney General as the bearer of law enforcement functions requires independence and neutrality in carrying out its duties, so ideally the Attorney General should be free from affiliation with political parties. The affiliation of the Attorney General with a political party, especially as an administrator of a political party, will create a conflict of interest when the Attorney General must make legal decisions that should be based on legal considerations, but because he has an interest in a political party, it is possible to make decisions based on considerations of political interests and the possibility of intervention from the political party that oversees him. The affiliation of the Attorney General with a political party will affect the perception of neutrality in prosecution and professionalism in maintaining integrity and independence. An Attorney General is required to focus fully on carrying out the duties and authorities of the Attorney General's Office that are imposed on him. The involvement of the Attorney General in political party affairs will interfere with the performance and effectiveness of his leadership, which in turn will eliminate public confidence in the institution of the Attorney General's Office.⁶¹

History shows that the involvement of political parties in organizing government is a determinant factor in the neutrality of the bureaucracy. According to Hamka Hendra A Noer in the conclusion of his research on the influence of political parties on the neutrality of the government bureaucracy, it states that political

⁵⁶Lihat Pasal 9 ayat 1 huruf h dan ayat 2 Undang-Undang Nomor 11 Tahun 2021 tentang perubahan terhadap Undang-Undang Nomor 21 Tahun 2021.

⁵⁷Lihat Pasal 11 ayat 6 Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Republik Indonesia. Kepala Kepolisian Republik Indonesia dijabat oleh Perwira Tinggi Kepolisian Negara Republik Indonesia yang masih aktif dengan memperhatikan jenjang kepangkatan dan karier.

⁵⁸Lihat Pasal 13 ayat 4 Undang-Undang Nomor 34 Tahun 2004 tentang Tentara Nasional Indonesia. Jabatan Panglima Tentara Nasional Indonesia dijabat secara bergantian oleh Perwira Tinggi aktif dari tiap-tiap Angkatan yang sedang atau pernah menjabat sebagai Kepala Staf Angkatan

⁵⁹Lihat Pasal 39 Undang-Undang Nomor 34 Tahun 2004 tentang Tentara Nasional Indonesia. yang menyatakan bahwa seorang Prajurit TNI termasuk juga Panglima TNI dilarang untuk menjadi anggota partai politik

⁶⁰Lihat Pasal 28 ayat (1) Undang-Undang Nomor 2 Tahun 2002 tentang Kepolisian Republik Indonesia. "Kepolisian Negara Republik Indonesia bersikap netral dalam kehidupan politik dan tidak melibatkan diri pada kegiatan politik praktis." Penjelasan Pasal 28 ayat (1) UU POLRI menyatakan bahwa yang dimaksud dengan "bersikap netral" adalah bahwa anggota Kepolisian Negara Republik Indonesia bebas dari pengaruh semua partai politik, golongan dan dilarang menjadi anggota dan/atau pengurus partai politik.

⁶¹Pertimbangan Mahkamah Konstitusi dalam Putusan Nomor 30/PUU-XXI/2023 hlm 249

parties always try to influence, control, and exploit the government bureaucracy and its resources for the benefit of the party is a reality in every government regime.⁶² In the conclusion of his research, it is stated that from the old order era to the new order era, political parties have always tried to interfere with the bureaucracy with the aim of encouraging the government bureaucracy to be non-neutral and professional in carrying out its functions. Even until the reform era, freeing the negative intervention of political parties towards the bureaucracy has become increasingly difficult and has even caused more severe impacts down to the level of bureaucracy in the regions.⁶³

Meanwhile, the involvement of political parties as the dominant political infrastructure in many public office recruitments is not accompanied by integrity in carrying out its functions. Referring to the results of the Indonesian Political Indicator survey in 2022, political parties received the lowest public trust score with 56.6%.⁶⁴ Several factors have led to low public trust in political parties, among others, influenced by the many negative stigmas about political parties, due to the number of party cadres caught in corruption cases plus high public expectations of political parties that cannot be answered well by political parties.⁶⁵ This condition is then further exacerbated by the client patron culture practiced by political parties in placing themselves in the democratic life in Indonesia.⁶⁶ This culture produces a pattern of political party oligarchy and cartel politics which results in the dysfunction of political parties in carrying out political recruitment tasks.⁶⁷

In the context of the Indonesian government system, which adheres to a presidential system with multiple parties (muliti parties). The presidential system with multiparties often holds the President hostage to the interests of political parties, so that in order to maintain the stability of his relationship with the legislature, he is forced to negotiate the composition of the cabinet by dividing ministerial positions to be held by cadres or partisans of political parties.⁶⁸ In such conditions, the existence of political parties will be a real threat to the implementation of the principle of impartiality of prosecutors in carrying out law enforcement functions. The position of Attorney General, whose filling mechanism is the dominance of the President, will become an object of interest exchange to create a strong Presidential system. The law enforcement function of the Attorney General's Office will be degraded from its purpose to provide protection and public welfare as mandated by the Constitution.

