Maintaining order: Public prosecutors in post-authoritarian countries, the case of Indonesia

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Maintaining Order

Public Prosecutors in Post-Authoritarian Countries, the case of Indonesia

F. AFANDI

Maintaining Order:
Public Prosecutors in Post-Authoritarian Countries,
the case of Indonesia

To my late father, Abah H. Abdul Syukur (1941-2006)
Completing this book was nothing compared his tireless struggle
to educate and take care of our family

Maintaining Order

Public Prosecutors in Post-Authoritarian Countries, the case of Indonesia

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Table of Contents

Acknowledgements V

List of Figures and Tables XI

Acronyms and Glossary XIII

1 The Indonesian Prosecution Service (*Kejaksaan Republik Indonesia*): Introduction, Academic Background, Theoretical Framework, and Research Methodology 1
- 1.1 Introduction 1
- 1.2 Academic Background and Problem Statement 4
- 1.3 Theoretical Framework 8
  - 1.3.1 The Rule of Law in the Criminal Justice System 9
  - 1.3.2 Organisational Setting, Bureaucracy and Performance 14
  - 1.3.3 The Role of the Public Prosecutor in Criminal Procedure 19
- 1.4 Research Methodology 23
  - 1.4.1 Research Approach 23
  - 1.4.2 Gaining Access 26
  - 1.4.3 Ethical Dilemmas and Safety Issues 28
- 1.5. The Structure of the Thesis 30

2 The Origins and Position of the Indonesian Prosecution Service: From Colonial Times to Post-military Regimes 33
- 2.1 Introduction 33
- 2.2 Searching for the Origins of the Prosecution Service 34
- 2.3 The *Vereenigde Oostindische Compagnie* (VOC) and the Dutch East Indies 36
- 2.4 The Japanese Military Administration 44
- 2.5 The Indonesian Revolution 46
- 2.6 Parliamentary Governments 50
- 2.7 The Guided Democracy 53
- 2.8 The New Order Military Regime 57
- 2.9 Post-military Regimes: The *Reformasi* (1999-2019) 64
- 2.10 Conclusion 69

3 The Bureaucracy of the Indonesian Prosecution Service: Military Culture, Hierarchical Control and Human Resource Management 73
3.1 Introduction 73
3.2 The Één en Ondeelbaar Doctrine and Organisational Culture 74
3.3 The Prosecution Service Structure and Hierarchical Control 78
3.3.1 The Supreme Prosecution Office and its Authority 81
3.3.2 The High Prosecution Office 85
3.3.3 The District Prosecution Office 90
3.4 Human Resource and Budget Management 93
3.4.1 Recruitment and Training 93
3.4.2 Promotion and Transfer 96
3.4.3 Supervision 101
3.4.4 The Budget 104
3.5 A Reform Effort 110
3.6 Conclusion 114

4 The Indonesian Prosecution Service within the Criminal Justice System: Its Tasks, Powers, and Relationship with other Criminal Justice Actors 117
4.1 Introduction 117
4.2 Legal Resources: Tasks and Powers within the Prosecution Service 118
4.2.1 The Public Prosecutor in Criminal Cases 119
4.2.2 The Public Prosecutor as State Attorney in Civil Law and Administrative Disputes 123
4.2.3 The Public Prosecutor as State Intelligence 127
4.3 The Prosecution Service and other Indonesian Criminal Justice Actors 133
4.3.1 The Criminal Investigators 137
4.3.1.1 The Police 139
4.3.1.2 The PPNS and Special Investigators 143
4.3.2 Advocates and Legal Aid Providers 145
4.3.3 The Ministry of Law and Human Rights 149
4.3.4 The Courts 152
4.4 Conclusion 155

5 The Indonesian Prosecution Service in Action: The Interpretation of Criminal Procedure and Prosecutorial Discretion 159
5.1 Introduction 159
5.2 Pre-Trial Process 161
5.2.1 Preliminary Investigation (*Penyelidikan*) 161
5.2.2 Investigation (*Penyidikan*) 164
5.2.3 Coercive Measures (*Upaya Paksa*) 169

5.2.4 Pre-Trial Hearings (*Pra-peradilan*) 172
5.2.5 The Pre-Prosecution Process (*Pra-Penuntutan*) 176
5.3 Prosecutorial Discretion in Criminal Case Dismissal 181
5.3.1 A Criminal Case Dismissal for Technical Reasons (*SKPP*) 183
5.3.2 A Criminal Case Dismissal for Public Interest (*Seponering*) 187
5.4 The Trial Process 191
5.4.1 Indictment (*Dakwaan*) 192
5.4.2 Presenting Evidence at Trial 195
5.4.3 Requisitoir and Court Decisions 197
5.4.4 Appellate Procedure 200
5.4.5 Execution 204
5.5 Conclusion 206

6 The Indonesian Prosecution Service and The Political Order: Conclusions on the Performance of Public Prosecutors in the Post-Authoritarian State 211
6.1 Introduction 211
6.2 The Indonesian Prosecution Service within the Constitution and its Political Context 212
6.3 The Nature of the Indonesian Prosecution Service 215
6.4 Public Prosecutors in the Criminal Procedure: Crime Fighters and Guardians of Political Order 218
6.5 Towards the Rule of Law Approach in the Prosecution Process: Policy Recommendations 222
6.6 Suggestions for Further Research 224

Summary 227

Samenvatting (Summary in Dutch) 231

Ringkasan (Summary in Bahasa Indonesia) 237

Bibliography 241

Lists of Legislations, Regulations and Court Decisions 273

Curriculum Vitae 281

List of Figures and Tables

Figures

Figure 1: The four criminal process models 21
Figure 2: The existing organisational structure of the Prosecution Service 80
Figure 3: State budgets for the IPS, police and judiciary – adapted from the Indonesian Ministry of Finance Report 2011-2016 105
Figure 4: Cost breakdown – the prosecution process for general crimes 108
Figure 5: The position of the IPS within the criminal justice system 138
Figure 6: Prosecutor's decision on incomplete investigation files 180

Tables

Table 1: The functions of criminal procedure and their features 22
Table 2: Coercive measures in the SV, IR, and HIR 43
Table 3: Duration of detention during the criminal process 171
Table 4: Dismissal of general crimes cases for legal reasons 185

Acronyms and Glossary

ABRI	*Angkatan Bersenjata Republik Indonesia* or Indonesian Armed Forces
ARD	*Algemeene Recherchedienst*, or General Criminal Investigation Service
BADIKLAT	*Badan Pendidikan dan Pelatihan* or Prosecutor Training Body Camp
BAKORPAKEM	*Badan Koordinasi Pengawas Aliran Kepercayaan Masyarakat* or the Board for the Monitoring of Mystical Beliefs
BAP	*Berkas Acara Pemeriksaan Penyidikan* or Investigation Files
BAPERJAKAT	*Badan Pertimbangan Jabatan dan Kepangkatan* or Board of Advisers on Position and Rank
BARESKRIM POLRI	*Badan Reserse Kriminal Kepolisian Republik Indonesia* or Indonesian National Police Criminal Investigation Body
BKR	*Badan Keamanan Rakyat* or Armed Forces
BNN	*Badan Narkotika Nasional* or National Anti-Narcotics Agency
DPR	*Dewan Perwakilan Rakyat* or House of Representative or Parliament
DRP	*Dinas Reserse Pusat* or Directorate of Central Investigation
Één en Ondeelbaar	One and indivisible
Ekspose perkara	Public Prosecutor's Case Expose
FORKOPIMDA	*Forum Komunikasi Pimpinan Daerah* or the Regional Coordination Council
Gelar Perkara	Case Expose
GOLKAR	*Golongan Karya*, or the Functional Group Party
HIR	*Herziene Inlandsch Reglement* or Amended Indonesian Legal Procedure
HPP	*Hakim Pemeriksa Pendahuluan* or Examining Judge *(Rechter Commissaris*)
ICJR	Institute for Criminal Justice Reform (Indonesian NGO)
ICW	Indonesia Corruption Watch
IPS	Indonesian Prosecution Service or *Kejaksaan Republik Indonesia*

IR	*Inlandsch Reglement* or the Native Legal Procedure
IS	*Indische Staatsregeling* or the Dutch East Indies Constitution.
Jaksa	Public Prosecutor / Native Prosecutor in the Colonial time
Jaksa Fungsional	Prosecutor's Operator
Jaksa Agung	Chief Prosecutor is both of the Prosecutor General and Attorney General
Jaksa Peneliti	Examining Prosecutor
Jaksa Struktural	Prosecutor's Manager
JAM	*Jaksa Agung Muda* or Deputy Chief Prosecutor
KAPOLRI	*Kepala Kepolisian Republik Indonesia* or The National Police Chairman
Kejaksaan Agung	Supreme Prosecution Office
Kejaksaan Negeri	District Prosecution Office
Kejaksaan Tinggi	High Prosecution Office
KODAM	*Komado Daerah Militer*, or the military headquarters in the area
KOMJAK	*Komisi Kejaksaan* or The Prosecution Commission
KOMNAS HAM	*Komisi Nasional Hak Asasi Manusia* or National Human Rights Commission
KOMPOLNAS	*Komisi Kepolisian Nasional* or The National Police Commission
KOPKAMTIB	*Komando Operasi Pemulihan Keamanan dan Ketertiban* or Operations Command for the Restoration of Security and Order
KORPRI	*Korps Pegawai Republik Indonesia*, or the Indonesian Civil Servant Corps
KPK	*Komisi Pemberantasan Korupsi* or Corruption Eradication Commission (CEC)
KUHAP	*Kitab Undang-Undang Hukum Acara Pidana* or the code of Criminal Procedure
KUHP	*Kitab Undang-undang Hukum Pidana* or the criminal code
LAPAS	*Lembaga Pemasyarakatan* or Prison
LBH	*Lembaga Bantuan Hukum* or Legal Aid Institute
LeIP	*Lembaga Kajian dan Advokasi untuk Independensi Peradilan* or Indonesian Institute for Independent Judiciary
LKPS	*Latihan Kemiliteran Pegawai Sipil* or Military Civil Service Training
LP	*Laporan Polisi* or Police Report
MA	*Mahkamah Agung* or Supreme Court
Magistraat	Magistratur or the Judicial officer

MAHKEJAPOL	A consultative forum of law-enforcement offices; *Mahkamah Agung* (Supreme Court), *Departemen Kehakiman* (Department of Justice), *Kejaksaan Agung* (Supreme Prosecution Service), and *Polisi* (Police). Now, the term MAHKEJAPOL has been changed into MAHKUMJAKPOL, since the Ministry of Justice has been renamed The Ministry of Law and Human Rights (*Menteri Hukum dan Hak Asasi Manusia*)
Malari	*Malapetaka Lima belas Januari* or the Fifteenth of January Riot
MAPPI FH UI	*Masyarakat Pemantau Peradilan Indonesia Fakultas Hukum Universitas Indonesia* or Indonesia Judicial Monitoring Society, University of Indonesia Law School
MK	*Mahkamah Konstitusi* or Constitutional Court
MLHR	Ministry of Law and Human Rights or *Kementerian Hukum dan Hak Azasi Manusia* (KEMENKUMHAM)
MoU	Memory of Understanding
MPR	*Majelis Permusyawarata*n Rakyat or People's Consultative Assembly
NGO	Non-governmental Organisation
NIP	*Nomor Induk Pegawai* or civil servant ID number
NRP	*Nomor Registrasi Pokok* or military registration number
Officieren Van Justitie	The Dutch Public Prosecutor
OM	*Openbaar Ministrie* or the Dutch Prosecution Service
Orde Baru	New Order
P-19	IPS form that is attached to a document, when a prosecutor passes files back to investigators
PAMGAL	*Pengamanan dan Penggalangan* or Security and Preconditioning
Pangreh Pradja	Native Police
PARMIN	*Partisipasi Kriminal* or Criminal Participation
PEMDA	*Pemerintah Daerah* or Local Government
Penahanan	Detention
Penangkapan	Arrest
Penetapan Tersangka	Suspect Determination
Pengacara	Advocate /Attorney /Lawyer
Penggeledahan	Search
Penyelidikan	Prelimenary Investigation
Penyidik khusus	Special Investigator
Penyidikan	Investigation
Penyitaan	Confiscation
PERJA	*Peraturan Jaksa Agung* or Chief Prosecutor Regulation

PERKAP	*Peraturan Kepala Kepolisian* or National Police Chairman Regulation
PERMA	*Peraturan Mahkamah Agung* or Supreme Court Regulation
PERPPU	The Government Regulation in Lieu of an Law
PERSADA UB	*Pusat Pengembangan Riset Sistem Peradilan Pidana Universitas Brawijaya* or UB Centre for Criminal Justice Research
PERSAJA/PJI	*Persatuan Jaksa-Jaksa* or Association of Prosecutors, the term PERSAJA has been changed into PJI (*Persatuan Jaksa Indonesia)* or Indonesian Prosecutor Association in 1993.
Petrus	*Penembak Misterius* or Mystery Shooters
PK	*Peninjauan Kembali* or Review
PNBP	*Penerimaan Negara Bukan Pajak*, or Non-Tax State Revenues
PPATK	*Pusat Pelaporan Analisis Transaksi Keuangan* or Centre for Financial Transaction Reports and Analysis
PPKI	*Panitia Persiapan Kemerdekaan Indonesia* or Indonesian Independence Preparatory Committee
PPNS	*Penyidik Pegawai Negeri Sipil* or Civil Service Investigator
PPPJ	*Pendidikan dan Pelatihan Pembentukan Jaksa* or public prosecutor's candidacy training
Pra-Penuntutan	Pre-prosecution
Pra-Peradilan	Pre Trial Hearings
Procureur-Generaal	Chief Prosecutor
PROPAM	*Profesi dan Pengamanan* or the Police Internal Affairs
PULBAKET	*Pengumpulan Bahan Keterangan*, or Evidence Collection
RAPIM	*Rapat Pimpinan* or The Leadership Meeting
RENDAK	*Rencana Dakwaan* or Indictment Plan
RENTUT	*Rencana Tuntutan* or Sentencing Demand Plan
Requisitoir	*Tuntutan* or a Sentencing Demand
Rezeki	Money obtained via illegal or corrupt activities
RIB	*Reglemen Indonesia yang Diperbarui* or Amended Indonesian Legal Procedure
RO	*Reglement op De Rechterlijke Organisatie* en *Het Beleid der Justitie* S.1847: 23 or Law on the judicial organisation
RR	*Reglement op bet beleid van de Regering in Nederlandsch-Indie or Regeringsreglement* or the Dutch East Indies Constitution
RUPBASAN	*Rumah Penyimpanan Barang Sitaan* or State's confiscated goods storage houses

SBY	Soesilo Bambang Yudoyono, Former Indonesian President
SEJA	*Surat Edaran Jaksa Agung* or Chief Prosecutor Circular Letter
Seponering	Prosecutorial Discretion on criminal case dismissal for public interest
SIMKARI	*Sistem Informasi Manajemen Kejaksaan Republik Indonesia* or Online IPS Managerial Information System
SKCK	*Surat Keterangan Catatan Kepolisian* or the Police Certificate of Good Conduct
SKPP	*Surat Ketetapan Penghentian Penuntutan* or Decree on Dismissal of a Prosecution for Technical Reasons
SOB	*Regeling Op De Staat Van Oorlog En Beleg*, or Law on Emergency Situations
SP3	*Surat Perintah Penghentian Penyidikan* or a Letter Ordering the Cessation of an Investigation
SPDP	*Surat Pemberitahuan Dimulainya Penyidikan* or the notification letter to open the investigation
SPRINDIK	*Surat Perintah Penyidikan* or Investigation Order
SV	*Reglement op de Strafvordering* or the Dutch Criminal Code
Terdakwa	Defendant
Terpidana	Accused
Tersangka	Suspect
TP4	*Tim Pengawalan, Pengamanan Pemerintahan dan Pembangunan* or Team for Guarding and Securing the Government and its Development Projects
Tri Krama Adhyaksa	Three doctrine of the IPS; *Satya* means loyalty, *Adhi* implies professionalism, and *Wicaksana* means to use power wise.
Upaya Paksa	Coercive Measures
VOC	*Vereenigde Oostindische Compagnie* or the Dutch East India Company
Waskat	*Pengawasan Melekat* or permanent performance control
WvS-NI	*Wetboek van Straftrecht voor Nederlandsch-Indie*/ WvS-NI or the Dutch East India Criminal Code

1 The Indonesian Prosecution Service (*Kejaksaan Republik Indonesia*): Introduction, Academic Background, Theoretical Framework, and Research Methodology

1.1 Introduction

In 1993, during the New Order military authoritarian regime, Yudi Susanto, Mutiari, and seven employees of the watch manufacturing *company*, PT Catur Putera Surya, were prosecuted for murdering a labour rights activist (Marsinah), in Sidoarjo District Court, East Java, Indonesia. During the trial, all the defendants withdrew their confessions (which had been recorded in the investigation files). They stated that they had been tortured and forced into making their confessions by the military and police, during the interrogation process. Moreover, evidence presented by the public prosecutor to the court supported the defendants' claims, as well as those of the witnesses. For this reason, the defendants' lawyer asked the prosecutor to demand an acquittal.[1] However, the prosecutor preferred to stick to the information in the investigation files, ignoring the facts revealed during the trial and proposing a 20-year sentence for the defendants (Qurniasari and Krisnadi 2014). Even though there was significant public protest around the hearing process, the Sidoarjo District Court sentenced all the defendants for murder. It was believed that when the judges decided this case they were not free, and were instead being controlled by the military regime (Rosari 2010). However, it was surprising that the Supreme Court judgement included an acquittal for all of the defendants in 1995. The Supreme Justice, Adi Andojo Soetjipto, argued that there was no evidence to support the prosecutor's indictment.[2] Most observers believe that the military regime was actually responsible for Marsinah's brutal murder.[3]

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1 Tempo Magazine, *Babak Akhir Kasus Marsinah,* (The Final Round of the Marsinah Case) https://majalah.tempo.co/read/hukum/1122/babak-akhir-kasus-marsinah, accessed on 15 January 2020.

2 An influential Supreme Justice, known for his integrity, Adi Andojo Soetjipto was the chair of the Supreme Court panel in the Marsinah case (Qurniasari and Krisnadi 2014). See (Pompe 2005, 160–64), for more stories on Adi Andojo Soetjipto's performance in handling controversial cases.

3 Until the time of writing, the actual murderers have never been found or been prosecuted at trial. Tirto.id, *Pembunuhan Buruh Marsinah dan Riwayat Kekejian Aparat Orde Baru* (The Murder of Marsinah and the Atrocities of the New Order Apparatus), https://tirto.id/pembunuhan-buruh-marsinah-dan-riwayat-kekejian-aparat-orde-baru-cJSB, accessed on 15 January 2020.

This is one of many cases showing how public prosecutors have followed directives from the authoritarian military regime. However, in some cases the public prosecutor did *not* follow the regime scenario when prosecuting criminal cases. One such example is a 1996 murder case involving a journalist from Bernas Magazine, Fuad Muhammad Syarifuddin (Udin). Udin was actively involved in revealing the Mayor of Bantul District's involvement in corruption; the mayor had a military background. Similar to the Marsinah case, the regime manipulated the Udin case by prosecuting Dwi Sumiaji (Iwik) in order to hide the original perpetrators, who were affiliated with the regime. In this case, the public prosecutor demanded an acquittal, because no evidence to support the prosecutor's indictment was presented at trial. However, since the Chief Prosecutor supported the prosecutor's decision, the Indonesian Prosecution Service's (IPS) relationship with the police and military became quite tense.

In 1997, one year after Udin's case, the police arrested and detained several prosecutors from the Supreme Prosecution Office for falsifying investigation files on the Nyo Beng Seng murder case. The IPS defended its prosecutors against the police allegation, saying that the evidence presented in the police investigation file was not sufficient to prove the defendant's wrongdoings. Therefore, the prosecutors conducted an additional examination, the results of which were incorporated into the police file, based on the latest findings. In the meantime, the police released the prosecutors after the Vice Chief Prosecutor, Soedjono Atmonegoro, made a strong protest against the Commander of the Indonesian Armed Forces (*Angkatan Bersenjata Republik Indonesia*/ABRI), General Faizal Tanjung. The IPS then switched to following the police and military scenario, authorising the police investigation file without any changes and revoking the results of the additional inquiry carried out by the prosecutors (Mangoenprawiro 1999).

As shown in the cases elaborated above, the New Order military regime positioned the public prosecutor as a mere 'postman' who would deliver the police investigation report to court. Such situations are commonly seen in authoritarian countries, where the executive dominates the political power and public prosecutors have become tools of the government. During the military regimes in Brazil (1964-1985) and Chile (1973-1990), public prosecutors could be punished if they made decisions that were not in the regime's interest (Pereira 2008). Similarly, Indonesia's authoritarian government has controlled criminal justice actors, including the prosecution service, and ordered them to maintain political order by prosecuting opponents of the regime (Lolo 2008).

After the demise of the New Order, there were high hopes that these things would change. In May 1998, frustrated citizens (led by students) held mass demonstrations and succeeded in pushing Soeharto into stepping down.[4]

4 This matter will be discussed further in Chapter 2

Accordingly, reformers sought legislation to guarantee independence for the judiciary and ensure due process in the criminal justice system, by developing a more accountable and professional prosecution service. As a country that has made a successful transition from authoritarian to democratic governance, Indonesia has faced a number of important questions. With a new constitution that protects human rights and guarantees the rule of law, Indonesia has had to reform its legal system, including the role and powers of the public prosecutor. But, to what extent has this really worked out?

From 1998 onwards, the government passed hundreds of new laws and reformed its bureaucracy to bring it in line with constitutional requirements. However, numerous observers argue that Indonesia's democracy and rule of law are still under-developed (Robison and Hadiz 2004; Lindsey 2007; Bedner and Berenschot 2011). As I will discuss in this thesis, one of the challenging issues for an Indonesian post-military government is criminal justice system reform. The new constitution was designed to prevent the regime's political interference in the justice system; to guarantee the independence of the judiciary, by transferring court administration from the Ministry of Justice to the Supreme Court; and to limit the influence of the military in the criminal justice system, by separating the police from the armed forces (ABRI). In addition, in 2002 the government established a new state agency – *Komisi Pemberantasan Korupsi* (KPK, or the Corruption Eradication Commission) – to achieve its main agenda: combating corruption within bureaucracy. Compared to the IPS, the KPK (with just one office in Jakarta) has a bigger budget and better management of human resources.[5]

As this research will show, however, after the establishment of the KPK the post-military authoritarian government made no serious efforts to reform the prosecution service. Under Law 16/2004 on the Indonesian Prosecution Service (thereafter, the 2004 IPS Law), the IPS is designed to be politically dependent on the president. The government retained the previous authoritarian military design of the IPS by positioning the Chief Prosecutor as a cabinet member. In addition, the post-military government allocated an insufficient amount to the IPS' operational budget.[6] In fact, the budget must cover the expenditure of all the prosecution offices throughout the country, and they must prosecute not only corruption, but all criminal cases investigated by the police and other special investigators. One Indonesian Prosecutors Association member complained about the situation, stating that *"…where law enforcement is concerned, it seems that the Prosecution*

5 Although the power of the KPK to deal with corruption cases has been changed and limited by Law 19/2019, the KPK's budget and management of human resources are still much better than those of the IPS.

6 This matter will be discussed further in Chapter 3.

Service is treated as a state-owned company…"[7]. As I will discuss further in this thesis, the government gives public prosecutors a limited budget for controlling crimes; it will increase the budget only if prosecutors can spend it in its entirety, as well as prosecuting cases which bring more revenue to the state.[8]

Despite the key role of the IPS in the Indonesian Justice System, the literature has not yet provided a clear analysis of the performance of the post-authoritarian IPS. It is the aim of this study to provide such an analysis, by considering the context in which the IPS conducts its relationship with different regimes, as well as with other criminal justice actors, societal actors, and the public at large. Subsequently, this study will discuss the IPS as an organisation, examining its structure and its culture.

The research will thus be able to show how public prosecutors perform their functions within Indonesia's criminal justice system. Since security and the rule of law are both desirable attributes of a democratic political system, the purpose of this study is to demonstrate both the practices and development of the IPS, as well as looking at the best way to strengthen the rule of law within IPS performance. This research will also critically observe and analyse the role of the public prosecutor within the criminal justice system; a role which cannot be isolated from the political preferences of the various Indonesian regimes over time.

1.2 Academic Background and Problem Statement

Much literature is available on police and courts worldwide, but only a few studies have been done on public prosecutors.[9] More research has recently

7 Narendra Jatna, a prosecutor in the Indonesian Prosecutors Association (*Persatuan Jaksa Indonesia*/PJI), complained about the Indonesian Prosecution Service's (IPS) budget allocation, which was reduced by the government because the IPS could not spend the previous year's budget in its entirety. Kbr.id, *Pemerintah Diminta Jangan Perlakukan Kejaksaan Seperti BUMN* (The Government is requested not to treat the Prosecution Service like a state-owned company), https://kbr.id/nasional/03-2016/pemerintah_diminta_jangan_perlakukan_kejaksaan_seperti_bumn/79324.html, accessed on 12 September 2019. For more discussion on IPS state budgeting, see section 3.3: Budget.

8 This matter will be discussed further in Chapter 3.

9 Prosecutors have received relatively little attention from social scientists. The sheer number of studies dealing with policing issues, for instance, dwarfs those aimed at prosecution. This may be because of the visibility of the policing profession. Cops are, without a doubt, the gatekeepers of the criminal justice system. Perhaps another reason why prosecutors have received scant attention from researchers is the misguided assumption that they play a smaller role in procedure. There have been many publications on the courts and police as central actors in ensuring the fairness and effectiveness of the criminal justice system. Studies on the police, for example, emphasise their function as a tool for maintaining security and order; the police have been perceived as a tool for twisting the law in favour of the powerful, and for the repression and containment of the vulnerable (Dammert 2019). In addition, studies on the respective roles of the court and judiciary within the justice system are also dominant, because of their function in guarding due process of law throughout (Shapiro 1981).

been conducted into the role of the prosecution service and its position within the criminal justice system. Most of the literature written in English focusses on the prosecution service in western, developed countries, such as the Netherlands (van de Bunt and van Gelder 2012; Tak 2008), the United States (L.Worrall and Nugent-Borakove 2008), the United Kingdom (Ashworth 1984; Samuels 1986), and Italy (Federico 1998; Montana and Nelken 2011; Montana 2009a). Other studies have also been conducted, comparing the prosecution services in Europe with that of the UK (Fionda 1995; Jehle and Wade 2006; Marguery 2008; Tak 2004; 2005), and the prosecution services in the United States with those in European Countries (Langer and Sklansky 2017b; Luna and Wade 2012).

Most of the aforementioned studies discuss the role of the prosecution service as a filter for the criminal justice system, and its connection with both the rule of law and democracy.[10] As magistrate, the prosecutor has a legal and moral duty to enforce the law, in the sense that violations of criminal law will be punished, as well as ensuring that criminal investigators exercise their coercive measures based on procedural rules. In most of the countries mentioned above, public prosecutors have discretion as to whether to accept or dismiss a case—they can select which crimes should be prosecuted and charged, determine all aspects of pre-trial and trial strategy, and (in many cases) essentially decide the punishment that will be imposed, upon conviction. Therefore, most of the aforementioned research focusses more on prosecutorial discretion in the public interest. Since prosecutorial discretion may be the subject of abuse, when it is either used in a diversionary way or exercised to suit the political agenda of a governing regime (Boolell 2012; O'Brien 2012), the aforementioned studies focus on controlling prosecutorial decision-making, and deal with the manner in which prosecutorial discretion may be used to create a more efficient criminal procedure.

Research into prosecution services is also currently on the rise in Asia. Some legal studies focus on what prosecution services are supposed to be and do;[11] others explain what public prosecutors actually are, or how they operate. Some such studies are Ling Li's (2010) thesis on Chinese courts, Cheesman's (2015) research on Myanmar's criminal justice system, and Hurst's (2018) research on China's and Indonesia's criminal justice systems. Such studies show that criminal justice actors, including public prosecutors,

10 Comparative literature on prosecutors in the European system, especially in the Netherlands, helped me to develop a more detached perspective of the Dutch system, upon which the IPS was modelled.

11 A notable report on the prosecution services in Asian developing countries was published by the United Nations Asia and the Far East Institute for the Prevention of Crime and Treatment of Offenders (UNAFEI), in 1998. The report discussed the role and function of the prosecution service in Cameroon, China, Costa Rica, India, Indonesia, Kenya, Laos, Malaysia, Pakistan, Philippines, and Thailand ("Annual Report For 1997 Resource Material Series No . 53", 1998).

play a pivotal role as governmental tools, not only for crime control but also for other political interests (Li 2010; Cheesman 2015; Hurst 2018).

Recent work dealing specifically with prosecutors' performance includes studies by Johnson (2002), on the Japanese prosecution system, and Lee (2014), on the South Korean prosecution service. The former explains how Japanese public prosecutors manage an effective prosecution process that leads to a high conviction rate (Johnson 2012; 2002). Pre-war Japanese public prosecutors, controlled by the totalitarian regime, were used as instruments for the regime, in order to suppress political opponents (Sasamoto-Collins 2015; Mitchell 1992). However, Johnson (2002) argues that, after World War II ended in 1945, Japan was able to reform its criminal justice system, including the prosecution service, to be more protective of the rights and interests of criminal suspects (Johnson, 2002).[12]

Another study explores the South Korean prosecution service's political role in presidential democracies. Similar to the Japanese public prosecutors, South Korean prosecutors have enormous power over criminal procedure.[13] However, unlike its counterpart in Japan, the South Korean prosecution service uses its power as a political weapon against those who oppose its interests, including the President. Furthermore, the incumbent president usually seeks to form an alliance with the prosecution service, expecting short-term political benefits under intense political competition, rather than reforming the prosecution service by limiting prosecutorial power within the justice system (Lee 2014a).

The political tension between the prosecution service and other state institutions, such as the President, can furthermore hinder the prosecution service's reform process towards becoming more accountable and professional (Lee 2014b). Reforming the prosecution service is hard, since it is linked to governmental power, operating as its tool within the criminal justice system. This prosecution service feature is different to the equivalent features of other justice actors, making the prosecution service the key actor for developing a more efficient and protective criminal procedure. A study on the post-authoritarian prosecution service in Latin America suggests that the trend towards adopting an adversarial prosecution system helps countries to reform their civil law prosecution system (Michel 2019).

12 Japan's high conviction rate means that many criminal offenders, who would be criminally charged and convicted under other systems, are never charged, which has negative consequences. Many victims of crimes feel abandoned or betrayed by prosecutors when they do not charge the people who have offended against them. To cope with this issue, Japan enacted two laws in 2004—the Lay Judge Law, and the (revised) Prosecution Review Commission Law—to check and control prosecutors' decisions not to charge (Johnson and Hirayama 2019).

13 As the civil law inquisitorial system has been adopted, South Korean prosecutors are involved in and can direct criminal investigations, and they have broader discretion to dismiss criminal cases in the public interest (Lee 2016; Choe 2018).

The scarcity of in-depth research on the prosecution service in post-authoritarian countries extends to Indonesia. Most Indonesian Prosecution Service (IPS) publications are merely formal legal elucidations of criminal justice procedures, and they fail to deal practically with the manner in which the prosecution process is managed. There are a few publications on how Indonesian prosecutors operate in practice. Among recent work dealing specifically with the IPS are those by Lolo (2008) Kristiana (2010) and Clark (2013). Lolo and Kristiana were both Indonesian prosecutors, and they both reported their experiences in their PhD theses. Lolo examined the Prosecution Service's position as the regime's political instrument during the New Order military era, while Kristiana focussed on the IPS' post-authoritarian performance in investigating and prosecuting corruption cases. Both of them agree that the IPS' centralistic bureaucracy, along with its command system, hinders public prosecutors in performing their tasks (Lolo 2008; Kristiana 2010). Meanwhile, Clark's research on the district prosecution office found that informal politics can play a part in determining the outcomes of corruption prosecutions (Clark 2013). These studies provide key information on certain areas of IPS operation, but they do not paint a full picture of how the IPS performs. Building on Lolo's, Kristiana's and Clark's analyses, and my own fieldwork data, this thesis develops a more comprehensive analysis of the post-authoritarian IPS.

Other studies that deserve mention are Lev (1965), Yahya (2004), and Ravensbergen (2018), all of which provide useful insights into the historical elements; I can compare their findings with the official history of the IPS, as written and published during the authoritarian military regime. In addition, since the IPS claims that it has adopted similar principles to the previous Dutch Colonial Prosecution Service (*Openbaar Ministerie*), this study considers general works on Indonesian legal transplants, such as those mentioned by Pompe (2005), Bedner (2001; 2013), and Massier (2008), in order to gain more insight into the current situation.

This thesis tries to locate the study of the Indonesian Prosecution Service within a broader literature on public prosecutors and prosecution services in post-authoritarian countries. It intends to contribute to the body of work produced by scholars who have addressed the role of the Indonesian public prosecutor and how criminal justice functions within Indonesia. It aims to fill the gap in the literature by examining the socio-legal dimensions of the public prosecutor's role, both in promoting the rule of law and in maintaining the political status quo via the criminal justice system. It will also analyse the IPS' position and design within the legal system. In doing so, it presents an empirical analysis of the development of the Indonesian prosecution service, historically and politically. Using the historical institutionalism approach (Fioretos, Falleti, and Sheingate 2016; Thelen 1999), it will discuss how temporal processes influence the origin and transformation of the prosecution service, governing political and economic relations.

Additionally, the thesis will examine the institutional nature of the IPS. The discussion will not only present legal institutional theories, it will also

analyse the public prosecutor's cultural context and organisational setting. This study fits into a research tradition on legal institutions in Indonesia, which combines law with the social and political studies conducted by Lev (2000), Bedner (2001), Pompe (2005), Setiawan (2013), Huis (2015), Rositawati (2019) and Crouch (2019). The aforementioned studies include the recruitment system, training, budget, organisation of legal personnel, and political structures within which civil, administrative and criminal justice are located and constructed from the legacy of the New Order Military authoritarian regime.

In this way, the present study seeks to provide a better understanding of the ways in which the public prosecutor operates in practice. The problem of the prosecutor's performance relies on his/her dual role as a civil servant and a *Magistraat* (Judicial Officer). In the former role, prosecutors are oriented toward executing the directives and policies of their organisation. As a member of the state bureaucracy, they must focus on state interests and take into account the instrumental goals of its criminal laws. On the other hand, the latter role is closely related to the concept of due process. The prosecutor must weigh up all the interests involved in a case, impartially. The core of the *Magistraat* role is neither effectiveness nor crime control, but justice (Packer 1964; Tak 2008; Fionda 1995; Montana 2009b; van de Bunt and van Gelder 2012).

In order to achieve the above objectives, the following key research questions guide the analysis in this research:

1. *How have subsequent Indonesian political regimes positioned and regulated the Prosecution Service, and how has this affected the prosecution service's performance?*
2. *What do post-authoritarian Indonesian public prosecutors do, in practice, during the criminal procedure?*
3. *How can this be assessed from the perspective of the rule of law, and in what way can it be improved?*

The thesis will finish by providing a number of recommendations for reforming the Indonesian Prosecution Service more effectively within the framework of the rule of law, and by detailing areas for further research.

1.3 Theoretical Framework

In this research, the socio-legal approach is used to understand the rise and fall of the prosecution service's power within Indonesian criminal procedure.[14] This study is inspired (among other things) by the criminal justice

14 It is an interdisciplinary approach, providing (among other things) analyses of how social and political factors influence the performance of legal institutions in interpreting and implementing the law (Banakar and Travers 2005).

approach, which for decades has been applied as a critical analytical tool to the development and performance of criminal justice systems (Ashworth 2011). The criminal justice approach is a particular approach within the socio-legal field. It combines criminal law, criminology, political science and anthropological theory, providing an important framework for the analysis and critiquing of the conditions for, impacts of, and possibilities for prosecution services, globally (Luna and Wade 2012).

The discussion and analysis have been inspired by the occurrence of the following theoretical frameworks: (1) rule of law concepts within the criminal justice system; (2) institutional theory in public administration; and (3) the social function theory within criminal procedure. The rule of law is used as an entry point for understanding the Prosecution Service's role in guarding democracy and promoting the rule of law within the criminal justice system. The institutional theory is used to analyse the internal and external factors that contribute to shaping the prosecutor's work patterns. Finally, the social function theory of criminal process is used as a tool to identify the role of public prosecutors within the criminal procedure.

1.3.1 The Rule of Law in the Criminal Justice System

> *"Nowadays, in contrast, we must say that the state is the form of human community that (successfully) lays claim to the monopoly of legitimate physical violence within a particular territory."* (Weber, 2004, 33).

All states use the punishment mechanism as a means to maintain order and the rule of law. However, different state regimes have different ways of prioritising the maintenance of order and the enforcement of the rule of law (Cheesman 2015). The power to punish expresses the ultimate authority, whereas those who are punished are powerless compared to the state. Similar to all bureaucratic structures, the state is theoretically goal-directed: it exists for a set of purposes. The power to punish during the criminal process is supposed to be wielded in order to attain these goals, rather than the private goals of individuals occupying positions within its structure (Chambliss and Seidman 1971, 271). In his book, *Discipline and Punish*, Michel Foucault demonstrates historical constitutional transformations and the exercising of political power, wherein punishments are largely seen as displays of governmental power (Foucault 1995). The government establishes a criminal justice system, consisting of a set of agencies and processes to control and minimise crime, as well as to impose penalties on those who commit crimes. However, in order to maintain its legitimacy, the state must punish within certain constraints. The punishment must be transparent and transcendent (i.e. impersonal), and its rationale must be ascertainable by the public (McBride 2007). Furthermore, the guarantee of due process is intended to restrain the state's repressive potential (Nonet and Selznick 2009, 66). The idea of controlling and restraining the executive

arms of the state should take into account the law on which the rule of law is based.[15]

The rule of law is an umbrella term for a number of legal and institutional instruments which protect citizens from those who abuse state power. The basic functions of the rule of law are to: (1) curb any arbitrary and inequitable use of state power; and (2) protect citizens' property and lives from infringement or assault by fellow citizens (Bedner 2010, 50-51). However, these functions raise a number of questions regarding which instruments are best suited to attaining an optimum balance between limitations to state power and the protection of citizens' property and lives. Another question is: Which of the above functions should be prioritised, if they should come into conflict? Answers to such questions depend on the context of a given state or society (Bedner 2010, 52). Closer adherence to the rule of law may not only protect the people's rights more efficiently; it may also contribute to a more rational and effective penal policy (Allen 1996, 97). This is mainly because the rule of law requires laws to be articulated with a clarity and generality that is sufficient to enable citizens to moderate their behaviour; citizens can predict how the state will respond to and discourage any capricious or arbitrary use of state authority. Careful articulation may also lessen any avoidable conflicts and inconsistencies between new and existing laws, as well as diminishing any disharmony or incoherence within the legal system (Allen 1996, 98).

The criminal justice system is constituted of interrelated actors—the police, prosecutors, defence attorneys, and judges—all of whom serve their individual functions, but still interrelate with each other to form an identifiable holistic system with emergent characteristics, including the power to deprive an individual of liberty (Luna and Wade 2012, 177). Potentially, prosecutors are the most powerful figures in any country's criminal justice system. They decide: what crimes to prosecute; whom and what to charge; whether to plea bargain (where plea bargains exist), offer concessions or divert a case; how aggressively a conviction should be sought; and what sentence should be proposed. Police arrest suspects, but prosecutors decide whether or not the arrests will lead to charges. Judges only preside over trials and sentence defendants which prosecutors deem worth bringing before them (Tonry 2012). However, in practice there is considerable disparity between countries regarding the power of their respective prosecution services. There are more powerful prosecutors within certain systems, such as in Japan, South Korea and the Netherlands, while in other countries prosecutors have only limited power.

15 As a concept, the rule of law (as developed within the common law tradition) corresponds closely to what the German tradition refers to as *'Rechtsstaat'* - what the French call *etat de droit*, or the Indonesian idea of *Negara Hukum*. These terms all originated in the nineteenth century, but the notions they entail are much older, and they have formed part of a common tradition based on constitutionalism, the legality principle, equality before the law, and due process. For further discussion of this topic, see (May and Winchester 2018).

It is important to identify the different types of prosecutors across the world. Their role may be to prepare charges and process cases, but their function is to ensure that the guilty are convicted and the innocent are exculpated (Tonry, 2012). Important differences can be derived from the foundational characteristics of national legal systems. The most important of these are the contrasts between continental European civil law, Anglo-Saxon common law systems and hybrid systems, and between systems characterised by the "legality principle" and the "expediency principle" (Tonry, 2012).

