



UDC 34

## THE PROSECUTOR'S AUTHORITY TO INVESTIGATE AND PROSECUTE CRIMINAL OFFENSES THAT HARM THE STATE ECONOMY

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### ABSTRACT

In essence, the Prosecutor's Office is a judicial institution that carries out the executive function, which is also the guardian of the constitution and the rights of the population and maintains state sovereignty in the field of prosecution which has a central position in the legal system in Indonesia, because in addition to acting as a controller of case handling (*dominus litis*), the Prosecutor's Office also has the authority as the executor of court decisions that have obtained permanent legal force. Clarity is needed on crimes that cause losses to State Economy, which are handled by the Attorney General's Office, Tax and Customs and Excise Civil Servant Investigators (PPNS), while "In the interest of state revenue, at the request of the Minister of Finance, the Attorney General may stop the investigation of criminal acts in the field of taxation for a maximum period of 6 (six) months from the date of request letter, as well as for excise crimes.

### KEY WORDS

Authority, criminal law, state, economy.

In essence, the Prosecutor's Office is a judicial institution that carries out the executive function, which is also the guardian of the constitution and the rights of the population and maintains state sovereignty in the field of prosecution which has a central position in the legal system in Indonesia, because in addition to acting as a controller of case handling (*dominus litis*), the Prosecutor's Office also has the authority as the executor of court decisions that have obtained permanent legal force (*executief ambtenaar*) [1].

Not only that, Prosecutor's Office also has the authority to investigate certain criminal acts, including serious human rights violations, corruption, money laundering, forest destruction, and act as a State Attorney both inside and outside the court and participate in organizing activities to create public order and peace [2].

The position, role and function of the prosecutor's office are very central and strategic in a country. The AGO performs the function and role as the main state's organ in realizing state goals through law enforcement. In criminal field, the AGO is holder of control over the handling of criminal cases (*dominus litis*) [3]. The Attorney General is the *Procureur Generaal/Market Generaal*, namely the highest Investigator, Public Prosecutor, and Executor in a country. In addition, in the application of prosecution, the principle of opportunity is also known, namely an authority to determine whether or not a case should be submitted to the court based on considerations of justice and public interest. In the field of civil and state administration, the Attorney General's Office is the *Solicitor General*, namely that *Attorney General* has authority as the Supreme State Attorney. For this reason, the Attorney General's Office can represent the state if the state is sued in civil, state administrative or constitutional cases [4]. Finally, the *Attorney General* also acts as *Advocaat Generaal*, which is the only institution that provides conclusions/opinions on cassation requests that enter the Supreme Court. This concept is contained in Law Number 14 of 1985 jo Law Number 5 of 2004 jo Law Number 3 of 2009 concerning the Supreme Court In law, it is stipulated that in a special cassation examination for criminal cases, before the Supreme Court gives its decision, the *Attorney General* can submit a technical legal opinion in the case. The existence of the Prosecutor's Office, the Attorney General, and Prosecutors is not only regulated in Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia and various other laws and regulations which show that the Prosecutor's Office, the Attorney



General, and Prosecutors have an important role in the life of nation and state, as well as in international relations.

The authority to conduct investigations into certain criminal offenses must be interpreted as the authority to conduct investigations into all types of certain criminal offenses as long as they are regulated by the relevant laws [5]. Therefore, the authority to investigate certain criminal offenses is not only limited to Investigation of Serious Human Rights Violations and Corruption Crimes. Furthermore, the authority to conduct investigations into certain criminal offenses is carried out by Deputy Attorney General for Special Crimes.

The Deputy Attorney General for Special Crimes has the duty and authority to carry out duties and authority of Attorney General's Office in field of special crimes. The scope in field of special crimes includes investigation, investigation, pre-prosecution, additional examination, prosecution, legal remedies, implementation of judges' determinations and court decisions that have permanent legal force, examination and supervision of the implementation of conditional sentences in special criminal cases and other legal actions. ("Article 356 Regulation of Attorney General the Republic of Indonesia Number PER-006/A/JA/07/2017 on the Organization and Work Procedure of Attorney General the Republic of Indonesia")

Article 35 paragraph (1) letter k of Law Number 11 in 2021 Concerning the Amendment to Law Number 16 of 2004 Concerning the Attorney General of Republic Indonesia has given duties and authority to the Attorney General to handle criminal acts that cause losses to the state economy. The provisions of Article 35 paragraph (1) letter k have expanded the authority of Attorney General to not only investigate Corruption Crimes that harm state finances or state economy, but also has the authority to handle all criminal acts that cause losses to state economy but are not Corruption Crimes [6].

The handling of corruption crimes that cause losses to state economy before and after the enactment of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of Republic Indonesia has been carried out by Deputy Attorney General for Special Crimes through the handling of corruption cases that cause losses to the state economy alone or even at the same time harm the state finances and the state economy. Among these cases that have been legally binding (*in kracht*) are the corruption case of textile importation through the Batam Free Zone which caused losses to the state economy on behalf of the Defendant Drs. Irianto based on the Supreme Court Decision Number: 4952 K/Pid.Sus/2021 dated December 8, 2021, the corruption case of textile importation through the Port of Tanjung Emas Semarang which caused losses to state finances as well as the state economy on behalf of the Defendant Handoko based on Corruption Court Decision at Semarang District Court Number: 70/Pid.Sus-TPK/2022/PN Smg dated January 30, 2023.

Philosophical reason: that in essence the Prosecutor's Office is a judicial institution that carries out the executive function, which is also guardian of constitution and the rights of population and maintains state sovereignty in the field of prosecution which has a central position in the legal system in Indonesia, because in addition to acting as a controller of case handling (*dominus litis*), the Prosecutor's Office also has the authority as executor of court decisions that have obtained permanent legal force (*executief ambtenaar*) [8].