Historically, there have been five political party cadres who have held the position of Attorney General. The appointment of political party cadres was carried out by several Presidents in each different period of government as in the following table:

. Hamka Hendra A Noer, *Ketidak Netralan Birokrasi Indonesia Studi Zaman Orde Baru Sampai Orde Reformasi*, Kompas Gramedia, Jakarta, 2014, hlm 79-80.

⁶³Hamka Hendra A Noer, *Op Cit* hlm 306

⁶⁴Muhammad Nur Ramadhan dkk *Op Cit*

⁶⁵<https://databoks.katadata.co.id/datapublish/2022/07/13/berapa-banyak-warga-yang-percaya-partai-politik-ini-hasil-surveinya> diakses pada tanggal 07 Maret 2023.

⁶⁶ Muhammad Nur Ramadhan dkk, *Klientelisme Sebagai Perilaku Korupsi dan Demokrasi Banal*, Jurnal Anti Korupsi Integritas, hlm 178

Rully Chairul Azwar, *Partai Politik ditengah Ancaman Virus Oligarki dan Politik Kartel*, Jurnal Ketatanegaraan Volume 05 November 2017, Lembaga Pengkajian Majelis Permusyawaratan Rakyat, hlm 3.

⁶⁸ Hanta Yuda AR, *Presidensialisme Setengah Hati : Studi Tentang Kombinasi Sistem Multiparati dengan Presidensialisme pada masa pemerintahan Susilo Bambang Yudhoyono*, Gramedia, Jakarta, 2010, hlm 26

Table 1 Names of Attorney General who came from Political Party Cadres

No	Attorney General	Political Parties	Presidential Term
1	Mr. Kasman Singodimedjo	Partai Masyumi	Presiden Sukarno
2	Marzuki Darusman	Partai Golongan Karya	Presiden Abdurahman Wahid
3	Baharudin Lopa	Partai Persatuan Pembangunan	Presiden Abdurahman Wahid
4	Abdurahman Saleh	Partai Bulan Bintang	Presiden Susilo Bambang Yudhoyono
5	H. M. Prasetyo	Partai Nasional Demokrat	Presiden Joko Widodo

During President Sukarno's administration, Attorney General Kasman Singodimedjo was a politician from the Indonesian Muslim Brotherhood (Masyumi) and a former member of the Central Indonesian National Committee (KNIP), which had the same position as the MPR/DPR today. The revolutionary era of this appointment was understandable because the Attorney General Mr. Kasman Singodimedjo had a Meester in de rechten or Bachelor of Laws educational background. This was also motivated by the situation at the beginning of independence where human resources were still very limited so that President Sukarno did not have sufficient human resource options to fill the position of Attorney General. In addition, during the tenure of Attorney General Kasman Singodimejo, he was busy pioneering the institution of the Attorney General's Office by compiling administration and personnel so that the Attorney General Kasman Singodimejo had never carried out prosecutions.⁶⁹ So that during the period of Attorney General Kasman Singodimejo there was no controversy over the law enforcement function of the Attorney General's Office.

The filling of the position of Attorney General by political party cadres also appeared in the reform era. It began during the reign of President Abdurahman Wahid who appointed Golkar party politician Marzuki Darusman. Marzuki Darusman was previously a member of the DPR from the Golkar faction. During his tenure as Attorney General, Marzuki Darusman was not serious about resolving the corruption case of former President Suharto, the founder of Golkar. This attitude can be seen from the sudden replacement of Director of Investigation Chairul Imam, who was serious in investigating corruption cases against former President Suharto.⁷⁰ In addition, the replacement of Jampidsus Ramelan was followed by the release of several prisoners of corruption cases, including Bedu Amang, Syahril Sabirin, who was a partisan of the Golkar party.⁷¹

According to former senior prosecutor Djokomoeljo, Attorney General Marzuki Darusman during his tenure made a blunder by accepting potential corruption suspects Prayogo Pangestu, and Syahril Sabirin in the hotel room where he worked daily. Even during case title meetings Attorney General Marzuki Darusman as the highest investigator and public prosecutor never gave instructions to subordinates regarding case handling techniques. Then the Attorney General revoked the Order to Stop Investigation (SP3) on the case of former President Suharto even though it had been stopped by the previous Attorney