The civil law tradition is historically associated with inquisitorial adjudication and its heavy emphasis on determining the material truth of each case—the unobstructed, objective understanding of what actually happened. Hence, civil law countries place greater emphasis on non-partisan investigations prior to trial, since substantive truth-finding is the primary objective (Luna and Wade 2012, 179).[16] Meanwhile, common law jurisdiction is associated with an adversarial (or accusatorial) criminal process. This system places opponents—a public prosecutor on behalf of the state, against the defendant and perhaps a public defender or private criminal defence attorney—before a presumably impartial decision maker, in the form of a judge and/or a jury. The truth is supposed to emerge as the parties present evidence and convince the judge to support their claims (Luna and Wade, 2012, p. 179). When applied to actual criminal justice systems, the distinctions between common law and civil law traditions seem less stark; therefore, whether or not the distinctive features of each tradition are clear cut between justice systems is questionable. Moreover, the criminal justice systems of certain countries may be best described as hybrid, given the mix of legal traditions found in their own unique criminal processes (Luna and Wade 2012, 181).

Hybrid systems can also be seen in post-colonial countries, whose criminal justice systems have adopted not only features from their own former colonial systems, but also certain features from other systems. Criminal procedure comparatists believe that post-colonial countries adopting the inquisitorial civil law system tend to be authoritarian states, in contrast to those which apply the adversarial common law system (Ross and Thaman 2018). They argue that the inquisitorial system gives broader discretion to the state and allows for less public control. It is different from the adversarial system, which has more features to protect citizens during

16 In most European countries, and in the parts of Latin America which have adopted inquisitorial civil law, preliminary investigation consumes the most resources and time. During this stage, an investigating magistrate or public prosecutor will prepare the central piece of criminal procedure and a comprehensive investigative dossier or file, including all the evidence that would eventually be admissible at the trial stage, as the bases for proving guilt and imposing a sentence (Luna and Wade 2012, 157). In contrast with the adversarial process, in which the truth is conceived as a by-product of a battle between the state and the defence, the inquisitorial process demands that prosecutors view 'facts' and evidence through an objective lens (Luna and Wade 2012, 39–40).

the criminal procedure (cf. Lee, 2014a). A common trend has occurred in post-authoritarian Latin American countries, which previously adopted civil law and are now adjusting their justice systems to be more adversarial (Michel, 2018). Such transformation of justice administration in democratising countries is mostly a corollary transition from crime control to due process (Lee 2014a).

Like other developing countries which have inherited a colonial system, Indonesia's criminal justice system follows the former colonial Dutch civil law system. During its development, the Indonesian government adopted several features from the adversarial system in the 1981 Law, or *Kitab Undang-Undang Hukum Acara Pidana* (*KUHAP*, or Code of Criminal Procedure).[17] However, since the code was drafted during the authoritarian regime, provisions on the protection of citizens are limited. The KUHAP still gives the government significant power to control criminal procedure (Strang 2008, 202). Like other authoritarian countries, criminal justice was a key tool for the Indonesian military regime, which used it to maintain the political stability of the ruling government by weakening the rule of law in cases related to state security (cf. Savelsberg and Mcelrath 2014; Skinner 2015).

Authoritarian regimes prioritise social control over dispute resolution, as their main mission for justice administration (Tate and Haynie 1993). In authoritarian states, criminal justice systems rely on a larger law enforcement-punishment apparatus for the maintenance of order, and to produce higher rates of arrest, prosecution, conviction, and incarceration. Authoritarian governments often create specialised units for political policing, and assign criminal police to the maintenance of law and order (Sung 2006). By contrast, in liberal democracies justice is sought through the defence of civil liberties via the due process of law, which leads to heavier investment in the judiciary and a higher rate of case attrition in the criminal justice process.

Criminal justice systems rely heavily on the official granting of discretionary power (Dworkin 1963; Galligan 1990). Considerable discretionary authority is vested in criminal justice bureaucracies, in terms of making and implementing policy. Judges, prosecutors, public officials, and lawyers all exercise some form of discretion in their daily decision-making on matters of criminal law and criminal justice cases (Woude 2017). In the context of the prosecution system, the most important legal principles are the expediency principle (known as the 'opportunity principle') and the legality principle. The two principles concern the degree of discretion that is permitted or expected from all branches of the criminal justice process, particularly at the prosecution stage. In states which apply the legality principle, prosecutors have limited or no official discretion during their work on individual cases. This principle demands the mandatory prosecution of all cases where sufficient evidence is presented to prove the guilt of a suspect, as long as no

17 This matter will be discussed further in Chapter 5.

legal hindrances prohibit such prosecution.[18] The expediency principle, by contrast, justifies prosecutorial discretion in decisions to prosecute. Prosecutors are authorised to dispose of cases for any good faith reason, such as extenuating circumstances, victim compensation, or conflict with other prosecution priorities.

One of the public prosecutor's objectives is to act in the public interest (e.g. ensuring public safety, or seeking fair and just outcomes). Furthermore, the prosecutor must take public interest into account when deciding whether or not to prosecute a case. This decision must be preceded by sufficient evidence to justify making a prosecution. This public interest consideration also influences whether or not the prosecutor exercises their discretion to waive a case. For this reason, prosecution services are referred to as the 'filters' and 'managers' of the criminal justice system (Fionda 1995; Jehle and Wade 2006; Tak 2008).

In some countries, public interest criteria for waiving criminal cases can be found in policy considerations that are publicly accessible and may be tested directly in court. This mechanism is used to ensure that prosecutors continue to carry out their functions in the public interest. However, Fionda's study in the UK, the Netherlands and Germany, found that public interest has little to do with public opinion. Although the public voice in the media may influence public interest formulation, policy makers formulate public interest *criteria* with minimum reference to the views of actual members of the public. Under such criteria, policy makers unilaterally impose the minimum standards necessary to protect citizens from victimisation, and to ensure a minimum level of retribution and deterrence (Fionda 1995, 227).

Unlike other civil law countries, such as the Netherlands and Germany (above), the Indonesian legal system allows top government officials to define 'public interest', with minimum input from the public itself. Public interest criteria in criminal case dismissal cannot even be tested in court. Indonesian scholars argue that the government alone can exercise discretion (*freies ermessen)* regarding the public interest (Gautama 1983; Joeniarto 1968; Asshiddiqie 2008; Utrecht 1986). The government may even exercise its discretion to override the law in the public interest (Utrecht 1986, 35).[19] This is similar to post-colonial authoritarian countries, which may lack the ability to produce written policies, and often provide unclear translations of legal text (Massier 2008).

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18 Based on the legality principle, the prosecutor must prosecute all cases, although a filter mechanism exists to dismiss cases. In Italy, for example, a preliminary hearing judge (*giudice dell'udienzavpreliminare*) has authority over whether or not to commit a case to trial, dismiss the case, or inform the parties about matters that still need to be addressed and investigated (Montana 2012, 105).

19 The opinion that government discretion may violate law made in the public interest has been supported and promoted since the Soekarno Guided Democracy era (Fakih 2014), which centralised state power in the president's hands and rejected the separation of powers. This will be discussed further in Chapter 2.

Indonesian scholars and government officials invariably translate *Beleid* (policy), *Wijsheid* (wisdom), and *Freies Ermessen* (discretion) as either *Kebijakan* or *Kebijaksanaan* (Pringgodigdo 1994, 6-7); both words come from the term, *bijak*, which means 'wise'. The perception is that both policy and discretion are part of a ruler's wisdom, which is reflected in the Indonesian state ideology of integralism. The integralism ideology implies that a harmonious relationship between the state and society is an Indonesian value, supposedly found in all Javanese villages. Within this view, state leaders will (by default) pursue the common good, which, if there are diverging views, will be established through 'deliberation and consensus' (*musyawarah-mufakat*). Since leadership plays an important role in the state ideology, such discretion cannot be questioned. Moreover, as I will elaborate in Chapter 5, although Indonesian criminal procedure adopts the opportunity principle, only the Chief Prosecutor can dismiss a criminal case for public interest reasons. The IPS believes that prosecutorial discretion in criminal case dismissal is the prerogative of the Chief Prosecutor, and that such dismissal cannot therefore be reviewed by the court.[20] The dominant role of policy makers in determining public interest criteria may contribute to the prosecutor's position as more of a state instrument than a public official.

It is, perhaps, not surprising that, when I did my preliminary fieldwork in 2014, I found only three cases which had been dismissed by the IPS for public interest reasons. Further, I found that the IPS applied the military's command system, which has strong influence on the reporting mechanism during criminal proceedings. The IPS treats public prosecutors as soldiers and not as street-level bureaucrats (as defined by Lipsky (2010)), precisely because individual prosecutors have hardly any opportunity to exercise discretion.[21] This preliminary finding contributed to changes in my research focus. The most significant change was shifting from an initial focus on prosecutorial discretion to studying the performance of the public prosecutor in post-authoritarian Indonesia. For this new research focus, I decided to study the ways in which the public prosecutor operates, in practice, within the IPS' military command system, and how can this be assessed from the perspective of the rule of law.

1.3.2 Organisational Setting, Bureaucracy and Performance

Law enforcers such as the police and the prosecution service, which in most countries fall within the executive branch, are mutually dependent upon one another. Each sub-system may be designed to fulfil the goals of the system as a whole, the success of which can be measured from an input-output perspective. As a system, criminal justice typically aims to process cases efficiently, while ensuring correct outcomes through the acquittal (or

20 See Constitutional Court Decision 29/PUU-XIV/2016.

21 This matter will be discussed further in Chapter 3

non-prosecution) of the innocent, and the conviction and suitable punishment of the guilty. Scholars and reformers focus on prosecutors as being the key to how the criminal justice system is administered, and increasingly blame or praise them for failures within the system (Jehle and Wade 2006; Langer and Sklansky 2017a; Lee 2014b; Montana 2009a; Johnson 2012; Luna and Wade 2012; Michel 2019). One way to analyse the prosecution service's operation within the criminal justice system is to measure its performance based on standards, goals, or benchmarks, established by the government.

Several scholars (see Langer and Sklansky 2017b) believe that the position and design of prosecution within the legal system has an impact on both democracy and the rule of law. This is because the independence and accountability of prosecutors will influence due process implementation within the criminal procedure (Michel 2018; Boyne 2017; Wright and Miller 2010). Furthermore, the question of the prosecution service's position in the state organisation has been the subject of ongoing debate in many countries (Marguery 2008; Tonry 2012). This is mainly because successful criminal prosecution depends on investigations being conducted or supervised by the prosecution service. Therefore, to be able to evaluate the consequences of the prosecution service's position, one must understand both the objectives providing direction for the system and the features that sustain the idea of the prosecution service within the constitution. The objectives are emphasised differently, according to the prosecution service's main priority, whether that is to maintain public or political order, or to promote the rule of law. In Indonesia, debate concerning the Prosecution Service's position in the state organisation became increasingly heated after the authoritarian military government stepped down in 1998. The subject of this debate is the extent to which the prosecution service is, and should be, free to perform its functions, independent of political influence and the risk of abuse (Tim MaPPI FH UI 2015; Maringka 2015; Waluyo 2015; Mahfud MD 2015).

In a democratic government, prosecutors must implement the rule of law faithfully. In most European countries, prosecutors rely on internal bureaucratic accountability to ensure they remain within rule of law norms. In some countries, such as Sweden (Asp 2012), France (Hodgson 2005), Italy (Montana 2009a), the Netherlands (Tak 2003), and Germany (Boyne 2017), public prosecutors have a quasi-judicial role,[22] although the prosecution service is a part of the executive.[23] In this manner, the prosecution service should be counted as the executive power at policy level, while the action

22 Dutch prosecutors have a judicial role. They have gained wider authority to dispose of cases without judicial involvement (although subject to appeal to judges) through dismissals, 'transactions' (in which suspects agree to pay a penalty without pleading guilty), and 'penal orders' (in which sanctions are imposed and convictions are carried out) (van de Bunt and van Gelder 2012, 120).

23 Dutch public prosecutors are positioned as judicial civil servants (*rechterlijke ambtenaren*) (Marguery 2008, 120).

of the public prosecutor at concrete case level must be traced back to its capacity as the part of the judiciary (Crijns 2010, 316).

By contrast, in some other countries prosecutors are members of the executive branch of government. In England and Wales, prosecutors work for the Crown Prosecution Service, led by a politically appointed director of public prosecutions. Line prosecutors are civil servants and members of the national bureaucracy, and although prosecutors are assigned to work either within a specific district or at central headquarters, they can be transferred from one location to another. As members of the executive branch, prosecutors' priorities are set by political officials, who take both public opinion and political considerations into account (Lewis 2012). In the US, however, where prosecutors build their accountability on an electoral basis, an external check is designed to compensate for the shortcomings of weak judicial review and overly broad criminal codes (Luna and Wade, 2012). State prosecutors typically work in county-level offices, led by an elected chief prosecutor. US federal prosecutors work either in a specialised unit of the Department of Justice, or in offices attached to federal district courts which are led by the US attorney, who is appointed by the government (Tonry 2012).

As mentioned in the previous section, studies on the prosecution service in developing countries, including Indonesia, are still lacking. There are, however, a great many studies that investigate the performance of legal institutions (notably, in Indonesia) from an organisational perspective.[24] The studies demonstrate how insufficient financial, human, and organisational resources have contributed to serious problems regarding the quality of judicial administration in Indonesia. There are two types of organisational factors influencing the performance of Indonesian legal institutions. The first is external: the organisation's socio-political context, including a wide range of factors and actors that are largely beyond its scope of control. These include social, cultural, economic, political and legal relationships, as well as historical and geographical contexts, and the technological possibilities available. The second is internal: human, financial and material resources, and how people's behaviour within the organisation influences its functions (Wilson 1989). For this reason, the IPS' budget, structure, bureaucracy, culture, supervision, training, recruitment, transfer, and promotion will all be discussed in this research.

The cultural context of the Indonesian Prosecution Service and its organisational setting need to be addressed, in order to understand how public prosecutors should exercise their tasks and powers within the criminal justice system. This research analyses the legal culture within the Prosecution Service, which is closely connected to its organisational culture. Legal culture has long been recognised as an important factor in explaining

24 Studies on Indonesian legal institutions, conducted by Lev (1965), Pompe (2005), Bedner (2001), and Setiawan (2013), inspired me to analyse the IPS and how it is influenced by other political actors.

the character, performance, and effectiveness of law and legal systems. In this case, 'legal culture' means "the network of values and attitudes relating to law, which determines when and why and where people turn to law or government or turn away" (Friedman 1969, 34).

As mentioned above, the prosecution service's position within the state organisation has an impact on the prosecution process. The activities of the prosecution service are based on organisational goals, which are defined as "an image of a desired future state of affairs" (Wilson 1989, 34). One way to analyse the prosecution service's operation in the criminal justice system is to measure its performance, based on standards, goals, or benchmarks established by the government. In this research, 'performance' is a neutral concept, meaning that it does not have an inherently positive or negative connotation. This allows for further specification of organisational performance: it may be excellent, terrible, or anything in between (Setiawan 2013). The prosecution service's performance is usually defined as the difference between a goal (or standard) and the actual result achieved by an individual (an operator, a manager, and an executive),[25] an organisation (the prosecution service), or the justice system as a whole (Contini and Carnevali 2010).[26]

In the English Crown Prosecution Service, for example, job descriptions and performance indicators are set for each prosecutor. Their progress and future career path both depend on the judgements of their seniors, in relation to how well they have fulfilled the guidelines set down locally and nationally, as well as the local workload targets (Jehle and Wade 2006, 157). In the American adversarial system, where prosecutors function as parties to criminal hearings, winning cases is a strong performance indicator (Polzer, Nhan, and Polzer 2014). Whereas, the performance of German prosecutors is assessed not by the conviction rate or the length of sentences given, but by whether or not they have applied the law correctly in a particular case (Boyne 2017, 146), which can be seen (for example) in their closing statements. German prosecutors are expected to present the facts for *and* against a defendant, and they may ask the court to acquit a defendant if they are not convinced the defendant is guilty after all the evidence has been presented at court. A prosecutor may even appeal an unjust conviction on behalf of a defendant. Unlike the German approach, Japanese prosecutors are career civil servants who are not under pressure to amass convictions.

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25 I borrow Wilson's (1989) classification of government agencies, which splits the role of bureaucrat into three types—operator, manager and executive—in order to understand what motivates different actors within the hierarchy of IPS bureaucracy.

26 Setiawan's (2013) thesis on the National Human Rights Commissions in Indonesia and Malaysia defined 'performance' as a process which concerns the relationship between inputs and outputs. Inputs are an organisation's supplies (such as human and financial resources, and equipment), while outputs consist of the work the agency does, and the outcomes of that work (Setiawan, 2013). However, Setiawan also comments that a state agency's good performance cannot guarantee that its outcomes will be effective, referring to the extent to which an organisation has achieved its goals in order to change, improve and benefit society.

They consider that their primary purpose is not to charge the innocent, but instead to charge only those who have really committed crimes (Johnson, 2002, p. 228). Thus, Japanese prosecutors are very selective about the cases they bring forward. Unless a trial is highly likely to lead to a conviction, Japanese prosecutors will refrain from filing charges.

Although Indonesian prosecutors are civil servants, similar to Japanese and Dutch prosecutors, their position as magistrates who promote due process has been minimised.[27] The IPS retains its militaristic culture, to impose on public prosecutors loyalty to the Chief Prosecutor, while his/her position remains dependent on the President's political preferences.[28] As stated in the Chief Prosecutor Regulations PERJA 007/A/JA/08/2016, the IPS goals,[29] and its visions and missions, are all designed to be in line with the President's programme during his five-year term. Therefore, the performance of Indonesian public prosecutors is assessed by whether or not they can implement and secure the President's political agenda in their work.[30] The IPS goals, as mentioned in the Chief Prosecutor Regulations PERJA 007/A/JA/08/2016, include:

1. increasing asset recovery from corruption cases;
2. enhancing the quality of law enforcement, to provide legal certainty, justice, and benefit to the public, and to justice seekers;
3. expanding government authority to solve civil law and administrative disputes;
4. increasing public trust in the IPS; and
5. realising bureaucratic reform and good governance within the IPS.

Because the normative goals seem vague and difficult to operationalise, management controls that encourage efficient case-handling procedures exert a strong influence on practice. In addition, the meaning of 'justice' is ambiguous in the IPS goals. A somewhat less vague (but still complex) prosecutorial goal would be to maximise a sense of public security, which might be conceptualised as (among other things) reducing crime through deterrence and rehabilitation.

Later, I will discuss various regimes which have adjusted the IPS' tasks and powers to serve their own political interests. Due to this, some IPS functions are currently no longer in line with its core duties within the prosecution process. The government positions public prosecutors as state lawyers, who assist the government and its companies in both civil and

27 This matter will be discussed further in Chapter 2

28 This matter will be discussed further in Chapter 3.

29 Unlike the police force and the Human Rights Commission, which has specific goals written into its own laws, The IPS law has no provisions specifically stating goals for its prosecutors. See Article 4 Law 2/2002, which mentions goals for the police. See also Article 75 Law 39/1999, which regulates the goals of the National Human Rights Commission.

30 This will be elaborated further in Chapter 3.

administrative disputes. The government also stipulated an additional function for prosecutors: to act as state intelligence. In this manner, the IPS was not designed simply to support the prosecution process, but also to protect government interests by maintaining public order. The IPS then created specialised divisions to serve these additional functions, and arranged goals for those divisions. In some cases, similar tasks may fall to more than one division, which confuses prosecutors in aiming to achieve their goals.[31]

1.3.3 The Role of the Public Prosecutor in Criminal Procedure

Article 12 of the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Havana, Cuba, on 27 August to 7 September 1990, states:

> *"Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system."*

In post-authoritarian Indonesia, more studies have been carried out on criminal proceedings, which analyse the role of public prosecutors. Upon closer examination, through a socio-legal lens, the IPS seems to use security and order standards to support public prosecutors' work within the criminal justice system. A war on crime campaign by the state will jeopardise the rule of law in the criminal process, since it often oversteps the limits of legality and frees public officials from accountability (Allen 1996).

A convenient starting point for analysing the role of the IPS within criminal procedure is Herbert Packer's (1964) *Two Models of the Criminal Process*, which connects the rule of law in criminal justice closely with the idea of due process (Sanders and Young 1994). Packer proposed that the whole of criminal process could be interpreted, not so much as a battle between the prosecution and defence, but as a conflict between two competing value systems or models – those of crime control and due process – which require balancing (Packer 1964). The crime control model is based on societal interests, such as security and order, while the due process model is based on the primacy of individual rights in relation to the state. Packer assumes that the crime control model promotes more efficient work by the police and prosecutors. On the other hand, the due process model places more emphasis on the need for an "obstacle course" for police and prosecutors in carrying out their work, which is designed to protect defendants' rights and freedoms before a conviction is carried out (Packer 1964).

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31 This will be elaborated further in Chapter 4.

Packer's models provide a useful way to reduce the complexity of the criminal process. The models allow us to simplify details and to highlight common themes and trends. They provide a guide for actors within the criminal process, regarding the actual and positive operation of the criminal justice system (King 1981). Although there are critiques of Packer's model on the basis of empirical findings from the field, criminal justice scholars use his framework as a structure for pointing out new ideas, and for establishing other criminal justice frameworks (Griffiths 1970; Feeley 1973; King 1981; Fionda 1995; Roach 1999; Macdonald 2008).

The first critique of Packer's model came from Griffiths. He argued that Packer presented two sides of the same model: the "battle" between the "police and prosecutor perspective, and the court perspective" (Griffiths 1970, 367). Thus, as an alternative to this battle framework, Griffiths proposed a "family model". Under the new paradigm, the state treats offenders like children: punishing them so that they learn a lesson, then aiding their reintegration into society. Another comment came from Malcolm Feeley. He argued that due process is a normative, idealised concept, generated by the court and masking the empirical reality that is much closer to crime control (Feeley 1973).

Suggestions for additional models followed. Michael King (1981) proposed six models, including Packer's due process and crime control models, and four others. The additional four models are: (1) the medical model, where the justice system should resemble a clinic, in which the successive objectives are diagnosis, prognosis, treatment and cure; (2) the bureaucratic model, where the justice system's objective is to process defendants according to a standardised procedure – quickly and cheaply; (3) the status passage model, which focuses more on stigma and labelling; and, (4) the power model, where the criminal justice system is considered a part of the state machinery, serving the political interest of the ruling class (King 1981, 13-28).

Kent Roach (1999) added victim perspectives, by introducing two new models: a punitive model of victims' rights, and a non-punitive one. The punitive model refers to a victim's participation in advancing the retributive and expressive importance of punishment, while the non-punitive model places more emphasis on the importance of crime prevention and restorative justice (Roach 1999).

Since public prosecutors have expanded their roles within the criminal justice system, Julia Fionda (1995) proposed three models for understanding their actual operation. She argued that Packer's models are inappropriate for explaining the expansion of the prosecutor's role into sentencing. She thus proposed three models: (1) the operational efficiency model, where prosecutors have a managerial role and exercise sentencing powers to control an increasing workload; (2) the credibility model, which seeks to restore the public's trust in the criminal justice system by intervening in the prosecution of low-level offenders early on in the criminal justice process; and (3) the restorative model, where prosecutors use sentencing powers to

advance mediatory, reparative, compensatory, rehabilitative, and reintegrative goals, to help restore the social balance which has been disrupted by the offence (Fionda 1995, 180-88).

Some Indonesian criminal law experts attempt to combine the above frameworks, and use them to explain how the Indonesian criminal justice system operates. For example, Sahetapy attempted to tailor Griffith's (1970a) model to Indonesia's situation by proposing the *Pengayoman* model, which (as he argued) is based on Indonesian values that position the state as father and offenders as his children. Hence, the objective of Indonesian criminal justice is to punish the offenders so that they can learn a lesson, and to help their reintegration into society (Setiadi and Kristian 2017, 101-2). Similar to Sahetapy, Muladi proposed using the balance of interests model to meet the objectives of the criminal justice system, not only to protect the interests of victims and perpetrators, but also to pay attention to the state and public interest (Muladi 1995). In this regard, he seems to emphasise state interests over a victim's interests, reflecting the Indonesian state ideology of integralism. However, in practice, integralism has been linked to authoritarianism (Bedner 2017, 160; Simanjuntak 1994, 252-53). Since leadership plays an important role in state ideology, the President still has the power to intervene in criminal justice policies and to align them with his/her political preferences (Atmasasmita 2010, 64-65).

By combining the afore-mentioned models, the present study attempts to understand public prosecutors' performance in post-authoritarian Indonesia. Public prosecutors' roles within criminal procedure also differ in the degree to which they promote certain models. Combining such models leads to the following continuum:

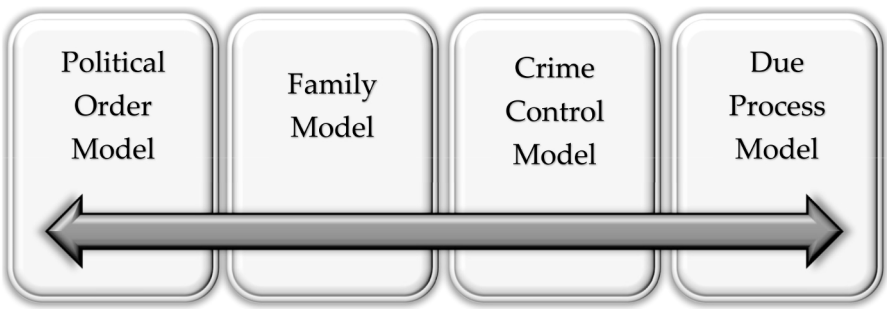

Figure 1: The four criminal process models

This continuum will be used in the present study, to identify how the character of the Indonesian public prosecutor has changed over time. The models form a basis for monitoring the operation of public prosecutors within criminal procedure, and are unlikely to exist either in isolation, or within one regime only. Therefore, the public prosecutor's role within criminal procedure moves, together with patterns and prosecutorial policies, along the continuum. The above models are the ideal type, and no

prosecution service in the world conforms fully to just one. The prosecution service's operation in criminal proceedings has always had different features, from various models. Here, features are adopted from Packer's models – the due process and crime control models. Both of these models are ideal foundations, which are promoted within Indonesian criminal procedure by both civil society and human rights researchers. While the family model features are adopted from Griffith, they are also popular among Indonesian criminal justice scholars, because the government promotes the integralist model, positioning the state as 'parents' within the justice system. The three models emerged from the rule of law principle, which prevents government officials from abusing their powers. Meanwhile, the political order model is adopted from King's model, which positions criminal procedure as part of the state machinery, serving the political interests of the ruling class. As I will discuss throughout this study, Indonesia has operated within all four models, at different points in time.

The operationalisation of the four models in this study includes identifying the function of the criminal justice system and its features. A historical overview and mapping of the Indonesian constitutional and legal framework (and its political contestation), are provided, in order to identify the public prosecutor's role within the criminal process. The table below details which features are associated with the four models.

Social Function	Process Model	Features of the Criminal Justice System
Justice	Due Process Model	a) Equality between parties b) Rules to protect defendants against error c) Restraint of arbitrary power d) Presumption of innocence
Punishment	Crime Control Model	a) Disregard of legal controls b) Implicit presumption of guilt c) High conviction rate d) Discretion of decision makers e) Supportive of police
Rehabilitation	Family Model	a) Discretion of decision makers b) Expertise of decision makers c) Minimising conflicts d) Restoring social balance
Maintenance of Political Power domination	Political Order Model	a) Dependent on political consideration b) Discretion as policy c) Reinforcement of regime's values d) Alienation and suppression of defendant e) Minimising of conflict f) Paradoxes and contradictions between rhetoric and performance

Table 1: The functions of criminal procedure and their features (adjusted from Packer 1964, King, 1981 and Griffith, 1970)

1.4 Research Methodology

1.4.1 Research Approach

After eight years of practicing law in Indonesia – as a professional lawyer, public defender, and criminal law lecturer – I have been seeking an answer to a number of perplexing questions about the system of which I have been a part. These questions essentially boiled down to just one: Is this the criminal justice system Indonesians want? This question eventually led to my interest in studying the Indonesian Prosecution Service as a central criminal justice actor, because it is often forgotten by Indonesian scholars. It was Lev's (1965) article, discussing the political contestation between prosecutors, judges, and the police during early Indonesian independence, which opened my mind to conducting socio-legal research on the IPS.[32] As I mentioned above, following Lev's (1965) seminal work, only a few Indonesian legal or political experts have carried out empirical studies on how the IPS actually works.[33]

The socio-legal research approach is considered to be non-legal research by some Indonesian legal scholars.[34] One possible explanation for this situation is the significant impact of academic censorship, imposed by the previous authoritarian regime. During the New Order era, most socio-legal research was conducted by foreign Indonesianists. It was not common for Indonesian legal scholars to conduct socio-legal research, since censorship limited their academic freedom. One exception was the prominent lawyer and former prosecutor, Adnan Buyung Nasution, who used the socio-legal approach in his PhD research on the 1950s Indonesian constitution. Since his thesis promoted the amendment of the constitution, Commander in Chief of the Restoration of Security and Order (KOPKAMTIB), General Susilo Sudarman, sent radiograms to all universities in Indonesia, in order to prohibit the circulation of Nasution's book (Nasution 2010, 80).

Socio-legal research should, according to Galligan, start with the features of law which are "relevant to the actions of citizens and officials and examine meanings attributed to such features by citizens and officials, and the actions that follow" (Galligan 2007, 36). This research starts with an analysis of the law, followed by an examination of its impact and its use by those working within the criminal justice system (Ashworth 2011, 336).

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32 I wish to thank the Indonesian Directorate General of Higher Education, the Ministry of Education and Culture, and Leiden University, all of which provided me with financial support for my doctoral study via the DIKTI-Leiden PhD scholarship.

33 Kristiana (2011) uses the socio-legal approach to examine how the IPS handles corruption cases, while Lolo (2008) examines corruption practices in the IPS during the New Order era. Clark (2013) examines how district prosecutors have handled corruption cases, from a political economy perspective.

34 For further discussion, see Bedner (2015).

The socio-legal approach in this thesis employs doctrinal research to understand the normative system of the IPS. The approach is employed not only by analysing relevant laws, such as IPS law, criminal law, and criminal procedure law, but also by analysing any relevant court cases. In this sense, I examine legal rules and decisions and clarify ambiguities within the rules, then structure them in a logical and coherent manner, and describe their inter-relationships. In this study I try to examine the inter-relationship between the law and the governmental institutions that are its main producers and users.

Most of the previous legal researches on the IPS, which had been carried out by students (undergraduate to doctoral level) tend to emphasise the statute, legal comparative and philosophical approaches. Only a few of the students have considered studying case law. During the authoritarian military regime, it was difficult to access court decisions, since the Supreme Court did not publish (and limited researchers' access to) them (Pompe, 2005). Although in recent years the Supreme Court has released almost all of its decisions online,[35] not many legal researchers have seriously observed Supreme Court decisions in their doctrinal research (Kouwagam 2020, 60).

As I mentioned above, socio-legal research applies various methods and techniques to the collection of data. I conducted empirical research, in order to have a broader understanding of what the IPS does in practice. I obtained most of my information and data through interviews and the collection of documents. Initially, my research focused on the prosecutor's work within the general crime division. However, when I did fieldwork in certain prosecution offices, it turned out that I also needed to pay more attention to other divisions, since they have inter-connected tasks and powers within the prosecution process. Thus, I extended my research to include the special crimes and intelligence divisions. In addition, I paid attention to the advancement division, which is responsible for human resource management, budgeting, and bureaucracy reform within the IPS. Although I did not conduct field research within the civil law and administrative law dispute divisions, I gained information about these divisions from top level prosecutors with experience working within them.[36]

During my fieldwork (from 2014 to 2016) I interviewed 50 IPS staff, including operators, managers, and executives[37], in seven district prosecution offices, two provincial high prosecution offices, and the Supreme Prosecution Office in Jakarta. I also interviewed ten criminal lawyers, five

35 For this research, I collected some court decisions via the website of the Supreme Court, https:/putusan3.mahkamahagung.go.id/, while other decisions not accessible on this website were collected from NGOs, such as the Institute for Criminal Justice Reform and Indonesian Legal Aid institutions.

36 See Chapter 3. For certain divisions, the IPS offers no specific career path. All prosecutors should be ready to be placed in any division, even if they have not followed any special training in the functions and tasks of each division.

37 I borrow the labels for these roles from James Q. Wilson's (1989) study of bureaucracy. The Indonesian Prosecution Service uses the terms *Jaksa Fungsional* for operators, *Jaksa Struktural* for managers, and *Pimpinan Kejaksaan* for executives.

police officers, three Supreme Court judges, two District Court judges, and ten NGO activists who were involved in Indonesian criminal justice issues. The interviews were conducted in a semi-structured way, on the basis of a list of questions I drafted in Leiden at the beginning of the research period. However, I continuously adapted the list on the basis of new insights from my field research. Since this thesis focusses on the IPS, I did not conduct extensive research on other criminal justice actors, such as advocates, the police, and judges; instead, I interviewed the heads of criminal investigation units in district police forces, as well as judges and advocates working in the same areas. In triangulating my findings, I always verified pieces of information by cross-checking informants' statements with those of other informants, as well as with other available documentation, such as newspapers, websites, and project documents – if available; this was to ensure that such information was reliable and accurate. In addition, I followed the prosecutors' debates on their Facebook group. When I found exciting information in a discussion, I contacted them by telephone or email to inquire further. Since I promised interviewees anonymity, I use a coding system that identifies subjects by category only. Each code represents one sub-category, indicating a prosecutor's performance within the criminal procedure.

In addition to above methods, I undertook participant and non-participant observations of the ways in which IPS public prosecutors interpret the law, how they act, and how they understand their day-to-day activities. This approach is similar to Pompe's (2005) ethnography-based research on the Indonesian Supreme Court, and Bedner's (2001) research on Indonesian administrative courts. In this manner I attempt to describe and analyse prosecutors' professional and legal culture, in practice**.** As an observer, I participated in public debates, meetings, and informal discussions between IPS leadership and its operators at national, regional and district levels. I observed public prosecutors' activities, whenever this was possible. The activities included not only those open to the general public, but also in-house activities, including some internal meetings and discussions. I also stayed in a boarding house for prosecutors and in IPS leaders' official residences, which allowed me to have many informal conversations, and to learn more about the lives of prosecutors, stories from old times, and current gossip, about which I afterwards made notes. The prosecutors knew that I was there to collect information and would not disclose their personal identities, in case it damaged their careers.

Ethnographic methods are considered useful to scholars who are employing a historical framework or examining legal changes. As both Sally Engle Merry and Lawrence Friedman describe in their chapters, ethnographic methods can be used to build a contemporary context for understanding legal history (Merry 2002; Friedman 2002). I looked at the developments in prosecution service legal doctrine in Indonesia, constituting a development within a "judicial tradition". As legal heritage, legal doctrine is transferred between generations within a judicial institution or system, where each generation consciously builds on the transferred heritage of its

predecessors, the authoritativeness of which is based on certain origins and historical backgrounds (Huis 2015, 10).

An impressive collection on Indonesian history at Leiden University library helped me to unravel the history of the IPS. I compared the materials I found there with the IPS' official history, which was published during the New Order military regime, in order to gain a more comprehensive story. However, since my Dutch is limited, I relied heavily on secondary sources which discuss Indonesian criminal justice, such as Lev (1965, 2000, 2007, 2009), Pompe (2005), Bedner (2001), Yahya (2004) and Ravensbergen (2018). In addition, when I found relevant information in Dutch that had rarely been discussed, I sought assistance from colleagues and my supervisor in translating the materials.

Since this study discusses the IPS as a part of the criminal justice system, its focus is on looking at the prosecution service as a legal institution. This study will also include significant bodies of law, and the prosecutors' practice in performing decision making roles within what is often referred to as 'the criminal justice system' (Ashworth 2011, 335). Thus, this study is a mixture of criminal justice, and criminological and socio-legal perspectives and techniques. It starts with an analysis of criminal procedure, then examines the impact of the law and its use by those working within the criminal justice system. Using this perspective, the study concerns actors who play certain roles within institutions. It is not simply a matter of exposing and commenting on the issue of the gap between law in the books and law in action; the study also includes a more philosophical assessment, and an examination of the justifications for particular rules and practices (Ashworth, 2011, 341).

1.4.2 Gaining Access

Gaining access is crucial to the success of empirical research. As Glesne and Peshkin state, access involves getting consent "to go where you want, observe what you want, talk to whomever you want, obtain and read whatever documents you require, and do all this for whatever period of time you need to satisfy your research purposes" (Glesne and Peshkin 1992, 33). Although I have experience in working as a criminal law advocate, legal aid activist, and law lecturer, and am familiar with certain issues within the IPS, gaining access to conduct socio-legal research in the IPS is nevertheless challenging.

Since the New Order regime the IPS has been co-opted into a military-style bureaucracy; it is well known as a closed institution that will not easily give access or provide information to outsiders, especially researchers.[38]

38 This is evidenced by the fact that only a small amount of empirical research on the bureaucracy and prosecution culture has been carried out by those who are not working for the IPS. Some empirical research has been done by externally funded institutions, involving researchers from the IPS (e.g. Tim Peneliti Komisi Kejaksaan 2013b; 2013a; Komisi Hukum Nasional 2005c; 2005b; 2005a).

Further, conducting empirical research on the IPS is risky, as demonstrated by what happened to two prosecutors researching the IPS for their PhDs: Andi Lolo (2008) and Yudi Kristiana (2007). It is suspected that they were demoted from their positions, because of their empirical work on the IPS. Lolo eventually resigned from the IPS and went to work as a lecturer in the University of Indonesia, while Kristiana was transferred to a prosecution office in a remote area.[39] Moreover, although the dictatorial regime fell in 1998, the Indonesian government retains several regulations which censor any criticism of state institutions (Wiratraman 2014). Since the IPS maintains the bureaucratic and military culture of the authoritarian regime, a study of the current IPS can categorised under the authoritarian field. Therefore, doing this research involved a certain amount of risk (Glasius et al. 2017). I have considered the risks of undertaking this research, and I must be cautious about publishing my findings in Indonesia.[40]

Obtaining research consent from the IPS was also one of the challenges I had to overcome during my fieldwork. When I started my fieldwork, in 2014, I relied heavily on official letters, from Leiden Law School and Brawijaya Law School, explaining my status as a PhD student and state university lecturer. I hoped the letters would help IPS top management to give me access to the information I needed. However, it turned out that the letters were not sufficient to ensure the IPS would open its gates. When I started my research in a District Prosecution Office near my home town, I could only get access to interview a junior prosecutor, who unfortunately was unable to answer my questions.

Consequently, I decided to move my fieldwork to the Supreme Prosecution Office in Jakarta. Since I did not have a contact in that office, I asked an NGO friend who was involved in IPS reform to help me gain access. In addition to this, I used the Brawijaya Law School alumni network to find prosecutors who had graduated from Universitas Brawijaya. Finally, I obtained access through the Brawijaya alumni network and NGOs, enabling me to meet many influential top-level IPS managers, who helped me open the IPS gates – not only in the Supreme Prosecution Office, but also in the high provincial and district prosecution offices. It turned out that this informal approach was more effective than the formal method of using official letters (a lengthier procedure, and therefore more time-consuming). Moreover, when I used the formal approach the information I obtained was very limited and normative. Interviewees were reluctant to explain what they did based on the criminal procedure; they wanted to discuss

39 Lolo's dissertation on prosecutorial corruption during the New Order Era, published by the University of Auckland, New Zealand, was not openly accessible. I was fortunate to obtain one copy as part of the literature for my research.

40 During my fieldwork, one of my friends (a lecturer in Jakarta), concerned about the issues of security and intelligence, checked my mobile and said that I was being tapped. A discussion on the risk of researching criminology in sensitive areas can be read in Goldsmith (2003).

legal doctrines only. However, when I used the informal approach and got a verbal recommendation from high-ranking IPS managers, I could easily access documents, interview prosecutors, and make observations within the IPS. Since gaining access to the IPS is very time-consuming, my fieldwork plan was extended from six months to one-and-a-half years. From 2014 to 2016 I researched seven district prosecution offices, two provincial high prosecution offices, and the Supreme Prosecution Office in Jakarta. I also lived in a boarding house with prosecutors for three months in Jakarta, and sometimes I stayed at their 'official' and private residences during my fieldwork. Moreover, I could observe and easily communicate with prosecutors during my stay. I asked them about their personal lives, as well as asking for their opinions about their professional duties as prosecutors.

1.4.3 Ethical Dilemmas and Safety Issues

Conducting socio-legal research on the post-authoritarian Indonesian Prosecution Service is tricky, because its military culture prevents outsiders from accessing documents, limiting access to information. Therefore, I needed some time to gain the trust of top-level IPS management and to obtain access. In order to respect their trust, I did not record conversations regarding sensitive information; instead, I wrote such information down in field notes, after meetings.[41] I asked for their permission to quote their statements, and assured them that I would not mention specific details, such as their names, location, or even the date of the conversation, because this might endanger their careers. Furthermore, in this study I sometimes use real names and I sometimes use pseudonyms. If I considered a particular case study to be sensitive, I decided to protect the anonymity of my informant. I also changed the names of institutions and people, in order to avoid certain risks and to meet ethical standards for research (Saunders, Kitzinger, and Kitzinger 2015).

