

# **Investigating the Authority of the Prosecutor as An Alternative for Criminal Case Handling in the Indonesian Justice System**

**Jamaluddin, Marlia Sastro, Ramziati**

Faculty of Law

Universitas Malikussaleh

Muara Satu, Kota Lhokseumawe, Aceh 24355, Indonesia

[jamaluddin@unimal.ac.id](mailto:jamaluddin@unimal.ac.id) , [marliasastro@unimal.ac.id](mailto:marliasastro@unimal.ac.id) , [ramziati@unimal.ac.id](mailto:ramziati@unimal.ac.id)

**Jumadil Saputra**

Faculty of Business, Economics and Social Development

Universiti Malaysia Terengganu

21030 Kuala Nerus, Terengganu, Malaysia

[jumadil.saputra@umt.edu.my](mailto:jumadil.saputra@umt.edu.my)

**Abdul Talib Bon**

Department of Production and Operations

Universiti Tun Hussein Onn Malaysia

86400 Parit Raja, Johor Malaysia

[talibon@gmail.com](mailto:talibon@gmail.com)

## **Abstract**

The authority of prosecutors in handling criminal cases alternatively in the Indonesian judicial system is very important to investigate. Therefore, it needs to be regulated in the draft revision of Law Number 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia. Thus, in the draft amendment to the Prosecutor's Office, it must accommodate the values, customs and laws that live in the environment of society in the framework of the NKRI, which is Bhineka Tungga Ika, under Pancasila as the basis of Idil and the 1945 Constitution as the Constitutional Foundation of the Republic of Indonesia. Furthermore, this study found that the prosecutor's role is as a public prosecutor and as a mediator in resolving minor criminal cases alternatively as one of the solutions to anticipate the swelling of prison inmates and the swelling of the budget for inmates.

## **Keywords**

Persecutor, Authority, Criminal Case, Justice System

## **1. Introduction**

The Correctional Database System reports that the prisoners in Indonesia totalled 272,005 people scattered in prisons and financing for criminals while in Correctional Institutions. Throughout all regions in Indonesia. The expression of Agus Toyib, Bc.IP, MH Regional Office of the Ministry of Law and Human Rights in Aceh as one of the samples in this paper is explained from the 26 prisons and prisons in Aceh that only have 4090 prisoners/convicts. Still, until today, June 20, 2019, it is filled by 8,552 prisoners/convicts. If a solution t found quickly, this problem will become a big problem for the community, state and nation.

Since ancient times until now, the sense of community justice in handling legal cases in the community such as theft, domestic violence, fights, traffic accidents and various other matters in the community prioritizes peaceful settlement by deliberation consensus. The culture and customs, and customary law have grown and developed from generation to generation in a pluralistic Indonesian society (Judiasih & Fakhriah, 2018). (Hadikusuma, 1992) stated

that the Indonesian population lives and comes from islands with various cultural customs and customary laws. The history of artistic development the Malay-Polynesian era, the association of life, the place of residence, and the diverse natural environments.

The pluralism of culture, customs and customary law that applies in Indonesian society cause different values of justice in resolving various legal cases that occur in indigenous communities within the framework of the Unitary State of the Republic of Indonesia (Nugroho, 2021). The role of customary leaders in handling multiple legal issues that arise among Indonesian indigenous peoples since ancient times until today still exists following the culture and customs and customary law that applies in the community concerned (Antons, 2005; Correa, 2001; Kuruk, 2020). In their role, familiar leaders resolve various legal cases in indigenous communities that do not distinguish between criminal cases and civil cases (Correa, 2001; Judiasih, & Fakhriah, 2018). All legal issues in indigenous peoples tried in conventional courts are conducted based on consensus to achieve peace between the parties. Prosecutors with special powers can act for and on behalf of the state or government inside and outside the courtroom. Habari that mediation efforts are carried out under the provisions of the Attorney General of the Republic of Indonesia's Decree No.: Kep.225/A/J/A/3/2003 concerning the JPN's duties and authorities. During the mediation process, JPN used a persuasive approach to state electricity customers behind their payments. Settlement of civil disputes arising from arrears in-state electricity payments.

Yusuf, Sampurno, Hasrul, & Arisaputra, (2018) stated that to optimize the Public Prosecutor's Office's function as a state prosecutor, the Public Prosecutor must be educated in civil law and state administrative law. The Prosecutor's office must also be institutionalized. If a lawsuit involving the state's interests arises, the Prosecutor can be appointed and determined to act as a state attorney without difficulty. The resolution of criminal cases through the District Court is perceived as lacking in providing a sense of justice for the victim for the punishment or sentence (Strang & Sherman 2003). The settlement of particular crimes for minor crimes is carried out in a manner that is opposed to the provisions of the criminal law system that is now practised as a legacy of Dutch colonialism, which adheres to the "Nullum Delectum" principle (principle of presumption of innocence)" and strictly separates criminal law from civil law. The state judiciary must deal with violations of material criminal law (Brennan Jr, 1963; Kadish, Schulhofer & Barkow, 2016). The Prosecutor's authority and competence, as the public Prosecutor, fully carry out the orders of the law to bring criminal actors to the judiciary and obtain legal certainty (Suominen, 2014). Changes are required due to the importance of the Prosecutor's authority in alternative settlements.