⁶⁹Panitia Peringatan 75 Tahun Kasman, *Hidup Itu Berjuang: Kasman Singodimedjo 75 Tahun*, Bulan Bintang, Jakarta, 1982, hlm 145

⁷⁰Djokomoeljo, *Proses Peradilan...Op Cit* hlm161-163

⁷¹*Ibid* hlm 149

General, this action was a technical weakness of the Attorney General because SP3 should be reopened through a pretrial mechanism and this policy was a form of Attorney General Marzuki Darusman's incomprehension of the bureaucratic culture of the Prosecutor's Office which applied the doctrine of prosecutors as one and inseparable. At that time the Attorney General's Office was also led by Marzuki Darusman to be involved in many activities that were not directly related to the law enforcement function, for example, attending the Consultative Group of Indonesia (CGI) meeting to discuss increasing debt to donor countries.⁷²

On June 6, 2001 President Abdurahman Wahid appointed Baharudin Lopa as Attorney General to replace Marzuki Darusman. Baharudin Lopa, a retired prosecutor, is a cadre of the United Development Party (PPP), one of President Abdurahman Wahid's supporting parties.⁷³ Baharudin Lopa served as Attorney General for a short period of only 28 days as he passed away in Mecca on July 3, 2001. During his time as Attorney General, investigations were carried out against people who were politically opposed to President Abdurahman Wahid, so the law enforcement process caused controversy in the community because of doubts about its impartiality.⁷⁴

During the administration of President Susilo Bambang Yudhoyono, Abdurahman Saleh was appointed as Attorney General. Abdurahman Saleh is an advocate and cadre of the Crescent Star Party (PBB), which was one of the parties supporting President Susilo Bambang Yudhoyono in the 2004 elections.⁷⁵ At the beginning of his appointment, Abdurahman Saleh had received public support given his experienced track record as an advocate at the Jakarta Legal Aid Institute (LBH). However, during his tenure, based on the experience of senior journalist Panda Nababan, Abdurahman Saleh issued many controversial policies, especially in fostering prosecutors' careers. During the tenure of Attorney General Abdul Rahman Saleh many strategic positions of the Head of the High Prosecutor's Office were left vacant for months and to fill the vacant positions was done by consulting with parties outside the Prosecutor's Office.⁷⁶ A clear example is the appointment of Hendarman Supandji as Deputy Attorney General for Special Crimes (Jampidsus) during the era of Attorney General Abdul Rahman Saleh. The appointment was made by ignoring Hendarman Supandji's track record as a prosecutor who had previously made a career in coaching. At that time, Hendarman Supandji had already obtained a Presidential Decree as the Deputy Attorney General for Development (Jambin) but was changed by Attorney General Abdul Rahman Saleh to Jampidsus.⁷⁷

Furthermore, in the first term of President Joko Widodo's administration, he appointed H.M. Prasetyo as Attorney General. Attorney General H.M. Prasetyo is a retired career prosecutor with the last position of Deputy Attorney General for General Crimes (Jampidum). However, prior to his appointment as Attorney General, H.M. Prasetyo was active as an organizer of the National Democratic Party (Nasdem), which was the party that supported Joko Widodo as a Presidential candidate in 2014. H.M. Prasetyo is a member of

⁷²Djokomoelyo, *Proses Peradilan...Op Cit* hlm161-163

⁷³<https://nasional.tempo.co/read/24304/ppp-setuju-baharuddin-lopa-jadi-menteri> diunduh pada Rabu tanggal 15 Mei 2024

⁷⁴<https://tirto.id/kepergian-baharuddin-lopa-saat-membongkar-kasus-korupsi-besar-ghlu> diunduh pada Rabu tanggal 15 Mei 2024

⁷⁵<https://partaibulanbintang.or.id/profil-partai/sejarah-partai-bulan-bintang/> diunduh pada hari Rabu tanggal 15 Mei 2024.

⁷⁶Panda Nababan, *Op Cit* hlm 260-261

⁷⁷Abdul Rahman Saleh, *Bukan Kampung Maling Bukan Desa Ustadz Memoar 930 Hari di Puncak Gedung Bundar*, Kompas Media Nusantara, Jakarta, 2008,hlm 114



the House of Representatives elected for the 2014-2019 period from the electoral district of Central Java II province.⁷⁸

During the tenure of Attorney General H.M Prasetyo, many cases handled by the Attorney General's Office received intervention from the Nasdem Party. For example, the confession of prosecutor Johanis Tanak during the fit and proper test to become a KPK leadership candidate at the House of Representatives, who at the time served as Head of the Central Sulawesi High Prosecutor's Office, admitted that he had been asked to go to Attorney General H.M Prasetyo. At that time, the Central Sulawesi High Prosecutor's Office was handling an alleged corruption case involving former Central Sulawesi Governor Major General (Ret.) Bandjela Paliudju, who was the Chairman of the Advisory Board of the Central Sulawesi Nasdem Party.⁷⁹