As an Indonesian conducting research on IPS performance, I of course have a dream that someday the IPS can successfully reform itself, and be able to guarantee due process and promote the rule of law within the criminal justice system. For this reason, I prefer to use a relational perspective concerning my relationship with the IPS and its prosecutors, which is not limited to my field research but can remain in place in order to build their trust (Cunliffe and Alcadipani 2016, 544).[42] Since, when I return to Indonesia, I will need to present my research findings to top-level IPS

41 This method of recording data is similar to Bedner's (2001) and Berendschot's (2011) ethnography work on collecting sensitive data.

42 I did not use an instrumental perspective in my research, which would have created a short-term relationship with the IPS as merely the research object, based on the duration of the field research. Neither did I use a transactional perspective, which would have created a relationship with the research object that is based on reciprocity (Cunliffe and Alcadipani 2016, 542–43).

managers and assist them in reforming the IPS bureaucracy, this approach may minimise any risk for, and reluctance on the part of, the IPS leadership. In order to build a long-lasting relationship with the IPS, (in 2015) I established a centre for criminal justice research (*Pusat Pengembangan Riset Sistem Peradilan Pidana*/PERSADA) at the Universitas Brawijaya.[43] The research centre is designed to promote multi-disciplinary research on criminal justice issues. One of PERSADA's agenda items is to strengthen the position of the IPS within the criminal justice system, since the current criminal procedure gives limited power to prosecutors in the pre-trial phase.[44]

In addition, I have not simply criticised IPS policies, I have also assisted them in several cases. In doing so, I was able to gain more information on the IPS' performance. Once, the IPS top managers asked me to assist them in providing expert testimony in a Constitutional Court hearing regarding the constitutionality of prosecutorial discretion (*seponering*) for the Chief Prosecutor.[45] By representing the IPS in this case, I could access not only oral information from top-level IPS managers, but also obtain documents which had not been disclosed by the IPS.

I was also involved as an expert witness in the pre-trial hearing of KPK senior criminal investigator, Novel Baswedan, who was arrested for a crime that was allegedly based on the fabrication of evidence. Similar to Samad and Widjojanto, Baswedan was arrested by the police after revealing a corruption case involving a police general. Almost all the Indonesian criminal law lecturers refused to assist Baswedan, because they were worried that they could be affected by this contestation. I held a conference on (and legal examination of) the case, in order to support Samad and Widjojanto. In doing so, I also could gain relevant information for my research. I also assisted legal aid activists in giving a legal opinion (in- and outside trial) on prosecutors' performance in some controversial cases, such as a blasphemy case in Sampang, Madura, a child sex abuse case in the Jakarta International School, and a persecution case in Banyuwangi. By being involved in such cases, I could obtain files and details which the IPS has not formally disclosed.

I never imagined that the trust of the top-level IPS managers would have an impact on one of my respondent's careers. When interviewing a top-level manager who had the power to promote and transfer staff within the IPS, I mentioned the name of my respondent as an example of a good

43 The official website of PERSADA UB (*Pusat Pengembangan Riset Sistem Peradilan Pidana Universitas Brawijaya*/Centre for Criminal Justice Research) is: http://persada.ub.ac.id/.

44 Persada UB, *Persada UB ingin perbaiki manajemen barang bukti di Kejaksaan.* (PERSADA UB wants to participate in reforming IPS evidence management) http://persada.ub.ac.id/persada-ub-ingin-perbaiki-manajemen-barang-bukti-di-kejaksaan/, accessed 18 December 2019.

45 In this case, the police asked the Constitutional Court to review and revoke prosecutorial discretion, because the Chief Prosecutor had dismissed the controversial case of two KPK commissioners: Abraham Samad and Bambang Widjojanto.

prosecutor who had been placed in the wrong position. Later on, I found out that he got a promotion to a better position within the IPS.

The fieldwork verified my assumption that, even though the IPS has a bad image for its corruption and abuses of power, not all prosecutors are corrupt. I met a number of good prosecutors, who did in fact make some changes in order to reform their organisation. As I will discuss in this thesis, structural constraints, such as the IPS' militaristic bureaucracy and its informal rules, limit individual decision making. This situation makes it very difficult for even good prosecutors to act in a different manner.

1.5. The Structure of the Thesis

The title of this thesis is "Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the case of Indonesia". I am aiming to investigate the functions of the IPS as a government agency whose tasks and powers are to maintain security and order. The thesis focusses on the legal, historical and political aspects of the prosecution process in Indonesia's criminal justice system, across different political regimes. To begin with I explain the reasons for conducting this study, the research objectives, the theoretical frameworks, and the research method.

In order to understand why the Prosecution Service is oriented more towards maintaining political order than promoting the rule of law and the tensions between legal norms and practices, the thesis is divided into two parts.

The first part provides some context for the IPS, describing the origins of the Prosecution Service and the impact of its transformation into the Prosecution Service bureaucracy – this is presented in two chapters. Chapter 2 looks into the Prosecution Service's legal history, including the Dutch and Japanese colonial eras. It also explains how the Prosecution Service transformed after Indonesian Independence. I will also discuss the position of and legal framework for public prosecutors, before and after the authoritarian regimes from 1959 to 1998. Ultimately, the chapter reflects on how the position of the Prosecution Service within the criminal justice system has been used by various regimes to retain their political power. Chapter 3 explores the cultural context of prosecution, and its organisational setting. Since prosecutors make decisions within the ambit of a special kind of organisation, one must view their choices within the context of that organisation. I will describe the key features of the prosecutors' organisation: its national and militaristic structure, and the vague division of labour between frontline operators, mid-level managers, and top-level executive authorities. Together with the other contextual factors discussed, these organisational attributes shape the Indonesian Prosecution Service's approach to justice.

The second part, concerning the Indonesian Prosecution Service's approach to justice, investigates how the values of the Prosecution Service are performed practically, by the prosecutors. This part is also presented

in two chapters. Chapter 4 explores the Prosecution Service's tasks and powers, not only in criminal cases, but also when acting as state intelligence to guard public order, and as state attorney in civil law and administrative disputes. It argues that these tasks and powers have been designed to serve the regimes' interests, retaining their power. The chapter also looks into public prosecutors' relationships with the police, judges, lawyers, and other criminal justice actors. Since prosecutors lost their control over the pre-trial stage, they have been developing strategies to influence other actors, keeping them in line with the mission of the Prosecution Service. Chapter 5 demonstrates how the Prosecution Service's culture and the weakened position of prosecutors within the criminal justice system, have both affected the prosecution process. It attempts to explain how public prosecutors apply criminal procedure, from the pre-trial phase to the trial phase. I will show that a prosecutor's position is similar to that of a 'postman' within the criminal justice system; hence, they will defend their investigation files at trial and insist on sentencing defendants, even if it requires them to breach procedural rules.

Finally, Chapter 6 brings the most significant findings of this research together. I will situate my conclusions within the context of current research on the rule of law and criminal justice in post-authoritarian countries, by comparing the case of the Indonesian Prosecution Service to similar cases in other countries. I will end the chapter by discussing the limitations of this research and by suggesting topics for further research.

2 The Origins and Position of the Indonesian Prosecution Service: From Colonial Times to Post-military Regimes

2.1 Introduction

Understanding the current condition of the Indonesian Prosecution Service (the IPS, or *Kejaksaan Republik Indonesia*)[1] requires an inquiry into how the Prosecution Service's history has been commodified to fit the political interests of different regimes. As Lev (1985) believes, it is important to track legal history from the colonial period onwards, in order to understand significant features that were sewn into the fabric of the colonial state and have yet to unravel. By tracking the Prosecution Service's legal history through the records (literally) of the structure of the state, this chapter reflects on how the position of the service within the criminal justice system has been used by various regimes, in order to retain their power.

During the Dutch colonial period, using the criminal justice system to exert control over the natives of Indonesia was of primary concern for the government. The vague criminal procedures put in place did not sufficiently protect human rights, and they were designed – in conjunction with the weak position of the native prosecutor (or, *Jaksa*) – to ensure that the colonial administration retained its power (Bloembergen, 2011a; Cribb, 2010; Idema, 1938; and Ravensbergen, 2018). Although the criminal procedure, *Herziene Inlandsch Reglement* (HIR), enacted in 1941, was intended to improve the protection and rights of native people, the Japanese military colonisation of Indonesia from 1942 to 1945 halted this effort. During early independence the new Indonesian government tried to build the so-called Indonesian rule of law, guaranteeing better protection of its citizens, and even though chaotic political contestation and civil war both occurred during the 1950s, criminal justice actors (including the prosecutor) operated quite well during that time, in terms of judicial independence and the rule of law (Feith 2007, 320). However, political contestation between civilians and the military contributed to the repositioning of criminal justice actors. The rise of the Guided Democracy and New Order military authoritarian regimes repositioned such actors as the regime's instruments for retaining political power.

1 In this chapter, I use the terms 'Prosecution Service' and '*Kejaksaan*' interchangeably, when referring to the Indonesian Prosecution Service.

This chapter addresses the development of the Prosecution Service and its role in the criminal justice system from a historical perspective, from colonial times to the present day. It begins by highlighting the origins of the *Jaksa*[2], who was positioned as a member of the judiciary in all the Javanese Kingdoms. The position of *Jaksa* was later adjusted by the Dutch and Japanese colonial administrations, and it was completely transformed after Indonesian independence. In the following analysis I will try to explain these transformations, by including descriptions of the relationship between the legislation or policies and their political context.

2.2 Searching for the Origins of the Prosecution Service

The official history of the Prosecution Service connects its origin to similar institutions in Majapahit, the most significant of the Javanese Hindu kingdoms, which existed from the 13th century until the 15th century. This idea is commonly used, not only by the Prosecution Service itself, but also by other state institutions. Ali argues that the development of this historiography was influenced by the spirit of nationalist leaders in the revolutionary period, in order to transform the Neerlando-centric historical writing from the Dutch point of view into Indo-centric writing adopting an Indonesian perspective (Ali 2005, 35, 152-55). M. Yamin is an influential figure who promoted the Indo-centric approach in Indonesian historiography. He argues that the origin of the Indonesian unitary concept is not the Dutch East Indies, but instead it originates from two great pre-colonial empires: Sriwijaya in Sumatra, and Majapahit in Java. In his book, Yamin portrays Majapahit territory as being more or less as broad as the Dutch East Indies territory.[3] In 1948, Yamin published his book on Gadjah Mada – a Majapahit era prime minister who managed to unite the various regions of the *Nusantara*[4] – and called him a national hero who initiated the idea of a unitary state before the colonial period (Yamin 1948). This book was written to affirm that the concept of the unitary state of Indonesia had existed in pre-colonial times.

The figure of Gadjah Mada later became a vital symbol for Indonesia's state agencies.[5] The police, army and Prosecution Service all claimed that the figure of Gadjah Mada was their hero and represented their organisa-

2 The terms '*Jaksa*' and 'native public prosecutor' are used interchangeably in this chapter.

3 The Indonesian government still promotes Yamin's portrayal of the Majapahit territory, which is exactly the same today as it was then - stretching from Aceh to Papua. See: detikTravelCommunity, *Sepenggal Kisah Gerbong Maut di Museum Brawijaya Malang* http://travel.detik.com/read/2016/07/14/142000/3251578/1025/4/sepenggal-kisah-gerbong-maut-di-museum-brawijaya-malang, accessed 4 April 2016.

4 Nusantara is a name for the Indonesian archipelago, originating in Javanese.

5 The first state university in Indonesia was named after Gadjah Mada, to commemorate his role as the nation's first unifier. See Wikipedia, Gadjah Mada University: https://en.wikipedia.org/wiki/Gadjah_Mada_University, accessed 4 April 2016.

tions. The Indonesian police, for instance, erected a Gadjah Mada statue in front of their headquarters, as a long-term symbol.[6] They also use *Bhayangkara*, believed to be the name of Gajah Mada's special troops, as the Indonesian word for 'police'. Moreover, the police claim that their organisational philosophy, *Catur Prasetya*, was coined by Gadjah Mada[7] (Awaloeddin Djamin et al. 2006, 304). On the other hand, although the Prosecution Service did not build its own statue of Gajah Mada, it does believe that Gajah Mada is an important symbol for their office. As written in the official prosecution service history, which also refers to Yamin's book, Gadjah Mada was the *Adhyaksa*, who supervised the elite forces (*Bhayangkara*) with his officers (*Dhyaksa*).[8] In 1978, the Chief Prosecutor, Major General Ali Said, created the doctrine *Satya Adhi Wicaksana*; translated from Javanese Madjapahit Sanskrit, *Satya* means 'loyalty', *Adhi* implies 'professionalism', and *Wicaksana* means 'able to use power wisely'.[9] The doctrine was created to strengthen the ésprit de corps, uniting the *jaksas*' minds and their loyalty to the government.

However, historians and Indonesian legal scholars agree that the root of the term *Jaksa* is the term *Adhyaksa*[10], who indeed have an essential position in the judicial structure of the Majapahit empire (Mertokusumo, 1970; Ravensbergen, 2018; Soepomo, 1953; and Tresna, 1957). According to Boechari, only talented people could be appointed as the *Dhyaksa*, which translates as 'superintendent' or 'chairperson'. The candidate had to be highly literate, and have an ability to analyse and interpret the Majapahit legal sources related to a case ("Simposium Sejarah Hukum", 1976, p. 80). The Majapahit Kingdom classified its courts based on the severity of the punishments they might deliver, and on whether any of their cases might affect the interests of the crown. The *Padu* Court was for trivial cases, in which the *Adhyaksa* acted as judge, and the *Pradata* Court was for serious

6 It seems that there is struggle for this claim, especially between the police and the Prosecution Service. As stated by one Deputy Chief Prosecutor: "Gajah Mada was an *Adhyaksa*; he was not a *Bhayangkara*. But, since we (the Prosecution Service) had not taken account of this, the police quickly created his statue, and now the Gadjah Mada statue stands in front of their headquarters". Interview with BW in 2015.

7 The four pledges of the police (*Catur Prasetya*) are: *Satya Haprabu*: To be faithful to the country and its leaders; *Hanyaken Musuh*: To get rid of the enemy; *Gineung Pratidina*: To defend the state; and *Tan Satrisna*: Faithfulness to obligations.

8 The police, however, referred to Gadjah Mada as *Bekel,* the head of the *Bhayangkara* special troops who guard and enforce the law (Awaloeddin Djamin et al. 2006).

9 Chief Prosecutor Decision 074/J.A./7/1978 jo. Chief Prosecutor Decision 052/J.A./8/1979 and Chief Prosecutor Decision 030/J.A./1988. The military police also implement a similar doctrine: *Satya Wira Wicaksana*. They also use Gajah Mada's face as their logo. See, for instance, Pom Kodam Mulawarman, Arti dan Lambang: http://pom.kodam-mulawarman.mil.id/profil-pomdam-mulawarman/arti-dan-lambang, accessed 4 April 2016.

10 According to a Chief Prosecutor Decision KEP-017/5/66, 25 May 1966 jo. KEP-008/D.A/2/1968 8 February 1968, the title *Adhyaksa* was only given to the high-ranking *Jaksas*. See the Chief Prosecutor Regulation Perja 002/A/JA/04/2018, which regulates that only Chief Prosecutor badges should feature the title *Adhyaksa*.

crimes regulated by Hindu law[11] (Tresna, 1957, 16). The *Adhyaksa* had the authority to prosecute criminal cases in the *Pradata* court, while also acting as judge in the *Padu* court.

After the fall of the Majapahit Kingdom, the terms *Adhyaksa* and *Dhyaksa* evolved into *Jeksa/Jaksa*, and their positions continued as part of the judiciary (Panitia Penyusunan dan Penyempurnaan Sejarah Kejaksaan RI 1985, 11). Meanwhile, *Jaksa* was the official name for the prosecutor in the *Pradata* court *and* the judge in the *Padu* court, both courts serving to adjudicate criminal cases and resolve private disputes[12] (Tresna 1957, 17). *Jaksa* was still being used as a name for court officials when Islam began to influence the Javanese kingdoms. The position of the *Jaksa* as a judge in the *Padu* court was retained in the Islamic Mataram Kingdom (1613-1645). The *Pradata* court was changed into the *Surambi* court,[13] but the *Jaksa* retained the role of court official, and continued to prepare cases to be adjudicated before the king (Tresna 1957, 18-20). This gradual change in the role of the *Jaksa* took place when the *Vereenigde Oostindische Compagnie* (VOC) took control of Batavia and the Javanese kingdoms in the 17th century.

2.3 The *Vereenigde Oostindische Compagnie* (VOC) and the Dutch East Indies

As the *VOC* occupied several kingdoms in Java, the Javanese criminal justice system was influenced by the European system. The VOC established and operated the *Raad Van Justitie binnen het Casteel Batavia*,[14] (the Batavian court).[15] The *Advocaat Fiscaal van Indie* occupied the position of public prosecutor for the court. However, the VOC kept the Javanese court as the indigenous judiciary, since most citizens lived in remote areas (Tresna 1957, 28; Balk, Dijk, and Kortlang 2007, 65).

The VOC, for instance, kept the *Karta* Court in the Sultanate of Cirebon. The court followed the procedure stated in the *Pepakem Cirebon*[16]. The formulation of the procedure was inspired and influenced by the Javanese criminal justice system and by Islamic law. The court was led by the *Jaksa*

11 The Pradata court jurisdiction covered cases endangering the security of the king and his realm, such as social unrest, murder, violence, robbery and theft, that were difficult to investigate.

12 This division is different from the European criminal justice system, which divides courts based on the nature of their cases: private, or public.

13 The *Penghulu*, assisted by Islamic Law scholars, advised the Sultan when to decide a case.

14 Aside from this, the VOC created the *Drossaard*, which had the authority to adjudicate disputes between landlords in Batavia. The VOC installed the *Schouten*, which had the authority to investigate and prosecute criminal cases in the *Drossard*.

15 Batavia was the capital city of the Dutch East Indies.

16 In 1758, President P.V Hasselaar enacted the *Pepakem Cirebon* as the codification of Javanese Law (Tresna 1957, 32).

Papitu, who referred to seven court officials.[17] The seven *Jaksas* would examine the less severe criminal cases and decide whether or not a defendant was guilty.[18] The sultan and the president judged and gave verdicts on serious crimes (Tresna 1957, 31-34).

In 1747, the VOC established the *Landraad* in Semarang as the court for natives, consisting of seven regents led by a European President, and substituting the *Pradata* court. Since the regent had the authority to resolve trivial cases, the VOC abolished the *Padu* court. The *Jaksa*, however, could adjudicate minor cases on behalf of the regent (Tresna 1957, 36-37). The *jaksas*' expertise in the Javanese legal system made their position indispensable. In the *Landraad*, the function of the *Jaksa* was advisor, similar to the *Penghulu*.[19] The Jaksa would advise the *Landraad* member before deciding a case. The chief *Jaksa* (*Hoofd Jaksa*, or Javanese Fiscaal) served both as a public prosecutor in the trial process, and as a supervisor for police investigations in each district (Ravensbergen 2018, 57).

In 1798, the VOC was officially declared bankrupt, and its possessions became colonies of the Dutch State. In 1808, the King of the Netherlands, Louis Bonaparte, appointed Herman Willem Daendels as the Governor General of the Dutch East Indies. Part of Daendels' agenda was to reform the judiciary. He created the *Landgerecht* (the circuit court), to mediate disputes between natives. The police chiefs (*Schouten*) were in charge of investigating and prosecuting crimes in this court. Daendels also established four large *Landraaden*, as well as smaller law courts in all of the Northeast Coast of Java residencies (Ravensbergen 2018, 63-64).

The Dutch colonial administration was enabled, not only by diverse sources of law – such as Adat Customary Law, Islamic Law and European Law – but also by various judicial systems (municipal, kingdom, and regent) which competed and overlapped with each other. The Dutch maintained a pluralist legal approach in the colony.[20] During that time there were native courts[21] – Islamic courts in Java and the outer islands, and customary courts found mainly in the outer islands[22] (Lev 2000, 16).

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17 The Jaksa's office was called *Kejaksan*, and it was located under the Banyan Tree in the Lunar Square in Cirebon.

18 If they could not agree on a verdict, the sultan and VOC resident would pronounce judgement.

19 The *Penghulu* is traditionally the highest authority in Islamic bureaucracy at the Javanese district level. In the Dutch East Indies, the *Penghulu* also acted as judge in the Islamic courts, and as advisor on Islamic matters in the general courts. In modern Indonesia, the *Penghulu* is the district-level head of Islamic bureaucracy (Huis 2015, xxi).

20 Article 67 RR states that the native population should be administrated and governed by their native leaders, under certain conditions.

21 The Indigenous court was ruled and managed by indigenous officials, adjudicating trivial cases (Pompe 2005, 30).

22 In East Nusa Tenggara and Bali, for instance, *Jaksas* played a more significant role than judges. People preferred to contact a *Jaksa* to ask for advice (Yahya 2004, 26).

In 1811-1816, when Britain acquired the Netherlands East Indies from the VOC, Governor-General Thomas Stamford Raffles changed Daendels' policies. He introduced a uniform judicial system of identical circuit courts and *Landraaden*. Raffles also replaced large *Landraaden* with new circuit courts, led by lawyers trained to deal with criminal cases with the possibility of a death sentence. Raffles introduced the jury system and private prosecutor (*Aanklager*)[23] into the trial process. Unlike the previous period, the resident was made the sole judge, while the other *Landraad* members (including the *Penghulu* and *Jaksa*) were asked to act as advisors. The *Jaksa* could only act as a public prosecutor if no private prosecutor attended the trial (Ravensbergen 2018, 67).

When the Dutch regained control of the Netherlands East Indies, the Dutch colonial government changed Raffles' policies. The Provisional Regulations 1819, *Reglement op de administratie der Politie en de Criminele en Civiele rechtsvordering onder den inlander in Nederlandsch Indie*, repealed the jury system and limited the private prosecutor to the litigation of trivial matters only (Ravensbergen 2018, 70-71). In addition, the *Jaksa* was transformed from an advisor on local traditions into a representative of colonial interests. Moreover, this transformation strengthened the *Jaksa*'s position as public prosecutor in the *Landraad* (Ravensbergen 2018, 131-32).

In order to maintain public order amongst the natives, the colonial administration could intervene judicially and punish natives without any legal grounds for doing so. The Governor-General and the resident controlled both judicial administration and police tasks. A resident even determined whether or not a criminal case would be prosecuted in a higher court. A resident could punish the natives with corporal punishment, regardless of the type of violation, based on the *rottingslagen* arrangement[24] (Wignjosoebroto 2014, 18-19).

The constitutional reform movement and political shift in the Netherlands forced the Dutch parliament and the King to create the new constitution, or *Grondwet*, in 1848. The constitution changed the governmental system from a monarchy into a parliamentary system. Based on the constitution, the King must obtain parliamentary approval in order to make laws for the colonies. Furthermore, in 1854 the colonial government promulgated the first constitution in the Netherlands East Indies: *The Reglement op bet beleid van de Regering in Nederlandsch-Indie or called as Regeringsreglement*

23 The private prosecutor concept can be found within the common law system; it is used to prosecute cases affecting an individual victim. One of the private prosecutor's tasks is to conduct proceedings in defamation cases. The origin of this role is found in common law, which has long considered defamatory libel to be 2a tort of a quasi-criminal character, affecting an individual rather than the community" (Kaufman 1960, 108).

24 In 1844, the colonial government limited the number of blows that could be struck in a single corporal punishment to forty. In 1848, this limit was reduced to twenty, and the beating of women was banned. In August 1862 the punishment was finally banned altogether, but in that year official records noted that a total of 474,375 rattan blows had been carried out in the colony, most of them in Java. (Cribb 2010, 59)

(RR). Efforts to establish an independent judiciary in the colony followed. The colonial government replaced the position of Resident with that of Jurist, as president of the *Landraad*. Although the jurists were impeachable by the government, the police magistracy remained in the hands of the resident (Ravensbergen 2018, 260).

The colonial constitution segregated the citizens of the colony into three classes: Europeans, Indonesian natives, and foreign orientals.[25] This policy also applied in the judiciary administration, as stipulated in the Law on Judicial Organisation 1847, or the *Reglement op De Rechterlijke Organisatie* en *Het Beleid der Justitie (RO)*. In the criminal court, citizens were distinguished by racial status.[26] Europeans were brought before the *Raad van Justitie*, with the possibility of appeal to the Netherlands East Indies Supreme Court in Batavia, while Indonesians were brought before the *Landraad* (with the possibility of appeal to the *Raad van Justitie*).

In 1849, the Dutch established a dual system of criminal procedure. One part, which closely resembled the Dutch Code of Criminal Procedure and applied to Europeans, was regulated by the *Reglement op de Strafvordering* (SV)[27]. This code was the stricter of the two, and it offered better protection to defendants. Moreover, the government recruited professional officers to enforce it. The other code, which was much looser and more flexible, was the *Inlandsch Reglement* (IR)[28], covering criminal procedure for Indonesians (Pompe 2005, 28). The latter gave far less protection, and fewer rights to defendants and suspects, mainly because there were no strict procedures for conducting an investigation, or any limitations on the duration of detention (Lev 1999, 177).

The dual criminal procedure systems also extended to the Prosecution Service. In European criminal courts, according to Article 43 of the RO, the *Procureur-Generaal* headed a hierarchical prosecution service (*Openbaar Ministerie/OM*) staffed by fully trained prosecutors (*officieren van justitie*).[29] On the Indonesian side, the *jaksas* were structurally subordinated to the *resident*, as native prosecutors, and did not serve the *Procureur-Generaal*.[30]

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25 Article 75 of the *Regerings Reglement* (RR).

26 Article 76 of the *Regerings Reglement* stipulated that the criminal procedure for Europeans should have the hallmarks of criminal procedure in the Netherlands (the *concordantie* principle).

27 The SV was changed in 1876 and 1914, and in 1932 the *politierechter* became regulated. (Soepomo 1997, 45)

28 For the outer islands, the *Rechtsreglement Buitengewesten* was equivalent to the *Inlandsch Reglement* on Java.

29 In Art. 55 RO, the OM tasks were described as: "to enforce all legal provisions and decisions of the public authority, prosecute all crimes and violations, and execute all criminal convictions".

30 A *Jaksa's* authority was completely different under the *Officieren van Justitie* tasks, as mentioned by Article 55 of the R.O. In this instance, the *jaksas* were simply police officers under the Assistant Resident, without any independent authority. (Idema 1938, 69)

This was intended to maintain the unitary authority's principle of colonial government of the natives (Idema 1938, 67).[31]

According to IR 1848, there were two kinds of *Jaksa* who could engage in trials of natives: the *Hoefd Jaksa* (or Chief of Natives Prosecutor) and the *Jaksa*. The Chief *Jaksa* was the officer in the resident's office. The chief was in charge of prison and suspect interrogations. On the other hand, the *Jaksa* had limited responsibility, for one district only. Even though the *Jaksa* received criminal reports from the *wedono* (the native district official), they still needed to wait for orders from the regent and resident before beginning an investigation. The *Jaksa* collected information from the preliminary *wedono* investigation, as well as summoning and interrogating witnesses in order to prepare the indictment (Ravensbergen 2018, 175-76).

During pluralistic court sessions in the *Landraad*, the *Jaksa* acted as public prosecutor and translator for the trial proceedings (Ravensbergen 2018, 174). *Landraad* judges' non-proficiency in the native language affected the court session. While judges would examine the evidence or witness testimony, they also depended on the *Jaksa's* translation during the trial. It was common for *Jaksas* to rehearse the witness in giving evidence to the judge, according to their instructions (Idema 1938). Since *Jaksas* had little legal training in Dutch criminal procedure,[32] they had no responsibility for the indictment (*acte van beschuldiging)*.[33] Although *Jaksas* sat behind the bench alongside the judge, at the trial stage, the *Landraad* judges were responsible for drafting the proper and correct indictments[34] (Lev 2000, 254).

The Dutch colonial government also divided the police. Police responsibility for maintaining the security of European citizens was supervised and led by the Dutch East Indies High Court's Chief Prosecutor (*Procureur-Generaal op Het Hooggerechtshof van Nederlands Indie*), while the resident

31 Mr. Visscher, Algemeen-Secretaris, Vroeger Procureur-Generaal, komt met zwaarder geschut: "Het zou schadelijk zijn voor het politiek gezag indien de Djaksa's zich meer onder geschikt konden achten aan den Proc.-Gen. dan aan den Resident".

32 The *Jaksa's* role as Advisor to the *Penghulu* in the *Landraad* was repealed. The *Jaksa's* position was changed to that of public prosecutor. (Ravensbergen 2018, 134–35)

33 In 1884, W. A. J Van Davelar wrote, in a judicial handbook, that it was impossible to give *Jaksas* responsibilities equivalent to the European prosecutors. The public prosecution service had to be independent, and the *jaksas* could not possibly meet this requirement. First, because *Jaksas* often ranked lower than the Javanese members of the law court – if these were regent, or *patih* – and they would tend to follow their orders instead of acting independently. Second, the *jaksas* did not have the judicial knowledge necessary to stand before the European Court President. (Ravensbergen 2018, 277–78)

34 "Until 1898, the division of labour was that the *Landraad* judge would draft the document of reference whereas the *Jaksa* drafted the indictment. In practice, the *Landraad* judge also checked the indictment written by the *Jaksa*, because it was said the *jaksas* could not draft indictments on their own. In 1898, indictments were completely taken away from the *Jaksa* by abolishing the indictment altogether, and keeping the document of reference (drafted by the *Landraad* judge) and formally introducing this document as the indictment." (Ravensbergen 2018, 278)

supervised the *Pangreh Pradja* (the native police), who were responsible for the security of the natives. The *Openbaar Ministerie* directed and supervised the judicial police (*rechtspolitie*), or repressive police (*repressieve politie*), as *hulpofficieren*, who were assigned to assist the criminal investigation of European citizens. However, when the *Openbaar Ministerie* investigated cases among the natives, they could not ask for the assistance of *Pangreh Pradja* without the resident's permission (Bloembergen 2011a, 9-10). In 1916 the colonial government established the *Politieke Inlichtingendiest/PID* (the police intelligence division), and then renamed it as the *Algemeene Recherchedienst*, or ARD (General Criminal Investigation Service), in 1918.[35] This division, led by the Chief Prosecutor, had the authority to investigate and oversee native political movements that might endanger political stability (Bloembergen 2011b, 172).

The lack of clarity regarding the separation of powers that applied in the Netherlands East Indies allowed the executive to intervene in judicial power. Although the *Procureur-Generaal* was expressly mentioned as part of the judicial power,[36] the governor general controlled prosecution policy for the entire population of the colony. Article 56 of the RO stated that the *Procureur-Generaal* and its officers should comply with the Governor General's instructions, with regard to maintaining public order and conducting criminal prosecutions. Even the *Hooggerechtshof* could not control the Governor General's intervention in the prosecution process. The *Hooggerechtshof* only had limited authority to supervise the *Procureur-Generaal*'s decisions to waive criminal cases based on the opportunity principle[37] (Soepomo 1997, 137). The Governor General retained this authority up until 1925, when the *Indische Staatsregeling* (IS) passed into the Dutch East Indies constitution. Article 35-37 IS gave the Governor General greater authority to intervene in the native judicial process (for example, by suspending the prosecution process for certain people), as well as the authority of *exorbitante rechten*, which was used to alienate, restrict the movement of, and detain people perceived to be threatening public order, without due process (Pompe, 2005, 23).

In 1915 the government enacted the Criminal Code (*Wetboek van Strafrecht voor Indonesie*), which came into effect for all residents in 1918. This code could be seen as the first step towards a gradual unification of the criminal justice systems in the colony. Another action taken by the colonial

35 *Gewestelijke Recherce* (the District Criminal Investigation Service) was set up at district level. As the Chief Prosecutor had succeeded in taking over police supervision from the interior department, the Prosecution Service found itself with a new position available: Deputy Chief Prosecutor (*Advocaat-Generaal*) for the police (Bloembergen 2011a, 216–24, 236).

36 Art. 147 IS stated that the *Procureur-Generaal* held the same position as the Chief of the *Hooggerechtshof*.

37 The *Hooggerechtshof* could request a report on cases dismissed by the *Procureur-Generaal*. When the *Hooggerechtshof* found that there was negligence in a dismissal process, they could ask the *Procureur-Generaal* to prosecute the case (Article 179 (1) RO).

government was revision of the code of criminal procedure (IR), making it into the *Herziene Inlandsch Reglement* (HIR) which was enacted in 1941. The process in the HIR was much better than in the IR. Every detention order had to be based on a written letter. Indeterminate detention periods, as controlled by the Assistant Resident, were replaced with arrest (*gevangenhouding*) for 30 days, and this could be extended by the President of the *Landraad* for an additional 30 days (Soepomo 1997, 145-46). Similar to the SV's detention and arrest arrangement, the HIR only allowed detention orders for defendants who were accused of crimes punishable by a five-year imprisonment (Article 62 of the HIR). Permission from the *Landraad's* president was required for house or body searches, except in urgent circumstances (Articles 77 and 78 of the HIR). The public prosecutor, however, had the authority to undertake seizure without the permission of the *Landraad's* president (Article 63 of the HIR). Broadly speaking, although the HIR was better than the IR, which had no strict procedures for conducting investigation and prosecution, it still did not specifically regulate the defendant's rights, or judicial control of coercive measures (*dwangmiddelen*) such as custody or preliminary detention. The differences between the SV, IR and HIR (predominantly, when law enforcers exercise coercive measures) can be seen in the following table:

	SV	**IR**	**HIR**
Defence	The defendant was entitled to a lawyer. If s/he was unable to pay for a lawyer, the government provided one for free (120 of the SV).	The defendant was entitled to a lawyer (Article 349 of the IR).	The defendant was entitled to a lawyer (Article 254 of the HIR).
Detention/Arrest	Detention might be applied, in the case of a suspect being prosecuted for a crime entailing a potential five-year imprisonment. The judge had the authority to postpone detention (Article 360a of the SV).	The arrest was conducted based on a written order from the Assistant Resident, at the request of either the *Procureur-Generaal* or *Officieren van Justitie* (Article 77 of the IR).	A detention order was only allowed for defendants who were accused of crimes punishable by a five-year imprisonment. (Article 62 of the HIR).
Foreclosure/Seizure	If the public prosecutor wanted to seize property, s/he needed to get a permit from the president of the *Raad van Justitie*, except in urgent situations.	Law enforcement could seize property under any circumstances, without permission from the court.	The public prosecutor had the authority to undertake seizure, without permission from the *Landraad's* president (Article 63 of the HIR).

House/Body Search	The public prosecutor could conduct house searches, after obtaining permission from the president of the *Raad van Justitie* (Article 91).	House searches were not regulated. Law enforcement could seize property under any circumstances, without court permission.[38]	Permission from the *Landraad's* President was required for house or body searches, except in urgent circumstances (Article 77 and 78 of the HIR).
Judicial Control of Coercive Measures	The *Rechter Commissaris* supervised and controlled the coercive measures undertaken by investigators and prosecutors (Article 41-65 of the SV).	The control of coercive measures was not regulated.	Judicial control of coercive measures was limited
Officers who could exercise coercive measures	The *Officieren Van Jusitite*	*Hoefd Jaksa* and *Jaksa* (Article, 55-64).	The *Officieren Van Jusitite* and *Magistraat*

Table 2: Coercive measures in the SV, IR, and HIR

Unlike the previous IR, which accommodated the *Jaksa*, the HIR introduced the *Magistraat*[39] as public prosecutor and replaced the *Hoefd Jaksa* and *Jaksa* roles in the native court with the *Officieren Van Justitie* (Article 38 of the HIR). The assistant resident adopted the *Magistraa*t position, if no official with a legal background was appointed to the *Magistraat* position in the *Landraad*. Therefore, the public prosecutor in the native court was part of the prosecution service (*Openbaar Ministrie*), serving under a Chief Prosecutor (*Procureur-Generaal)*.[40] The prosecution service served three primary functions: investigation, prosecution, and execution of the court's decision. The public prosecutor was attached to the *Raad van Justitie.* Hierarchically, this position was under the Chief Prosecutor, who was head of the Prosecution Service. The public prosecutor had the authority to supervise the police, conduct additional investigations, and draft indictments.[41] As the lead investigator, the *Officieren van Justitie*, in the *Raad van Justitie*, could instruct and coordinate (as well as supervise) both the *Magistraat* and public prosecutors, in the *Landraad*. The police and other government investigators were also mentioned, such as the *hulpmagistraat* or the prosecutor's assistant. Furthermore, the public prosecutor could take over the investigation

38 According to *Arrest Hoogerechtshof* (the Supreme Court Decision), 7 September 1937, house searches were permitted for criminal investigations (Soepomo 1997, 145).

39 The *Magistraat* was a judicial official with a Dutch legal background (Tresna 1955, 74).

40 In some cities, like Jakarta, Semarang and Surabaya, the public prosecutor position was held by the *Magistraat*, who had a Dutch legal background, but in other cities the assistant resident played the public prosecutor role (Soepomo 1997, 145).

41 See articles, 42, 46, 49 and 56 of the HIR.

from the police, if they wanted to speed up the process.[42] The HIR was an essential step towards unifying the prosecution service in Indonesia, and it might also have led to a unified criminal procedure (Lev 2000, 73), but its operation was halted by the Japanese invasion of the archipelago in 1942.[43]

2.4 The Japanese Military Administration

Some scholars cite the Japanese colonisation period as the beginning of military politics in Indonesian society (Slater 2010, 141-42; Kenichi 1996, 16-18). Military doctrines, such as strict discipline, full obedience to the leader, and marching drills, were all imposed on Indonesian citizens (Weerd 1946, 45-53). The Japanese taught these military values and provided military training to all Indonesians, in order to increase their military power in preparation for the Pacific War against the United States and its allies. Japan also forced Indonesians to provide hard labour, within and outside of Java, which led to thousands of civilian casualties (Kurasawa 1988, 672).

The Japanese decided to simplify and unify the criminal procedure, and for this reason it adopted the *Herziene Indonesisch Reglement* of 1941 (with some adjustments) as the only national procedural code in Indonesia (Pompe, 2005, 178). The racial distinctions made by the Dutch colonial judiciary were repealed.[44] Soon, the Dutch (and nationals of other western countries then at war with Japan) were interned in special camps.[45] Privileges were now given exclusively to the Japanese, who could only be prosecuted before Japanese judges and under Japanese law (Lev 2000, 39; Lolo 2008, 62-63).

The Japanese established the *Gunsei Hooin*, or Courts of the Military Administration. (Weerd 1946, 35). They allowed the judicial system to function as it had done under the Dutch administration, as long as it did not contradict Japanese military rules (Lev 2000, 73). Europeans lost all their legal privileges, and their bureaucratic role was eliminated. The Japanese placed native people in the Europeans' former positions in government and law enforcement (Kurasawa 1988, 537). Since there was a lack of legal expertise within the colony, the Japanese established a crash course legal qualification, the *Shihö Kanri Yöseizyo*, for Indonesian staff (Siong 1998, 448).

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42 Article 54 of the HIR.

43 The Japanese 16th Army occupied Java on 8 March 1942, after defeating the Dutch East Indies Government (Kurasawa 1988, 24). Sumatra and Java were thereafter administrated by the Japanese Army, while the Celebes, Borneo, and all the islands east of a line running north to south, through Bali and the Makassar Straits, were under the control of the Japanese Navy.

44 Ordinance No. 14 of the Japanese Commander in Chief, 29 April 1942, established *the Gunsei Hooin*/Law for Military Government Courts; it abolished all the existing law courts.

45 The Japanese administration detained Dutch officers and professionals in military camps (Wignjosoebroto 2014, 174).

The course took only one year, in comparison to the Batavia School of Law, which took at least five years to complete. The course probably produced 150 Indonesian graduates, many of whom remained judges and prosecutors until after independence (Lev 2000, 40).

The military government did not establish any specific laws regarding the judicial system; instead, it replaced all the Dutch terms in the previous regulations with Japanese and Indonesian terms. The Indonesian judiciary was differentiated into eight levels and types. The *Landraad* (renamed *Tihoo Hoin*) became the General First Instance Court; the *Raad Van Justitie* (renamed *Kootoo Hoin*) became the General Court of Appeal[46]; and the *Hooggerechtshof* (renamed *Saikoo Hoin*) became the Supreme Court (Lev 2000, 39). The Japanese also converted other courts, such as the Misdemeanour (or Police) Court (*Keizai Hooin*), the District Courts (*Ken Hooin*), the Municipal Courts (*Gun Hooin*), the Islamic Court (*Kakyoo Kootoo Hooin*), and the Court of the Priests (*Sooryoo Hooin*). *Kooto Hooin* was originally comprised of Japanese members only, and the lower courts were staffed by Indonesians (Weerd 1946, 36). The Japanese removed the executive staff from *Tihoo Hoin* and stipulated, in Law No.34/*Osamu Seirei* No. 3 of 26 September 1942, that the court had to be administrated by a single judge, appointed by the Japanese military authorities (Siong 1998, 423-24).