Juridical reason: It is emphasized that Law of Republic Indonesia Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic Indonesia, especially Article 35 (1) letter k, still requires clarity so that *dominus litis* principle is implemented as authority of Prosecutor's Office in overcoming criminal acts that harm state finances and the state economy.

Sociological reasons: Clarity is needed on crimes that cause losses to the State Economy, which are handled by Prosecutor's Office, Tax and Customs and Excise Civil Servant Investigators (PPNS), while "In the interest of state revenue, at request of the Minister of Finance, the Attorney General may stop investigation of criminal acts in field of taxation for a maximum period of 6 (six) months from the date of request letter, as well as for excise crimes [9].



The legal problem is that there are vague norms and vacant norms in Article 35 paragraph (1) letter k. Handling criminal offenses that cause losses to the state economy and can use peaceful fines in economic crimes based on laws and regulations, namely

- Handling, there is a vague norm "Handling" whether the meaning of the word handling can be interpreted as the same as investigation, investigation, prosecution, there is no limit to explanation of the word handling;
- That in the elucidation of Article 35 paragraph (1) letter k of Law Number 11 of 2021, paragraph 3, the use of peaceful fines in economic crimes is one form application of the principle of opportunity owned by the Attorney General in tax crimes, customs crimes or other economic crimes based on the Law, there is a vague norm, namely other economic crimes based on the Law, There is no clarity here because what is meant by other economic criminal offenses based on the Act, there is a vague norm and doesn't directly include what Act number, what year about what or directly mention what criminal offense as before the sentence of other economic criminal offenses based on the Act, namely taxation criminal offenses, customs criminal offenses;
- That there is no limitation on which criminal acts can be categorized as detrimental to the State's economy as referred to in Law Number 31 of 1999 concerning the Eradication Crime of Corruption in conjunction with Law Number 20 of 2001 concerning amendments to Law Number 31 of 1999 concerning the Eradication of the Crime of Corruption with criminal acts that harm the State's economy as referred to in Article 35 paragraph (1) letter k of Law Number 11 of 2021, even though definition of the State's economy in explanation of Article 35 paragraph (1) letter k of Law Number 11 of 2021 is taken from explanation of Law Number 31 in 1999 concerning the Eradication Crime of Corruption;
- In Law No. 11 of 2021 Concerning the Amendment to Law No. 16 of 2004 Concerning the Attorney General's Office of Republic Indonesia, there is no provision that requires mutual notification between Investigators, both Investigators from Attorney General's Office of Republic Indonesia and Civil Servant Investigators (PPNS) in accordance with Taxation or Customs Law, who have conducted Investigations into Criminal Acts that cause losses to the state economy and can use peace fines in economic crimes based on statutory regulations.

The Concept of Reconstructing the Authority of the Prosecutor's Office to investigate and investigate criminal acts that cause losses to the State economy, namely reconstructing Article 35 paragraph (1) letter k of Law No. 11 of 2021, by providing clarity of meaning: a) The phrase "Handling" whether the meaning of the word handling can be interpreted as the same as investigation, investigation; b) Limit the meaning of "other economic crimes based on the law" by deleting the phrase "based on the law" and interpreting it as taxation crimes and customs crimes; c) Limit the meaning of "detrimental to the State economy" as referred to in explanation of Law No. 31 of 1999 on Eradication Crime of Corruption in conjunction with Law No. 20 of 2001 on the amendment to Law No. 31 of 1999 on the Eradication of Criminal Acts with "detrimental to the State economy" in Article 35 paragraph (1) letter k of Law No. 11 of 2021; d) Require Investigators (Investigators from the Attorney General's Office in Republic of Indonesia and Civil Servant Investigators (PPNS) of Taxes and Customs and Excise) to inform each other/report the investigation process that is being handled as this is also regulated in the Corruption Eradication Commission Law.

The authority of Attorney General in Article 35 paragraph (1) letter k is implementation of the principle of opportunity and principle of *dominus litis* in prosecution stage. The main authority attached to the Attorney General in Article 35 paragraph (1) letter k, is the authority to handle criminal acts that cause losses to the state economy. Associated with the sentence "peaceful fines may be used", then Article 35 paragraph (1) letter k is a unity of two authorities, namely handling criminal offenses and using peaceful fines. Using peace fines is not a separate authority, but in context of handling criminal offenses that cause losses to the state economy [10].

**Conclusion.** Clarity is needed on crimes that cause losses to State Economy, which are handled by the Attorney General's Office, Tax and Customs and Excise Civil Servant Investigators (PPNS), while "In the interest of state revenue, at the request of the Minister of



Finance, the Attorney General may stop the investigation of criminal acts in the field of taxation for a maximum period of 6 (six) months from the date of request letter, as well as for excise crimes.

Reconstruct article 35 paragraph (1) letter k of Law No. 11 of 2021, by providing clarity of meaning: a) The phrase "Handling" whether the meaning of the word handling can be interpreted as the same as investigation, investigation; b) Limit the meaning of "other economic crimes based on the law" by deleting the phrase "based on the law" and interpreting it as taxation crimes and customs crimes; c) Limit the meaning of "detrimental to the State economy" as referred to in the explanation of Law No. 31 of 1999 on the Eradication of Corruption in conjunction with Law No. 20 of 2001 on the amendment to Law No. 31 of 1999 on Eradication of Criminal Acts with "detrimental to the State economy" in Article 35 paragraph (1) letter k of Law No. 11 of 2021; d) Require Investigators (Investigators from the Attorney General's Office of the Republic of Indonesia and Civil Servant Investigators (PPNS) of Taxes and Customs and Excise) to notify each other/report investigation process that is being handled as this is also regulated in Corruption Eradication Commission Law.

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