In the context of the duties and authorities of the Attorney General which are so strategic in law enforcement in Indonesia. The position of Attorney General is a professional position that has distinctive characteristics so that it must be filled by individuals who have good legal knowledge and special expertise including managerial expertise in leading and coordinating other law enforcers in law enforcement efforts. Therefore, the Attorney General must be a person with integrity, capacity, capability, competence, track record, and high commitment in law enforcement efforts including the eradication of corruption.⁸⁰ Since Indonesia's independence and the institution of the Prosecutor's Office existed in the constitutional system, there have been 25 (twenty-five) names who filled the position of Attorney General. However, most of the names that filled the position of Attorney General did not come from the prosecutor profession. There are various professional backgrounds that fill the position of Attorney General, including Judges, Soldiers, Notaries, Advocates, Academics, and Members of Parliament. In addition, five Attorney Generals were cadres of political parties.

It was noted that in the early era of independence President Sukarno appointed the first Attorney General, Mr. Gatot Tarunamihardja, who served from August 12, 1945 to October 22, 1945, a former Tihoo Hoin or Judge during the Japanese occupation.⁸¹ The second Attorney General was Mr. Kasman Singodimedjo who served from 8 November 1945 to 6 May 1946, a former soldier during the Dutch occupation as Chairman of the People's Security Agency and former chairman of the Central Indonesian National Committee (KNIP).⁸² The third Attorney General was Mr. Tirtawinata who was an academic who served from July 22, 1946 until 1951. The fourth Attorney General was R. Soeprapto who served from 1951 to 1959 who was a Judge. Then the fifth Attorney General was again held by Mr. Gatot Taroenamihardja from April 1, 1959 to September 22, 1959.⁸³ The sixth Attorney General was Mr. Goenawan who served from December 31, 1959 until 1962 and was the first career prosecutor to be appointed as Attorney General with the last career position of Deputy Attorney General.⁸⁴ Jaksa Agung Ketujuh adalah R. Kadaroesman menjabat sejak tahun 1962 sampai dengan tahun 1964 merupakan jaksa karier dengan jabatan karier

⁷⁸https://id.wikipedia.org/wiki/Muhammad_Prasetyo diunduh pada tanggal 10 Desember 2023

⁷⁹<https://nasional.kompas.com/read/2019/08/28/10533201/tersangkakan-kader-nasdem-johanis-tanak-semprat-dipanggil-jaksa-agung> diunduh pada tanggal 14 Desember 2023.

⁸⁰Pertimbangan Mahkamah Konstitusi dalam Putusan Nomor 30/PUU-XXI/2023 hlm 246

⁸¹https://id.wikipedia.org/wiki/Gatot_Taroenamihardja diunduh pada 16 Desember 2023

⁸²https://id.wikipedia.org/wiki/Kasman_Singodimedjo diunduh pada 16 Desember 2023

⁸³https://id.wikipedia.org/wiki/Gatot_Taroenamihardja diunduh pada 16 Desember 2023

⁸⁴Kejaksanaan Agung, *Op Cit* hlm 150

terakhir Jaksa Agung Muda.⁸⁵ The eighth Attorney General was Brig. Gen. Agustinus Sutardhio, who served from 1964 to 1966 and was the first Attorney General with a military background.⁸⁶

Meanwhile, during the era of President Suharto in the first three periods of government, there was a constitutional habit carried out by the President by filling the position of Attorney General by the army. Starting from the ninth Attorney General, Brigadier General Soegih Arto from the army served from March 27, 1966 to 1973.⁸⁷ The tenth Attorney General Lieutenant General Ali Said from April 4, 1973 to February 18, 1981 was a soldier from the legal corps.⁸⁸ The eleventh Attorney General, Lieutenant General Ismail Saleh, served from February 18, 1981 to May 30, 1984, and like Ali Said was a soldier from the legal corps.⁸⁹ The twelfth Attorney General, Major General Hari Suharto, served from June 4, 1984 to March 19, 1988 and was an army soldier.⁹⁰ The thirteenth Attorney General, Rear Admiral Sukarton Marmosudjono, served from March 19, 1988 to June 29, 1990 and was a naval soldier.⁹¹ The fourteenth Attorney General, Singgih, was the longest serving Attorney General, from August 9, 1990 to March 14, 1998, and was a career prosecutor with the last career position of Deputy Attorney General for Special Crimes (Jampidsus).⁹²