The Army General Headquarters (*Gunshireibu*) controlled and supervised the criminal justice system, to ensure that their decisions were in line with the objectives of the military administration. The *Openbaar Ministerie* was also renamed in Japanese, as *Kensatu Kyoku*.[47] Therefore, since the HIR became the only criminal procedure at this time, the position and function of the *Officieren van Justitie* (the prosecutor, under the European procedural code) was replaced by that of the *Jaksa*, who become the prosecutor attached to the *Landraad*. The *Kensatu Kyoku* was organised hierarchically, according to the three judicial levels, and it was controlled by the military administration (Lev 2000, 40). This system was strongly centralised, and in its later stages it was even detached altogether from the justice department. There was no Chief Prosecutor during this period.[48] The Prosecution Service and police were jointly brought under the police department, which for this purpose was renamed *Tianbu* (Public Security Department) and came directly under the *Gunseikanbu* (Central Military Administration) (Weerd 1946, 38). Like its predecessor, the colonial Public Prosecution Office (*Openbaar Ministerie*), the *Kensatu Kyoku* served three primary functions under the Japanese military administration: investigation, prosecution and execution of the court's decisions. The prosecutors supervised criminal investigations undertaken by the police and other investigating bodies (Lolo 2008, 65).

The military also controlled trials held in Indonesian courts. The

46 The *Kooto Hooin* had control over the lower courts.

47 See Article 3, Osamu Seirei No. 14, 1944

48 *Gunseikanbu Sihobuco*, and then *Gunseikanbu Cianbucco*, in turn, acted as Prosecutor General (Panitia Penyusunan dan Penyempurnaan Sejarah Kejaksaan RI 1985, 48).

Kempeitai (Japanese Secret Service) observed trial sessions and supervised the judge's verdict in criminal cases thought to be of military interest (Weerd 1946, 38). The Japanese changed the law of evidence, to make it procedurally easier for them to punish suspects or defendants who were suspected of disturbing the Japanese interest (Lev 2000, 40). On 12 July 1942, the *Gunseikan* (Head of the Military Administration) of Java published*'Tjara mendjalankan atoeran-atoeran dalam oendang-oendang tentang boekti-boekti (bewijsmiddelen) dalam perkara kriminal'* (The application of the law of evidence in criminal cases). It stated that offenders should not escape punishment just because the prosecutor could not fulfil certain formal legal conditions. A single piece of legally admissible evidence was deemed to be sufficient. If they were dated, signed and sealed, with an indication of the name of the office concerned, written statements by civil servants or local administration officials – such as reports written by prosecutors, police officials, or members of the *Kempeitai* – had to be treated as legal documents. However, as Siong found, judges in Batavia did not obey this instruction, and thus they made the Japanese administration's criminal law system dependent on the former Netherlands East Indies procedures (Siong 1998, 438-39).

In 1945, when the Japanese realised that they were losing the Pacific war, they created *Dokuritsu Junbii Chōsakai* (The Committee for Preparatory Work for Indonesian Independence/PPKI). This committee, consisting of Indonesian nationalists, was appointed by the Japanese government to prepare for Indonesian independence and an Indonesian constitution. Soekarno (who would later become the first Indonesian President), Yamin and Soepomo were the influential committee members during the drafting process. A Constitution was drafted to satisfy the Japanese interest, and to make Indonesia a puppet state – part of Japan's Greater East Asia Co-Prosperity Sphere. Unsurprisingly, the resulting constitution contained few arrangements for human rights and the protection of citizens when dealing with the state[49] (Cribb 2000, 182).

2.5 The Indonesian Revolution

After Indonesian independence was proclaimed on 17 August 1945, the new government decided to keep all the existing institutions and laws inherited from both the Dutch and Japanese colonial governments. These colonial systems have persisted wherever new state institutions have not yet been established in conformity with the 1945 Indonesian constitution.[50] The 1945 Constitution adopts the provisions of the Dutch East Indies Constitution, when it comes to arranging state institutions and structuring authorities.

49 The 1949 and 1950 constitutions provide better protection of democratic rights. See (Drooglever 1997) for further details of the drafting process for these constitutions.

50 See articles I and II of the transitional provisions in the 1945 Constitution.

The House of Representatives (*Dewan Perwakilan Rakyat* or DPR) replaced the *Volksraad* function, the President function evolved from that of the *Gouverneur-Generaal*, and the Supreme Court displaced the *Hooggerechtshof*. The Financial Audit Board comes from *Rekenkamer*, and the Supreme Advisory Council derives from either *Raad van Nederlandsch-Indië* (in Batavia) or *Raad van Staat* (in the Netherlands). In contrast with the colonial system, the Indonesian Constitution introduces the People's Consultative Assembly (*Majelis Permusyawaratan Rakyat* or MPR)[51] as the highest political institution, with the authority to elect and impeach the President.

Even though the *Procureur-Generaal* (Chief Prosecutor) and its *Openbaar Ministrie* (Prosecution Service) played an important role during the Dutch colonial period, the constitution did not mention these institutions in its provisions. On 19 August 1945, the Indonesian Independence Preparatory Committee (*Panitia Persiapan Kemerdekaan Indonesia* or PPKI) agreed to adjust the Japanese judiciary structure, which positioned the prosecution service within the Public Security Department to the Ministry of Justice[52] (Yamin 1959, 453; Kusuma 2010, 512). The new government positioned the Prosecution Service as a department, and appointed Mr. Gatot Taroenamihardja as Indonesia's first Chief Prosecutor.[53] However, criminal justice actors, such as the police and Prosecution Service, were involved in fighting Dutch military aggression (Turan et al. 2000, 47-52). Chief Prosecutor Taroenamihardja ordered the police to focus on maintaining public security,[54] especially against the Dutch who were trying to reign over all territory[55] *(Panitia Penyusunan dan Penyempurnaan Sejarah Kejaksaan* RI 1985, 52). As mentioned by the third Chief Prosecutor, Tirtawinata, this revolutionary situation did indeed cause the Prosecution Service to not carry out its work properly (Poeze 2009, 250).

However, during the war, the new government issued its first law regulating the Prosecution Service – Law 7/1947 on the structure of the Supreme Court and the Supreme Prosecution Office.[56] The position of the Prosecution Service was mentioned in Law 7/1947, which referred to Article 24 of the 1945 Constitution on the judiciary:

> *"…as the composition of the judiciary and its authorities cannot be organised as required*

51 *Majelis Permusyawaratan Rakyat* - inspired by the single-party system in communist countries (Asshiddiqie 2014, 134–35).

52 Soepomo later added that the department of justice's authority included the courts, prisons, prosecutors and cadastre (Yamin 1959, 464).

53 Gatot Taroenamihardja obtained his doctoral legal degree at the University of Leiden.

54 A *Maklumat Pemerintah* (Government Statement) on 1 October 1945 stated that the Head of the Judicial Police is the Chief Prosecutor.

55 A *Maklumat Pemerintah* (Government Statement) on 1 October 1945 said that the Chief Prosecutor was leader of the Judicial Police (*Justitiale Politie*).

56 The elucidation of this law cited Japanese laws (*Sihoobutyoo Osamu Seirei*, 14 January 1944, and *Gunseikanbu Osamu Seirei* No. 49, 8 November 1944), when positioning the Prosecution Service under the Ministry of Justice.

in Article 24 of the Constitution, it is therefore crucial to regulate: … (c) the structure of the Prosecution Service; and, (d) the Chief Prosecutor's supervisory authority over the public prosecutor."

Article 24 (1) of the 1945 Constitution states that judicial power is exercised by the Supreme Court and other judicial bodies. Law 7/1947 clarified that the Prosecution Service is part of the judiciary. The law adopted a judiciary setting based on Dutch judiciary law (RO), thereby making the Indonesian Prosecution Service's position the same as it was in the former Dutch colonial prosecution service. Therefore, when the first Chief Prosecutor, Gatot Taroenamihardja, resigned from his position on 24 October 1945, the Chief of the Supreme Court was assigned multiple positions as Chief Prosecutor[57] (*Panitia Penyusunan dan Penyempurnaan Sejarah Kejaksaan* RI 1985, 69). Since the 1945 Constitution did not embrace the separation of powers, and the Indonesian political system has continued to oscillate between being a presidential and a parliamentary system,[58] the President and Ministry of Justice are both able to appoint and dismiss judicial officials.[59]

Law 7/1947 was enacted retroactively, from 17 August 1945 onwards. This retroactive arrangement was intended to provide legitimacy for the work of the courts and Prosecution Service during the revolutionary war against the Dutch, and the rise of internal republican conflicts. Kasman Singodimedjo, the second Chief Prosecutor (1945-1946), who was also Commander of the Armed Forces (*Badan Keamanan Rakyat* or BKR), instructed the police and prosecutors to release native prisoners, in order to help the new government at war (Panitia Penyusunan dan Penyempurnaan Sejarah Kejaksaan RI 1985, 78). On the other hand, the Prosecution Service also prosecuted republican political leaders and their followers, when they attempted a coup of the parliamentary government in 1946.[60]

The new government retained the *Wetboek van Strafrecht* 1918 (WvS)

57 Articles 60 and 61 of the RO state that the *Advocaat Generaal* and the *Raadsheer of Hoog-gerechtshof* could both hold the position of Procureur-Generaal, temporarily.

58 President Soekarno applied a presidential system in the new republics, while Vice President Muhammad Hatta convinced the new government to implement a parliamentary system. On 14 November 1945, Vice President Moh Hatta issued a statement that the presidential system was being changed to a parliamentary one.

59 The President appoints and dismisses the Chairman, Vice Chairman, members, and clerks of the Supreme Court, as well as the Chief Prosecutor and High Prosecutor, whereas the Minister of Justice appoints court deputy clerks and court prosecutors.

60 The Prosecution Service prosecuted the case of a republican political coup attempt on 3 July 1946. About 800 people were arrested for the attempted kidnapping of Prime Minister Sutan Syahrir. M Yamin, one of the most prominent republicans, was prosecuted as the intellectual actor behind the abduction. One of Yamin's tactics when refusing prosecution was to question the application of the WvS to his case. He claimed that the WvS, which was inherited from the colonial government, contradicted the Indonesian revolutionary principle. The WvS application was presented as evidence of the new government's lack of effort to establish a new criminal code which would have suited the Indonesians better (Poeze 2010, 278). The court sentenced Yamin to four years in prison, but two years later, in 1947, Soekarno granted him clemency and released him from prison.

as the criminal code for Indonesians. In its elucidation, the government preferred to adopt Dutch criminal law rather than Japanese criminal law, stating that the Japanese law was fascist and unclear, which potentially allows law enforcement officers to abuse their power. However, as Siong and Lev have said, the Indonesian government did not annul the Japanese regulations regarding criminal procedure (Siong 1998, 436,439; Lev 1973, 8). This can be seen in Law 7/1947 and Law 20/1947, both of which refer to the Japanese regulations governing criminal procedure. Since the laws adopt the RO to the provisions, the position and function of *Jaksa* (or native prosecutor) replaces that of the Dutch prosecutor (*Officier van Justitie).* This later influenced the government decision to use the HIR, rather than the SV.

Chief Prosecutor Tirtawinata preferred to uphold the HIR as the Indonesian criminal procedure, rather than using *Gunsei Keizirei*, the Japanese criminal procedure. According to the public prosecutor, the latter would only be applicable in a police state (*Politiestaat*), and not in a democratic state.[61] Indonesia's new government adopted the HIR instead, because the Minister of Justice argued that Indonesia was eager to establish its own national procedural laws, rather than following strict and complicated European procedural codes. In addition to the lack of resources, the government also believed that prosecutors would not be able to uphold the stricter European criminal procedure set out in the SV (Lev 2000, 75).

A further regulation of the Prosecution Service, Law 19/1948, dealt with the structure and jurisdiction of the judiciary and the Prosecution Service. As judicial officers, public prosecutors and judges worked in the same office. This law guaranteed the independence of the judiciary and prohibited the government from intervening in judicial matters, unless otherwise provided by the Constitution[62] (Article 3). In the same way as the previous law, the Chief Prosecutor had authority to supervise both the prosecutor and the police (Article 56). However, due to military conflict with the Dutch, and the enforcement of procedural law that had not yet been established, Law 19/1948 never came into effect (Pompe, 2005, 179).

The political and security conditions in Indonesia gradually stabilised, when the Indonesian government and the Netherlands agreed to negotiate. At the 1949 Round Table Conference, it was decided that Indonesia was a federal state, and that the federal government would arrange the constitution and adopt a parliamentary system. Although the position of the Prosecution Service was not explicitly included in the Constitution, it did mention that the service would be attached to the Supreme Court, indicating that it was a part of the judicial power (Article 148). The Constitution stated that the Prosecution Service consisted of a central service and federal state services. At the federal level, only one Supreme Prosecution Service

61 Chief Prosecutor's letter 1626/2/KA, 1 September 1947 *(Panitia Penyusunan dan Penyempurnaan Sejarah Kejaksaan* RI, 1985, p. 83).

62 The government was allowed to intervene in matters such as abolition, clemency and amnesty.

existed at the highest level in the Indonesian federal state. The Federal Constitution guaranteed the independence of judicial power, by banning any intervention in judicial procedure (Article 145).

Based on the Federal Presidential Decision 22/1950, 16 January 1950, the Chief Prosecutor could supervise the police on behalf of the Prime Minister. Administration of the police was led by the Minister for Home Affairs. The brevity of the federal state period – only seven months and twenty days – meant that the federal government had no time to make laws regarding the Prosecution Service as an institution, i.e. laws determining its organisation, tasks and powers.

2.6 Parliamentary Governments

The implementation of the Provisional Constitution of 1950, on 15 August 1950, marked the end of the federal government, and returned Indonesia to the concept of a unitary state. The 1950 constitution was designed to be temporary, because the government planned to organise a Constitutional Assembly election to choose who would be drafting the new constitution. The 1950 Constitution adopted the parliamentary system, just like the previous federal constitution. The Provisional Constitution also prohibited the government from intervening in the judiciary (Article 103). The Constitution contained 28 articles on human rights protection, as well as some articles which protected defendants' rights in the criminal justice process.[63]

Furthermore, the government adjusted the criminal procedure in Emergency Law 1/1951, by renaming the HIR as *Reglemen Indonesia yang Diperbarui* (RIB, or Amended Indonesian Legal Procedure), and it became the official criminal procedure. However, since the Indonesian government dreamed of its own procedure, Emergency Law 1/1951 positions the RIB as guidance for criminal justice actors when dealing with cases. The government also structured Indonesian judicial organisations using Emergency Law 1/1951. The law not only regulates the court, but also the Prosecution Service's organisation and powers.[64] The Prosecution Service was positioned as part of the judiciary (Article 2) and the Chief Prosecutor's power to supervise police investigations was retained (Article 5). The Chief Prosecutor had another position as Chief Military Prosecutor[65], with the authority to supervise military prosecutors and the police while they

63 These included: protection from unlawful arrests and detentions (Article 12); equality before the law (Article 13); presumption of innocence (Article 14); the prohibition of criminal punishment, such as any deprivation or punishment of a guilty party which would result in the loss of civil rights (Article 15); a ban on home searches without a legal basis (Article 16); and, the protection of privacy (Article 17).

64 The law translated both the *Officieren Van Justitie* and the *Magistraat* terms in the HIR as *Jaksa*.

65 See Government Regulation S.4/1948, on military titular rank. The Chief Prosecutor's rank was Army Lieutenant General.

were conducting investigations or prosecuting criminal cases involving military personnel[66] (Article 27 of Law 5/1950). Therefore, It seemed that *Jaksas* could enjoy independence when performing their duties, similar to the former Dutch colonial prosecutors (Lolo 2008, 70).

The Prosecution Service employed and recruited many prosecutors with a Dutch legal education (Lev 2000, 82). Chief Prosecutors Tirtawinata and Soeprapto were both former colonial judges. Chief Prosecutor Gatot Taroenamihardja, Chief Prosecutor Baharuddin Loppa, Omar Seno Adji, Adnan Buyung Nasution, Prijatna Abdurrasyid, and many more people who later become reputable Indonesian lawyers, began their careers as public prosecutors. The public prosecutors belonged to a professional organisation called *Persaja* (*Persatuan Jaksa-Jaksa*, or The Prosecutor's Association), which played a pivotal role in promoting the rule of law[67] and reforming the Prosecution Service to become more professional and akin to its predecessor, the *Openbaar Ministrie*. Taking into account the poor legal knowledge of the pre-war public prosecutors, Chief Prosecutor Soeprapto asked high-ranking public prosecutors with a legal background to assist the lower level pre-war public prosecutors in drafting indictments (Lev 2000, 80).

On 28 December 1950, Prime Minister Mohammad Natsir suggested to the President that Mr. Soeprapto be appointed as Chief Prosecutor at the Supreme Court.[68] Soeprapto, who was a former judge and chairman of the *Landraad*, succeeded in keeping the Prosecution Service working to maintain the rule of law, amid political contestations during the parliamentary period (Nasution 1995). Even though Soeprapto faced a shortage of trained personnel, budget, equipment, and facilities, he managed to make the legacy of the Dutch system work impressively. The Chief of the Police, General Soekanto, and Soeprapto were known for their positive leadership, maintaining a good relationship between public prosecutors and the police, and for emphasising criminal procedure which was based on the law and not simply used for particular political interests (Lev 2007, 238). This fact should be understood as a consequence of both the judicial independence guarantee in the constitution, and the balance of political parties within the parliamentary system.

66 The Prosecution Service could use the HIR and SV procedures when prosecuting the military. See Article 1, Law 8/1946.

67 See Article 1 of the Persaja (Prosecutor Association) Statute, which stated that the *Jaksa* association aimed to promote the rule of law. *Indonesischtalige statuten van de Persatuan Djaksa*, 1955.

68 Soeprapto was proclaimed 'a national hero' by the Prosecution Service. The service built a statue of him, and placed it in front of the Supreme Prosecution Office.

Soeprapto maximised the role of the Directorate of Central Investigation *(Direktorat Reserse Pusat*, or DRP)[69], regarding the investigation of serious crimes. The effectiveness of the DRP was related to its authority to conduct investigations and prosecutions. This was an important factor in Soeprapto's success.[70] The Prosecution Service was now able to prosecute army officers who were smuggling goods, as well as other high-profile cases. Some ministers, high-ranking military officers, and top government officials were arrested and prosecuted for serious crimes. In 1955, the Prosecution Service even arrested and prosecuted the Minister of Justice (Mr. Djody Gondokusumo) for corruption, with allegations under Article 419 Subsidair 418 of the Criminal Code[71] (Yahya 2004, 197-206). This situation forced President Soekarno to instruct Soeprapto to waive any criminal cases involving his political friends. Soeprapto refused to grant Soekarno's request, and continued his work.

The Prosecution Service's independence and authority resulted in severe friction between Soeprapto, the Army, and the President. The government and military considered that Soeprapto's decisions disturbed political stability. When the military started controlling civilian administration with Law 74/1957 on Emergency Situations (*Regeling Op De Staat Van Oorlog En Beleg*, or SOB), it also tried to take over the Prosecution Service, but it was not easy because Soeprapto was still in power. In 1958, the military proposed a government regulation, stipulating that any Prosecution Service investigation involving military personnel ought to first be granted permission to investigate from the personnel's commander. Although Soeprapto was against this plan, the army succeeded in convincing the government to accept their proposal and enact the regulation (Yahya 2004, 57).

In 1959, with the support of the army, President Soekarno issued a decree which effectively ended the parliamentary system era (Sundhaussen 1986, 206-10). This decree, which re-enacted the strong presidential constitution of 1945, became a turning point in the so-called 'guided democracy' (Lev 2009). The government and military now had a reason to dismiss Soeprapto.[72] He was accused of being a counter-revolutionary figure for

69 The Prosecution Service retained the position of *Dinas Reserse Pusat* (*Algemene Recherche Diens*), which was established in 1920 by the *Procureur-Generaal*. Articles 180 and 101 of the RO stated that this division had a role in coordinating and supervising investigations conducted by the police *(Panitia Penyusunan dan Penyempurnaan Sejarah Kejaksaan* RI, 1985, p. 121).

70 The DRP was similar to the KPK authority, which also dealt with investigation and prosecution.

71 The Public Prosecutor sentenced Mr. Djody Gondokusumo to two years in prison, for receiving Rp. 40.000 from Bong Kim Tjong and assisting him with his visa application. It was later revealed that the money was intended for the political party chaired by Djody.

72 The Ministry of Information released the reason for Soeprapto's dismissal. It said that Soeprapto was the only person standing against government policy to place supervision of the Prosecution Service under the authority of the ministry. He was also known as the person who created political instability, by investigating party members and some ministers. Soeprapto's dismissal was a way to control the Prosecution Service (Lev 2009, 275).

releasing Schmidt, a former unit commander in the Dutch army.[73] The Public Prosecutor's Association (*Persaja*) disputed this decision. The Head of *Persaja*, Oemar Senoadji, said that Soeprapto's dismissal from his position as Chief Prosecutor broke the rule of law; Soeprapto had been dismissed without any proper administrative procedure or hearing.

The tension between the Prosecution Service and the army increased, beginning with the Chief Prosecutor, Gatot Taroenamihardja's[74] decision to arrest and detain several high-level military officials for smuggling. The army general, Nasution, argued that Gatot's action disrupted public order, and the army then retaliated by arresting and detaining Chief Prosecutor Gatot.[75] Soekarno resolved the conflict by dismissing Gatot as Chief Prosecutor and transferring the military officers who had committed smuggling.

Soekarno issued Presidential Decree 5/1959, which stipulated that the Prosecution Service was a government instrument. The position of the Chief Prosecutor was governed by the Security Ministry, which was led by Army General Nasution at the time. Soekarno then appointed Gunawan (a junior chief prosecutor who had support from army headquarters) as Chief Prosecutor.

2.7 The Guided Democracy

> "*You are in an organisation, and the organisation is (represented by) the leader, so you (must) understand that being part of the organisation means you are also a part of the leader. You must help the government to lead the state, to destroy everything opposed to the state, and to promote everything developed by the state.*" (Soekarno 1960, 15)[76]

During the 1950 Constitution period, Soekarno's relationship with the parliamentary government was quite tense. He opposed the Prime Minister's role in government and was against the separation of powers. He considered the parliamentary model to be a western style of government,

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73 Soeprapto argued that the Prosecution Service was merely executing a high court decision. Since Schmidt had served a prison sentence of more than five years, based on a high court decision, he should be released immediately. Soeprapto stated that his decision to allow Schmidt to re-enter the Netherlands was based on permission from the Minister of Justice. However, at a cabinet meeting on 31 March 1959, it was decided that Soeprapto would be dismissed from the position of Chief Prosecutor, because he was the person ultimately responsible for the Schmidt case.

74 Soeprapto's successor as Chief Prosecutor.

75 As Adnan Buyung said, Gatot was hit by a car and sustained severe injuries (Nasution 2004, 117).

76 "*Saudara-saudara adalah satu organisasi dan organisasi adalah an sich hal pimpinan, maka Saudara-saudara mengerti bahwa saudara ini adalah satu bagian daripada organisasi itu, bagian daripada pimpinan itu. Saudara harus membantu kepada negara untuk memimpin djalannja Negara demikian rupa, sehingga Negara bisa berfungsi disini, membinasakan segala sesuatu jang menentang, disini membangun segala sesuatu jang membina*". President Soekarno's speech at the first Prosecution Service Department conference, on 30 October 1960.

identical to that of colonialism. Via a presidential decree on 5 July 1959, which re-enacted the 1945 Constitution, he coined the term 'guided democracy', placing all the political power in his hands.

In 1960, Soekarno declared the end of the separation of powers doctrine in the People's Consultative Assembly session. The Minister of Justice, Sahardjo, asserted that the separation of powers did not complement the Indonesian legal system. Sahardjo introduced the *Pengayoman* model as an 'Indonesian legal system'; a system which placed the wisdom of the President at the centre of national legal principle (Sahardjo 1963). Moreover, while Soekarno was now enjoying absolute power, citizens' rights were still not being regulated (Hart and Nusantara 1986, 6).

Soekarno said that the revolution was not yet over; therefore, intervention by the President was essential to the justice system[77] (Lev 2009, 70). Soekarno also determined the position of Supreme Court Chief Justice, Wirjono Prodjodikoro in the cabinet. Wirjono was appointed Minister of Law and the Interior, as well as Coordinating Minister of Law and Home Affairs (Pompe 2005). Through Minister of Justice, Astrawinata the government started reorganising the Prosecution Service, giving it executive power; the Chief Prosecutor had to take direction from the Minister of National Security/Army Chief of Staff, General AH Nasution.

Unlike his predecessor, Gunawan allowed the President to intervene in the Prosecution Service. Gunawan's appointment marked the transformation of the Prosecution Service from an independent institution into an institution that was entirely controlled by the executive (Lev 1965, 196). On 22 July 1960, a cabinet meeting was held and it was decided that the Prosecution Service was no longer subordinate to the Ministry of Justice. The Prosecution Service became the Ministry for Prosecution Service, and the Chief Prosecutor became the Minister for the Prosecution Service, who was directly responsible to the President.[78] This date was later declared (by the Minister for the Prosecution Service, Gunawan) to be the 'birthday' of the Prosecution Service, still celebrated today, as *Hari Bhakti Adhyaksa*.[79]

Furthermore, with military support, Gunawan began the militarisation of prosecution service bureaucracy. The position of Chief Prosecutor was redefined to resemble that of Army General, with the highest level of command and the ability to treat other public prosecutors as troops. The Chief Prosecutor required public prosecutors to undertake military training and wear military uniforms[80] (Lev 1965, 197), undergoing basic military training for two months in the LKPS (*Latihan Kemiliteran Pegawai*

77 Article 19 of Law 19/1964 allowed the President to intervene in judicial process.

78 President Soekarno issued Presidential Decree No. 204/1960 on 15 August 1960, which stated that the position of Chief Prosecutor would change to Minister for the Prosecution Service from 22 July 1960.

79 See Chief Prosecutor Decision No. Org/A.51/1 2 January 1960, and No.Kep-62/J.A/7/1982, 16 July 1982 (Ritonga et al. 2003, 59).

80 See *Suara Persadja*, 1961.

Sipil, or Military Civil Service Training) (Mangoenprawiro 1992, 41). The public prosecutor position was now even more disreputable than it had been pre-war (as *executive ambtenaar*). The public prosecutors had lost their independence and become troops who needed to obey their leader's directions. The Prosecution Service metamorphosed into a tool, which the regime could use to eradicate any political activities opposing government policy. Since Gunawan was loyal to the regime,[81] Soekarno granted the Prosecution Service a budget to build a new office, which was designed to look similar to the United States Attorney General's Office [82] (Mangoenprawiro 1992, 42).

When Law 13/1961 on the Police was enacted, Gunawan failed to retain the prosecutorial power to supervise the police during their criminal investigations (Lev 1965, 198). Even though Law 15/1961 on the Indonesian Prosecution Service retained the Chief Prosecutor's authority, including the supervision and coordination of police investigations,[83] Law 13/1961 on the Police granted the Police Chairman control over and supervision of preventive and repressive policing, including criminal investigations (Article 7).[84] Because of these contradictory provisions, the police were reluctant to be supervised by the IPS during criminal investigations, since police law stated that it was the Police Chairman who had the power to supervise investigation processes, including any coercive measures taken (Articles 13 and 14).[85] As a result, during the investigation process, the prosecutors and the police each had their own interpretation of the HIR, according to their own interests (Poernomo 1988, 21).

In 1962, due to the deterioration of Gunawan's relationship with the military and his malpractice while reigning as Chief Prosecutor, Soekarno replaced him with Kadarusman, who was the former Deputy Chief Prosecutor.[86] However, it was not long before a special committee for reorganising the Prosecution Service recommended Brigadier General Soetardhio

81 Even though it failed, Gunawan urged the Supreme Court to accept his concept of 'the consensual model'. It means that the judge's verdict and sentence must not differ from the prosecutor's charges and demands. Because of this, the Chief of PERSAJA, Oemar Seno Adji, who believed judicial independence should not be interfered with, resigned from his position as Deputy Chief Prosecutor (Pompe 2005).

82 Since the Indonesian Government obtained the loan from the US Government to build the Prosecution Service Building, its design was inspired by the US Attorney General's Office Building. The main difference is that whereas the US Attorney General's Office lower floor houses shooting range facilities, the Indonesian Prosecution Service's lower floor is equipped for receptions or ceremonies. Moreover, when US Attorney General Robert Kennedy visited Indonesia, Chief Prosecutor Gunawan gifted him a Sumatran Tiger.

83 The 1961 IPS Law also authorised prosecutors to conduct a further investigation if they believed that the evidence was insufficient (Article 7, paragraph 2).

84 This law positioned the police (as a department) under the army, which was answerable only to the President.

85 An elucidation on Article 15 of Law 13/1961, which stated that police investigations should also be conducted with due consideration of the Prosecution Service Law.

86 Kadarusman was the Chairman of the Committee for Preparation of the 1961 Law on the Prosecution Service.

as Chief Prosecutor. This recommendation correlated with the Prosecution Service's position as subordinate to the Department of Defence and Security (Lev 1965, 198).

Soekarno issued Presidential Decree/Law 11/1963 on Anti-subversion, in order to silence his political opponents and strengthen his regime. The Chief Prosecutor played an important role under this law, becoming responsible for the investigation and prosecution of subversion cases (Article 5). While the law contained the 'rubber article' (or 'catch-all article'), the Chief Prosecutor could easily prosecute anyone who was targeted by the regime. The Chief Prosecutor would often visit the presidential palace, to be instructed on who would be prosecuted for revolutionary reasons (Mangoenprawiro 1992, 43).

Even though Law 19/1964 on Judicial Power and Law 13/1965 on the Courts both stated that the President could intervene in judicial process, for revolutionary reasons, there was no precise definition of "revolutionary reasons" in either of the laws. Furthermore, the President (as revolutionary leader) could define the cause, based on his political interest. As former Chief Prosecutor Singgih pointed out, Brigadier General Soenarjo (Head of the DRP) had instructed him to put Osman, a Surabaya businessman, in jail. Osman had hampered Soekarno's wish to marry a Surabaya woman, which meant (to Soenarjo) that he opposed the regime. As a criminal investigator at the DRP, Singgih needed to find a crime for Osman, in order to justify prosecuting him. Osman was found to be in possession of an illegal warehouse, and he could therefore be arrested and prosecuted for an economic crime (Ritonga et al. 2003, 78-81). Another case was mentioned by former Deputy Chief Prosecutor, Prijatna Abdurrasyid, who received an order from the regime to arrest and detain Muchtar Kusumaatmadja, a professor of international law, for insulting Soekarno. As the Head of the West Java High Prosecution Service (*Advocaat-General*), Prijatna instructed his prosecutors to investigate, and summoned some professors and students from Padjadjaran University. Since there was no reliable evidence of Muchtar's crime, Prijatna refused to detain him. Prijatna believed that the Muchtar case was fabricated because Muchtar was due to run against a candidate from the Communist party, for election as rector of Padjadjaran University (Abdurrasyid 2001, 195-97).

In 1965, the clash between the Communist Party (*Partai Komunis Indonesia*, or PKI) which supported Soekarno, and the army heated up, when seven army generals were found murdered. Soon, the army accused PKI of being the mastermind behind the so-called coup of 30 September, and it mobilised the masses to dissolve the Communist Party. The army then led a purge of PKI members across Indonesia. It was reported that 1,500,000 people were detained without fair trial, and 100,000 people were murdered during this purge (Roosa 2008, 5). The Prosecution Service supported the army's action by detaining several PKI members, and then transferring them to the KODAM (*Komado Daerah Militer*, or the military headquarters in the area) for further processing (Mangoenprawiro 1992, 66).

2.8 The New Order Military Regime

> "*National stability clearly requires a safe and orderly atmosphere. The role of the ABRI*[87] *(Armed Forces) in this case is significant, both as a defensive security power and a social political power. The ABRI has carried out its duties well, both as a protector of national stability and an initiator of more dynamic development policy.*" (Eriyanto 2000, 90) [88]

In 1966, General Soeharto and his army took over the government from Soekarno and his Guided Democracy regime. Soeharto claimed he had a mandate from Soekarno to organise and lead the cabinet.[89] He began to reorganise the administration and purge Soekarno's loyalists and any communist elements from the government. Soeharto structured the Chief Prosecutor role to fall under the Cabinet Presidium, which he led.[90] Soeharto then replaced Chief Prosecutor Soethardio, a Sukarno loyalist, with his own man, Lieutenant General Sugih Arto.

One of first things that Soeharto did, after he was officially appointed President in 1967[91], was to arrest and detain the Deputy Chief Prosecutor for Intelligence, Soenarjo Tirtonegoro. Soeharto dismissed Soenarjo from his position, even though there were no allegations of wrongdoing regarding Soenarjo's relationship with Soekarno. He was briefly detained in a military prison, and later released. It was firmly believed that this arrest was Soeharto's retaliation towards Soenarjo, for Soenarjo's actions whilst he had been in the military police. Soenarjo had investigated smuggling cases in Central Java in the 1950s, in which Soeharto had been involved, and the Army Commander demoted Soeharto's position as a consequence (Mangoenprawiro 1992, 71).

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87 ABRI is an abbreviation of *Angkatan Bersenjata Republik Indonesia* (or, the Indonesian Armed Forces).

88 "*Stabilitas nasional jelas memerlukan suasana aman dan tertib. Peranan ABRI di dalam hal ini cukup besar, baik sebagai kekuatan pertahanan keamanan maupun kekuasaan sosial politik. ABRI sebagai stabilisator dan dinamisator dalam pembangunan telah menjalankan tugas-tugasnya dengan baik.*" Soeharto's presidential speech, 1994. ABRI has carried out its duties properly, both as a stabilising force and as a stimulus for the country's development.

89 Soeharto claimed he had been given a mandate from President Soekarno on 11 March 1966, to secure the nation after protests to dismiss PKI, which was accused of being the main actor in the killing of seven army generals. The mandate later became known as *Supersemar* (*Surat Perintah Sebelas Maret 1966, or Eleven March Mandate 1966*), which was exploited by Soeharto to maintain his political power and seize the presidential position from Soekarno.

90 Presidential Decree No.163 of 1966, 25 July 1966, and the Decree of the Ampera Cabinet Presidium No.26/U/Kep/l966, 6 September 1966, (*Amanat Penderitaan Rakyat* – The Message of the People's Suffering).

91 On 7 March 1967, the Provisional People's Consultative Assembly (MPRS) appointed Soeharto as its acting president, before the national election in 1968. After the People's Consultative Assembly (MPR) was elected, on 27 March 1968, Soeharto was appointed its president (Tap MPRS No XLIV/MPRS/1968).

Soeharto named his regime the 'New Order', to distinguish his administration from Soekarno's Guided Democracy, which would now be considered the 'Old Order'. When the New Order began, there were high hopes that the new regime might promote the rule of law which had remained unenforced by the previous administration (Nasution 2004, 199). However, it turned out that Soeharto instead preferred to retain the previous repressive regulations and strengthen military power instead of civilian politics[92] (Lev 1978, 62).

The New Order shaped a bureaucratic military administrative regime. The regime restricted the political freedom of civil servants, including prosecutors, in order to maintain political stability. Prosecutors were obligated to join the KORPRI (*Korps Pegawai Republik Indonesia*, or the Indonesian Civil Servant Corps), which was a wing of the GOLKAR party (*Golongan Karya*, or the Functional Group Party) formed by the military. Therefore, prosecutors were forced to vote for GOLKAR in every national election (Lolo 2008, 153). *Dharma Wanita* was also established, in order to domesticate women's roles in politics, making wives into a governmental tool to ensure their husbands' loyalty to the regime (Suryakusuma 2011, 8-10; Lolo 2008, 116-17). With its tight command-and-control structures, the New Order military bureaucracy forced the Prosecution Service to serve the ruling regime.[93] The military influence on the Prosecution Service was obvious.[94] Five military generals were also Chief Prosecutors during Soeharto's era – Navy Admiral Soekarton Marmosudjono, and four army generals: Lieutenant General Sugih Arto, Lieutenant General Ali Said, Lieutenant General Ismail Saleh, and Major General Hari Soeharto.

Although a Chief Prosecutor had the same structural status in the cabinet as the Commander of the Armed Forces (ABRI), in practice the two were not equal. Since the military rank of Chief Prosecutor was only a two-star or three-star general (lower than a four-star military commander), the Chief Prosecutor's level was below that of the ABRI Commander. It is not surprising then that in 1971 Chief Prosecutor Sugih Arto handed his position as Army Chief Prosecutor to an ABRI Commander.[95] The submissive attitude of the Chief Prosecutor towards his superiors was a bonus for the President, who already had control over the Armed Forces (Lolo 2008, 132).

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92 *Dwi Fungsi*, ABRI, or the 'dual function of the armed forces' concept was established to legitimise the role of the army in civilian politics.

93 The New Order also forced courts and their judges to serve the regime (Pompe 2005).

94 The military co-opting of the Prosecution Service is evidenced by the fact that the Head of the High Prosecution Office in each province was required to join a meeting initiated by Kowilhan (*Komando wilayah pertahanan*/Defense Territory Command). In spite of the Head of the High Prosecution Office position not falling under the Kowilhan structurally, he nevertheless had to report the Prosecution Service's work to the commander of the Kowilhan (Mangoenprawiro 1992, 136).

95 Even though Law 5/1950 was not repealed, Chief Prosecutor Sugih Arto delegated the military prosecutor mandate to the Army Commander in 1973 (*Panitia Penyusunan dan Penyempurnaan Sejarah Kejaksaan* RI, 1985, p. 237).

To begin with, the New Order's main agenda was to purge communist ideology in government and society. Therefore, the military had an interest in controlling and using the Prosecution Service as a backbone for prosecuting most of the communist party elite and its other members. On 3 March 1969, Soeharto issued Presidential Decree 19, which strengthened the KOPKAMTIB's (*Komando Operasional Pemulihan Keamanan dan Ketertiban*, or the Operational Command for the Restoration of Security and Order)[96] power to control all governmental apparatus, including judicial institutions. For security reasons, the KOPKAMTIB could direct and intervene in the criminal procedural processes of the police, Prosecution Service, or court.

The Chief Prosecutor Lieutenant General of the Army, Ali Said, confessed that in 1978 he received an instruction from the KOPKAMTIB to interrogate, arrest and detain suspects of subversive cases, without a trial.[97] The KOPKAMTIB could also take criminal cases from the police and prosecutors, and instruct them to use evidence prepared and controlled by the KOPKAMTIB. Adnan Buyung Nasution, a former prosecutor who is also known as a prominent human rights defender in Indonesia, criticised the KOMKAPTIB's power as excessive, he equated the KOPKAMTIB's actions with shooting flies using a cannon (Nasution 2004, 268). Later, Nasution was detained without trial, due to his criticism of the government. Chief Prosecutor Ali Said revealed that Nasution's detention by the Prosecution Service was instructed by the Commander of the KOPKAMTIB, and it happened mainly because Nasution was a suspected intellectual actor behind the MALARI riots in 1974.[98] The Prosecution Service detained Nasution in a military prison for two years. Although Nasution was found innocent, the government refused to apologise; but it did announce through the press that Nasution was not involved in the Malari incident (Nasution 2004, 303-30).

During the New Order military regime, the Prosecution Service was an effective government instrument to keep military systems in power, through the Anti-Subversion Law. Via this draconian law, prosecutors played the role of the regime's guardians, prosecuting political opponents to the government and any citizens who criticised regime policy. Singgih

96 Soeharto established the KOPKAMTIB on 10 October 1965, to strengthen the military operation to purge the Indonesian Communist Party. According to the presidential decree, KOPKAMTIB's actions should have been in line with the rule of law, but in practice it was too difficult to control KOPKAMTIB's coercive measures.

97 Instruction No. 03 /Kopkamtib/XI/1978 stated that KOPKAMTIB was an institution with the highest authority to conduct coercive measures, such as putting someone under arrest or detaining them, for security reasons.

98 Malari (*Malapetaka Lima belas Januari*/the Fifteenth of January Riot) was one of the political riots which happened during the time of the New Order. Students used the momentum created by the riot to protest against Japanese investments, when Japanese Prime Minister Tanaka visited Jakarta on 14-17 January 1974. The regime took serious measures against protesters, who included students, pro-democracy activists, and journalists (Wiratraman 2014, 97–100).

stated that, when he was appointed Chief Prosecutor in 1990, he received an instruction from Soeharto to use the Anti-Subversion Law against those opposing government policies, without hesitation (Ritonga et al. 2003, 238). This can be seen in the case of Muchtar Pakpahan, the labour activist, who was prosecuted by the Prosecution Service under the Anti-Subversion Law, due to his criticism of the regime in his controversial book on Indonesian Politics[99] (Lolo 2008, 173-91).

In addition to government intervention, the Prosecution Service also suffered corruption among its own public prosecutors. Nasution affirms it can easily be found that some parties in criminal cases are required to provide *Uang Semir*[100], in order to obtain 'benefits' due to the cases being handled by the Prosecution Service (Nasution 2004, 270). During this time, the police, prosecutors and judges were not only corrupt themselves; they also thought of corruption as a 'side benefit', and one of their official rights. Lev explained that, during the New Order era, every legal profession could be controlled, guided and interfered with by the regime (Lev 2005, 3). It is a paradox that prosecutors seemed to be brave enough in prosecuting minor cases, but they did not have the courage to prosecute corruption cases involving President Soeharto and his cronies. In the 1970s, the Prosecution Service closed several major corruption cases, such as Ibnu Sutowo's Pertamina corruption case, for unexplained reasons.