## 2. Materials and Methods

This study uses the normative juridical approach or Legal Research (Siregar & Lubis, 2021). According to Soetadnyo, doctrinal research is legal research that is conceptualized based on the author's doctrine. Normative juridical research is a type of legal research that uses the law to construct a system of norms (Cass, 2001; Ewald, 1990). Empirical data is used to conduct in-depth legal research in this study.

## 3. Results and Discussion

The ideals of Indonesian independence include: ending the enactment of the Dutch colonial legal system in Indonesia, which is only following their culture and attaches great importance to their interests as colonizers and not to the soul of the Indonesian nation, which prioritizes a peaceful, secure and peaceful life during society by the motto "big problems minimized, small problems eliminated". Starting from this premise, the Draft Amendment to the Law of the Republic of Indonesia Concerning the Prosecutor's Office should include the legal values that grow and develop in the lives of the Indonesian people, which are Bhineka Tunggal Ika, as one of the norms integrated with the Prosecutor's Law.

The Prosecutor's authority in the history of handling criminal cases in Indonesia in writing this article cannot be separated and has only been limited since the Republic of Indonesia. Its independence on August 17, 1945, Indonesia has experienced several eras and government regimes, starting with the old order era and the authority under the leadership of President Soekarno from 1945 to 1967 and the new order era under President Soeharto's regime from 1967 to 1967. 1998.

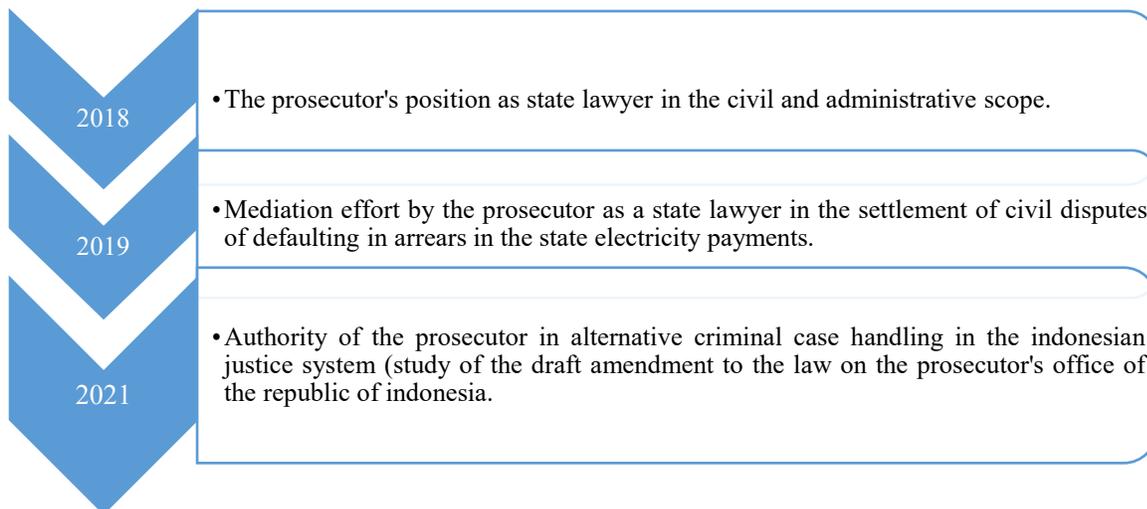
The New Order is the regime that has led the longest in the history of government in Indonesia. The peak of its glory ended with a student demonstration on 19 to May 21, 1998, who had controlled and occupied the DPR/MPR building in Senayan Jakarta. Due to the political turmoil, on May 21, 1998, at the independent palace, President Soeharto resigned from his position as the year the end of the New Order regime and era transition to the reform era. Von Savigny explained the law must refer to as an incarnation of the soul or spirit of a nation. There is always a close relationship between law and the personality of a country. in Article 1 Paragraph (1) of Indonesia. Efforts to revise the Prosecutor's Law are too late to accommodate Indonesian values and the legal system.

Indonesian criminal law and criminal procedural law are more oriented to humanitarian principles by values, culture, and customs. Customary law that applies in Indonesian society gives the prosecutor the authority to resolve minor criminal cases alternatively to anticipate the booming inmates of prisons and the high budget requirements for prisoners. The prosecutor's task, especially in minor crimes, is to delegate cases committed by criminal offenders to court. The essential issue is utilizing the community's sense of justice which must be obtained by these justice seekers who are the most priority. It can only take a solution if the prosecutor, as the public prosecutor, is given normative power and authority to resolve minor criminal cases.