In the era of President Habibie, the fifteenth Attorney General was Soedjono C. Atmonegoro who served from March 20, 1998 to June 15, 1998 and was a career prosecutor with the last career position of Deputy Attorney General.⁹³ The sixteenth Attorney General, Lieutenant General Andi Muhammad Ghalib, served from June 17, 1998 to June 14, 1999 from the army.⁹⁴

In the era of President Abdurrahman Wahid, the seventeenth Attorney General Marzuki Darusman was appointed from October 29, 1999 to June 1, 2001, a former member of the House of Representatives.⁹⁵ The eighteenth Attorney General was Baharudin Lopa, who served from June 6, 2001 to July 3, 2001, a retired prosecutor with the last career position of Chief Prosecutor of South Sulawesi.⁹⁶ The nineteenth Attorney General was Marsilam Simanjuntak who served from July 10, 2001 to August 9, 2001 and was a non-party political activist.⁹⁷

In the era of President Megawati Soekarnoputri, the twentieth Attorney General, M.A. Rachman, who served from August 14, 2001 to October 21, 2004, was a career prosecutor with the last career position of Deputy Attorney General for General Crimes (Jampidum).⁹⁸

In the era of President Susilo Bambang Yudhoyono, the twenty-first Attorney General was appointed, Abdul Rahman Saleh, who served from August 14, 2001 to October 21, 2004, and was an advocate, notary,

⁸⁵Rajab Ritonga dkk, *Op Cit* hlm 190

⁸⁶Kejaksaan Agung, *Loc Cit* hlm 169

⁸⁷Kejaksaan Agung, *Op Cit* hlm 169

⁸⁸https://id.wikipedia.org/wiki/Ali_Said diunduh pada tanggal 16 Desember 2023

⁸⁹https://id.wikipedia.org/wiki/Hari_Suharto diunduh pada tanggal 16 Desember 2023

⁹⁰https://id.wikipedia.org/wiki/Ismail_Saleh diunduh pada tanggal 16 Desember 2023

⁹¹Rajab Ritonga dkk *Op Cit* hlm 90

⁹²https://id.wikipedia.org/wiki/Soedjono_C._Atmonegoro diunduh pada tanggal 16 Desember 2023

⁹³https://id.wikipedia.org/wiki/Andi_Muhammad_Ghalib diunduh pada tanggal 16 Desember 2023

⁹⁴https://id.wikipedia.org/wiki/Marzuki_Darusman diunduh pada tanggal 16 Desember 2023

⁹⁵https://id.wikipedia.org/wiki/Marzuki_Darusman diunduh pada tanggal 16 Desember 2023

⁹⁶https://id.wikipedia.org/wiki/Baharuddin_Lopa diunduh pada tanggal 16 Desember 2023

⁹⁷https://id.wikipedia.org/wiki/Marsillam_Simanjuntak diunduh pada tanggal 16 Desember 2023

⁹⁸https://id.wikipedia.org/wiki/M.A._Rachman diunduh pada tanggal 16 Desember 2023

and Supreme Court judge..⁹⁹ The twenty-second Attorney General, Hendarman Supandji, who served from May 23, 2007 to September 24, 2010, was a career prosecutor with the last career position of Jampidsus.¹⁰⁰ The twenty-third Attorney General was Basrief Arief, who served from November 26, 2010 to October 20, 2014, a retired prosecutor with the last position of Deputy Attorney General.¹⁰¹

President Joko Widodo appointed the twenty-fourth Attorney General, H.M. Prasetyo, who served from November 20, 2014 to October 18, 2019, is a retired prosecutor with the last position of Jampidum, and a former member of the House of Representatives.¹⁰² The second Attorney General, Burhanuddin, who took office on October 23, 2019, is a retired prosecutor with the last position of Deputy Attorney General for Civil and Administrative Affairs (Jamdatun).¹⁰³

Table 3 Names of Attorney Generals Based on Professional Backgrounds

No.	Name	Position Period	Description
1	Mr. Gatot Taroenamihardja	12 Agustus 1945 s.d 22 Oktober 1945	Former Tihoo Hoin or Chief Judge at Puwokerto District Court
2	Mr.Kasman Singodimedjo	8 November 1945 s.d 6 Mei 1946	Former Chairman of the People's Security Agency (Army) member of KNIP
3	Mr.Tirtawinata	22 Juli 1946 s.d Tahun 1951	Academics
4	R.Soeprapto	Tahun 1951 s.d Tahun 1959	Judge
5	Mr.Gatot Taroenamihardja	1 April 1959 s.d 22 September 1959	Former Tihoo Hoin or Chief Judge at Puwokerto District Court
6	Mr.Goenawan	31 Desember 1959 s.d Tahun 1962	Career Prosecutor
7	R.Kadaroesman	Tahun 1962 s.d Tahun 1964	Career Prosecutor
8	Brigjen Agustinus Sutardhio	Tahun 1964 s.d Tahun 1966	TNI
9	Brigjen Soegih Arto	27 Maret 1966 s.d Tahun 1973	TNI
10	Letjen Ali Said	4 April 1973 s.d 18 Februari 1981	TNI
11	Ismael Saleh	18 Februari 1981 s.d 30 Mei 1984	TNI