The New Order not only exploited the Prosecution Service for its own political interests, it also shaped criminal procedure to ensure that it could tighten its grip on the justice system. Although the RO (*Reglement op De Rechterlijke Organisatie en Het Beleid der Justitie*, Stb, 1847-23 jo 1848-58, or the Law on Judicial Organisation) was never legally repealed, the New Order retained the previous regulations, which allowed criminal justice system actors to become more fragmented. The Prosecution Service lost its supervisory power over police investigations, when Chief Prosecutor Ali Said ceded power to the police during the drafting process for the new criminal procedure in 1981[101] (Awaloeddin Djamin et al. 2006, 399). In addition, since parliament was dominated by the Golkar party and the military, Law 8/1981 on Criminal Procedure (*Kitab Undang-undang Hukum Acara Pidana*, or the KUHAP) was designed to replace the HIR, in order to empower the

99 Muchtar confessed that the military controlled his trial. The army supervised the interrogation right up until the prosecution process in court. He knew that the prosecutor's questions were drafted by military intelligence, who monitored his case (Lolo 2008, 173–91).

100 *Uang Semir* means a sum of money or service, provided by parties to the prosecutors or their wives.

101 The National Police Chairman, Awaloeddin Djamin, initiated a meeting with Chief Prosecutor Ali Said and the Minister of Justice Mudjono, to discuss the Draft KUHAP. Awaloeddin succeeded in convincing Ali Said to transfer the Prosecution Service's investigatory powers to the police. Since the police were part of the military faction in the DPR (House of Representatives), Ali Said left the discussion of the KUHAP to the police (Awaloeddin Djamin 1995, 218–23).

police.[102] The KUHAP allowed the police (which were part of the military) to investigate and exercise coercive measures, such as pre-trial detentions and foreclosure, not only without the prosecutor's supervision but also with minimum judicial control.[103]

Two years after the KUHAP was enacted, the military (under the Commander of the KOPKAMTIB) ran the *Celurit* operation, where hundreds of civilians were killed as a means of reducing crime. The military instructed mystery shooters (*Penembak Misterius/Petrus*) to kill civilian street criminals, based merely on their tattoo. Hundreds of people were found dead, with their bodies tied up or put into sacks (Cribb 2000; Kroef 1985). The KUHAP was insufficient whenever cases involved the regime's own political interests. The new police powers, under the new code, strengthened the military's capacity to control the legal process indirectly. Since the police were part of the armed forces, the military could intervene in criminal processes relating to their own concerns. If the police were handling cases in which the military had an interest, it was not possible for such cases to go through the prosecution process (Lolo 2008). Even after the case had been through the prosecution process, a public prosecutor sometimes needed to accommodate the military's intentions by not taking into account evidence presented at trial. In 1993, for instance, the public was shocked by the controversial case of Marsinah, who was killed due to her criticism of a company's labour policy in Surabaya, East Java. It was later found that the military intervened in the case; it asked investigators and public prosecutors to manipulate the case by hiding the original perpetrators, who were allegedly affiliated with the regime (Rosari 2010).

The KUHAP adopts most of the procedure in the HIR, but it also adds new concepts, such as pre-trial procedure, claiming that these will protect human rights. It gives citizens a chance to take legal action against coercive measures, such as arrest, detention and seizure by law enforcers. The KUHAP introduces the Functional Differentiation (*Diferensiasi Fungsional*) principle, which means that investigation and prosecution are defined as two separate processes. Via this principle, the KUHAP replaces the prosecutor's *dominus litis* at the pre-trial stage. The police force is a main actor and master of pre-trial procedure, who can initiate investigations and exercise coercive measures without any assistance from the public prosecutor. The police are granted positions as primary investigators, with the authority to oversee and supervise the investigation process conducted by civil service

102 The police investigator has more power in the KUHAP than in the HIR. While Article 53 of the HIR makes the police force the prosecutor's assistant in finding pieces of evidence to present at trial, the KUHAP repeals this provision and gives the police investigator autonomy to investigate, without any intensive supervision by the prosecutor.

103 See 5.3.4: Control of the Investigation Process.

investigators[104] (Harahap 2007, 47-48). The prosecutor's role, as stipulated in Article 13 of the KUHAP, is limited to prosecuting and executing legally binding court orders only (Article 1, Section 6, KUHAP). The prosecutor is reduced to functioning as an intermediary officer (who brings the investigation files to court) in criminal procedure. However, since the KUHAP still recognises special criminal procedure for other laws, such as anti-corruption and anti-subversion law, the Prosecution Service can retain its authority to investigate special crimes. Public prosecutors succeeded in keeping this power, under Law 5/1991 on the Prosecution Service.[105]

However, the Prosecution Service Law 1991 affirmed the Chief Prosecutor's position as the president's man.[106] As Chief Prosecutor Singgih revealed, during the drafting process for the Prosecution Service Law 1991, Soeharto instructed the Minister of Justice, Ismail Saleh (who was also a Chief Prosecutor), to make the appointment and dismissal of the Chief Prosecutor similar to that of cabinet members, who did not need approval from the House of Representatives.[107] The Prosecution Service Law 1991 also required the Chief Prosecutor to obtain the President's approval before exercising prosecutorial discretion and waiving a criminal case in the public interest. Still, the law did not explicitly define public interest – it only set out procedures for the Prosecution Service to consult with other government agencies, and obtain presidential approval regarding whether or not a case deserved to be dismissed for public interest reasons (Article 32c). Therefore, it is not surprising that prosecutorial discretion was only exercised when the regime had an interest in a case.

Public prosecutors seemed fearless in requesting acquittals for cases which were fabricated by the regime, if the Chief Prosecutor supported their actions. In 1996, the public prosecutor demanded an acquittal for the murder case of Bernas journalist, Fuad Muhammad Syarifuddin (Udin). The public appreciated the prosecutor's decision, since it was firmly believed that Udin was killed by the regime for his activities in revealing the corruption practiced by Bantul Mayor, who had a military background. As was acknowledged by Chief Prosecutor Singgih, this prosecutor's decision made the relationship between the police and the Prosecution Service quite tense (Ritonga et al. 2003, 266).

In 1997, tension between the Prosecution Service and the police heated up. The police arrested and detained several prosecutors from the Supreme Prosecution Office for falsifying the investigation files in Nyo Beng Seng's

104 The PPNS (or civil service investigator) must coordinate with the police before handing the investigation dossier to the Public Prosecutor. Article 107, KUHAP, Article 14 Law 2/2002 on the Police.

105 See Chapter 4.

106 Before the KUHAP was enacted, the New Order positioned the Chief Prosecutor as a high state official. Then, in 1983, the Chief Prosecutor was repositioned as a state official at the same level as the minister.

107 This argument was then adopted in Article 19 of the Prosecution Service Law 5/1991.

murder case.[108] The prosecutors believed that the evidence presented in the police dossier was not sufficient to prove the misdeeds of the defendants, Agiono and Atok.[109] They argued that, based on Article 27 of Law 5/1991, prosecutors could conduct an additional examination, in order to complete police files. After Vice Chief Prosecutor Soedjono Atmonegoro made a strong protest to the ABRI Commander, General Faizal Tanjung, the National Police Headquarters released the prosecutors[110] (Mangoenprawiro 1999, 43).

In 1997, when most of the Asian countries were hit by a severe financial crisis, Indonesia also suffered economic collapse, which turned public opinion against the government. In May 1998, students organised a big rally to demand Soeharto's resignation and reform Indonesia's political and economic structure. The regime fought back against the massive student demonstration, causing civilians and several students to be killed or injured. This accident provoked further protests and riots in Jakarta, and in other cities. Then, as the international pressure placed on his regime increased, political support for Soeharto collapsed. Finally, on 21 May 1998, Soeharto resigned from the presidency, marking the fall of the New Order regime.

In short, the Soeharto military regime succeeded in turning the Prosecution Service and public prosecutors into its instruments. Whereas Soekarno's Guided Democracy provided a set of rules for the regime to intervene in the prosecution process, the New Order Regime allowed this practice to normalise deviancy and damaging behaviour. Appointing a Chief Prosecutor with a military background created the opportunity to intervene in the Prosecution Service's policies and make them comply with the regime's interests. The Chief Prosecutor then introduced military doctrines, creating strain amongst public prosecutors and neutralising any critics of the regime.

108 Tempo, *Wawancara Mayjen Pol. (Purn) Koesparmono Irsan: Berani Nggak Polisi Menghadapi Menteri Tenaga Kerja?* (An Interview with Police Major General Koesparmono Irsan: Are the Police Brave to go Against the Labour Minister?), http://tempo.co.id/ang/min/02/42/nas1.htm, accessed 14 April 2016. See also, JPNN, *Ditanya Pembubuhan Nyo Bengseng, Andi Nirwanto Langsung Kabur* (Andi Nirwanto refused to answer the Nyo Bengseng murder case), https://www.jpnn.com/news/ditanya-pembunuhan-nyo-bengseng-andhi-nirwanto-langsung-kabur?page=1, accessed 14 April 2016.

109 In the trial, the two defendants withdraw their statement from the police dossier, since they had been giving testimony under threat of death. They confessed that they were tortured during the interrogation process Jawawa.id, Police tortured the suspects, witness in murder trial says, https://jawawa.id/index.php/newsitem/police-tortured-the-suspects-witness-in-murder-trial-says-1447893297, accessed 14 April 2016.

110 As a result of this conflict, prosecutors organised solidarity actions in each District Prosecution Service Office; they rejected police investigation dossiers and caused case backlogs for the police.

2.9 Post-military Regimes: The *Reformasi* (1999-2019)

The reform movement pushed to separate the military's role from civilian politics, which included depriving Golkar of its privileged political position in the government.[111] The People's Consultative Assembly (MPR) issued two resolutions – TAP MPR No. VI/MPR/2000 and TAP MPR NO. VII/MPR/2000 – revoking military power over the police, and repositioned the police as a civilian institution. The President's authority to control law enforcement was also reduced. Unlike the previous regime, under which the President could control the police by assigning his man as the Chief of Police, Law 2/2002 states that the President must obtain parliament's approval to appoint and dismiss the National Police Chairman.[112] The new regime made a commitment to fight corruption, and this can be seen in the enactment of Law 30/2002, which established a new, strong institution to eradicate corruption: the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*, or *KPK*). The KPK was designed as an independent institution, with a similar level of authority to that of the Prosecution Service during the Soeprapto period – the KPK would have the power to investigate and prosecute. In contrast with the police and the Prosecution Service, the KPK could investigate and prosecute corruption cases involving high-ranking officials and parliamentary members, without any obligation to get a permit from the President.[113]

Since there was a tremendous push to enforce the rule of law, the government and parliament amended the 1945 Constitution, which clearly stated a separation of powers and guarantees judicial independence. As in Article 24 of the 1945 Constitution:

> a. *The judicial power shall be independent and shall possess the power to organise the judicature in order to enforce law and justice.*
> b. *The judicial power shall be implemented by the Supreme Court, by judicial bodies operating under it in the form of public courts, religious affairs courts, military tribunals, and state administrative courts, and by a Constitutional Court.*
> c. *Other institutions with functions relating to judicial powers shall be regulated by law.*

The government also transferred the Ministry of Justice authority to manage court administration to the Supreme Court.[114] However, since the position of the Prosecution Service is not explicitly stated in Article 24, this led to confusion over whether or not the Prosecution Service is part of the executive or the judiciary (Maringka 2015; Waluyo 2015). Former Chief Prosecutor, Basrief Arief, admitted that the Prosecution Service's involvement

111 Civil servants were no longer forced to join the Golkar Party.
112 Law 2/2002 on the Police.
113 Law 30/2002 on the KPK.
114 Law 4/2004 on the Judiciary.

came quite late in the drafting discussions for Article 24. Consequently, in the amended 1945 Constitution there were no specific articles regulating the Prosecution Service's position and authority.[115] Meanwhile, during the drafting discussions in parliament for Article 24, some factions, such as the PKB (National Awakening Party), the PBB (Crescent Star Party) and Golkar, proposed specific chapters and articles on the Prosecution Service which would state the position of Chief Prosecutor as being independent from the executive power (*Naskah Komprehensif Perubahan UUD Buku VI Kekuasaan Kehakiman* 2010, 53:47, 50, 54). The parliamentary discussion minutes show that the Prosecution Service's position was designed to be part of the judicial power[116] (*Naskah Komprehensif Perubahan UUD Buku VI Kekuasaan Kehakiman* 2010, 53:74, 77, 78, 96, 316, 319). However, since other professions (such as advocates, notaries, and institutions such as the police and prison service) were also demanding inclusion as part of the judicial power, parliament accommodated this by formulating Section 3 of Article 24, which is mentioned above.

Since the President lost most of his control over the justice system during the constitutional amendment process, he exploited the Prosecution Service's vague position in the constitution, preserving its power over the IPS in the new 2004 Prosecution Service Law. The government succeeded in hindering the parliament's draft of the IPS Law, and replaced it with its own draft.[117] Unlike the parliament draft, which was dramatically adjusted to support the Prosecution Service's bureaucracy, IPS Law 2004 retains the President's control over the Chief Prosecutor and sets up the IPS as the executive body.

As the government believes that the Prosecution Service should be an executive body, it also believes that the appointment or dismissal of a Chief Prosecutor, and the length of the role's term, should be a prerogative power of the President (Article 21 of Law 16/2004 on the IPS jo. and Article 1 (2) of President Regulation 38/2010 on the Organisation of the Prosecution Service). This makes the position of Chief Prosecutor vulnerable to replacement by the government, if prosecutorial policies are not in line with the President's concerns. This was demonstrated in President Habibie's era (1998-1999), when there were tremendous demands to prosecute former President Soeharto for corruption during his presidency. As one of Soeharto's loyalists, President Habibie dismissed Soedjono C Atmonegoro from his position as Chief Prosecutor the day after Soedjono reported to

115 Interview with Basrief Arief, 2 December 2015.

116 Legislators, such as Hamdan Zoelva, Hari Mustafa, Zain Badjeber, Soetjipto, and I Dewa Gede Palguna, proposed positioning the Prosecution Service as part of the judicial authority.

117 The parliament draft introduced the secretariat general as a supporting administrative system in the prosecution process and prevented the Chief Prosecutor from becoming a member of the cabinet. See Risalah Pembahasan Undang-Undang Kejaksaan 2002-2004 (Legislative Minutes for the Prosecution Service Law).

President Habibie that the Prosecution Service had strong proof for prosecuting Soeharto for corruption. Habibie replaced Soedjono C Atmonegoro; Lieutenant General Andi Ghalib became the new Chief Prosecutor. It was later proven that, under Andi Ghalib the Prosecution Service did not take the handling of Soeharto's corruption case seriously[118] (Mangoenprawiro 1999). From 1999-2001, Marzuki Darusman, a Golkar politician, was Chief Prosecutor; he was appointed by President Abdurahman Wahid (commonly known as Gus Dur). Darusman argued that, as a civilian, a public prosecutor should not wear a uniform and badges; he asked public prosecutors to wear professional attire instead. It seems that this was one of the first initiatives to alter the military culture among public prosecutors.[119] Since President Gus Dur felt dissatisfied with Darusman's performance,[120] he appointed Baharuddin Lopa to replace Darusman as Chief Prosecutor. Lopa was a reputable public prosecutor with unshakable integrity. Gus Dur had faith in Lopa's ability and believed that, under his command, the Prosecution Service could prosecute corruption cases from the previous New Order regime. However, Lopa was in the position for only two months, because he died of heart failure during a visit to Saudi Arabia.[121] Marsilam Simanjuntak was then appointed as Chief Prosecutor.

When the political relationship between the parliament and the President heated up in February 2001, the parliament voted to impeach Gus Dur and make Megawati Soekarnoputri (Megawati) President. Megawati then appointed MA Rachman, a career public prosecutor, as Chief Prosecutor. Rachman's appointment was controversial at the time, due to the Public Servant's Wealth Audit Commission (KPKPN) alleging that Chief Prosecutor

118 The Prosecution Service prosecuted Soeharto for corruption in his capacity as foundation chairman, but not as the President who allegedly misused his authority during the New Order regime. On 11 October 1999, the prosecution service waived Soeharto's case investigation, due to no available evidence to prosecute him for corruption.

119 This initiative did not last long, since Marzuki's replacement requested that prosecutors continue to wear uniforms.

120 Marzuki Darusman reopened Soeharto's corruption case. In the Chief Prosecutor's official investigation order, Prin.096a/J.A/12/1999, Darusman gave the public prosecutor a mandate to prosecute former President Soeharto. In the indictment, the public prosecutor charged Soeharto for using his position as chairman of seven different foundations to embezzle 571 US dollars (Aditjondro 2006). Many critics (including the Minister of Justice, Yusril Ihza Mahendra, and the former Chief Prosecutor, Ismail Saleh) were disappointed with the quality of the public prosecutor's indictment. Saleh said that the indictment should align with the Chief Prosecutor's official investigation order, which focuses on Soeharto's role as President (Saleh 2001, 114–15). In the end, the court released Soeharto, due to his serious illness. Supreme Court Decision 1846K/Pid/2000 stated that, since the Prosecution Service failed to bring Soeharto to trial, due to his illness, the prosecution process should be terminated; further, the Prosecution Service should cover Soeharto's medical expenses, and bring him back to trial as soon as he had recovered.

121 Rumours were spread that the death of Baharuddin Lopa was strange, since he was in good health before leaving for Saudi Arabia. Some connected his death with the Prosecution Service's serious prosecution of big cases.

MA Rachman had not properly disclosed his acquisition of a mansion in South Jakarta. However, Megawati insisted on retaining Rachman as Chief Prosecutor. Some donors, such as the Asian Development Bank (ADB), who were assisting the Prosecution Service reform agenda, stopped their assistance programmes due to lack of political will from the administration to enforce the rule of law.

In 2004, when Soesilo Bambang Yudhoyono (commonly known as SBY) was elected President, he appointed former Supreme Judge and reputable legal aid activist, Abdul Rachman Saleh, as Chief Prosecutor. Saleh restarted bureaucratic reform within the Prosecution Service. Using his experience in reforming the Supreme Court's bureaucracy, he invited reputable reformer activists to act as a special team to promote the bureaucratic reform of the Prosecution Service. The Prosecution Service reform agenda was put into action, aiming to reorganise the bureaucracy to make it more professional and accountable. One programme focussed on preparing online case management, in order to solve caseloads and strengthen the supervision of public prosecutors working in the Prosecution Service (Saleh, 2008). The programme has not yet been launched, due to Abdul Rachman Saleh's replacement by Hendarman Supanji, the former Deputy Chief Prosecutor of Special Crimes, in 2007. Although Supanji was not seriously following Abdul Rachman Saleh's initiative to reform the Prosecution Service bureaucracy, he had issued some PERJA (Chief Prosecutor Regulations) on bureaucratic reform.

In 2009, SBY was re-elected in a second run for the presidency. He retained Supanji's position as Chief Prosecutor, without issuing a new Presidential Decree on Supanji's appointment (as would be the case for any other minister). This became problematic when a former Minister of Justice, Yusril Ihza Mahendra, who was being investigated by the Prosecution Service on a charge of corruption, challenged the legitimacy of Supanji's appointment as Chief Prosecutor in the Constitutional Court. Mahendra argued that, since the President did not issue a new Presidential Decree on Supanji's appointment in the second term of SBY's presidency, Supanji's position as Chief Prosecutor was illegitimate.[122] Mahendra believed that the Chief Prosecutor's term should be the same as a minister's term, which always depends on the President's term. The Constitutional Court approved Mahendra's argument, and decided that the term of a Chief Prosecutor should be the same as that of cabinet members, i.e. similar to the presidential term.[123] This Constitutional Court decision legally confirmed the Chief Prosecutor's position as a member of the cabinet.

President SBY went on to employ his presidential prerogative, selecting his old colleague, Basrief Arief (a former Deputy Chief Prosecutor who

122 Presidential Decree Number 187/2004 mentions the Chief Prosecutor's position as a member of the Cabinet of *Indonesia Bersatu.*

123 See Constitutional Court Decision 49/PUU-VIII/2010.

had already retired), to replace Supanji.[124] Arief continued the reform programme initiated by the previous Chief Prosecutor, and issued some PERJA on the reform programme. However, Chief Prosecutor Arief regretted his failure to reform human resource management within the Prosecution Service. This shows that the Chief Prosecutor's willingness to reform prosecution service bureaucracy was insufficient. There were still political impediments, both inside and outside the Prosecution Service, which aimed to retain the status quo of prosecution service bureaucracy in maintaining various political interests.

During SBY's administration (as confessed by former Chief Prosecutors, Abdul Rahman Saleh and Basrief Arief), the President let the Prosecution Service carry out its tasks and duties according to the law, but the Chief Prosecutor had to inform the President if the service was prosecuting a case which would have political impact on the President (Saleh, 2008).[125] However, since there were no clear guidelines on the relationship between the President and Chief Prosecutor with regard to prosecution policy, there was opportunity for the President to intervene in the prosecution process. For example, the former State Secretary Mahendra witnessed Chief Prosecutor Hendarman Supandji visiting President SBY, to receive directions about a Prosecution Service decision to investigate a corruption case.

In 2014, Joko Widodo (Jokowi) was elected as the new President. As there was legitimacy from the constitutional court for the presidential prerogative to hire and fire a Chief Prosecutor as a cabinet member, Jokowi hired M Prasetyo, a former public prosecutor and politician from the National Democratic Party (Nasdem). Critics said that Prasetyo's appointment was a case of 'pork barrel politics', in which Jokowi constructed his cabinet from different political parties, in return for their political support in the presidential election. By naming Prasetyo as Chief Prosecutor, Jokowi positioned the Prosecution Service as a political weapon, to control and warn opposition politicians against destabilising his administration (Muhtadi 2015, 365). The Prosecution Service was also used by Nasdem to coerce sub-national executives into joining the party (Power 2018, 331). In addition to political impediment by the President, the Prosecution Service now had to deal with direct intervention in the prosecution process by political parties. As the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*, or *KPK*) revealed, Nasdem politicians intervened in Gatot Pujo Nugroho's case, offering to influence the Prosecution Service to drop the corruption case against him.[126] Although there was public demand to

124 Basrief Arief worked with SBY during Megawati's Administration. SBY was the Coordinating Minister for Political and Security Affairs, and Basrief Arief was the Deputy Chief Prosecutor for Intelligence.

125 Interview with Basrief Arief, 2 December 2015.

126 Jakarta Globe, Top Prosecutor Denies Involvement Nasdem Bribery Case, https://jakartaglobe.id/news/top-prosecutor-denies-involvement-nasdem-bribery-case/, accessed 6 March 2016

reposition Prasetyo, it seems that Nasdem succeeded in convincing Jokowi not to replace Prasetyo.[127]

One member of the Prosecution Service reform team complained about Prasetyo's lack of willingness to reform the Prosecution Service.[128] Prasetyo did not persist with the previous Chief Prosecutor Arief's efforts to improve prosecution service bureaucracy. Instead, he took a step backwards by issuing policies which contradicted the Prosecution Service reform goals, such as not considering assessment results when deciding on the promotion process, and using the high official meeting to decide on a promotion. Prasetyo also reinstated the authority of the intelligence division to investigate corruption cases[129], by issuing a circular letter which repealed the PERJA regulation 011/A/JA/04/2013.[130] He also strengthened the military culture among public prosecutors, by introducing the swagger stick as a symbol of authority.[131]

2.10 Conclusion

> *"Like many other new states, Indonesia possessed no fully articulated ideology backed up by a powerful political organization. Without these, abolishing the old law could only mean a symbolic vacuum, into which chaos must rush. Or so it probably seemed."* (Lev 1973, 13)

Using the historical institutionalism approach (Fioretos, Falleti, and Sheingate 2016; Thelen 1999), this chapter discusses how temporal processes

127 Nasdem also used the media (Metro TV) to campaign for Prasetyo's success in the Prosecution Service. Metro TV organised and broadcasted the FGD (Focus Group Discussion) on the Prosecution Service, during a massive protest requesting a reshuffle of Prasetyo's cabinet in his capacity as Chief Prosecutor. See Misbahul Munir, *Mengembalikan Kepercayaan Publik Terhadap Prosecution Service* (Restoring Public Trust in the Prosecution Service), 1 December 2015, http://news.metrotvnews.com/read/2013/11/22/196472/kesadaran-keamanan-informasi-minim-permudah-penyadapan. Accessed 6 March 2016.

128 Interview with AG, 2016.

129 Former Chief Prosecutor Basrief Arief issued the PERJA, which revokes the intelligence division's authority to investigate corruption cases. Arief said that this regulation was enacted to end the conflict between prosecutors in the special crimes and intelligence divisions, when deciding whether a case can be prosecuted as corruption or not. In some cases, while the intelligence division agreed to investigate corruption cases, the special crimes division opposed investigation. As a result, there was no legal certainty for people being investigated by both divisions.

130 See the Chief Prosecutor's circular letter, SE-017/A/ JA/08/2015. As the PERJA regulation should have been repealed by a regulation of the same degree, it showed that the decision to return authority for corruption investigations to the intelligence division was intended to maintain political stability in the Prosecution Service. It seems that Prasetyo had not considered the impacts which had already been faced by suspects in the Arief period (See 3.2.3: The Prosecution Service as State Intelligence).

131 A swagger stick is a short stick or riding crop, which is usually carried by the military as a symbol of authority, https://en.wikipedia.org/wiki/Swagger_stick

influence the origin and transformation of a prosecution service, governing both political and economic relations. I therefore divide the history of the Indonesian Prosecution Service into political conjunctures when concerted efforts were made to put important new institutional frameworks in place, and periods during which those frameworks have provided a relatively stable structure for politics or policymaking.

This chapter presented a discussion of post-independence ideological contestation, showing that Indonesia's criminal justice system still has similar problems to those it suffered during the colonial period. Like other post-colonial states, Indonesia has an ambition to apply the rule of law, in order to provide its citizens with better protection and justice.[132] However, the regime's interest in maintaining political stability and public order influences the rule of law discourse, keeping it in line with so-called 'Indonesian values'. This study shows that a vague state ideology, which has been interpreted based on the regime's best interests, affects criminal justice actors' understanding of how they can exercise discretionary powers within criminal procedure.

Since late colonial times, discussion of whether criminal justice institutions should prioritise the rule of law over law and order has persisted in Indonesia. The Dutch colonial government established a dual criminal justice system, wherein the native system was designed to maintain public order; therefore, the native system actually provided less protection for native defendants. On the other hand, the European system upheld the rule of law principle, which provided more protection for European citizens. Since there were enormous protests against this criminal justice division,[133] the Dutch administration responded by introducing a new criminal procedure (*Herziene Inlandsch Reglement/HIR*), intended to provide better protection for native defendants, compared to the previous procedure. The Dutch administration began to modernise the prosecution process in the native courts (*Landraad*), repositioning native prosecutors (*Jaksa*s), placing them under the control of assistant residents and public prosecutors with a Dutch legal background (*Openbaar Ministrie*).

The Japanese military occupation of the Netherlands East Indies in 1941 interrupted Dutch efforts to modernise the native criminal justice system. Unlike the Dutch, the Japanese colonial administration was led and controlled by the military. Since the Japanese were facing the Pacific War, colonial bureaucracy was militarised. The Japanese recruited one million natives and trained them to assist them in the coming war. The

132 Article 1 (3) of the Constitution.

133 There were many protests against the native criminal justice system. In 1917, for instance, some prominent leaders of Sarekat Islam (the most significant native organisation in the Netherlands East Indies), such as O.S Tjokroaminto and Semaoen, complained about unjust treatment by justice actors, who could easily detain natives in a pre-trial process, with insufficient evidence (Ravensbergen 2018, 379–80).

justice system was also adjusted for this reason. The Japanese applied the HIR as a criminal procedure, but they adjusted the procedure in order to serve and maintain public order. The Japanese repealed the position of Chief Prosecutor, and merged the police and prosecution services together under the title of Ministry of Security. Since the Japanese incarcerated most of the Dutch legal officials (including the public prosecutors), the military administration had to recruit natives to work as public prosecutors.

After Indonesia gained independence in 1945, the Indonesian government seems to have committed to fostering the rule of law in its criminal justice system. The new government restructured the position of Chief Prosecutor (which had been repealed by the Japanese), to become the leader of the Prosecution Service. The administrative position of Chief Prosecutor fell under the Minister of Justice, but the Chief Prosecutor was also a part of the judiciary, as in the Dutch colonial period. Chief Prosecutor Gatot Taroenamiharjo, who obtained his doctoral law degree from Leiden University, was appointed as the first republican Chief Prosecutor. Since the new republic suffered from a lack of professional lawyers with a thorough understanding of Dutch criminal procedure, the HIR was used to govern criminal procedure. However, as there was a revolutionary war from 1945 to 1949, the Prosecution Service could not operate effectively.

After the revolutionary war ended in early 1950, criminal justice actors (including the Prosecution Service, courts, and police) could start to operate properly. The new government adjusted criminal procedure in Emergency Law 1/1951, by reclaiming the term *Jaksa* as the translation of *Officieren Van Justitie* and *Magistraat* in the HIR. The government renamed the HIR as *Reglemen Indonesia yang Diperbarui* (RIB, or Amended Indonesian Regulation), and it became the official criminal procedure. However, since the Indonesian government dreamed of its own procedure, Emergency Law 1/1951 positions the RIB as guidance for criminal justice actors when dealing with cases. Actors can waive the RIB if they think the procedure is not in line with their interests. This provision had far-reaching consequences later on.

However, since criminal justice actors (like the police and Prosecution Service) had courageous leaders who insisted on maintaining and fostering the rule of law (Feith 2007, 320), the criminal justice system began to operate well, and reached a golden age (Lev 2007, 238). As Lev (1973) argues, the elite tends to play an important role in imposing new institutional models on a society, whether or not the society itself is receptive (Lev 1973, 2), and it seems that, during this period, Chief Prosecutor Soeprapto succeeded in upholding the rule of law in the prosecution process. The Prosecution Service could choose to use the RIB or the SV (the Dutch criminal code), according to which of these offered better protection for the defendants of a case. Chief Prosecutor Soeprapto resolved criminal legal pluralism, by advising the public prosecutor to exercise the opportunity principle when dealing with criminal cases which had already been settled by *Adat* criminal law (Yahya 2004, 33-34).

The rise of military-political power in 1959 halted this effort. The President dismissed Chief Prosecutor Soeprapto and National Police Chairman Soekanto Tjokrodiatmodjo from their positions. From that time onwards, the Prosecution Service and police were militarised. The public prosecutor was indoctrinated with military values, to ensure their loyalty to the regime. The government applied colonial law with Indonesian-based interpretations, while it tried to create Indonesian legal norms to replace the colonial model (Massier 2008, xx). In the Guided Democracy era (1959-1965), these norms were proposed and established as Indonesian legal interpretations, by Minister of Justice Sahardjo.

Sahardjo introduced the *Pengayoman* concept.[134] According to this concept, the rule of law must be based on community wisdom, which is represented by the leader's wisdom. During Guided Democracy, the idea of the President as the greatest leader and wisest man in the community was promoted. Therefore, the President's discretion became the law itself (Sahardjo 1963). The military New Order regime (1965-1999), expanded this *Pengayoman* concept further, not only in terms of legal interpretation but also in terms of social and political understanding. Leaders had the power to interpret the law, based on their own positions as representatives of public wisdom. Thus, a leader's discretion was considered to be a demonstration of both policy and wisdom, and it was used as a reason to legitimately apply or ignore rules. Hence, this power to use unlimited discretion affected law enforcement. The regime controlled prosecution policies to suit its own political interests. In general, it seems that Indonesian criminal justice actors emphasised law and order in dealing with criminal cases.

This situation was unlikely to change after the 1945 Constitution was amended in the post-authoritarian military regime. Although the new constitution guaranteed judicial independence, Prosecution Service Law 2004 makes the Chief Prosecutor's position dependent on the President's political power. In addition, the Prosecution Service retains the military culture set up by previous regimes to control public prosecutors. In the next chapter I will show that these toxic organisational norms have succeeded in shaping the Prosecution Service's structures, values and practices, and promoting rule-breaking as long as it is in line with the government's political interests (cf. van Rooij and Fine 2018).

134 The *Pengayoman* is symbolised by the Banyan Tree, and it represents both protection and succour (Lev 2000, 119).

3 The Bureaucracy of the Indonesian Prosecution Service: Military Culture, Hierarchical Control and Human Resource Management

3.1 Introduction

In order to understand to what extent public prosecutors can carry out their power within the criminal justice system, it is essential to look at non-legal factors. As I discussed in the previous chapter, the Indonesian Prosecution Service (IPS) has been designed to serve the government's political interests since the Guided Democracy regime was in place. Due to the authoritarian Guided Democracy and New Order regimes positioning the Chief Prosecutor as a member of the cabinet, the Prosecution Service became dependent on the President's political decisions when managing its prosecution policies.

This chapter discusses the internal organisation of the Prosecution Service. It starts with an analysis of Prosecution Service culture and its structure, before looking at how the Prosecution Service manages its human resources and finances. I will discuss key features of the prosecutors' organisation, including: (1) its structure, which is both national and militaristic; and (2) its vague division of labour between frontline operators, mid-level managers, and top-level executives. Subsequently, I will elaborate on the consequences of the Prosecution Service's military culture and its status as a state agency, as opposed to public prosecutors being employed as civil servants.[1] Although the Prosecution Service has only limited resources, the IPS succeeds in forcing its public prosecutors to serve the organisation's mission (i.e. the regime's interests) by instilling a military culture. However, since the culture does not fit the prosecutor's role as a criminal justice actor, I will elaborate on the reasons why the Prosecution Service finds it difficult to manage its human resources.

Since the Prosecution Service treats its operators as soldiers, who are not allowed to exercise discretion, most prosecutors prefer to gain a position as a manager, in order to reach a higher position. However, as the number of operators is insufficient, most District Prosecution Office managers play a double role as public prosecutors. As Wilson (1989) has pointed out, when

1 Unlike the police, army and judges, who are excluded from civil servant status, Law 5/2014 on State Civil Administration positions prosecutors as civil servants. This status influences human resource management within the Prosecutor's Office. *FGD Pusat Penelitian dan Pengembangan Kejaksaan Agung: Disparitas Kesejahteraan Antar Aparatur Penegak Hukum* (Focus Group Discussion of the Centre of Research and Development of the Supreme Prosecution Office: Wealth Disparities between Law Enforcers), https://kejaksaan.go.id/unit_kejaksaan.php?idu=28&idsu=35&id=4175, accessed 8 April 2017.

carrying out their duties under such conditions operators will depend heavily on circumstances and surrounding factors; their work patterns will change from law enforcement to the mere handling of a situation (Wilson 1989, 36, 37). This chapter also discusses how the circumstances, beliefs (doctrines), interests, and organisational culture in the Prosecution Service contribute to shaping prosecutors' working patterns.

3.2 The Één en Ondeelbaar Doctrine and Organisational Culture

"…culture shapes behavior at law firms and in prosecutors' offices." (Fitzgerald 2009, 14).

As I discussed in the previous chapter, the Guided Democracy authoritarian regime positioned the Chief Prosecutor as 'the President's man'. Moreover, the Prosecution Service Law 1961 positioned the Chief Prosecutor as the highest prosecutor,[2] with the authority to control all other public prosecutors. The New Order military regime reorganised the Prosecution Service's organisation and its culture. The regime stressed that loyalty was the most important value for public prosecutors. Throughout the New Order military administration, most of the Chief Prosecutors had a military background; they therefore imposed a military culture on IPS bureaucracy. Not surprisingly, those who worked in the Prosecution Service perceived the Chief Prosecutor to be like the Commander of an army, while the operators were perceived as soldiers.

The first Chief Prosecutor under the New Order regime, Army Lieutenant General Soegih Arto (1966-1973), reorganised the Prosecution Service's bureaucracy and emphasised discipline for prosecutors (Abdurrasyid 2001, 238). He also required that prosecutors should wear uniforms. Since that time, public prosecutors have worn uniforms and badges during their daily activities, both inside and outside court. Soegih Arto also applied military ranking to the Prosecution Service.[3] He copied the army registration system, basing a prosecutor's ID number on their academic background. Besides having a *Nomor Induk Pegawai* (NIP), or civil servant ID number, a public prosecutor also has a *Nomor Registrasi Pokok* (NRP), or military registration number.[4] Chief Prosecutor Soegih Arto invented

2 *Penuntut Umum Tertinggi*

3 Prior to 1961, public prosecutors were given a titular military rank, because they played a role as military prosecutors. See 2.6: Parliamentary Government.

4 Number 6 means that a prosecutor already has law degree when s/he applies for a job in the Prosecution Service, while number 5 means s/he has a diploma, number 4 means s/he is a senior high school graduate, number 3 means s/he is a junior high school graduate, and number 2 means s/he an elementary school graduate. For instance, NRP 3795844 was the number for a former Head of the East Java High Prosecution Service, MH. This shows that MH used his junior high school certificate to apply for an administrative staff position in the Prosecution Service. Prior to 2015, administrative staff could apply to be prosecutors.

the prosecutors' values: 'Honesty, Friendliness and Responsibility' *(Panitia Penyusunan dan Penyempurnaan Sejarah Kejaksaan* RI 1985, 237).

Chief Prosecutor Major General Ali Said (1973-1981) continued Soegih Arto's initiatives to militarise the IPS. He developed the set of prosecutor values invented by Soegih Arto, and turned it into the *Satya Adhi Wicaksana* doctrine, adopting concepts from Javanese Madjapahit Sanskrit: *Satya* means loyalty, *Adhi* implies professionalism, and *Wicaksana* means to use power wisely.[5] The *Satya Adhi Wicaksana* is commonly referred to as the *Tri Krama* or *Trapsila Adhyaksa.* Ali Said also created *Panji Adhyaksa*[6] (the IPS military flag), and named the military ranks of prosecutors, based on the Majapahit Javanese concepts for prosecutors: executives were called *Pati Adhyaksa*, managers were called *Wira*, and operators were called *Dharma* (*Panitia Penyusunan dan Penyempurnaan Sejarah Kejaksaan* RI, 1985, p. 237,296).

The use of Majapahit Javanese Kingdom[7] terms can be understood as an attempt by the IPS to engender *Bapak*-ism (paternalism) among prosecutors. The Prosecution Service indoctrinates Javanese paternalism by emphasising loyalty and politeness to seniors (Lolo 2008). This feature also resembles the way in which Soeharto managed the New Order state (Bourchier, 2015; Case, 2002). Moreover, the Prosecution Service applies the *Satya Adhi Wicaksana* doctrine as a fundamental value for prosecutors while they are carrying out their tasks and powers. Chief Prosecutor decisions 052/J.A/8/1979 and 030/JA/1988 both state that, as state guardian a prosecutor must follow the doctrine when enforcing law and order in the justice system.

The prosecutor's executives and managers promote the *Tri Krama Adhyaksa* doctrine as a 'sense of mission'[8] within the Prosecution Service. However, Chief Prosecutor Decision 030/JA/1988 states that the *Tri Krama Adhyaksa* doctrine must be applied and interpreted in line with the IPS ethos, which adopts the principle of één en ondeelbaar (an indivisible whole), inherited from the Dutch Colonial Prosecution Service. Soepomo argues that this principle was applied in order to manage Prosecution Service administration and prosecutorial consistency; it was therefore

5 Chief Prosecutor Decision 074/J.A./7/1978 jo. Chief Prosecutor Decision 052/J.A./8/1979 and Chief Prosecutor Decision 030/J.A./1988.

6 *Panji Adhyaksa* is perceived to be the sacred heirloom of the Prosecution Service. Articles 138, 139 and 140 of Chief Prosecutor Regulation 016/A/JA/07/2013 specifically regulate maintaining the *Panji Adhyaksa*. See also Chief Prosecutor Decision (Keputusan Jaksa Agung/KEPJA) 064/J.A/7/1987, 9 July 1987, on procedure for handling the *Panji Adhyaksa.*

7 Javanese are the largest ethnic group in Indonesia. Javanese symbols dominated both state mythology, under Soekarno, and the centralisation of power, under Soeharto. The predominantly Javanese *junta* kept Javanese values dominant within Indonesian cultural ideology (Garth 2010; Trivadi 2015; Young 1976).

8 'Sense of mission' means widespread agreement within an organisation, with regard to how tasks should be executed (Wilson 1989, 7, 26).

nothing to do with a strict hierarchy.[9] This principle also applies within the current Dutch Prosecution Service, as follows:

> *"…het OM is één en ondeelbaar. Dat wil zeggen dat in een zaak niet steeds dezelfde officier hoeft op te treden voor de rechtbank, omdat de officier van justitie wordt geacht de rechtsorde te vertegenwoordigen. Hij behartigt het algemeen belang, en dat kan door iedere officier van justitie evengoed gebeuren."* (Geelhoed 2013, 234)[10]

As mentioned above, the één en ondeelbaar principle means that although prosecutors share an equal position throughout the prosecution process, every prosecutor must be consistent and bound to other prosecutors' indictments. However, the Indonesian Prosecution Service defines één en ondeelbaar as legitimating its hierarchical and military structure, as follows;

"*One fundamental reason for carrying out duties and authority in the prosecution process is to aim to maintain prosecution policies themselves, in order to show the Prosecution Service's characteristic unity of thoughts, attitudes, and performance*." (Elucidation of Article 1 (3) Prosecution Service Law)

A more technical definition of the doctrine also can be found in Article 65 of Presidential Regulation 38/2010 jo. Presidential Regulation 29/2016, which states that public prosecutors at all levels – in the Supreme, High and the District Prosecution Offices – must perform their tasks and powers based on the één en ondeelbaar doctrine. Since the Chief Prosecutor is also the Supreme Prosecutor, executives and managers at every level report to the Chief Prosecutor regarding the success of the prosecution process. Therefore, the Chief Prosecutor is above the reproach of prosecutors. In this case, it is not surprising that prosecutors might consider themselves to be representatives, or even alter egos, of the Chief Prosecutor. They believe that they are only executing the Chief Prosecutor's orders, which come directly from their leader (Surachman & Hamzah, 2015, p. 282).