The customary government carries out the settlement of minor criminal cases. In the context of Acehese customs, the village government is called the village government and carried out by the prosecutor to reduce the buildup of issues in the judiciary and a sense of justice. The success of the rule of law is not marked by "overdose of prison inmates", providing protection for human rights and being able to create state administration apparatus and law-abiding society. In addition, prosecutors who handle criminal cases, especially minor crimes, the law provides space for prosecutors in the form of alternative settlements of criminal cases that are under the sense of truth and justice of the community, so that it can have an impact on the accumulation of points in court. Prisons in Indonesia are overcrowded. This problem is an indicator of the failure of the rule of law.

For a person suspected of a criminal act being processed to transfer his case to court, from the initial process until there is a judge's decision and sentenced to prison for 1 (one) month, it costs a minimum of Rp. 900,000 becomes the burden of the state—the state (Article 34 Paragraph (1) of the 1945 Constitution), excluding law violators. The authority to settle cases of minor crimes alternatively given to prosecutors to reduce the buildup of issues in court, reducing the burden on the state budget. Indonesian people who have a communalistic understanding, then resolving legal problems in society requires togetherness through deliberation and consensus, different from individual European institutions. It is necessary to question whether the criminal law product, which is the competence of the Prosecutor's Office in enforcing the law, has been sanctioned.

The values and principles of the life of the Indonesian people in general who adhere to a collective understanding with very pluralistic culture and customs with the motto "Bhineka Tunggal Ika". The value of derivation manifests itself in the form of legal norms oriented to the principle of humanity in accordance with the culture and character adopted by the pluralistic Indonesian society. It should be integrated with the land of Indonesia to restore the dignity and dignity of the original law of the Indonesian nation. The intervention of the customary justice system into the criminal justice system is due to the prosecutor's authority to resolve criminal cases alternatively in accordance with the law and values that live, grow, and develop. In the community (Living Law), which leads to the Prosecutor's alternative criminal case settlement process.



## 5. Conclusion

The granting of the prosecutor's authority in handling criminal cases alternatively in the Indonesian justice system is very important, so it needs to be regulated in Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. Thus, in the Draft Amendment to the Law, the Prosecutor's Office must accommodate the values, customs and laws that live within society within the framework of the Unitary State of the Republic of

Indonesia (NKRI), which is Bhinneka Tungga Ika, following Pancasila as the basis of the 1945 Constitution as the Constitutional Foundation of the Republic of Indonesia. So that the role of the prosecutor is not solely as a public prosecutor, but also as a mediator in resolving minor criminal cases alternatively as a solution to anticipate the booming inmates of prisons and the swelling budget for prisoners.

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## Biographies

**Jamaluddin** is a lecturer at Faculty of Law, Universitas Malikussaleh, Muara Satu, Kota Lhokseumawe, Aceh 24355, Indonesia

**Marlia Sastro** is a lecturer at Faculty of Law, Universitas Malikussaleh, Muara Satu, Kota Lhokseumawe, Aceh 24355, Indonesia.

**Ramziati** is a lecturer at Faculty of Law, Universitas Malikussaleh, Muara Satu, Kota Lhokseumawe, Aceh 24355, Indonesia.

**Jumadil Saputra** is a PhD holder and works as a senior lecturer in the Department of Economics, Faculty of Business, Economics and Social Development, Universiti Malaysia Terengganu, Malaysia. He has published 125 articles Scopus/ WoS indexed. As a lecturer, he has invited as a speaker in numerous universities, the examiner (internal and external), the reviewer for article journal and proceeding, the conference committee, journal editorial board, and others. He is a professional member of the International Business Information Management Association (IBIMA), Ocean Expert: A Directory of Marine and Freshwater Professional, and Academy for Global Business Advancement (AGBA). His research areas are Quantitative Economics (Microeconomics, Macroeconomics, and Economic Development), Econometrics (Theory, Analysis, and Applied), Islamic Banking and Finance, Risk and Insurance,

Takaful, i.e., financial economics (Islamic), mathematics and modelling of finance (Actuarial). His full profile can be accessed from <https://jumadilsaputra.wordpress.com/home-2/>.

**Abdul Talib Bon** is a professor of Production and Operations Management in the Faculty of Technology Management and Business at the Universiti Tun Hussein Onn Malaysia since 1999. He has a PhD in Computer Science, which he obtained from the Universite de La Rochelle, France in the year 2008. His doctoral thesis was on topic Process Quality Improvement on Beltline Moulding Manufacturing. He studied Business Administration in the Universiti Kebangsaan Malaysia for which he was awarded the MBA in the year 1998. He's Bachelor degree and diploma in Mechanical Engineering which his obtained from the Universiti Teknologi Malaysia. He received his postgraduate certificate in Mechatronics and Robotics from Carlisle, United Kingdom in 1997. He had published more 150 International Proceedings and International Journals and 8 books. He is a member of MSORSM, IIF, IEOM, IIE, INFORMS, TAM and MIM.