⁹⁹[https://id.wikipedia.org/wiki/Abdul_Rahman_Saleh_\(jaksa\)](https://id.wikipedia.org/wiki/Abdul_Rahman_Saleh_(jaksa)) diunduh pada tanggal 16 Desember 2023

¹⁰⁰https://id.wikipedia.org/wiki/Hendarman_Supandji diunduh pada tanggal 16 Desember 2023

¹⁰¹https://id.wikipedia.org/wiki/Basrief_Arief diunduh pada tanggal 16 Desember 2023

¹⁰²https://id.wikipedia.org/wiki/Muhammad_Prasetyo diunduh pada tanggal 16 Desember 2023

¹⁰³https://id.wikipedia.org/wiki/ST_Burhanuddin dinduh pada tanggal 16 Desember 2023.

No.	Name	Position	Period	Description
12	Mayjen Hari Suharto		4 Juni 1984 s.d 19 Maret 1988	TNI
13	Laksamana Muda Sukarton Marmosujono,		19 Maret 1988 s.d 29 Juni 1990	TNI
14	Singgih		3 Agustus 1990 s.d 14 Maret 1998	Career Prosecutor
15	Soedjono C. Atmonegoro		20 Maret 1998 s.d 15 Juni 1998	Career Prosecutor
16	Andi Muhammad Ghalib		17 Juni 1998 s.d 14 Juni 1999	TNI
17	Marzuki Darusman		29 Oktober 1999 s.d 1 Juni 2001	Former Member of Parliament
18	Baharuddin Lopa		6 Juni 2001 s.d 3 Juli 2001	Retired Prosecutor
19	Marsilam Simanjuntak		10 Juli 2001 s.d 9 Agustus 2001	Activist
20	M.A Rachman		14 Agustus 2001 s.d 21 Oktober 2004	Career Prosecutor
21	Abdul Rahman Saleh		21 Oktober 2004 s.d 9 Mei 2007	Advocate, Notary, Former Supreme Court Judge
22	Hendarman Supandji		23 Mei 2007 s.d 24 September 2010	Career Prosecutor
23	Basrief Arief		26 November 2010 s.d 20 Oktober 2014	Retired Prosecutor
24	H.M. Presetyo		20 November 2014 s.d 18 Oktober 2019	Retired Prosecutor
25	Burhanuddin		23 Oktober 2019 s.d Sekarang	Retired Prosecutor

Based on this data, in total, since the establishment of the Attorney General's Office, only 10 (ten) Attorney Generals have come from the prosecutor profession. Five people were recorded as serving as Attorney General while actively serving as prosecutors while the rest were appointed as Attorney General after retiring as prosecutors. This fact raises an anomaly of how it is possible for a law enforcement institution that is filled with professionals but in its decision making is determined by people who do not have experience, knowledge and professional skills.

Historically, Attorney Generals who come from professional prosecutors have more courage to refuse law enforcement intervention from the President. During the reign of President Soeharto, Attorney General Soedjono C Atmonegoro once refused the President's order to conduct an investigation of Amien

Rais, who at the time was known to be very critical of the government.¹⁰⁴ Attorney General Singgih also rejected the President's intervention in the handling of the Ambassador Bank corruption case. Attorney General Singgih dared to charge Dicky Iskandar Dinata, who was the son-in-law of Bulog Chief Bustanul Arifin, a confidant of President Suharto.¹⁰⁵

In addition, from the aspect of professionalism of Attorney General Singgih, there is a difference in attitude in understanding the rule of law with the previous Attorney General who did not come from professional prosecutors. Attorney General Singgih at that time stopped the habit of the previous Attorney General who did not come from career prosecutors who used subversive articles against ordinary general crimes such as gambling, fertilizer smuggling. The subversive crime article was used proportionally and selectively as a political offense only for people who wanted to overthrow the legitimate government by means of clandestine or underground movements.¹⁰⁶ Attorney General Singgih even firmly rejected the intervention to use the subversive law in handling the Xanana Gusmao case because he considered that Xanana's rebellion was open, so it was sufficient to be charged with the general criminal offense of possessing firearms without a license.¹⁰⁷