The Chief Prosecutor's position as Supreme Prosecutor is designed to ensure a strict hierarchical structure within the Prosecution Service. The Chief Prosecutor has a responsibility to lead, supervise and control all prosecutors, in line with the Prosecution Service's policies. The IPS applies the één en ondeelbaar doctrine, not only in its bureaucratic administration, but also when managing the behaviour of its prosecutors, which can be evidenced by their attitude and performance (Article 65 of Presidential Regulation 38/2010). Article 4 of Chief Prosecutor Regulation (*Peraturan Jaksa Agung/PERJA*) 016/A/JA/07/2013 states that every prosecutor must be able to demonstrate unity of thought, order and conduct. Moreover, it

9 Soepomo said that the Prosecution Service is a unit that cannot be divided; its members are bound to work together to achieve the same goal. The behaviour of one member binds other members to that behaviour (Soepomo 1997, 136).

10 This principle is applied in the Netherlands, in order to maximise coordination between the investigator and prosecutor. As a result, there is a uniformity between the application of criminal law and that of criminal procedure (Bosch et al. 2011, 103).

has been shown that the Prosecution Service applies the één en ondeelbaar doctrine when controlling prosecutors' performance in the prosecution process, in order to align it with their leadership perspective. Hence, only leaders have the right to exercise discretion (Kristiana 2010, 279).

Taken together, these results suggest that the IPS applies the één en ondeelbaar doctrine in order to revoke public prosecutors' independence. The Prosecution Service emphasises and promotes the most important value in this doctrine, namely prosecutors' loyalty to the institution and its leaders, via military indoctrination. This can be seen in the obligation to use military symbolism, and the positioning of operators as soldiers. Although Chief Prosecutor Major General Hari Suharto defines the independence of prosecutors in Decision 030/JA/1988, the definition is not actually designed to give prosecutors independence. In this regard, Chief Prosecutor Decision 030/JA/1988 defines 'independence' as both the bond between prosecutors and their obligation to serve the state and society, as follows:

> "*Independence means that those who work in the Prosecution Service are aware that, in carrying out its tasks, the Prosecution Service is the only state law enforcement institution with a mandate and trust from the public, state and government to be the public prosecutor. Therefore, those who work in the Prosecution Service must improve their knowledge and capabilities.*"[11]

The regulation of public prosecutors' independence can only be found in Article 8 of Chief Prosecutor Regulation 014/A/JA/11/2012 on the Prosecutors' Code of Conduct, stating as follows:

> 1) *Prosecutors carry out their duties, functions and authority:*
>   a. *independently, regardless of government influence, or other political influences; and*
>   b. *unaffected by any individual, group, public, or media interests.*
> 2) *Prosecutors are justified and protected when they refuse to carry out any orders from superiors that may violate legal norms.*
> 3) *A prosecutor's refusal (as previously mentioned) shall be made in the form of a written statement, indicating their reasons for refusal. Their refusal shall be submitted to their superiors and the superiors' leaders.*

Most of the operators that I interviewed did not know about the above provision, guaranteeing their independence. Their understanding is that a superior's order is absolute and must be obeyed, so they perceive their posi-

11 *Mandiri, berarti setiap warga Kejaksaan menyadari di dalam pelaksanaan tugasnya bahwa Kejaksaan adalah satu-satunya badan negara Penuntut Umum dibidang penegakan hukum yang diamanahkan dan dipercayakan masyarakat, Negara dan Pemerintah yang mewajibkan setiap warganya agar senantiasa meningkatkan mutu pengetahuan dan kemampuannya.*

tion as being similar to a soldier receiving orders from their commander.[12] Operators are afraid to reject orders from their superiors, since it will put their career at risk. According to the above article, prosecutors can reject orders from their superiors only if the order violates legal norms. However, the refusal procedure mentioned in the article shows that, although operators have the power to decide whether or not an order violates legal norms, they must consult their superiors about their decision. The article also indicates that prosecutors should obey orders from their superiors, even if the order violates professional ethics, as long as there is no violation of legal norms.

The Prosecution Service enforces military discipline for prosecutors via several activities, such as weekly ceremonies and marching, and daily parades. The Prosecution Service maintains its structure via ranking, all ranks being graded on a numerical basis. High-ranking prosecutors use stars as their insignia, middle-ranking prosecutors use gold jasmine buds, and officers use gold bars, all of which are copied from military ranking. The oversight mechanism is carried out to ensure that prosecutors have similar attitudes, thoughts, and actions to the Chief Prosecutor in carrying out their duties. Like military leaders, prosecutorial executives in the High and District Prosecution Offices are responsible for supervising their subordinates down to two levels below their own rank. If the subordinate makes a mistake, or behaves in an inappropriate manner, they will also be punished.[13]

The impact of this strict control of operators by prosecutorial managers is that most do not believe that they have the authority to analyse the substance of criminal cases. Thus, the operator's decisions during the prosecution process may not be carefully analysed, since most of the decisions are made by managers (cf. Price Water House Coopers and British Institute Of International and Comparative Law 2001, 29).

3.3 The Prosecution Service Structure and Hierarchical Control

Prior to 1961, the structure of the Indonesian Prosecution Service was similar to the Dutch Prosecution Service model. The prosecution office was structured to serve the judiciary. The District Prosecution Office was attached to the District Court, and was led by the Head of the District Prosecution Office. The *Advocaat-Generaal* (or High Prosecutor) led the High

12 As I observed during my fieldwork, military manners apply to prosecutors' daily habits. Operators call the Head of General Crimes Division in the District Prosecution Office 'Commandant'. In a consultation meeting for instance, I heard operators make statements like "*ijin*" ("permission to speak") or "*siap salah*" when starting a conversation with their manager. The term *siap salah* is commonly found in the Indonesian military, and it translates literally as "no excuse, Sir". Even when no mistakes have been made by operators, this phrase is usually stated before a discussion can begin.

13 See 3.4.3: Supervision

Prosecution Office, which was attached to the appeal courts (*gerechtshof*). Prosecutors in the High Prosecution Office carried out appeal cases and filed cessations with the Supreme Court. The Supreme Prosecution Office was attached to the Supreme Court, and it was led by the Chief Prosecutor, who was responsible for managing prosecution policy. When the government included the Prosecution Service as a part of the executive (in Prosecution Service Law 15/1961), the structure of the IPS was formed to serve the government's interest. This structure was retained in Law 5/1991, and in the current Prosecution Service Law 16/2004.

The Prosecution Service consists of one Supreme Prosecution Office in Jakarta, with jurisdiction over the entire territory of the Republic of Indonesia,[14] 31 High Prosecution Offices with provincial jurisdiction, 393 District Prosecution Offices with district, municipal or city-wide jurisdiction,[15] and 86 Sub-District Prosecution Offices.[16] Prosecution Service staff include 9,903 public prosecutors[17] and 12,875 administrative staff[18] (Kejaksaan Agung 2016, 38).

Since the public prosecution function not only deals with criminal prosecution, but also operates as a national state intelligence institution guarding public order,[19] the number of prosecutors mentioned above is likely to be insufficient. In addition, the Prosecution Service applies militaristic bureaucracy, which affects the management of a prosecutor's career. Since high-ranking public prosecutors with considerable experience cannot work in the District Prosecution Office, top-ranking prosecutors accumulate in the Supreme Prosecution and High Prosecution Offices. This can be seen in the percentage of public prosecutors concentrated in the Supreme Prosecution Office, i.e. 11%, which is equivalent to the number of prosecutors distributed throughout the 55 District Prosecution Offices on Borneo.[20] As a result, in many places outside Java prosecution offices suffer from a lack of prosecutors.

Article 3 of Law 16/2004 states that the Prosecution Service at all levels – District, Provincial and Supreme Prosecution Office – should adhere to the één en ondeelbaar (an indivisible whole) principle.[21] This principle reinforces the hierarchical structure of the prosecution service's bureaucracy, wherein the Prosecution Service is ultimately managed by the Supreme

14 Indonesia is the largest archipelago in the world, covering an area of 904,569 square kilometres (about 741,000 square miles) – about forty-six times the size of the Netherlands.

15 Presidential Regulation 38/2010 jo. 29/2016 divides District Prosecution Offices into two types: A and B. The division is based on the number of cases, the complexity of problems being dealt with, or the decision of the Chief Prosecutor.

16 The Sub-District Prosecution Offices are located in remote areas.

17 6,965 men and 2,949 women.

18 8,532 men and 4,523 women.

19 See 4.2.3: The Public Prosecutor as State Intelligence

20 Borneo (or Kalimantan) island covers an area of 743.330 square kilometeres, which is equivalent to 17 times the area of the Netherlands.

21 See Article 65 of Presidential Regulation 38/2010.

Prosecution Office, not only with regard to prosecution policies, but also concerning prosecutorial discretion. This principle is often associated with the Chief Prosecutor's position as the highest public prosecutor, who controls all prosecutorial tasks and powers[22] (Maringka 2015, 49-51). Therefore, the organisational structure of the Supreme Prosecution Office requires a large number of public prosecutors, because it is so complex. As found by the IPS reform team, this structure has an impact on administrative red tape, because the Supreme Prosecution Office has at least seven layers, from the top managerial level to that of the operators (Komisi Hukum Nasional 2005a, 45). In addition, the Chief Prosecutor supervises and controls eleven divisions in the Supreme Prosecution Office,[23] as illustrated in the following figure:

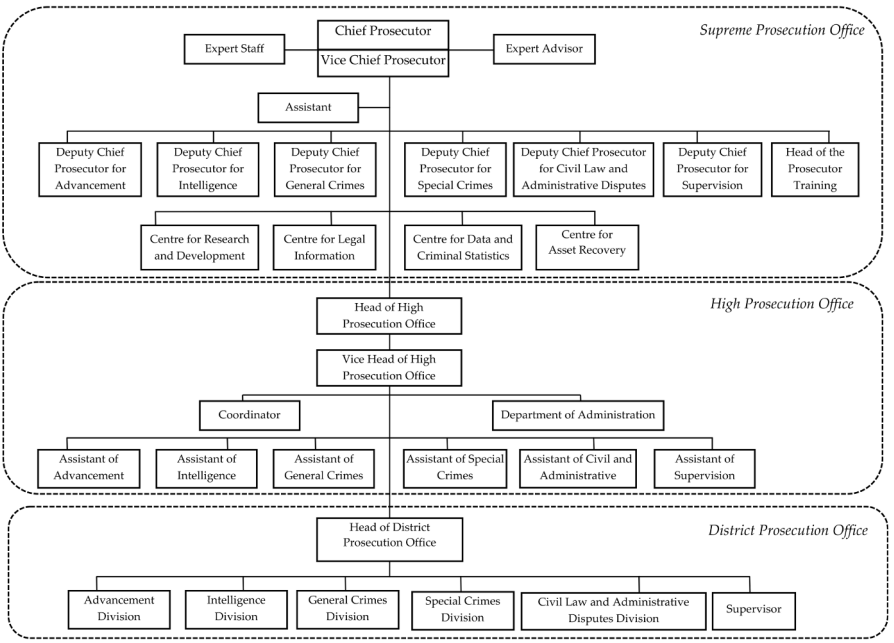

Figure 2: The existing organisational structure of the Prosecution Service[24]

22 A seminar held by the Prosecution Service agrees upon a condition in which public prosecutors in *Komisi Pemberantasan Korupsi* (KPK, or the Commission of Corruption Eradication) are not under the control of the Chief Prosecutor, but are instead under the control of the Chairman of the KPK. This can be seen as a violation of procedural law, and a basis for the principle of *een en ondeelbaar* (the Prosecution Service as an indivisible whole) which is mentioned in Article 2, Section 3 of the Prosecution Service Law 16/2004. See *Kejaksaan RI, Seminar Hari Bhakti Adhyaksa 2012, Eksistensi Lembaga Penegak Hukum Ad Hoc ditinjau dari Sistem Peradilan Pidana the 2012 Adhyaksa* (Day Seminar, The Existence of Ad Hoc Law Enforcement Agencies and the Criminal Justice System), https://kejaksaan.go.id/unit_kejaksaan.php?idu=28&idsu=39&id=3403, accessed on 3 February 2017.

23 Chief Prosecutor Regulation 006/A/JA/07/2017.

24 Chief Prosecutor Regulation PER 009/A/JA/01/2011 jo. PER 006/A/JA/3/2014.

3.3.1 The Supreme Prosecution Office and its Authority

The Supreme Prosecution Office is where management of the Prosecution Service is centred. The Supreme Prosecution Office has the power to impose disciplinary sanctions on prosecutors, in their capacity as civil servants. Similar to the structure of the Prosecution Service during the authoritarian military regime, the existing structure of the Prosecution Service is hierarchically organised and centralised. Law 16/2004 on the Prosecution Service maintains the 1961 and 1991 Prosecution Service Laws defining the basic structure of the Prosecution Service. The Chief Prosecutor is the highest public prosecutor and the most person with most responsibility in the Prosecution Service; they control all the duties and powers of the Prosecution Service (Article 18 (1)):

> "*[T]he Chief Prosecutor is responsible for the independent prosecution process, for the sake of justice based on the law. Thus, as leader of the Prosecution Service, the Chief Prosecutor can fully formulate and control the mission and policies of prosecution.*"[25]

Furthermore, the Chief Prosecutor normatively appoints every single prosecutor in the country. He also decides on all promotions, demotions and dismissals of public prosecutors, throughout the whole system. Therefore, the executive prosecutors who assist the Chief Prosecutor in managing the IPS have significant authority to determine a prosecutor's career development.

The function of a Vice Chief Prosecutor is not clearly regulated in the Prosecution Service Law 2014. Art 18 (3) states that the Chief Prosecutor and Vice Chief Prosecutor are the duumvirates. Presidential Regulation 38/2010 jo. 29/2016 on the Organisation of the Prosecution Service and Chief Prosecutor Regulation 006/A/JA/07/2017 do not specifically mention the duties and authority of the Vice Chief Prosecutor. The provisions only state that the Vice Chief Prosecutor's tasks and powers are merely based on the Chief Prosecutor's delegations; for example, leading bureaucratic reform of the Prosecution Service.[26] However, when the Chief Prosecutor is not present due to personal issues, or is out of office, the Vice Chief Prosecutor can stand in for the Chief Prosecutor. Furthermore, as long as the Chief Prosecutor is in the office and the Deputy Chief Prosecutors are actioning other tasks, the Vice Chief Prosecutor perceives that he has no prestigious tasks.

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25 See Elucidation of the Prosecution Law 2004.

26 Article 19 of Chief Prosecutor Regulation 049/A/J.A/12/2011 on Staff Careers in the Prosecution Service states that the Vice Prosecutor is also Chairman of the Board of Advisors on Position and Rank (BAPERJAKAT).

The Vice Chief Prosecutor's leadership regarding bureaucratic reform, as delegated by the Chief Prosecutor, is not assumed to be a prestigious task. Therefore, the Vice Chief Prosecutor's position is often left vacant.[27] Some Vice Chief Prosecutors even apply for early resignation before their term ends.[28] As a result, the Prosecution Service faces difficulty in managing the agenda which is already planned, and in adapting to challenges in law enforcement practice (Tim Sosialisasi dan Penyusunan Profil Kejaksaan RI 2025 Program Reformasi Birokrasi Kejaksaan 2009, 15).

A Chief Prosecutor is assisted by six deputies and one Head of the Prosecutorial Training Agency, all of whom are appointed and dismissed by the President, based on the Chief Prosecutor's advice.[29] The six Deputy Chief Prosecutors each have their own specific type of authority, as follows: The Deputy Chief Prosecutor for Advancement, The Deputy Chief Prosecutor for Special Crimes, The Deputy Chief Prosecutor for General Crimes, The Deputy Chief Prosecutor for State Intelligence, and The Deputy Chief Prosecutor for Civil Law and Administrative Disputes.

To be able to serve as a deputy, a prosecutor must have previous experience of serving as Head of the High Prosecution Office, or at a similar rank. Nevertheless, the 2004 Prosecution Service Law also provides an opportunity for non-prosecutors to serve as deputies, with certain conditions attached.[30] Under the New Order regime, the position of Deputy Chief Prosecutor for Intelligence was always given to high-ranking military officers, who were directly appointed by the President.[31]

The IPS cannot change its organisational structure without approval from the President and Minister for Administrative and Bureaucratic Reform.[32] The Chief Prosecutor also needs to obtain presidential authorisation to appoint and dismiss a Vice Chief Prosecutor and deputies of the Chief Prosecutor.[33] As this process takes time, these posts are often

27 Kompas, *Reformasi Birokrasi di Kejaksaan Dianggap Sulit karena Tak Ada Wakil Jaksa Agung* (Bureaucratic reform of the IPS is believed to be difficult because there is no Vice Chief Prosecutor), https://nasional.kompas.com/read/2016/07/24/19011601/reformasi.birokrasi.di.kejaksaan.dianggap.sulit.karena.tak.ada.wakil.jaksa.agung, accessed on 13 February 2017; and *Fahdi Fahlevi, Jabatan Wakil Jaksa Agung Akhirnya Diisi Arminsyah Setelah Setahun Kosong* (the Vice Chief Prosecutor position was finally filled by Arminsyah, after remaining vacant for a year), http://www.tribunnews.com/nasional/2017/11/15/jabatan-wakil-jaksa-agung-akhirnya-diisi-arminsyah-setelah-setahun-kosong, accessed on 13 February 2017.

28 Interview with a former Vice Chief Prosecutor, December 2015.

29 Article 24 (1) of the Prosecution Service Law 2004.

30 Article 24 (3) of the Prosecution Service Law 2004.

31 Ali Said, for instance, was appointed directly by President Soeharto to fill the position of Deputy Chief Prosecutor for Intelligence (Abdurrasyid, 2001, pp. 243–245).

32 Before the KPK law was amended through Law 19/2019, Articles 25 (2) and 27 (4) of Law 30/2012 allowed the KPK to appoint its officers and manage its structure independently, through KPK regulation. See also, KPK Regulation 01/2015.

33 Articles 23 and 24 of Law 16/2004 on the IPS.

vacant.[34] The organisational design of the Prosecution Service in the 2004 Law on the Prosecution Service is the same as that of the Ministry, which is politically dependent on the President.[35] The selection process for the National Police Chairman is better than the Chief Prosecutor's appointment, in terms of checks and balances, because the legislative is involved in selecting the Police Chairman. In comparison with selection of the KPK's commissioners, who are elected by an independent committee via a transparent process, the Chief Prosecutor's appointment is same as the selection of ministers,[36] which is carried out based on the President's political interests.

The Chief Prosecutor's independence will significantly influence the prosecution process. Unfortunately, the guarantee of Prosecution Service independence in the Prosecution Service Law is a mere formality, as if the law were already in line with the 1945 Constitution:[37]

> "*The Chief Prosecutor must report their responsibility to the President, and present a responsibility report in a parliament meeting.*"[38]

This article has indirectly created the opportunity for the President's and parliament's intervention in the Prosecution Service. According to the former Deputy Chief Prosecutor for Special Crimes, Marwan Efendi, being given the Chief Prosecutor position as the President's subordinate means that the Chief Prosecutor must demonstrate his dedication, loyalty, and credibility, by implementing and securing the President's instructions (Effendy 2005, 125).

In any case, parliament uses meetings with the Chief Prosecutor to intervene in cases that are carried out by the Prosecution Service. In some cases, members of parliament attempt to force the Chief Prosecutor to prosecute or dismiss cases related to their interests. For example, during the 19 January 2016 meeting, the GOLKAR and GERINDRA factions asked the Chief Prosecutor to halt the investigation of the Speaker of the House of Representatives, Setya Novanto, as the IPS was investigating him for an alleged abuse of power relating to his position as House Speaker, and for his alleged involvement in a conspiracy involving falsely citing the names of

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34 *Tempo.co, Sudah 6 Bulan Posisi Jaksa Agung Muda Pengawasan Kosong*, (The position of Deputy Chief Prosecutor for Supervision has been vacant for 6 months), https://nasional.tempo.co/read/664689/sudah-6-bulan-posisi-jaksa-agung-muda-pengawasan-kosong, accessed 4 February 2017.

35 Compared to the Prosecution Service, the KPK and police have more power to manage their own organisations.

36 See Articles 22 and 24 of Law 39/2008 on the Ministry.

37 Article 24 of the Constitution guarantees the independence of judicial institutions, such as courts and the IPS.

38 See the elucidation of the Prosecution Service Law and compare it with the KPK responsibility model in Article 20 of the Law 30/2002, which states that the KPK is responsible for the public and should deliver its reports transparently and regularly to the President, parliament, and the Financial Audit Board.

President Joko 'Jokowi' Widodo and Vice President Jusuf Kalla. Because the IPS relies on the political process in parliament to approve its operational budget, it seems that it is hard for them to ignore this type of intervention.[39]

Since there is no provision on the Chief Prosecutor's term, his political position is more vulnerable than a Police Chairman. The President does not need complicated procedures involving parliament when s/he wants to appoint or dismiss the Chief Prosecutor.[40] Thus, the political configuration of cabinet members creates a hostile working relationship between the Chief Prosecutor and his deputies. For example, in 2016 a rumour was spread that the President wanted to reshuffle Chief Prosecutor Prasetyo, because he was allegedly involved in a graft case committed by his Nasdem colleague.[41] KPK caught the Nasdem party Secretary General, Patrice Rio Capella, in the act of assisting a corruption suspect who wanted to get his case dismissed by the Supreme Prosecution Office.[42] However, Prasetyo was allowed to retain his position as Chief Prosecutor, because of political support from the Nasdem party. Since Prasetyo was aware that Deputy Chief Prosecutor for Supervision, Widyopramono, had been nominated to replace him, Prasetyo seemed reluctant to give Widyopramono more of a forum within the Prosecution Office.[43]

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39 *Kompas, Saat Jaksa Agung disidang Komisi III DPR* (The Chief Prosecutor was tried by Commission III of the DPR), http://print.kompas.com/baca/2016/01/31/Saat-Jaksa-Agung-Disidang-Komisi-III-DPR, accessed on 16 February 2016. Several months later, on April 15 2016, the Prosecution Service decided to stop this case investigation, because of the political obstacles it faced during the process of investigation. See *Lalu Rahadian, Kasus Pemufakatan Jahat Setya Novanto Dihentikan Sementara* (The case of Setya Novanto's conspiracy is temporary terminated by the IPS), https://www.cnnindonesia.com/nasional/20160415151743-12-124221/kasus-pemufakatan-jahat-setya-novanto-dihentikan-sementara, accessed on 16 February 2016. Novanto was a politician who was known to be legally immune. Later on, Novanto was prosecuted by the KPK for another corruption case. Novanto was then sentenced to 15 years in prison, in an electronic ID card case. Adinda Normala, Setya Novanto: Finally Sentenced After Decades of Scandals, https://jakartaglobe.id/context/setya-novanto-finally-sentenced-decades-scandals, accessed on 3 May 2018.

40 Article 19 of Law 16/2004.

41 *Alfani Roosy Andinni, Faktor Utama Jokowi Layak Reshuffle Jaksa Agung* (The main reason why Jokowi should reshuffle the Chief Prosecutor), https://nasional.sindonews.com/read/1072742/12/faktor-utama-jokowi-layak-reshuffle-jaksa-agung-1451288609, accessed on 17 February 2017. *Rahmat Fajar, Jaksa Agung Siap Dipanggil KPK* (The Chief Prosecutor is ready to be summoned by the KPK), http://www.republika.co.id/berita/nasional/hukum/15/10/16/nwax0x365-jaksa-agung-siap-dipanggil-kpk, accessed on 17 February 2017.

42 *Tempo.co, Ini Isi Detail Dakwaan Suap Rio Capella* (The indictment details of the Rio Capella bribery case), https://nasional.tempo.co/read/717176/ini-isi-detail-dakwaan-suap-rio-capella, accessed on 17 February 2017.

43 Widyo Pramono, who was Prasetyo's competitor for nomination as Chief Prosecutor in the early Jokowi era (2014), was mentioned by many parties as a substitute for Prasetyo. After he lost to Prasetyo due to a lack of political support, Widyo Pramono worked hard on improving his political image. In 2015 he became a professor of criminal law, via Diponegoro University, Semarang. At that time, the idea of reshuffling Chief Prosecutor Prasetyo emerged, and Widyo Pramono published a book about eradicating corruption practices in the Supreme Prosecution Office. Prasetyo, who was due to be present and open the event, suddenly cancelled it without giving any clear reason for doing so.

Political parties all want to position one of their members as Chief Prosecutor, in order to secure their cadres from prosecution for corruption.[44] With regard to the Prosecution Service's duty in criminal cases, the Chief Prosecutor is the Supreme Prosecutor, who controls all policies and process within the Prosecution Service.[45] Moreover, all public prosecutors are obliged to follow the orders and instructions of the Supreme Prosecutor.

This section shows that political impediment of the Chief Prosecutor, by both the President and parliament, results in inefficiency within the IPS. Top prosecutorial managers must negotiate their institutional goals and autonomy, to stay in line with the President's and parliament's interests. Since the Prosecution Service applies a militaristic culture and centralises its bureaucracy, any intervention in the Chief Prosecutor's work by the President or parliament will automatically interfere with the tasks of public prosecutors.

3.3.2 The High Prosecution Office

At provincial level, the High Prosecution Office is led by the Head of the High Prosecution Office, who acts as intermediary between the Supreme Prosecution Office and the District Prosecution Office. Article 4 (2) of Prosecution Service Law jo. and Article 40 of the Presidential Regulation 38/2010 jo. 29/2016 stipulate that a High Prosecution Office should be established in every province. However, because the post-Soeharto regimes created new provinces,[46] some High Prosecution Offices manage the prosecution process for two regions.[47] Since the central government lacks the budget to build new offices and recruit new officers, the High Prosecution Offices need to negotiate with the provincial governments to assist them in developing new offices. Hence, both the Head of the High Prosecution Office and prosecutorial intelligence play vital roles in convincing provincial

44 The Prosecution Service still plays a primary role in the investigation process for local corruption cases (see Clark 2013). The KPK, which is centralised in Jakarta and has limited human resources, is not be able to manage all corruption cases. The Democratic Party complained about Nasdem's actions, which were viewed as utilising the Prosecution Service to force their cadres to move to another political party. In some cases, the Prosecution Service stops investigations of corruption cases which are being conducted by local leaders, if they move to Nasdem (Muhtadi 2015; Power 2018).

45 The elucidation of Article 18 (1) of the IPS Law. Compare this to the Presidium Decision on Ampera Cabinet No. 24/U/Kep/9/66 on 6 September 1966, asserting the status of the Chief Prosecutor as the highest public prosecutor.

46 Regional expansion was based on the spirit of decentralisation following the New Order Regime, intended as a way to avoid centralised economic downturns (BAPPENAS and UNDP 2008, 31).

47 This is similar to: South Sulawesi High Prosecution Office, which covers the West Sulawesi province; East Borneo High Prosecution Office, which covers the North West province; and Papua High Prosecution Office, which covers West Papua. See, for example, the official website of the West Sulawesi High Prosecution Office, https://www.kejati-sulsel.go.id/, accessed on 23 January 2019.

governments to grant land to the Prosecution Service. In some cases, local governments are willing to allocate a special budget to the construction of a new office building, or to official residences for prosecutors.[48] For example, Riau Provincial Government allocated 94 billion rupiahs to the construction of a new building for the Riau High Prosecution Office.[49] Another example is Surabaya District Government, which funded an official residence for the Head of the East Java High Prosecution Office.[50]

The 2004 Prosecution Service Law and Presidential Regulation 38/2010 jo. 29/2016 describe the Head of the High Prosecution Office's functions, but fail to explain the functions of the High Prosecution Office as an organisation. As I mentioned in the previous section, prior to 1961 the IPS structure was designed to attach to the judiciary. The function of the Head of the High Prosecution Office was adopted from the *Advocaat-Generaal* (or High Prosecutor) concept from the Dutch colonial period. The High Prosecutor prosecuted criminal cases at the court of appeal.[51] Whilst Law 15/1961 on the Prosecution Service positioned the IPS as an executive body, the government also issued Law 16/1961 on the establishment of the High Prosecution Office, which stated its role of supervising and controlling the District Prosecution Office in each province. The first New Order Chief Prosecutor, Lieutenant General Soegih Arto, restructured the High Prosecution Office, designing it to serve the interests of provincial government. He also introduced an army structure to the High Prosecutor's Office at provincial level (Soegiharto 1989, 256-57).

The Prosecution Service still retains most of the organisational structure designed by Soegih Arto, but with some adjustments. Articles 790 and 792 of Chief Prosecutor Regulation 006/A/JA/07/2017[52] regulate the authority of the High Prosecution Office as a liaison office between the Chief Prosecutor and all other prosecutors at district level. Seven assistants are assigned to the Head of the High Prosecution Service: an Assistant for Advancement,

48 Hukum Online, *Kejaksaan Boleh Terima Hibah asal bukan uang* (The IPS is allowed to receive grants, as long as these are not paid in cash), https://www.hukumonline.com/berita/baca/lt4ec23389cb0ce/kejaksaan-boleh-terima-hibah-asal-bukan-uang, accessed on 23 January 2019.

49 RiauGreen.com, *Sekdaprov: Pembangunan Gedung Kejati Riau Wujud Partisipasi Pemerintah Daerah* (Local government constructs the Riau High Prosecution Office), http://riaugreen.com/view/Pekanbaru/33658/Sekdaprov--Pembangunan-Gedung-Kejati-Riau-Wujud-Partisipasi-Pemerintah-Daerah.html#.XEg5N89KjOQ, accessed on 25 January 2019.

50 Tribunjatim.com, *Relakan aset Jadi Rumah Dinas Kepala Kejaksaan Tinggi, pemkot Surabaya balas budi?* (By using a city asset as the official home of the Head of High Prosecution Office, is the mayor of Surabaya returning a favour?), http://jatim.tribunnews.com/2018/04/03/relakan-aset-jadi-rumah-dinas-kepala-kejaksaan-tinggi-pemkot-surabaya-balas-budi, accessed on 25 January 2019.

51 In the Supreme Court, the *Advocaat-Generaal* advises supreme judges when they handle a case. Nowadays, the term *Advocaat-Generaal* describes a Deputy Chief Prosecutor, who has different functions (*Panitia Penyusunan dan Penyempurnaan Sejarah Kejaksaan RI*, 1985, p. 64).

52 Compare with Articles 492 and 493 of Chief Prosecutor Regulation 009/A/JA/01/2011.

an Assistant for Intelligence, an Assistant for General Crimes, an Assistant for Special Crimes, and an Assistant for Supervision.[53]

As the organisation of the Prosecution Service was based on the structure of the government, the High Prosecutor no longer handled criminal cases in the appeal court.[54] Since then, the prosecution process has always been conducted based on the structure of institutions with the authority to investigate at the same level, rather than on the court structure. Thus, the High Prosecution Office prosecutes cases from investigators at provincial level, such as the Provincial Police or Provincial Special Investigation Boards.[55] Inasmuch as the Prosecution Service retains its investigation authority in corruption cases, public prosecutors in the Supreme, High, and District Prosecution Services investigate corruption cases based on the degree of financial loss. The High Prosecution Office only investigates corruption cases in which the loss is more than five billion rupiahs.[56]

However, unlike when the High Provincial Court handles appeal cases, High Prosecution Office public prosecutors must submit cases to the District Court. Furthermore, the IPS regulates that the High Prosecution Office must give each case to the District Prosecution Office that will handle it at trial.[57] Because of this, hierarchical control over the prosecution process becomes more complicated.[58] One Assistant for General Crimes from a High Prosecutor's Office admitted that he faced difficulty in supervising operators, especially when they wanted to submit an indictment to the judges. The Head of the District Prosecution Office has equal rank to the Assistant for General Crimes. Thus, s/he believes that s/he is the supervisor of the prosecution process in his/her own office, and refuses to accept orders from the High Prosecution Office. To solve this problem, the Head of the High Prosecution Office decides if the operator should obey an order from the Assistant for General Crimes or from the Head of the District Prosecution Office.[59]

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53 Compare with the Indonesian army's organisational structure at provincial level, which positions assistants to officials under a commander, who supervises duties in the field. See Kodam Diponegoro, *Organisasi* (the organisation) https://www.kodam4.mil.id/organisasi/, accessed on 25 January 2019.

54 Article 9 of Law 16/1961 stated that the High Prosecutor should handle criminal cases in the appeal court, but Prosecution Service Laws 5/1991 and 16/2004 no longer stated that the High Prosecutor had the authority to handle cases in the appeal court.

55 Article 59 of Chief Prosecutor Regulation 036/A/JA/09/2011 mentions the equality principle when handling general crime cases, i.e. investigation files from investigation boards at national level should be submitted to the Supreme Prosecution Office, the provincial level equivalents are sent to the High Prosecution Office, while those from district level are submitted to the District Prosecution Office.

56 Chief Prosecutor Circular Letter 001/A/JA/01/2010, on controlling the investigation and prosecution of corruption.

57 See 3.3.3: The District Prosecution Office.

58 As I have elaborated in 3.2, the IPS applies military bureaucracy when controlling and supervising operators, including during the prosecution process.

59 Personal communication with an Assistant for General Crimes of the SS High Prosecution Office, NJ, in January 2019.

The High Prosecution Office supervises the District Prosecution Office, not only with regard to the prosecution process[60], but also concerning managerial issues.[61] The Head of the High Prosecution Office gathers the Heads of the District Prosecution Offices in his/her office, to explain his/her (and the Chief Prosecutor's) policies on the prosecution process and management, including budget, performance assessment, or the inauguration of new top-level management staff at the High Prosecution Office.[62] Although the High Prosecution Office's power to control prosecutors is not strong enough to decide on a prosecutor's promotion or transfer,[63] it can recommend that the Supreme Prosecution Office promotes a prosecutor.

Top-level managers (or executives) in the High Prosecution Office are also in charge of regular inspections of the District Prosecution Offices. Often, the Head of the High Prosecution Office himself carries out an area inspection. For example, one Head of the High Prosecution Office, N, regularly holds an inspection of the District Prosecution Offices whenever he hears that the offices are handling serious cases, or that cases attracting public attention via the media. N often arrives at the District Prosecution Office without giving any notice. As a former Prosecution Director in the KPK, he refuses to follow the IPS tradition which obligates the District Prosecution Offices to greet him in a respectful manner, like an army commander inspecting their troops. The District Prosecution Office must prepare accommodation, and organise a welcome party and entertainment for the Head of the High Prosecution Office's delegation.[64] N says that the official budget does not cover the welcome party tradition within the IPS.[65]

60 For instance, see Article 492 of Chief Prosecutor Regulation 039/A/JA/10/2010, which states that the District Prosecution Office must request direction from the Head of the High Prosecution Office, if it wants to stop the investigation of a corruption case.

61 Article 41 of Presidential Regulation 38/2010 jo. 29/2016.

62 The High Prosecution Office invites the Head of the District Prosecution Offices, whenever there is an inauguration ceremony for new top managers at the High Prosecution Office. Since District Prosecution office travel budgets are limited, District Prosecution Office managers use their own money to cover travel expenses. Personal communication with a Head of the M District Prosecution Office, in January 2016.

63 Similar to the controlling system within the Indonesian Supreme Court (Bedner 2001; Pompe 2005), the Prosecution Service uses promotion and transfer as its predominant tool to ensure the loyalty of its prosecutors.

64 Personal communication with N in 2015. During my fieldwork in B, I stayed at his official house and followed some of his schedules. I therefore had the opportunity to observe his work, and to conduct some interviews with other prosecutors about their own work.

65 An intelligence operator tells of when he was asked to lobby a company to lend its cruise ship for a welcoming party held by his office, in order to greet a delegation from the High District Prosecution Office. A Head of the High Prosecution Office also admitted that there is a tradition of giving presents to the High District Prosecution Office delegation after it has conducted an inspection of the District Prosecution Office. See 4.2: State Intelligence.

So, he does not inform the Heads of the District Prosecution Offices about his visits, because he does not want them to use unofficial money.[66]

The Head of the High Prosecution Office plays a pivotal role in protecting operators in the District Prosecution Offices from intervention, particularly when they are handling criminal cases. Operators and managers in the District Prosecution Office do not have sufficient power to reject an order from their superior, let alone from the prosecutor's executives. N further states that intervention in criminal cases usually comes from former leaders, who previously worked in the High Prosecution Office and later gained a position in the Supreme Prosecution Office. However, in some cases High Prosecution Office protection is not strong enough; for example, when prosecutors are demoted or transferred to a remote area because of their disobedience to top managers in the Supreme Prosecution Office. Due to the centralisation of promotions and transfers in the Supreme Prosecution Office, some Heads of the District Prosecution Office were demoted because of their loyalty to the Head of the High Prosecution Office, rather than to executives in the Supreme Prosecution Office.[67]

Similar to the Chief Prosecutor position, from which a person which can be dismissed by the President at any time, a person working in the position of Head of the High Prosecution Office can easily be replaced by the Chief Prosecutor. Thus, the Head of the High Prosecution Office must establish a good relationship with the Chief Prosecutor, and show their loyalty to them:

> "*When I was a Head of the High Prosecution Office in Province B, I overheard some businessmen and mafia organising fundraising to bribe executives in the Supreme Prosecution Office to demote and transfer me from my position. Fortunately, I had a good relationship with the Chief Prosecutor. Therefore, I could retain the seat and get a promotion to another location.*"[68]

Another example is the appointment of Maruli Hutagalung – known to be one of Chief Prosecutor Prasetyo's loyalists – as the Head of the East Java High Prosecution Office.[69] Reputable NGO, Indonesian Corruption Watch

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66 N is known as a Former Chief Prosecutor's (BA's) man. He was a rising star prosecutor, since he was appointed as the KPK's Director of Prosecution. During BA's reign, he got a promotion to an executive position in the Supreme Prosecution Office, and then to the Head of W High Prosecution Office. When B was replaced by another new Chief Prosecutor, N was demoted from the position of inspector at the Supreme Prosecution Office. Following this, he was appointed as a secretary to the Deputy Chief Prosecutor, then demoted again as expert staff.

67 Personal communication with N in 2015.

68 Personal communication with N in 2015.

69 After retiring, Hutagalung emulated Prasetyo's political career, by joining the Nasdem party. Tribun Jatim, *Nyaleg Lewat Nasdem, Maruli Hutagalung Bakal Sumbangkan Setengah Gajinya Jika Terpilih*, (Maruli Hutagalung will donate half of his salary if he is elected as a parliamentary member of the Nasdem Party), http://jatim.tribunnews.com/2018/11/18/nyaleg-lewat-nasdem-maruli-hutagalung-bakal-sumbangkan-setengah-gajinya-jika-terpilih, accessed on 15 December 2018.

(ICW) criticised Prasetyo's decision to promote Hutagalung, since his name was mentioned in a graft case investigated by the KPK.[70] Hutagalung can retain his position until his retirement, because he has Prasetyo's full support. Given that, the replacement of the Chief Prosecutor could lead to the replacement of the Head of the High Prosecution Offices. The Chief Prosecutor could replace the executive prosecutor (for example, the Head of the Prosecution Offices) with their own loyalist. For example, N, who was a known loyalist of the former Chief Prosecutor B, was replaced and demoted as expert staff when B was replaced by another Chief Prosecutor. In addition, N admits that on several occasions his actions were not in line with the Chief Prosecutor's interest.[71]

3.3.3 The District Prosecution Office

The Head of the District Prosecution Office leads the District Prosecution Office, assisted by four divisions: the Advancement Division, the General Crimes Division, the Special Crimes Division, and the Civil Law and Administrative Dispute Division. The District Prosecution Office is divided into two types (A and B). This division is based on the number of cases, the complexity of problems in the area, and other reasons decided by the Supreme Prosecution Office. In island or sea-locked districts, Sub-District Prosecution Offices are established by the IPS.

Since Java has the largest number of prosecution service staff, several positions in the District Prosecution Offices outside of Java are vacant. As a result, a prosecutor has a double role – as an operator and manager. For example, in Karimun District Prosecution Office, where there are 26 managerial positions, there are only 12 prosecutors,[72] so more than half of the administrative positions are vacant. In addition, a criminal case manager also serving as an operator must take on other tasks, such as assisting an intelligence unit which might also be suffering from limited resources. The Prosecution Commission found that some District Prosecution Offices recruit internship staff using their off-budget, in order to fill the vacant position (*Tim Peneliti Komisi Kejaksaan* 2013b, 68). In some District Prosecution Offices I found that the manager pays certain internship staff[73] with their own money.

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70 Tirto.id, *ICW: KPK harus Kejar Jaksa Terlibat Korupsi*, (ICW: KPK must chase prosecutor who was involved in corruption), https://tirto.id/icw-kpk-harus-kejar-jaksa-terlibat-korupsi-bXdG, accessed on 15 December 2018. Republika, *Disebut dalam Kasus Gatot, Jaksa Maruli Malah Dapat Promosi* (As Stated in the Gatot Corruption Case, Prosecutor Maruli Got a Promotion), https://www.republika.co.id/berita/nasional/hukum/15/11/17/nxy7k3334-terlibat-kasus-gatot-jaksa-maruli-malah-dapat-promosi, accessed on 15 December 2018.

71 Personal communication with N in 2015.

72 Karimun District Prosecution Office, *Pejabat Struktural* (Managers), http://www.kejari-tbkarimun.go.id/pejabat-struktural/, accessed on 20 December 2018.

73 This position is called *tenaga honorer* – similar to temporary staff, with functions to assist a civil servant's tasks.

The uniformity of the organisational structure in District Prosecution Offices may cause some issues for managers and operators, since all District Prosecution Offices face different problems in terms of caseload and the types of cases that should be carried out by prosecutors. For example, although public prosecutors in the Aceh Province prosecute Islamic criminal law (*sharia*) cases, the organisational structure and task division in the District Prosecution Office is similar to other areas where sharia law does not apply.[74] Prosecutors in the Aceh Province must hold public whippings of those found guilty of gambling, which violates sharia law.[75] Thus, some District Prosecution Offices in Aceh might manage their budget and human resources to impose Islamic penal law, simply because they are suffering from a limited budget.

In addition to the above, District Prosecution Offices have workloads which come not only from their own jurisdiction, within a district, but also from the High and Supreme Prosecution Offices. Since all criminal cases must be submitted to the District Court, High and Supreme Prosecution Office public prosecutors who receive investigation files from investigators' branches at provincial and national levels will hand over such files to the District Prosecution Office. The Head of the District Prosecution Office then takes over supervision of the prosecution process and appoints operators to prosecute the case, while also being able to involve operators (as prosecutors) in the High District Prosecution Office.[76] As mentioned in the previous section, this results in double supervision of the prosecution process, since operators in the District Prosecution Office must consider the Head of the High District Prosecution Office's instructions, as well as instructions from top-level managers in the High or Supreme Prosecution Offices.

The political background of the Chief Prosecutor has an indirect influence on prosecutors' performance at the District Prosecution Office.[77] Since President Joko Widodo chose a Nasdem party politician (Prasetyo) as Chief Prosecutor, it is likely that Nasdem has been receiving benefits to assist its political interests. A notable example of this influence is shown in the response of the prosecutor's leadership of the K District Prosecution Office, who was annoyed by the fact that Nasdem politicians visited his office and asked him to assist cases in which they have an interest. Moreover, prosecutor's manager of K District Prosecution Office grumbled that he could not investigate corruption cases allegedly involving the regent, who was also a regional chairman of Nasdem, despite enormous public demand for the

74 Article 39 of the Prosecution Service Law.

75 *Hotli Simanjuntak and Moses Ompusunggu*, Buddhists caned for violating sharia in Aceh, https://www.thejakartapost.com/news/2017/03/13/buddhists-caned-for-violating-sharia-in-aceh.html, accessed on 17 December 2018.

76 See Articles 13 (5), 73 and 83 of Chief Prosecutor Regulation 036/A/JA/09/2011.

77 See 3.3.1: The Supreme Prosecution Office.

Prosecution Office to handle the case.[78] The regent was only prosecuted for corruption after certain NGOs reported the case to the KPK.[79]

The Head of the District Prosecution Office's position as a member of FORKOPIMDA (or the Regional Coordination Council)[80] has also been known to influence prosecutors' performance when they are investigating corruption cases committed by local governments.[81] Lolo (2008) states that, during the New Order period, FORKOPIMDA effectively provided an opportunity for district governments to intervene in the prosecution process. In some cases, the district government succeeded (via this forum) in convincing the Head of the District Prosecution Office to stop an investigation into corruption (Kristiana 2006, 108). One Head of the District Prosecution Office, DH, says that he uses this forum to fulfil the IPS target for the number of corruption cases that should be handled by the District Prosecution Office. DH asked a mayor to name any subordinate who causes trouble in his administration, and to supply the District Prosecution Office with evidence of the fact. Based on the evidence, the District Prosecution Office can then prosecute the subordinate for corruption. This cooperation is not only beneficial to the Prosecution Service; the mayor also benefits politically, since he can remove any subordinate who is interfering with his political leadership.[82]

A Head of the District Prosecution Office receives an honorarium from the district government, due to his/her involvement in FORKOPIMDA. In Batu city, for example, the Head of the District Prosecution Office receives 1,200,000 rupiahs per month from the regional government budget.[83] The Head of the District Prosecution Service is equipped with an official car, but the local government also lends him/her an official luxury car. Even though the District Prosecution Service must obtain the President's permission to investigate a criminal case (such as a corruption case that allegedly involves the mayor or regent), the relationship between the Head of the District Prosecution Office and local leaders seems to prevent them from enforcing the law (cf. Clark 2013, 120).[84]

78 Bangsa Online, *Banyak Kasus Korupsi Yang Ditangani Kejari Kepanjen Diduga Mengendap* (Some corruption cases handled by the Kepanjen Prosecution Office seem to have been stopped), https://www.bangsaonline.com/berita/21386/banyak-kasus-korupsi-yang-ditangani-kejari-kepanjen-diduga-mengendap, accessed on 17 January 2019.

79 Kompas, *KPK Tetapkan Bupati Malang Tersangka dua Kasus Korupsi*, (The KPK has determined the Malang Regent to be a suspect in two corruption cases), https://nasional.kompas.com/read/2018/10/11/18032261/kpk-tetapkan-bupati-malang-tersangka-dua-kasus-korupsi, accessed on 19 January 2019.

80 During the New Order periods, this forum was called MUSPIDA - see 2.8: The New Order Military Regime.

81 Article 26 of Law 23/2014 on Regional Administration includes the District Prosecution Office as a member of FORKOPIMDA, led by either the mayor or the regent.

82 Personal communication with DH in 2015.

83 See Batu Major's Decision 188.45/85/KEP/422.012/2015 on FORKOPIMDA's establishment.

84 Kompas, *Sejumlah Warga TTU Tuntut Jaksa Kembalikan Mobil Bantuan Pemda* (Some TTU Residents Demand that Prosecutors Return District Government Cars) https://regional.kompas.com/read/2015/06/18/14580391/Sejumlah.Warga.TTU.Tuntut.Jaksa.Kembalikan.Mobil.Bantuan.Pemda, accessed on 19 January 2019.

One of the major challenges for the Head of the District Prosecution Office is dealing with a limited budget as prosecutors balance caseloads with other tasks. Executive prosecutors in the High or Supreme Prosecution Offices ask the Head of the District Prosecution Office to perform well, no matter what it costs. The Head of the District Prosecution Office that I met said that he allowed his operators to receive *Rezeki*[85] from those who have an interest in the prosecution process, but he warns operators not to engage in extortion. According to one of the managers, in eastern culture, rejecting *Rezeki* that has been offered sincerely is taboo.

3.4 Human Resource and Budget Management

All public prosecutors would agree that the Deputy Chief Prosecutor for Advancement in the Supreme Prosecution Office plays a vital role in determining their career mobility.[86] The Deputy Chief Prosecutor for Advancement and his/her top managers are at the heart of prosecution service bureaucracy, throughout Indonesia. Article 8 (2) Chief Prosecutor Regulation 006/A/JA/07/2017 states that the duties of the Deputy Chief Prosecutor for Advancement are: management planning; the provision of facilities and infrastructure development; organisation and management; staffing; finance; state asset management; legal considerations; drafting internal regulations; international cooperation; and, other technical support. Further, the Deputy Chief Prosecutor for Advancement has become the leader of prosecution service bureaucracy reform in the post-Soeharto period.

This section will discuss how top-level managers in the office of the Deputy Chief Prosecutor for Advancement manage the Prosecution Service's human resources, in terms of recruitment, training, and the promotion process. It will then will elaborate on budget management, as well as on how supervision and control are implemented in the Prosecution Service.

3.4.1 Recruitment and Training

To be appointed as a public prosecutor, a person must fulfil the following requirements, as mentioned in Article 9 of the 2004 Prosecution Service Law:

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85 As Bedner (2001) found, Indonesian street-level bureaucrats use the term *Rezeki* to describe money obtained via illegal or corrupt activities. See 3.4.4, for further elaboration.

86 The office of the Deputy Chief Prosecutor for Advancement is located on the sixth floor of the Supreme Prosecution Office. Therefore, the expression 'the 6th floor' is frequently used by prosecutors to describe the place where their career is at stake. The 6th floor is a very busy place, where prosecutors come from all over Indonesia to lobby top managers and assist them in promoting their careers.

a. Be an Indonesian citizen;
b. Be pious to the One Almighty God;
c. Be loyal to Pancasila (the state philosophy) and the 1945 Constitution;
d. Hold a university degree in law;
e. Have a minimum age of 25 (twenty-five), and a maximum age of 35 (thirty-five);
f. Be physically and mentally healthy;
g. Be authoritative, honest, and not behave disgracefully; and
h. Be a civil servant.

Article 9 also stipulates that a candidate must pass a public prosecutor candidacy training test (*Pendidikan dan Pelatihan Pembentukan Jaksa*, or PPPJ) before gaining a position as a public prosecutor. Therefore, there are two stages to becoming a public prosecutor: first, a candidate must gain a position as a civil servant, then they can apply for the PPPJ and pass the required test.[87]

Since the Soeharto regime ended[88] there has been enormous demand to reform the civil service's recruitment process, including that for public prosecutors. The Administrative and Bureaucratic Reform Ministry Regulation 197/2012 requires that the Prosecution Service creates a professional recruitment committee and involves independent consultants in the civil service recruitment process. According to the Prosecution Service Bureaucracy Reform team, by using a computerised system the recruitment procedure is designed professionally, accountably, and transparently, in order to attract candidates qualified to apply for a prosecutorial position. However, some senior prosecutors oppose this procedure, because it might eliminate the so-called *Bina Lingkungan* tradition, which was designed to secure a prosecutor's chances of recruiting their relatives as staff in the Prosecution Service[89] (*Tim Peneliti Komisi Kejaksaan* 2013b, 103).

Opponents argue that a computerised examination system, conducted by third parties, does not guarantee a high-quality pool of candidates for prosecutor positions, and that candidates being accepted because of their cognitive capacity is insufficient. For example, Chief Prosecutor Regulation 048/A/J.A/12/2011 requires that all prosecutors have an ideal posture and good physical appearance.[90] Opponents of the computerised system therefore propose adding an assessment to the recruitment process, which would be examined by the prosecutor's top manager as a final test to determine whether or not the candidate will be accepted. The Prosecution Service

87 This provision creates an opportunity for administrative staff who have civil service status to apply to the PPPJ and change careers from administrative staff to prosecutor.

88 It was hard to find any merit-based bureaucratic practice in the IPS during the New Order (Lolo 2008).

89 Personal communication with IS, in 2015.

90 Article 7 of Chief Prosecutor Regulation 048/A/J.A/12/2011 requires a male candidate to have a minimum height of 160 cm and a female candidate to have a minimum height of 155 cm. It seems that military culture in the Prosecution Service influences this provision, which requires prosecutors to have ideal body sizes, akin to soldiers.

then accommodates the proposal and adds additional tests, such as psychological tests, health tests and interviews, which are similar to the procedure for military recruitment. For example, the East Java High Prosecution Office conducts a health test in an army hospital, while the psychological test and interviews are conducted at their headquarters, with the Head of the High Prosecution Office interviewing the candidates himself. [91]

The scoring composition is also adjusted – computer-assisted test scores are 60% and interviews are 40%.[92] Based on this recruitment system, although a candidate may obtain the highest score for legal matters (such as criminal law) in a computer-assisted test, s/he might fail the interview process and the Prosecution Service will reject him/her as a candidate. According to one of the Prosecution Service bureaucracy's reform team, IS, there are no clear criteria or measurements for interview-based assessment. It is at the top-level manager's discretion to decide who conducts an interview. It seems that the structures remain, in order to continue the *Bina Lingkungan* tradition.

After candidates have passed the civil service candidacy test, they must undergo administrative training and do an administrative staff internship. They must then do pre-civil service training in a Prosecutor Training Body camp (*Badan Pendidikan dan Pelatihan*, or BADIKLAT) in Jakarta.[93] Only after officially being appointed as a civil servant may a candidate apply for PPPJ, which is organised by BADIKLAT.[94] The candidate receives training material on a public prosecutor's tasks and powers regarding criminal law, civil law, and administrative disputes, as well as intelligence. The training is also designed to indoctrinate public prosecutor candidates in military culture. The Prosecution Service emphasises and promotes the most important value from the één en ondeelbaar principle, which is loyalty to the institution and its leaders. Candidates must learn military marching and physical training from army instructors. They are also taught how to give a military salute to seniors, as well as being required to conduct morning and afternoon parades. One of top-level managers in BADIKLAT says that these

91 A candidate for the position of prosecutor, who passed the health test, described how the test is conducted in an army hospital, similar to the health test which soldiers undertake. See Alan Adityanta, *Perjalanan Menuju Calon Jaksa* (The Journey of a Candidate for the Position of Prosecutor), http://www.adityanta.com/2018/02/22/perjalanan-menuju-calon-jaksa-2/, accessed on 6 June 2019, and compare it with Duta.co *Komandan Lanud Abd Saleh Jamin Tidak Ada Titipan Dalam Pantukhir* (Abd Saleh Air Base Squadron Commander Guarantees Fair Selection in Pantukhir), https://duta.co/komandan-lanud-abd-saleh-jamin-tidak-ada-titipan-dalam-pantukhir/, accessed on 6 June 2019.

92 *Pengumuman Pelaksanaan Seleksi Calon Pegawai Negeri Sipil Kejaksaan RI Tahun Anggaran 2017* (Announcement of Selected Civil Servant Candidates in the IPS, 2017), https://www.kejaksaan.go.id/uplimg/SCN_0001.pdf, accessed on 6 June 2018.

93 Pre-service training is compulsory for civil servant candidates, before they can be officially appointed. Civil servant candidates will be sent to a camp to receive special training on discipline, loyalty, and state ideology.

94 The Prosecution Service has its own training centre, with a different curriculum to the judge's training centre. See Chief Prosecutor Regulation 037/A/JA/12/2009 on the organisation of education and training for IPS staff.

military activities are designed to impose and strengthen the *éspirit de corps* among prosecutors.[95]

To obtain a higher position, prosecutors must complete additional training. For instance, before a prosecutor is appointed as Head of the District Prosecution Office, s/he must take part in leadership training (level 3). Further, all prosecutors must complete technical training on their tasks, such as general and special crimes training, administrative law training, or intelligence training;[96] for example, the Head of the Intelligence Division must offer an intelligence training certificate. However, since the BADIKLAT's data on prosecutors' profiles have not been integrated into the advancement data, this causes a situation where a prosecutor's promotion is (in many cases) not in line with their training background. For example, a prosecutor who has passed intelligence training might be promoted to a human resource staff member in the High Prosecution Office (Tim Peneliti Komisi Kejaksaan 2013b, 139).

Moreover, not all prosecutors can attend such training. As the BADIKLAT is located in Jakarta, prosecutors who work in the prosecution offices outside of Jakarta may not even receive sufficient travel expenses to participate in training.[97] In addition, prosecutors in general have problems with the sudden announcement of training schedules at times when they cannot leave their work, and prosecutors in remote areas find it difficult to get permission to attend training in Jakarta (*Tim Peneliti Komisi Kejaksaan* 2013b, 117-18). Hence, prosecutors outside of Java find it difficult to get a promotion, because certain positions require them to have training experience.

3.4.2 Promotion and Transfer

The promotion system is recognised as having a major influence on public prosecutors' performance in the justice system.[98] The UN Guidelines on the Role of Prosecutors state that:

> *"…promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.* (Section 7)."[99]

95 Compare the personal communication with SH (a senior trainer officer in BADIKLAT) in 2015 with the Chief Prosecutor's daily order (*Perintah Harian*) on 22 July 2017, which forces prosecutors to improve their éspirit de corps: http://kejari-tomohon.go.id/perintah-harian-jaksa-agung-22-juli-2017/, accessed on 6 June 2018.

96 See 4.2: Legal Resources: Tasks and Powers in the Prosecution Service

97 The IPS has a limited budget for training, and it therefore might not cover prosecutors' expenses to travel to the BADIKLAT.

98 During the authoritarian regime, the promotion system was designed to control judicial decisions in court (Bedner, 2001; Sebastiaan Pompe, 2005).

99 The United Nations Human Rights Office of The High Commissioner, *Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, Havana, Cuba, 27 August to 7 September 1990, https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx, accessed on 6 September 2017.

The Prosecution Service regulates the promotion system in Chief Prosecutor Regulation 049/A/JA/12/2011, which covers prosecutors' training, competency assessments, transfers, and career paths, as well as their termination and retirement requirements. The regulation also introduces a competency assessment that is a requirement for obtaining a top-level managerial position (Article 3).

In 2012, the IPS organised an assessment process in response to Presidential Instruction 17/2011 on Action on Corruption Prevention and Eradication. It required that the Prosecution Service should improve the accountability and transparency of its promotion process, and that it should involve an independent consultant when running a competency assessment. One advantage of the competency assessment is that only a few prosecutors with good capacity can pass the assessment. A notable example of this is that, in 2013, only 74 of the 745 prosecutors already positioned as managers in an Echelon 3 position[100] could pass the examination.[101]

However, Article 5 (2) of Chief Prosecutor Regulation 049/A/JA/12/2011 states that the results of the competency assessment must be reported to the Chief Prosecutor by the Deputy Chief Prosecutor for Advancement. The report is taken into consideration when promoting prosecutors at the Executives' Meeting (RAPIM).[102] Through the RAPIM, top-level managers can recommend a list of prosecutors for promotion or demotion to the Chief Prosecutor (who is in charge of authorising the list). The Deputy Chief Prosecutor for Advancement grumbles about this procedure, as it does not take into account his work on managing human resources within the Prosecution Service. He calls this meeting process a "grey area" or "blank spot".[103] Although the Deputy Chief Prosecutor for Advancement prepares a list of prosecutors meeting the requirements for promotion, the list should still be discussed with the Chief Prosecutor and his/her deputies in the RAPIM, as mentioned in Articles 18 and 17 of Chief Prosecutor Regulation 049/A/JA/12/2011.

One of the executive prosecutors observes the RAPIM process, wherein each Deputy Chief Prosecutor provides a folder containing a list of prosecutors who could be promoted. Furthermore, prosecutors on the list will have already passed the competency assessment from the Personnel Department

100 Echelon 3 positions include the Head of the District Prosecution Office, and the Assistant for General Crimes in the High District Prosecution Office.

101 Kejaksaan, *Pengumuman Asesmen Kompetensi Bagi Pejabat Fungsional Jaksa* (Announcement of the Competency Assessment for Prosecutors), https://www.kejaksaan.go.id/uplimg/File/2013/asesmen%20jaksa0001.PDF, accessed on 3 December 2017.

102 Articles 19-21 of Chief Prosecutor Regulation 49, 2011, state that the BAPERJAKAT (the Board of Advisers on Position and Rank) meeting should be chaired by the Vice Chief Prosecutor. However, Article 22 states that in certain circumstances the Chief Prosecutor may lead the meeting. Since there is no further elaboration on what these circumstances are, the Chief Prosecutor is able to take over the Vice Chief Prosecutor's position as Chairman at any time. Since then, the Prosecution Service has called the meeting *Rapat Pimpinan (RAPIM)*, or 'the Executive's Meeting'.

103 Personal communication, 2 December 2015.

of the Deputy Chief Prosecutor for Advancement, and would be competing with other candidates from other deputy departments.[104] If the Chief Prosecutor wants to promote his own staff,[105] and they are not mentioned on the list, the list from the Deputy Chief Prosecutor for Advancement may be ignored. Therefore, the promotion system is likely to be conducted based on top-level managers' political preferences.

One example of the above is DH's experience. DH was promoted to Head of the District Prosecution Service in Papua. He was promoted with the help of his former boss in the High Prosecution Office, who was appointed Deputy Chief Prosecutor.[106] All too often, prosecutors who had passed the competency assessment saw their colleagues who had failed the assessment be promoted, because of their close relationship with the executive prosecutors in the Supreme Prosecution Office. A further consequence of this practice is that the distribution of prosecutors is not in line with the human resource plan; District Prosecution Offices in Java have an excessive number of staff, while District Prosecution offices outside of Java suffer from a lack of prosecutors (Tim Peneliti Komisi Kejaksaan 2013b, 138).

Since the Prosecution Service does not stipulate when prosecutors should be promoted, or transferred to another area, some prosecutors stay in one position for a prolonged period. Although, on a practical level, the Prosecution Service places a prosecutor in one area for a maximum of two years, the decision to transfer a prosecutor is at the discretion of top-level management. If a prosecutor has access to the top manager in the Supreme Prosecution Office, he will be transferred to another place sooner (cf. Komisi Hukum Nasional 2005c, 82).

As I have mentioned in the previous section, although in general the Prosecution Service adopts military culture and bureaucracy, when recruiting new personnel it does not differentiate (in its approach) between operators, managers, and executives.[107] Since operators are perceived as

104 A notable example is when the former Chief Prosecutor for Special Crimes, R. Widyopramono, reported getting a *kattebelletje* or *surat sakti* (a magic letter from powerful and influential figures to officials - a common means of influencing decisions) from the Chief of the Constitutional Court, Arief Hidayat. He requested that Widyopramono help and support his relative's career in the Prosecution Service. Hukum Online, *Gara-Gara 'Memo Sakti', Ketua MK Dijatuhi Sanksi Etik*, (Because of 'a Magic Letter', the Chief of the Constitutional Court faced Ethical Sanctions), http://www.hukumonline.com/berita/baca/lt57233338a0eaf/gara-gara-memo-sakti--ketua-mk-dijatuhi-sanksi-etik, accessed on 3 December 2017.

105 Jawa Pos, *Lompatan Karir Anak Jaksa Agung, Kini Dipromosikan Jadi Kajari* (The Chief Prosecutor's Son Makes a Career Leap: Now Promoted to Head of the District Prosecution Office), https://www.jawapos.com/nasional/politik/21/06/2017/lompatan-karir-anak-jaksa-agung-kini-dipromosikan-jadi-kajari, accessed on 3 December 2017.

106 Personal communication with the Head of B District Prosecution Office, 12 June 2015. In the administrative culture prevailing in Indonesia, such personal connections are a vital ingredient of career development (Pompe, 2005, p. 387).

107 The Indonesian army has differentiated recruitment systems for soldiers and high-level officers (who were positioned as candidates for Commander status).

soldiers, prosecutors compete with each other to obtain structural positions as managers or executives in the Prosecution Service.[108] As a result, some District Prosecution Offices lack operators. In order to overcome this problem, the IPS issued PERJA 009/A/JA/01/2011, which reduced the number of managerial positions at the District Prosecution Office and encouraged prosecutors to determine their own careers as operators. However, due to many complaints and demands from prosecutors who wished to have managerial positions, the Chief Prosecutor issued Chief Prosecutor Regulation PERJA 06/A/JA/07/2017, which reinstates the managerial position at echelon 5 of the District Prosecution Office which was repealed in 2011. The Prosecution Service requires that prosecutors have experience in management at a lower level, before being appointed as a manager at the higher (or executive) levels. This causes some positions that were designed to be filled by non-prosecutorial staff (such as managers of personnel or financial departments) to be filled by prosecutors.[109] One notable example of this is that almost all the Assistant for Advancement positions in the High Prosecution Office are occupied by a prosecutor.[110]

The military bureaucracy pattern can be seen in the prosecutor placement system, which is organised based on a prosecutor's rank. A high-ranking prosecutor cannot occupy a position as an operator in a District Prosecution Office, because it is led by a prosecutor of a lower rank. As a result, high-ranking prosecutors accumulate in the High and Supreme Prosecution offices, even though the District Prosecution offices lack operators.[111] The Prosecution Service Law states that the retirement age for prosecutors is 62 years old, but prosecutors can only serve as executives or managers until they are 60 years old (for a position in echelons 1 and 2), or 58 years old (for a position in echelon 3, or below).[112] Furthermore, a prosecutor can only serve as Deputy Chief Prosecutor until they are 60 years old, and after that they can return to the office as an operator. However, because

108 The lowest managerial position for a prosecutor is echelon 5; for example, the head of a sub-section.

109 This practice contradicts Government Regulation 29/1997 jo. Government Regulation 47/2005 about Civil Servant Officers with Two Duplicate Positions. Article 2 of this regulation only allows prosecutors to be placed in a structural position which relates to their prosecution process tasks.

110 This practice influenced the way administrative staff think, i.e. that they may not be able to have such successful careers as prosecutors. As a result, prior to 2015 many administrative staff applied to become prosecutors.

111 Harian Dialog, *Jaksa Agung Seharusnya memanfaatkan Jaksa Fungsional yang Makan Gaji Buta*, (The Chief Prosecutor should evaluate senior prosecutors who get paid without doing much work), http://www.hariandialog.com/index.php/nasional/politik-a-hukum/8814-jaksa-agung-seharusnya-memanfaatkannya-jaksa-fungsional-makan-gaji-buta, accessed on 12 December 2017.

112 Article 25 (3) b and c of Chief Prosecutor Regulation 49/2011. Echelon 1 (for example, the Deputy Chief Prosecutor), Echelon 2 (for example, the Head of the High Prosecution Office), and Echelon 3 (for example, the Head of the District Prosecution Service, or Assistant at the High Prosecution Office).

of the military culture in the Prosecution Service, most of the former Deputies of the Chief Prosecutor who believe that their positions are similar to army generals apply for an early pension, since they are reluctant to be led by their former subordinates.

Article 13 of Chief Prosecutor Regulation 049/A/JA/12/2011 stipulates that a prosecutor can pursue career paths through managerial positions, operator positions, or a double position as manager and operator. Due to the lack of operators, prosecutors in the District Prosecution Offices often choose a double position as manager and operator. Prosecutors are unwilling to pursue a position as an operator, because to them it feels akin to being a soldier who has limited power and discretion. This has consequences for the control of a prosecution process which adopts military culture. For example, when a Head of the Intelligence Division is also an operator in the prosecution of a corruption case, s/he must have the approval of and be supervised by the Head of the Special Crimes Division. However, since his/her position as the Head of Intelligence Division is equal to that of his/her leader, the Head of the Special Crimes Division would find it difficult to control and supervise the prosecution process under the military culture.

In short, a combination of applying military rank and actual tasks results in intriguing problems. The Prosecution Service employs the promotion and transfer procedure to control prosecutors' loyalties to their leaders. Since the Prosecution Service adopts military-style bureaucracy and gives broader discretion to executive prosecutors, the career paths of prosecutors depend on their loyalties. The leaders assess prosecutors' loyalty based on their performance when carrying out orders within the prosecution process, even if they must break the law by doing so. In corruption cases, for instance, loyalty is usually examined based on prosecutors' obedience in halting an investigation on the basis of a leader's order, even though the case has strong evidence (Kristiana, 2006, p. 114). The Prosecution Service may demote or transfer a prosecutor who rejects an order to stop an investigation. After the disobedient prosecutor is removed, a new prosecutor will not be allowed to proceed with the corruption investigation (Kristiana, 2009, pp. 249-250).

A notable example of this is the case of the former Head of the Pontianak District Prosecution Office, Mangasi Situmeang. He sued against Chief Prosecutor Prasetyo's decision in the Administrative Court in 2015, because he believed that Prasetyo's decision to transfer and demote him was for no valid reason.[113] On 18 February 2016, Situmeang won his court case at Jakarta

113 Chief Prosecutor Prasetyo admitted that Situmeang was transferred and demoted from his position because of his initiatives to investigate four corruption cases in the Pontianak District Government. Prasetyo argued that Situmeang's action was not in line with President Joko Widodo's instructions not to disrupt government projects by carrying out investigation or prosecution of such projects. The minutes of the Parliament Commission III working meeting with the Chief Prosecutor, 21 April 2016.

Administrative Court. via Decision 237/G/2015/PTUN.JKT. However, although the IPS was ordered to cancel Situmeang's transfer,[114] the Chief Prosecutor ordered disciplinary sanctions for Situmeang in his Decision 205/A/JA/04/2016, demoting Situmeang from his position. This decision was later used as new evidence in the court and cassation process in the Supreme Court. Ultimately, the Prosecution Service won the case, since the Supreme Court argued that the Chief Prosecutor had discretion to transfer their prosecutor, in order to maintain the organisation of the Prosecution Service.[115]

3.4.3 Supervision

Article 1 (1) of Chief Prosecutor Regulation 022/A/JA/03/2011 constitutes that supervisions within the IPS are conducted through various activities, such as: observations, examinations, assessments, guidance, controls, inspections, imposing sanctions, monitoring, and evaluations. The Prosecution Service should supervise staff while performing their tasks, i.e. their implementation, as well as their attitudes, behaviour, and even their manner of speaking. The IPS ensures that the activities of its staff are in line with the law *and* with the Chief Prosecutor's policies.

The provision indicates the Prosecution Service's desire to control every aspect of the lives of its staff, because supervision covers not only prosecutors' tasks, but also their personal lives.[116] The Prosecution Service may impose a sanction on[117] or demote a prosecutor from their managerial

114 Sindo News, *Menang Gugatan, Mangasi Ingin Jaksa Agung Cabut Surat Mutasi*, (Winning Lawsuit, Mangasi asks the Chief Prosecutor to Re-evaluate his Transfer Procedure), https://nasional.sindonews.com/read/1086354/13/menang-gugatan-mangasi-ingin-jaksa-agung-cabut-surat-mutasi-1455788845, accessed on 12 December 2017.

115 The Supreme Court considered that the Chief Prosecutor's decision to transfer Situmeang was a discretionary power. The Supreme judges believed that the decision was issued to secure the IPS' dignity, so that there would be no contradiction with the law and good governance principles. In Article 7 (4) of Chief Prosecutor Regulation 49/2011, the Supreme Court accepts the Chief Prosecutor's definition of the term *Kebijakan* (or 'policies') as a discretion. See Supreme Court Decision 489K/PTUN/2016, pp. 32, 38.

116 One of the New Order's bureaucratic legacies is the involvement of civil servants' wives in the administration. The regime established the *Dharma Wanita* organisation, to help wives assist the government in maintaining their husbands' loyalty to the regime (Suryakusuma 2011). Prosecutors' wives joined the *Adhyaksa Dharma Karini*, which had a similar structure and pattern to the *Dharma Wanita* during the New Order era. See the statute of *Adhyaksa Dharma Karini* 2013, and Chief Prosecutor Decision 124/A/JA/11/2007 on the legalisation of *Adhyaksa Dharma Karini* in the IPS.

117 Merdeka, *Ketahuan Selingkuh dengan Polisi, Jaksa VP disanksi Tak Naik Gaji* (Having an affair with a police officer, or prosecutor VP, will be punished), https://www.merdeka.com/peristiwa/ketahuan-selingkuh-dengan-polisi-jaksa-vp-disanksi-tak-naik-gaji.html, accessed on 22 December 2017.

position for having an affair,[118] or for practising polygamy.[119] Prosecutors may also be fired if they commit domestic violence.[120] In addition, the Prosecution Service uses the article to impose implementation of the één en ondeelbaar (one and indivisible) doctrine,[121] which requires that prosecutors comply with the Chief Prosecutor's direction. One example of this is when Chief Prosecutor Prasetyo warned public prosecutors to obey President Joko Widodo's order not to prosecute regional administrations for their initiatives in building infrastructure.[122] If a public prosecutor's performance is not in line with this order, the IPS may punish them by imposing a sanction, such as demotion or the termination of employment.

The Prosecution Service applies two supervision models. The first is IPS middle manager and top-level manager (or executive) control. Since prosecutors are civil servants, they are bound to Presidential Instruction 15/1983, which regulates permanent performance control (*Pengawasan Melekat/Waskat*). This authorises managers to control their subordinates in carrying out their tasks. The second is IPS supervisory division control, led by the Deputy Chief Prosecutor for Supervision, but since the IPS has adopted a military culture, supervision is conducted based on a prosecutor's rank. A supervisor must have a higher grade than the prosecutor being examined.[123] For example, if a high-ranking prosecutor is reported for unethical conduct, and if there are no supervisors of a higher rank available in the District or High Prosecution offices at the time, the ethical examination must be postponed until the Supreme Prosecution Office sends a higher-ranking supervisor to check if any ethics have been violated (Komisi Hukum Nasional 2005d, 124).

118 CNN Indonesia, *Jaksa Selingkuh Dapat Dikenai Sanksi oleh Kejagung*, (Prosecutors who are unfaithful in their marriages can be sanctioned by the Supreme Prosecution Office), https://www.cnnindonesia.com/nasional/20151013081702-12-84597/jaksa-selingkuh-dapat-dikenai-sanksi-oleh-kejagung, accessed on 22 December 2017.

119 Tribunnews, *Kajari Singkawang Dicopot* (The Head Of the Singkawang District Prosecution Office has been dismissed), http://makassar.tribunnews.com/2012/01/18/kajari-singkawang-dicopot, accessed on 22 December 2017.

120 NewsDetik, *KDRT Jaksa Puji Kembali Disidang, Nazwita hadap dakwaan diganti* (Prosecutor Puji is on the trial again for domestic violence; Nazwita hopes the charge is changed), https://news.detik.com/berita/d-1153137/kdrt-jaksa-puji-kembali-disidang-nazwita-harap-dakwaan-diganti, accessed on 16 April 2017. NewsDetik, *Skandal Poligami Jaksa KDRT, Jaksa Puji dipecat*, (Polygamy scandal involving a prosecutor who committed domestic violence; Prosecutor Puji is fired), https://news.detik.com/berita/d-1166495/jaksa-puji-rahardjo-dipecat, accessed on 16 April 2017.

121 See 3.2: The *Één en Ondeelbaar* Doctrine and Organisational Culture

122 Ihsanuddin, *Jaksa Agung Ancam Pecat Jaksa Yang tak Patuhi Instruksi Jokowi* (The Chief Prosecutor threatens to fire prosecutors who do not follow Jokowi's instructions), https://nasional.kompas.com/read/2016/07/20/13210581/jaksa.agung.ancam.pecat.jaksa.yang.tak.patuhi.instruksi.jokowi, accessed on 16 April 2017.

123 See Article 18 of Chief Prosecutor Decision 503/A/JA/12/2000 and Articles 49 (2), and 68 (4) of Chief Prosecutor Regulation 022/A/JA/03/2011.

The Supreme Prosecution Office's supervisory division routinely inspects prosecutors' tasks in the High and District Prosecution Offices. It also examines public reports on prosecutors' performance in carrying out their tasks. However, since the supervisory division of the High Prosecution Office also routinely checks the District Prosecution Office, all too often prosecutors in the District Prosecution Office undergo a double inspection regarding the same issue (Tim Peneliti Komisi Kejaksaan 2013b, 74).

A secretary of Deputy Chief Prosecutor for Supervision, Jasman Panjaitan, claims that the budget for supervision is not sufficient to cover every supervision of every prosecutor.[124] Panjaitan says that, from 2012 to 2014, the budget for the supervision process was only 0.50% of the total IPS budget (Panjaitan 2015, 80). Indeed, this causes some Heads of the District Prosecution Offices to complain about their informal obligation to cover the expenditure of supervisors from the Supreme or High Prosecution Offices.[125] As already discussed throughout this chapter, it is not surprising that a supervisor might let a corrupt prosecutor retain their position, let alone there being no public indignation or media pressure surrounding a case. The supervisor may understand that the IPS' limited budget forces most of the prosecutors to seek alternative funding, such the receipt of a graft to cover their operational expenditure.

Apart from the above IPS internal supervision, the 2004 IPS Law also establishes external oversight via the Prosecution Commission (*Komisi Kejaksaan* or KOMJAK).[126] The KOMJAK has duties to supervise, monitor and evaluate the performance and behaviour of prosecutors and other IPS staff.[127] The KOMJAK also has authority to receive public complaints about the performance and behaviour of IPS staff. However, these supervisory powers are limited, because the KOMJAK cannot conduct direct examinations of the IPS staff without the IPS' permission. The KOMJAK simply hands over public complaints to the IPS supervisory division, and gives a recommendation to the division to follow up such a complaint.

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124 Article 1 (4) of Chief Prosecutor Regulation 022/A/JA/03/2011 states that a supervisor's tasks cover the supervision process for prosecutors *and* the tasks of administrative staff, including their attitude, behaviour and way of speaking.

125 The Head of N District Prosecution Office complains about a supervisor from the High Prosecution Office who frequently visits his office - because it is located in the capital city, not far from the High Prosecution Office - to collect *Rezeki* from operators working there. Personal communication, 2015.

126 See Article 38 of Law 16/2004 on the IPS jo Presidential Regulation 18/2005 on the Prosecution Commission.

127 Unlike other external supervisory body such as the Police Commission or the Judicial Commission that regulated in the Law, the tasks and power of the KOMJAK is regulated in Presidential Regulation 18/2011 on the Prosecution Commission

The KOMJAK cannot supervise the IPS' examination of such a complaint without the Chief Prosecutor's permission.[128] The KOMJAK may take over IPS supervision regarding such a complaint if, after three months, the IPS does not report its examination to the KOMJAK. However, as far as I found from its annual report, the KOMJAK never actually takes over the supervision process from the IPS.[129] As a result, the KOMJAK's function is similar to a mailbox, serving only to compile public complaints about a prosecutor's performance.

3.4.4 The Budget

Public Prosecutors always feel that they are not taken seriously by the government, and that they are last in line to receive a budget from the state. Indeed, the IPS' budget is smaller than that of both the police and the courts, which might make perfect sense considering their tasks. However, as can be seen in the following figure, it is noticeable that the police budget has risen significantly in recent years. One plausible explanation for this is that the police are good at lobbying the government for an increase in their budget.[130] Besides, the police department has more personnel,[131] and other various duties – not only criminal investigation, but also maintaining state security, and managing traffic issues.[132] The latter contributes to their PNBP revenues to the government. The figure also shows that the judiciary's budget rises slightly, while the IPS indeed has the lowest budget, comparing

128 The memory of Understanding No. Kep-099/A/JA/05/2011 jo No NK-001/KK/05/2011 on the IPS and KOMJAK job's mechanism on supervision, monitor and evaluation of the IPS staff performance.

129 A KOMJAK commissioner said that during his term the KOMJAK was headed by a former prosecutor. Furthermore, the head was reluctant to push the IPS to hand over the case, avoiding the conflict with his former colleague. Personal Communication IS 2015 See the Komjak Annual report in *Laporan Tahunan* https://komisi-kejaksaan.go.id/laporan-tahunan-2/ AntaraNews, *Pansel cari calon Komisi Kejaksaan RI yang berani ambil alih laporan* (Selection committee try to find the KOMJAK commissioner who have guts to take over a complaint (from the IPS)) https://www.antaranews.com/berita/965310/pansel-cari-calon-komisi-kejaksaan-ri-yang-berani-ambil-alih-laporan, accessed 6 November 2020

130 See 4.3.1.1: The Police

131 In 2014, for example, the police had about 430 thousand personnel to serve 514 districts across Indonesia; this figure is equivalent to 20 times the number of prosecutors available. *Dedy Istanto, Kapolri: Jumlah Polisi meningkat menjadi 429.711 personnel* (Dedy Istanto, National Police Chairman: the number of police increases to 429,711 personnel), http://www.satuharapan.com/read-detail/read/kapolri-jumlah-polisi-meningkat-menjadi-429711-personel, accessed on 4 April 2018.