Likewise, during the leadership of Attorney General Burhanuddin, who came from professional prosecutors, the Attorney General's Office won the title as the most trusted law enforcement agency by the public.¹⁰⁸ In the field of general crimes, Attorney General Burhanuddin dared to make a legal breakthrough that was felt directly by the community through the mechanism of stopping prosecution based on restorative justice.¹⁰⁹ In the field of special crimes, Attorney General Burhanuddin also practiced indiscriminate law enforcement against corruption by taking action against his own colleague in the Advanced Indonesia Cabinet, namely the active Minister of Communication and Information Technology (Menkominfo) Johnny Gideon Plate in the case of corruption in the procurement of 4 G BTS.¹¹⁰ In addition, for the first time in history, the death penalty was imposed on the perpetrator of corruption on behalf of Beni Tjokrosaputro in the case of corruption in the management of pension funds of PT Asabri. The PT Asabri corruption case is a corruption case successfully uncovered by the Attorney General's Office with the largest state financial loss in the history of law enforcement, reaching Rp. 22.78 trillion.¹¹¹

According to former prosecutor Andi Hamzah, the Attorney General who does not come from professional prosecutors has a weakness in fostering the prosecutor's organization. The Attorney General as the controller of the prosecutor's organization has the authority as the Personnel Supervisory Officer (PPK). As PPK, the Attorney General is authorized to determine the appointment, transfer, dismissal, and

¹⁰⁴Djokomoelyo, *Proses Peradilan...Op Cit* hlm 34

¹⁰⁵Rajab Ritonga dkk, *Op Cit* hlm 203-204

¹⁰⁶Rajab Ritonga *Op Cit* hlm 234-241

¹⁰⁷*Ibid* hlm 251

¹⁰⁸<https://www.viva.co.id/berita/nasional/1642846-survei-indikator-kejaksaan-agung-lembaga-penegak-hukum-paling-dipercaya-publik> diunduh pada tanggal 15 Desember 2023

¹⁰⁹Lihat Peraturan Kejaksaan Republik Indonesia Nomor 15 Tahun 2020 tentang Mekanisme Penghentian Penuntutan Berdasarkan Keadilan Restoratif (*Restorative Justice*).

¹¹⁰<https://www.merdeka.com/peristiwa/jaksa-agung-tidak-akan-diam-jika-menkominfo-terbukti-terlibat-korupsi-bts.html> diunduh pada tanggal 15 Desember 2023.

¹¹¹<https://news.detik.com/berita/d-6835251/kejagung-tangani-kasus-kerugian-negara-capai-rp-152-t> diunduh pada 15 Desember 2023.

management of employees in accordance with the provisions of laws and regulations.¹¹² According to Andi Hamzah, based on his experience, if the position of attorney general is held by someone outside the prosecutor's office, advisors from outside the prosecutor's office are usually brought in who do not understand the ins and outs of the career development system in the prosecutor's office so that they tend to and/or have the opportunity to damage the law enforcement system by giving proposals that do not pay attention to permanent structural and functional roles.¹¹³

According to Andi Hamzah, the bureaucratic culture of the Attorney General's Office, which is accustomed to the command system, is more likely to favor career prosecutors as their leaders. The simple reason is that career prosecutors are already steeped in their corporate culture so there is no need for orientation and adaptation. Career officials have certainly gone through a long process of education as prosecutors. They already know the character, leadership, attitude and integrity of this person. They can quickly adjust to the work rhythm of a familiar leader.¹¹⁴ Based on Panda Nababan's story, Attorney General Abdur Rahman Saleh even admitted to him that he never consumed food provided by the office because he did not trust his subordinates from within the Attorney General's Office. Attorney General Marzuki Darusman also during his tenure never had an office at the Attorney General's Office but had an office from hotel to hotel because he felt not accepted by the internal Attorney General's Office.¹¹⁵ The lack of trust of the Attorney General to his subordinates will make it very difficult to make law enforcement decisions in the Prosecutor's Office considering that the prosecutorial bureaucratic system based on the doctrine of "prosecutors are inseparable" requires a characteristic that is integrated into the mindset, behavior and work procedures of the Prosecutor's Office.¹¹⁶

The negative implications that arise as a consequence of the opening of the requirements to become Attorney General to non-prosecutors lead to legal uncertainty in the law enforcement process. In Article 1 point 3 of Law 11/2021, it has been determined limitatively that a Public Prosecutor is a Prosecutor who is authorized by this Law to conduct prosecutions and carry out judicial decisions and other powers under the Law. Meanwhile, the Prosecutor in Article 1 point 2 of Law 11/2021 is stated limitingly that the Prosecutor is a civil servant with a functional position that has specificity and carries out its duties, functions and authorities based on the Law. Meanwhile, in Article 18 paragraph 1 of Law 11/2021, the Attorney General is the highest public prosecutor in the Unitary State of the Republic of Indonesia.

If interpreted systematically in the explanation of the definition of Public Prosecutor in Article 1 paragraph 3, Article 1 paragraph 2 connected with Article 18 paragraph 1, there is a legal vacuum because it states that the Public Prosecutor is only the Prosecutor without including the Attorney General. This legal uncertainty can have implications for the highest prosecutorial authority by the Attorney General to be legally flawed if in the future the Attorney General is again filled by a person who is not a prosecutor as referred to in Article 1 paragraph 2 of Law 11 of 2021. The absence of legal certainty that the Attorney General is filled by a prosecutor leads to law enforcement practices that are contrary to the principle of due

¹¹²Lihat Pasal 4 ayat 1 Peraturan Kejaksaan Republik Indonesia Nomor 11 Tahun 2019 tentang Manajemen Karier Pegawai Kejaksaan Republik Indonesia

¹¹³Andi Hamzah, *Menyoal Wacana Jaksa Agung Karier atau Nonkarier*, diunduh: <https://gagasanhukum.wordpress.com/2010/09/27/menyoal-wacana-jaksa-agung-kariernonkarier/> pada tanggal 13 Desember 2023.

¹¹⁴Andi Hamzah, *Menyoal Wacana Jaksa Agung... Op Cit*

¹¹⁵Panda Nababan, *Op Cit* hlm 260-261

¹¹⁶Lihat Penjelasan Pasal 4 ayat 2 Undang-Undang Nomor 11 Tahun 2021 tentang perubahan Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia.



process of law because based on this principle, law enforcement must be carried out based on valid and written laws and regulations in accordance with the meaning of the principle of legality in criminal procedure law.

The absence of legal certainty that the position of Attorney General is held by professional prosecutors results in managerial weaknesses in the organization of the Prosecutor General's Office. An Attorney General who is not a professional prosecutor and does not understand the culture of the prosecutorial bureaucracy will have difficulty controlling the management of the prosecutorial bureaucracy. Historical facts show that Attorney General Abdul Rahman Saleh and Attorney General Marzuki Darusman were unable to carry out mutations and promotions that support a professional Attorney bureaucracy. This chaos ultimately has the potential to lead to failure in controlling the law enforcement function which leads to unprofessional law enforcement practices by the Attorney General's Office, which again contradicts the principle of *due process of law*.

The opening of opportunities for the position of Attorney General to be filled by political party cadres also shows that governance is contrary to the principles of the rule of law. The existence of political parties as a group naturally aims to gain political power and seize political positions. The existence of political party cadres who are seated as Attorney General naturally due to the culture of Patron Clientism will affect the independence of the Attorney General's bureaucracy. History proves that during the era of Attorney General Marzuki Darusman and Attorney General H.M Prasetyo, law enforcement was carried out with selective methods and there were intervention efforts. The implications of law enforcement practiced are contrary to the principles of *equality before the law* and *a fair trial and impartial court*, which are part of the characteristics of the rule of law. This situation is not in line with the principle of equality before the law and the principle of non-discrimination which are expressly regulated in the Constitution. Article 27(1) of the 1945 Constitution which states that all citizens shall be equal before the law and government and shall uphold the law and government with no exception, Article 28D(1) of the 1945 Constitution which states that every person shall have the right to recognition, guarantees, protection and certainty of a just law and equal treatment before the law, and Article 28I(2) of the 1945 Constitution which states that every person shall be free from discriminatory treatment on any grounds and shall have the right to protection against such discriminatory treatment.

CONCLUSIONS

The implementation of the Attorney General position filling mechanism has several negative implications for the independence and impartiality of the attorney general's office in carrying out law enforcement functions. The first implication is the abuse of authority by the President through intervention in the law enforcement function of the Attorney General's Office. The intervention is carried out with various patterns and motivations by each President in each era of government. The patterns of intervention include the first law enforcement intervention directed at implementing the President's personal interests. Second, law enforcement intervention to maintain power and protect cronies. Third, law enforcement intervention to implement the public interest which is carried out contrary to the applicable procedural law. The second implication is the practice of filling the position of Attorney General that ignores the principles of independence and impartiality of the law enforcement function. In practice, the President predominantly places the position of Attorney General not from a professional prosecutor background and even places political party cadres to occupy the position of Attorney General. Such placement of the position of Attorney General has led to the practice of impartial prosecutorial law enforcement that is contrary to the

principle of fair law enforcement (due process of law) which is the main principle of a democratic state of law.

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