132 The police took over the Ministry of Transportation's authority to control and manage traffic, according to Law 22/2009, which authorises the police to register vehicles and issue licence plates. They also grant driving licences. In 2016, the Constitutional Court strengthened these police powers in Decision 89/PUU-XIII/2015.

the two.[133] Another important thing to note is that a prosecutor's salary is lower than that of a policeman/woman and that of a judge, even though they occupy similar positions within the organisation.[134]

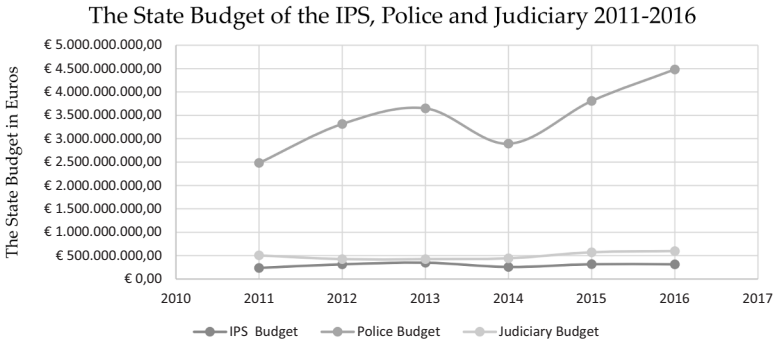

Figure 3: State budgets for the IPS, police and judiciary – adapted from the Indonesian Ministry of Finance Report 2011-2016[135]

One reason for the Prosecution Service's lack of funding may be that the IPS does not comply with the state budget system, which can be elaborated as follows. Firstly, the Prosecution Service's budget is poorly planned. Top-level managers in the Supreme Prosecution Office find it difficult to compile budget planning reports from the High and District Prosecution Offices. Although the Prosecution Service implemented SIMKARI (*Sistem Informasi Manajemen Kejaksaan Republik Indonesia*, or the Online IPS Managerial Information System) to assist in gathering periodic reports from all the prosecution offices, a lack of human resources who know how to operate SIMKARI forces the IPS to retain the old system, which requires each office to send its reports by post to the Supreme Prosecution Office[136] (A. Gunawan 2016, 3). This influences the IPS Planning Department when it updates its budget plans. On the other hand, some heads of District Prosecution Offices complain about the performance of the Supreme Prosecution Office's plan-

133 The Prosecution Service's total budget is only half that of the court's budget, and only a tenth of the police budget. For example, in 2014 the Prosecution Service received a budget of around €257,526,666, while the courts received €443,140,000, and the police received €2,892,966,666.67.

134 FGD *Pusat Penelitian dan Pengembangan Kejaksaan Agung: Disparitas Kesejahteraan Antar Aparatur Penegak Hukum* (Focus Group Discussion by the Centre of Research and Development for the Supreme Prosecution Office: The Wealth Disparity between Law Enforcers), https://www.kejaksaan.go.id/unit_kejaksaan.php?idu=28&idsu=35&idke=0&hal=1&id=4181&bc=, accessed on 8 April 2017.

135 For further details, please see *Nota Keuangan Dan Anggaran Pendapatan Dan Belanja Negara Tahun Anggaran* (Financial Notes and State Budget) from 2011 to 2016. I converted the budget from rupiah to euros, according to the exchange rate at the time. See the exchange rate at: http://www.bi.go.id/id/moneter/informasi-kurs/transaksi-bi/Default.aspx

136 See the Chief Prosecutor's Decision 026/1978 jo. 161/1982.

ning department, since it is likely to duplicate the previous year's reports, rather than adjusting them according to the newest plan proposed by the District Offices.

The second reason is that if the IPS records low spending the government cuts the IPS budget. Since the Prosecution Service spent 71% of its €315,680,000 total in 2015, the government allocated €313,733,333 to the IPS in 2016. A former Head of the District Prosecution Office in East Jakarta, Narendra Jatna, criticises this budget system, which treats the IPS like a state-owned company, in which IPS operators must spend all of the budget.[137] This lack of spending has several causes. The first is that items in the budget are earmarked for particular forms of expenditure, which do not always correspond to prosecutorial practices. For example, if a District Prosecution Office in a remote area has a specific budget for handling corruption cases when there are no corruption cases being investigated, the government will flag this as a lack in prosecutor performance. This means that the prosecutor must *find* corruption cases to prosecute within the area. In addition, the funding mechanism for operational costs in the IPS is based on a reimbursement system, meaning that operators must complete their tasks before they can propose operational funds. Some operators cannot comply with the reimbursement procedure based on the Ministry of Finance regulation, and they therefore receive no reimbursement (*Tim Peneliti Komisi Kejaksaan* 2013a, 154).

The third reason is that the Ministry of Finance requires every state institution to collect as much PNBP (*Penerimaan Negara Bukan Pajak*, or Non-Tax State Revenues) as possible, prior to proposing extra funding.[138] As I mentioned earlier, the police can obtain an increased budget from the government most of the time[139], because they collect PNBP successfully by issuing licences for vehicles and drivers, and by issuing traffic tickets. However, the Prosecution Service can only rely on corruption investigations and prosecutions to obtain PNBP.[140] For instance, the IPS budget increase in 2010 was considered a bonus by the Ministry of Finance, since the IPS could collect PNBP of Rp. 686.87 billion[141], which exceeded the 2009 Prosecution Service's PNBP target of Rp. 30.96 billion.[142]

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137 Kompas, *Dana Anggaran Kecil Untuk Penanganan Perkara, Kejaksaan Disamakan Seperti Badan Usaha* (With its small budget for case handling, the Prosecution Service is treated like a business entity), https://nasional.kompas.com/read/2016/03/13/17400751/Dana.Anggaran.Kecil.untuk.Penanganan.Perkara.Kejaksaan.Disamakan.seperti.Badan.Usaha, accessed on 12 April 2018.

138 See Law 20/1997 on Non-Tax State Revenues.

139 Through Densus 88, the police received additional funds of IDR 1.9 trillion fromthe total state budget, or almost half the total budget for courts in 2016.

140 The IPS may decrease a charge in a corruption case, if the suspect returns the money they obtained via corruption.

141 Equal to €49.062.142

142 Equal to €2.211.428. Epung Saepudin, *Kejaksaan Minta Rp 10,2 triliun Dikasih Rp 2,53 triliun* (The IPS asked for Rp. 102 trillion, and the government granted 2,53 trillion), http://www.anggaran.depkeu.go.id/dja/edef-konten-view.asp?id=736, accessed on 4 April 2018.

Therefore, the IPS assesses managers' performance in the District and High Prosecution Offices, in terms of the PNPB income that they can collect. Some District Prosecution Offices gain other income – not just from corruption cases, but also from traffic tickets.[143] This creates tension between the District Prosecution Offices and the police, as the police also receive PNBP from traffic tickets. The Prosecution Service argues that, according to the KUHAP (or, Criminal Procedure Code), it is the executor of court decisions in all criminal cases, including traffic violations.[144] Therefore, the IPS has the right to claim traffic violation fines as a part of its PNPB. On the other hand, the police also believe that they have the right to claim ticket fines as their PNBP, based on Law 22/2009 on Traffic.[145] Since the IPS and police both claim funds as their PNBP revenue, in 2013 (for instance) around 400 billion rupiahs received from traffic tickets may not have been being saved in the State Treasury.[146]

Apart from the three reasons mentioned above, political decisions during the formation of the state budget also impact the IPS' annual allocation. Some evidence for this is how Joko Widodo's administration prioritising building infrastructure resulted in budget cuts for less strategic institutions, including the IPS.[147] Besides the Prosecution Service's low spending, as mentioned above, this political decision resulted in IPS budget cuts of Rp 162 billion[148], or 4% of the total budget of Rp 4.5 trillion[149] in 2016.[150] The West Jakarta District Prosecution Office, in its annual report, complained about the budget decline affecting their tasks in prosecuting general crimes. In 2016, the government allocated the operational budget

143 *Kejaksaan Negeri Jakarta Selatan, Press Release Kejari jaksel setor denda Tilang Rp. 10 Milyar lebih ke kas Negara pada tahun 2017* (Press Release: South Jakarta District Prosecution Office deposited a ticket fine of more than ten billion rupiahs in the state treasury in 2017), http://www.kejari-jaksel.go.id/read/event/2017/12/04/266/kejari-jaksel-setor-denda-tilang-rp-10-milyar-lebih-ke-kas-negara-pada-tahun-2017, accessed on 4 April 2018.

144 Komisi Kejaksaan, *Denda Tilang sebagai PNBP Kejaksaan* (Fine ticket is revenue for the IPS PNBP), https://komisi-kejaksaan.go.id/denda-tilang-sebagai-pnbp-kejaksaan-2/, accessed on 4 April 2018.

145 Ghulam Muhammad Nayazri, *Polisi dapat Bagian dari Denda Tilang*, (The police may receive income from ticket fines), https://sains.kompas.com/read/2016/01/18/064059630/Polisi.Dapat.Bagian.dari.Denda.Tilang, accessed on 4 April 2018.

146 DPR, *Uang Tilang Rp 400 M Mengendap di BRI* (Ticket fine money was held in the bank) http://www.dpr.go.id/berita/detail/id/7304/t/Uang+Tilang+Rp+400+M+Mengendap+di+BRI, accessed on 12 April 2018.

147 Kontan.co.id, *RAPBN-P 2016, Anggaran Rp 50,6 triliun dipangkas* (IDR 50,6 trillion has been cut from the 2016 state budget plan), https://nasional.kontan.co.id/news/rapbn-p-2016-anggaran-rp-506-triliun-dipangkas, accessed on 3 December 2018.

148 Equal to €11.172.413

149 Equal to €310.344.827

150 Kompas, *Anggaran Dipangkas, Kejagung Terpaksa Berhemat untuk Biaya Perkara* (Budgets have been cut, and the IPS might save court fees for its budget), https://nasional.kompas.com/read/2016/06/10/16341911/anggaran.dipangkas.kejagung.terpaksa.berhemat.untuk.biaya.perkara, accessed on 3 December 2018.

for 585 cases, or approximately 50% of 1,215 cases received by the West Jakarta District Prosecution Office.[151] In some places, public prosecutors organised a strike to protest against insufficient budgets.[152]

The government only allocates Rp. 3,500,000[153] to each general crime case.[154] It covers costs, from the pre-prosecution process to execution of the court's decision at the initial trial stage. The public prosecutor's budget for overseeing the investigation process is only 6% of the total budget, or Rp. 200,000[155] per case. The biggest budget is Rp. 3,100,000[156], which is spent on operational costs during the trial stage. Meanwhile, the execution process only has 6% of the total budget, which is the same as the budget for the pre-trial process. This limited budget has consequences for the prosecution process.

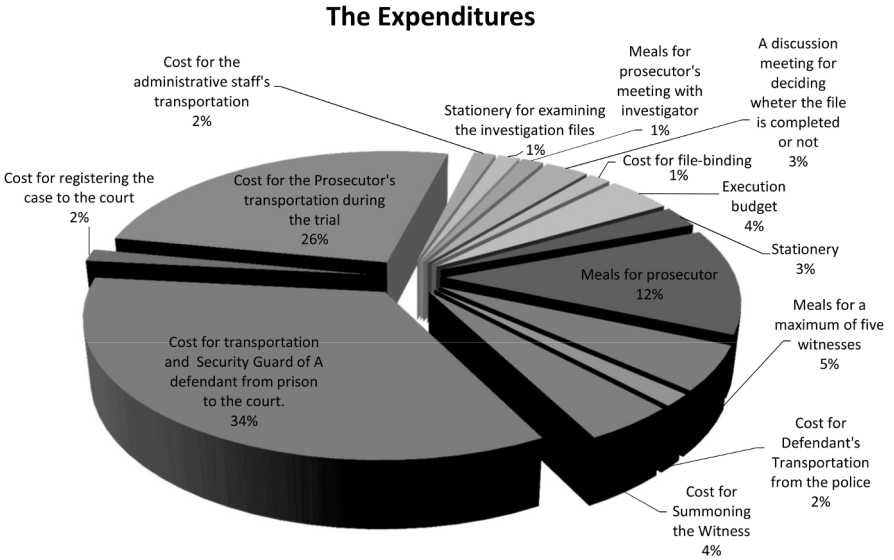

Figure 4: Cost breakdown – the prosecution process for general crimes[157]

151 Admin MaPPI, *Permasalahan Nasional dan Tahunan Anggaran Perkara Kejaksaan* (National and Annual Problems for IPS Budgets), http://mappifhui.org/2016/05/10/permasalahan-nasional-dan-tahunan-anggaran-perkara-kejaksaan/, accessed on 3 December 2017.

152 Johannes Tanjung, *Dana Operasional Belum Cair, Jaksa Kejari Pangkalan Kerinci Dikabarkan Mogok Sidang* (Operational funds have not been received, and a prosecutor from Pangkalan Kerinci District Prosecution office is reported not to have attended the trial), http://pekanbaru.tribunnews.com/2016/05/11/dana-operasional-belum-cair-jaksa-kejari-pangkalan-kerinci-dikabarkan-mogok-sidang, accessed on 3 December 2017.

153 Equal to €241,38.

154 Admin MaPPI, *Perbaikan Anggaran Perkara Kejaksaan untuk Perbaikan Penegakan Hukum* (Revisions to the Budget for IPS Cases to Improve Legal Enforcement), http://mappifhui.org/2016/03/14/perbaikan-anggaran-perkara-kejaksaan-untuk-perbaikan-penegakan-hukum/, accessed on 19 April 2016.

155 Equal to €13,79

156 Equal to €213,79

157 The data is taken from the 2015 M District Prosecution Office Operational Budget.

Article 10 of Chief Prosecutor Regulation 036/A/JA/09/2011 stipulates that a prosecutor overseeing the investigation process should gain strong evidence to present at trial, in line with the prosecutor's interests. Besides, in its Decision 130/PUU-XIII/2015 the Constitutional Court obligates an investigator to send an SPDP (or, a notification letter to open the investigation) no later than two weeks after the investigator decides to start the investigation process.[158] However, as can clearly be seen in figure 4, the pre-trial budget only covers stationery and meal costs during a coordination meeting between the prosecutor and the investigator. It is not surprising that most prosecutors tend to be passive when using their powers to supervise the investigation process, while at the same time facing resistance from the investigator. The prosecutor prefers to wait for the investigator to finish their criminal investigation, then to pass the completed investigation file on to the Prosecution Office.[159]

However, although the trial process receives the most significant allocation during the prosecution process, what is striking about figure 4 is that the budget is spent mostly on transportation costs – for prosecutors, as well as transferring defendants from prison to court. The figure also shows that prosecutors only have enough budget to summon witnesses once, and to buy meals for a maximum of five witnesses. Further, the figure shows that the execution budget is limited – only €10 to put a convicted person in prison, as well as to return the evidence. Furthermore, because of the insufficient budget for catching fugitives, prosecutors choosing to detain criminal suspects based on Article 21 (4)(a) of the KUHAP (a specified offence) or Article 21 (4)(a) of the KUHAP (carrying a penalty of at least five years' imprisonment).[160]

Interestingly, most operators are completely unaware of the budget for each case they handle at the District Prosecution Office. It seems that managers do not share the cost breakdown for criminal prosecution with operators. As managers must use the limited budget strategically, the shortfall is covered by an internal cross-subsidy, by allocating funding which might not be used to cover operational expenses.[161] Managers also allow

158 See Chapter 4.

159 Interview with Prosecutor DG, in 2015. See Article 10 of Chief Prosecutor Regulation 036/A/JA/09/2011, which urges public prosecutors to initiate coordination with the police, either via consultation or by giving technical advice on the investigation process. The coordination process should be written in the report and referred to when the prosecutor examines the investigation files.

160 The prosecutor chooses to detain, unless the accused has filed a suspension of detention by giving a sum of money to the Prosecution Service (see 5.2.3: Coercive Measures).

161 For example, as some District Prosecution Offices do not handle civil law cases by trial, the manager allocates this budget to covering the prosecution of criminal cases.

operators to fund their operations with *Rezeki*.[162] Some prosecutors admit that they buy stationery when they draft an indictment, without asking for a reimbursement[163] (cf. *Tim Sosialisasi dan Penyusunan Profil Kejaksaan* RI 2025 *Program Reformasi Birokrasi Kejaksaan* 2009, 26). Other prosecutors usually request a refund, once the trial process ends. However, operators complain about the lack of budget disbursement mechanism procedure resulting in expenses that might not be reimbursed (*Tim Peneliti Komisi Kejaksaan,* 2013a, pp. 30, 54).

The IPS culture positions operators similarly to soldiers, in order to force them to perform well on a limited budget. Operators need to perform well, in order to have a successful career. The executive prosecutor looks at the overall performance of operators, from their success in overcoming and processing limitations, to achieving organisational goals.

3.5 A Reform Effort

As I discussed before, the 2004 Prosecution Service Law is designed to maintain presidential political power in the IPS. However, since the public was demanding large-scale criminal justice reforms, including reform of the IPS, the government enacted Law 17/2007 on the National Long-Term Development Plan 2005-2025, mandating the IPS to reform its bureaucracy to regain public trust in the criminal justice system. Since then, donor agencies and reformers from civil societies have been in support of reforming IPS bureaucracy.[164] However, as mentioned in the previous sections, these reform efforts are likely to fail. This finding reflects on what Chase (1997) and Lee (2014) found: bureaucratic reform within a prosecution service cannot happen without changes to problematic provisions in laws, organisational structure, and culture. In this regard, prosecutors will find it difficult to change their working culture without incentives that are strong enough to change their behaviour (cf. Chase 1997; cf. Lee 2014a).

162 Some prosecutors I met admitted that they try to find *Rezeki halal,* instead of *Rezeki haram* (defined by Bedner as money from illegal or corrupt activities). *Rezeki halal* means a prosecutor receives an incentive not to abuse their powers. Some prosecutors had second jobs lecturing in law schools, or training advocates. Some of them had already been certified by the Ministry of Higher Education. However, in some cases the term *Rezeki halal* is problematic. For example, some prosecutors confess that they also give legal advice to clients with legal issues, including criminal cases. They argue that they can act as legal advisor, because Prosecution Service law constitutes that they can give legal advice to members of the community; in reality this causes a conflict of interest, because their prosecutorial position may be used to intervene in the criminal process.

163 Personal communication with IW, 11 June 2015.

164 See 2.9 Post-military Regimes: The *Reformasi* (1999-2019)

After 2007, the IPS launched a reformation agenda through six Chief Prosecutor Regulations on bureaucratic reform, or PERJA *Pembaruan*,[165] and the impact of those regulations seemed to be instantaneous and sporadic. The Prosecution Service was probably not serious about improving its accountability and transparency regarding its management process for criminal cases. The IPS began modernising its case management process through the SIMKARI (or, Online IPS Managerial Information System). The SIMKARI was established to provide comprehensive information, not only on human resources and budgets, but also on all prosecution office cases.[166] In 2011, the World Bank assisted the IPS in initiating SIMKARI as a pilot project in some District and High Prosecution Offices.[167] The Kepanjen District Prosecution Office was selected to receive an updated computer system, to support the SIMKARI application.[168] However, as I found during my fieldwork in 2015, Kepanjen District Prosecution Office only uses this device to upload the annual report to the Supreme Prosecution Office; it does not use it fully, i.e. to manage and supervise the prosecution process for criminal cases. The Kepanjen District Prosecution Office argued that not all prosecutors had the ability to operate a computer. Besides, after 2011 the next Head of Kepanjen District Prosecution Office did not have to take SIMKARI into account during the prosecution process.[169]

Since only few selected District and High Prosecution Offices received a budget to support the development of an online system, some District Prosecution Offices used their *Rezeki* to fund their online case management – for example, the District Prosecution Offices in Surabaya, West Jakarta,

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165 First, Chief Prosecutor Regulation 064/A/JA/07/2007 on the Recruitment of Civil Service Candidates and Prosecutors. Second, Chief Prosecutor Regulation 068/A/JA/07/2007 on the Implementation of Education and Training for Staff in the Prosecution Service. Third, Chief Prosecutor Regulation 066/A/JA/07/2007 on the Minimum Professional Standards for Prosecutors. Fourth, Chief Prosecutor Regulation 065/A/JA/07/2007 on Developing the Careers of Staff in the Prosecution Service. Fifth, Chief Prosecutor Regulation 067/A/JA/2017 on the Prosecutors' Behavioural Code. Sixth, Chief Prosecutor Regulation 069/A/JA/2007 on Provisions for Conducting Supervision within the Indonesian Prosecution Service. As was elaborated in the previous sections, most of the afore-mentioned regulations have since been adjusted by the Prosecution Service.

166 Kejaksaan, *Penerapan Sistem TI Penanganan Perkara* (The application of electronic systems to handling cases), https://www.kejaksaan.go.id/reformasi_birokrasi.php?section=3&id=39, accessed on 12 December 2017. See also the 2011 Annual IPS Report, p. 26.

167 Interview with IS, of the IPS reform team, 5 May 2015.

168 The reason for choosing Kepanjen District Prosecution Office was that the Head of the Office at the time was considered capable of adapting to technology, as well as being willing to reform. Interview with IS, of the IPS reform team, 5 May 2015.

169 When I interviewed the Head of the Kepanjen District Prosecution Office and the Head of the General Criminal Section in 2015, neither knew that the office had received some computers and software for managing criminal cases from the World Bank. When I asked them to check with previous administration staff, they stated only that support from the World Bank was not often used.

and Bandung. The Surabaya and West Jakarta District Prosecution offices built an online payment system for traffic tickets.[170] In addition, in 2015 and 2016 the West Jakarta District Prosecution Office uploaded its annual case and financial report, and published it on its website.[171] In 2015, the Bandung District Prosecution Office also built an online case management system, to assist operators and managers in carrying out their tasks during the prosecution process.[172] These initiatives led to some heads of District Prosecution offices being promoted to a higher level and more strategic position.[173] However, similar to the situation faced by the Kepanjen District Prosecution Office, which was mentioned earlier, the next Head of the District Prosecution Office was rather reluctant to continue the innovations of his/her predecessor.[174] As a result, the reform initiatives in those offices have been hindered.

Apart from the issues mentioned above, there are at least three reasons why donor agency support of IPS reform has not succeeded. Firstly, there are internal barriers. It seems that some top-level managers want to maintain the IPS status quo that benefits them. They are unwilling to cooperate with the reform team in providing essential data to establish a new system. Another reason is that the donor agencies and reform consultants sometimes propose a program based on their own agenda, which does not suit IPS interests. This makes the IPS reluctant to apply for the program being offered by the donors. The last reason is that reformers from the NGO provided no succession planning to the IPS reform team. Unlike LeIP (an

170 Tribunnews, *Sediakan Pengambilan Tilang Online, Kejari Surabaya Tak Lagi Dipenuhi Antrean Pelanggar Lalu Lintas* (Providing online payment for ticket fines - no more queues at the Surabaya District Prosecution Office), http://jatim.tribunnews.com/2018/09/07/sediakan-pengambilan-tilang-online-kejari-surabaya-tak-lagi-dipenuhi-antrean-pelanggar-lalu-lintas, and NewsDetik, *Ingat Mulai Esok Pelanggar di Jakbar tak Perlu Ikut Sidang Tilang* (Remember! Starting from tomorrow, violators of traffic laws in West Jakarta may not attend a traffic hearing), https://news.detik.com/berita/3388513/ingat-mulai-esok-pelanggar-di-jakbar-tak-perlu-ikut-sidang-tilang, accessed on 22 April 2018.

171 Website *Kejaksaan Negeri Jakarta Barat* (the official website of the West Jakarta Prosecution Office), http://www.kejari-jakbar.go.id/, accessed on 12 May 2018.

172 This initiative was a response to a suggestion from the Head of the High Prosecution Office, Fery Wibisono. Unfortunately, this project failed because the Chief Prosecutor did not want to launch it officially, for illogical reasons. Even though he was present at the Bandung District Prosecution Office, Prasetyo cancelled the launch, because of the number of participants present and the absence of certain officials. RMOL, *Kejagung RI Batalkan Launching Aplikasi Case Management Kejaksaan*, (Supreme Prosecution Office Cancels the Launch of an Online Case Management Application), http://www.rmol-jabar.com/read/2015/05/12/9082/Kejagung-RI-Batalkan-Launching-Aplikasi-Case-Management-Kejaksaan-, accessed on 22 April 2018.

173 The former Head of the West Jakarta District Prosecution Office was promoted as an Assistant for General Crimes in the North Sumatera High Prosecution Office, whereas the former Head of the Surabaya District Prosecution Office attained a new position as an Assistant for Special Crimes in the East Java High Prosecution Office.

174 This can be read on the West Jakarta District Prosecution Office website. Its annual reports have not been updated since the Head of the District Prosecution Office, Reda Manthovani, was replaced by Patris Yusrian Jaya and promoted to another office.

independent judiciary NGO that continues to assist reform efforts in the Supreme Court today), it seems that NGO reformers in the IPS do not work together as an organisation, but instead as individual consultants.[175] Therefore, at the time of writing it is not surprising that no NGO reformers are involved in the IPS reform team, since most of the previous team members have moved to another position, outside the IPS.[176]

A former Chief Prosecutor, Basrief Arief, said that he faced obstacles to reforming human resource management within the Prosecution Service. Arief believes that the IPS should reform the promotion and transfer process to be more transparent and accountable, so that it contributes to a prosecutor's performance.[177] A former Deputy Chief Prosecutor for Advancement admits that, besides the Chief Prosecutor's political will, external factors (such as impediment by political actors) has also affected the IPS bureaucratic reform progress. In this regard, although the Deputy Chief Prosecutor for Advancement manages a prosecutor's career, the final decision to promote or transfer a prosecutor should also consider external political interests, since the IPS needs political support from other political institutions, i.e. parliament or the ministries. Thus, as a high-level manager, the Deputy Chief Prosecutor for Advancement must negotiate IPS interests with other actors, in order to secure both a budget and authority from them. This negotiation includes how the prosecutor's executive can accommodate the political interests of other actors, concerning criminal prosecution[178], and also the promotion and transfer of prosecutors who have close connections with such political actors.[179]

These all create an image of the Prosecution Service as an institution whose leadership, general culture, and institutional dynamics conspire to protect its own interests, condone corruption, and prevent change.

175 Apart from the NGO's succession planning issues, transfer of knowledge from NGO reformers to prosecutors in the IPS reform team could have been be difficult. Most prosecutors in the IPS reform team had only a short period before they got promoted to another position. As a result, the IPS has no prosecutors with expertise in reform issues. Interview with IS, in May 2015.

176 Two of the main NGO activists in the IPS reform team continued their careers outside the IPS. SV was appointed Commissioner of Judicial Commission, while IS became a commissioner for the Prosecution Commission.

177 An interview with the Former Chief Prosecutor, Basrief Arief, in 2015.

178 One example of this can be seen in a video recording of a DPR meeting with the Chief Prosecutor on Facebook, in which one of the DPR members asks the Chief to apply prosecutorial discretion to a corruption case at regional level, in which a member of their party was a suspect.

179 Personal communication with B, in 2015.

3.6 Conclusion

The root of the Indonesian Prosecution Service's bureaucratic dysfunction is the application of military culture to prosecutors. The Prosecution Service still maintains its military interpretation of the één en ondeelbaar doctrine, in order to impose the loyalty on prosecutors. The IPS' military style can be seen in the military uniforms and badges which they wear outside of trial. As I elaborated in this chapter, the IPS has developed this interpretation of the één en ondeelbaar doctrine into the *Tri Krama Adhyaksa* principle, which ensures the dedication and loyalty of prosecutors to their leaders. The IPS embeds this principle in prosecutorial candidates and in its training programs. The top-level managers require operators to behave and make interpretations which match theirs. Thus, operators can be likened to soldiers, who have no discretion when carrying out their powers.

This militaristic culture affects the bureaucratic structure of the IPS and emphasises the command hierarchy. As I discussed above, the IPS has hierarchical control over prosecutors' tasks, and high-ranking prosecutors are positioned in the Supreme or High Prosecution Offices. The IPS centralises most of its authority and power in the Supreme Prosecution Office, while the High and District Prosecution Offices are positioned only as assistants and operators of Supreme Prosecution Office policies. Moreover, the government positions the Chief Prosecutor as a cabinet member, which results in an IPS structure and function which supports the government's political interests. For example, the function of the High Prosecution Office has been adjusted, from handling cases in appeal courts to supporting government institutions at provincial level, and acting as a Supreme Prosecution Office representative to control prosecutors at district level. Such adjustment also affects the prosecution process. Since the District Prosecution Office handles the prosecution process in the District Court, operators in the High Prosecution Office must submit investigation files to the Head of the District Prosecution Office. Consequently, most District Prosecution Office managers would face difficulties in imposing hierarchical control on high-ranking operators from the High Prosecution Office.

The IPS bureaucratic system is inherited from the historical Dutch Colonial Prosecution Service, which was part of the judiciary. Thus, the IPS is likely to face difficulties in applying the militaristic system. Even though the IPS wants to position operators as soldiers, the Prosecution Service's human resource management is not the same as that of the army (which organises its employees according to type: soldiers, middle-ranking officers, and high-ranking officers). Compared to the army, which distinguishes its staff from the recruitment process onwards,[180] the IPS only distinguishes

180 The Indonesian army has differentiated recruitment processes for *Tamtama*, according to whether the candidate is a prospective soldier (an operator), a *Bintara* (a manager), or a *Perwira* (an executive). See either Government Regulation 39/2010 or Army Commander Regulations 18/III/2011.

between its recruitment process for prosecutors and the equivalent for administrators. Because all prosecutors have a chance of becoming high-ranking officers, most of them do not want to fill an operator position, which to them is equivalent to being a soldier. To respond to demand from prosecutors for high-level roles, the IPS provides managerial positions, even though it suffers from a shortage of operators. The Prosecution Service then stipulates that managers must perform a double role (also as operators). As a consequence, the IPS faces problems in imposing hierarchical control. For example, a General Crimes Division Manager cannot have hierarchical control over an Intelligence Manager who has a role as an operator in the prosecution process, since they are equals.

Another problem affecting the performance of the IPS is its limited budget. The IPS receives the smallest budget, compared to other criminal justice actors such as the police and judiciary. A prosecutor's salary is lower than those of both the police and judges. The IPS may cannot maximise the prosecutor's power when handling criminal cases. Surprisingly (as reported in its annual report), the Prosecution Service is capable of exceeding the government target for handling criminal cases, even though its budget is limited.[181] As I discussed above, top-level managers in the IPS allow operators to seek additional funds to cover their operational expenditures.

The Chief Prosecutor's weak political position within the executive, as well as their dependence on parliament, also influences IPS decisions on managing its personnel. Since top-level managers in the IPS must obtain approval from parliament for the IPS annual budget, it admits that it should accommodate the interests of parliamentary members, including during the prosecution process and within its human resource management. For example, top-level managers must consider any request from a parliamentary member to transfer, promote or delay the sanctioning of a prosecutor.

Apart from the internal barriers imposed by top-level managers, who benefit from maintaining the current status quo within the IPS, the approach of donor agencies and NGOs seems to ensure that the IPS bureaucracy remains unreformed. Besides, the IPS must adjust its goals to align with the regime's interests, so that the regime can retain political power. This then influences the IPS' tasks and powers – not only as criminal prosecutors, but also when performing other functions – to secure the political interests of the regime. The next chapter will elaborate on the IPS' relationship with other criminal justice actors, such as the police and judges. It will show that, since prosecutors suffer from heavy workloads and limited budgets, they are reluctant to carry out tasks that potentially disrupt their relationship with other actors.

181 The Prosecution Service is always proud of its performance when criminal prosecutions exceed the target set by the government. See the IPS annual reports from 2011 to 2016.

4 The Indonesian Prosecution Service within the Criminal Justice System: Its Tasks, Powers, and Relationship with other Criminal Justice Actors

4.1 Introduction

This chapter presents how the public prosecutors' tasks and powers within the criminal justice system have been designed to serve the regime in retaining its power. Although the authoritarian New Order regime of President Soeharto ended in 1998, the new government retained certain provisions obligating the Indonesian Prosecution Service (IPS) to serve the ruler's political interests. However, the decreasing political power of the President, the strengthening of the role of parliament and the judiciary in the constitution, and the emergence of various civil society actors, all inevitably affect how the Prosecution Service exercises its powers and duties. Therefore, the IPS' top-level managers must adjust their functions within IPS law – i.e. as public prosecutors in criminal cases, as state lawyers in civil law disputes and administrative cases, and as state intelligence – so that they remain in line with the demands of political actors.

Besides, since public prosecutors require other criminal justice actors (such as the police and the courts) to achieve their mission, I will also discuss the relationship between the IPS and other criminal justice actors. These criminal justice actors experienced similar problems to the IPS during the New Order. The authoritarian regime repealed their independence and emphasised their loyalty to the government, instead of encouraging them to demonstrate legal professionalism. As Lev (2000, p. 97) noted, changes in the relationship between such actors are very influential on the evolving character of justice. This chapter will discuss the extent to which the Prosecution Service interacts with criminal investigation institutions, advocates and legal aid providers, the ministry of law and human rights, and the courts. As the KUHAP (the Code of Indonesian Criminal Procedure) meant that prosecutors lost their power to supervise the pre-trial stage, they have developed strategies to influence other actors, in line with their mission. This chapter will show how the Prosecution Service exploits the weaknesses of other criminal justice system actors, in order to achieve its own goals.

4.2 Legal Resources: Tasks and Powers within the Prosecution Service

The Indonesian Prosecution Service is a government body that implements state power in the prosecution process, and performs other tasks according to the law.[1] As part of this executive power the Prosecution Service has duties, not only as the provider of public prosecution, but also as state intelligence, and as state attorney in administrative and civil law disputes.[2] Furthermore, the KUHAP and the 2004 IPS Law differentiate between the terms *Jaksa*[3] and Public Prosecutor (*Penuntut Umum*). *Jaksa* means the state officials (or civil servants) who have the authority to prosecute, execute judgements, and perform other duties based on law (Art 1 (1) of the IPS Law jo. Article 6 (a) of the KUHAP), while the public prosecutor is described as *Jaksa*, who has the authority to prosecute and execute judgements only (Article 1 (2) of the IPS Law jo. Article 6 (b) of the KUHAP).

In addition to the IPS Law and the KUHAP, provisions for the IPS can also be found in laws such as the Indonesian Criminal Code (known as *Kitab Undang-undang Hukum Pidana*, or KUHP), the Anti-Corruption Law, the Economic Crime Law, the Blasphemy Law, the Human Rights Law, the Juvenile Justice System Law, the Tax Law, the Foundation Law, and the Bankruptcy Law.[4] Even though the government granted Nanggroe Aceh Darussalam province special autonomy to impose sharia criminal law, the public prosecutor still plays an important role in determining if a case may be prosecuted using sharia law (in *Qanun*[5]) or the national Criminal Code (Article 39 of the 2004 Law Prosecution Service jo. Law 18/2001 on Aceh Special Autonomy).

The IPS Law gives the Chief Prosecutor special powers as supreme prosecutor.[6] Article 35 of the IPS Law stipulates the duties and authorities of the Chief Prosecutor, as follows:

1 Article 2 (1) of Law 16/2004 on the Indonesian Prosecution Service (hereafter, the IPS Law).

2 Article 30 of the IPS Law.

3 For more details on the term *Jaksa*, see Chapter 2.

4 Article 2 (2) of Law 37/2004 on Bankruptcy states that the IPS can bring a company bankruptcy before the court, for public interest reasons.

5 Law 18/2001 on Aceh Special Autonomy allowed the local legislature to formulate *Qanun*, the term for regional regulations in Aceh. See *Qanun* Aceh 6/2014 on Islamic Criminal Law.

6 The Military Court Law also mentions that the Chief Prosecutor is the Supreme Prosecutor in the Military Court. See Elucidation of Article 57 of Law 31/1997 on the Military Court. The IPS planned to establish the Deputy Chief Prosecutor for Military Crimes. Requisitoire Magazine, *Perlu ada Jaksa Agung Muda Militer di Kejaksaan Agung* (It is necessary to have the Deputy Chief Prosecutor for the Military in the Supreme Prosecution Office) http://requisitoire-magazine.com/2014/07/14/perlu-ada-jaksa-agung-muda-militer-di-kejaksaan-agung/, accessed 2 September 2018.

a. *To decide and control policies within the Prosecution Service;*
b. *To streamline the law enforcement process conducted by the Prosecution Service;*
c. *To dismiss any case, in the interests of the public;*
d. *To file cassation in the interests of law to the Supreme Court, in criminal law, civil law and administrative disputes;*
e. *To give legal advice to the Supreme Court, when examining criminal cases during the cassation process;*
f. *To impose travel bans on criminal case suspects who wish either to travel from Indonesia or to enter Indonesia.*

The Chief Prosecutor's power not only covers the prosecution policies within the IPS; it also maintains the uniformity of judgements within the judiciary by giving advice to the Supreme Court and filing cassation in the interests of law (MaPPI FH UI 2012, 6). Some observers say that these judicial powers are similar to the authority held by the Dutch *Procureur-Generaal* in the Supreme Court in the Netherlands today (*Sistem Kesatuan Hukum Dan Beberapa Topik Tentang Hukum & Peradilan Di Negeri Belanda* 2011). The IPS combines two different functions, which are held by two different officials in the Dutch system. In the Netherlands, the *Openbaar Ministerie* is in charge of controlling prosecution policies, while the Supreme Court *Procureur-Generaal* advises Supreme Court judges during cases (van de Bunt and van Gelder 2012, 121; Chorus, Hondius, and Voermans 2016, 450). Unlike the function of the Dutch *Procureur-Generaal*, who files cassation in the interests of legal uniformity, the IPS uses this power to enforce its policies within the prosecution process. It is clearly stated, in Vice Chief Prosecutor Circular Letter B-281/E/6/1996, that a Chief Prosecutor's legal advice to the Supreme Court is drafted in order to reinforce a prosecutor's cassation statement (*Memori Kasasi*).[7]

The next section will discuss how public prosecutors carry out their roles as criminal prosecutor, state attorney, and state intelligence. I will also discuss the difficulties prosecutors face in defining the three roles, when handling criminal cases.

4.2.1 The Public Prosecutor in Criminal Cases

Before the KUHAP was enacted in 1981, the Prosecution Service was authorised to carry out investigations of all crimes and violations of law, but this power decreased after the KUHAP was enacted, as it also allows police and civil service investigators certain investigative powers.[8] As the KUHAP adopts the principle of functional differentiation, which divides criminal procedure stages based on the actors involved, prosecutors' duties and powers are also more limited within the prosecution process. Prosecu-

7 See 5.4.4: Appellate Procedure

8 At least 30 civil service investigator bodies have been established since the KUHAP was enacted in 1981.

tors only examine investigation files after the police have completed their investigation; then they carry out any binding court decisions (Articles 137 and 270 of the KUHAP).

However, the transitory provisions of Article 284 Section 2 of the KUHAP allow the IPS to retain its investigative power, as follows:

> *"Within two years of the promulgation of this law, all cases shall be subject to its provisions, with temporary exceptions for special provisions on criminal procedure, as mentioned in certain laws, until they are amended or declared invalid."*[9]

Based on these provisions, the IPS argues that it still has the power (outside of the KUHAP) to investigate special crimes. With this in mind, the IPS has adjusted its organisational structure by dividing the position of Deputy Chief Prosecutor for Operation into two deputy positions:[10] a Deputy Chief Prosecutor for General Crimes (*algemeen strafrecht*); and a Deputy Chief Prosecutor for Special Criminal Cases (*bijzonder strafrecht*).[11] The most striking difference between these divisions is the relative authority to investigate. Under the New Order regime, the IPS was authorised to investigate subversive activities and corruption. When the Anti-Subversion Law was repealed after President Soeharto's fall in 1998, the IPS retained its power to investigate corruption.

Chief Prosecutor Regulation PERJA 036/A/JA/09/2011 mentions that the General Crime Division prosecutes crimes that are regulated in the KUHP, specifically: crimes against people and property; crimes against state security and public order; and general crimes regulated outside of the KUHP, including criminal acts or misdemeanours that are regulated by local governments (PERDA).[12] Chief Prosecutor Regulation PERJA 017/A/JA/07/2014 stipulates that the Special Crimes Division deals with corruption, tax crimes, economic crime (customs and excise), human rights violations[13], and money laundering cases.[14] The IPS also has the authority

9 Article 17 of Government Regulation 27/1983 on Implementation of the KUHAP states that public prosecutors can function as criminal investigators.

10 Presidential Decision 86/1982.

11 Theoretically, general crimes are defined by the offences stipulated in the KUHP, while special crimes are criminal acts that sit outside the KUHP (Mudzakkir 2008). However, in practical terms this categorisation is different from the categorisations used by the police, the IPS, and the judiciary. Moreover, there is no similarity between the different categorisations used by these institutions. For example, terrorism is categorised as a special crime by the police, but the IPS classifies it as a general criminal offence.

12 Chief Prosecutor Regulation 036/A/JA/09/2011 also includes certain criminal provisions outside of the KUHP, such as juvenile law, cyber-crime and terrorism.

13 The IPS is the only institution with the authority to investigate cases of human rights violation. See Law 26/2000 on the Court of Human Rights.

14 The Special Crimes Division only handles money laundering cases within specific offences, such as corruption, and other crimes dealt with by the division. The general crimes division also handles money laundering cases within offences investigated by the police or other civil service investigators.

to investigate any corruption that is committed by civilians or the military (Article 39 of Law Number 31, 1999).

However, if an offender is being prosecuted for several offences which were committed concurrently, the IPS' differentiation of the procedures for general crimes and special crimes (via its dual criminal prosecution divisions) complicates the prosecution process.[15] Because the Special Crime Division cannot prosecute the general *and* special crimes in a single case, without cooperating with the police or civil service investigators, the division usually limits itself to prosecuting special crimes and disregards any general crimes.[16]

In 2007, the Constitutional Court reviewed the IPS' power to conduct criminal investigations.[17] Subarda Midjaja (Subarda) filed a constitutional review of this IPS power, because he was named by the IPS as a suspect in a case of alleged soldier health insurance corruption, even though the case had already been investigated and dismissed by the police beforehand.[18] Subarda argued that the Prosecution Service's authority to reinvestigate the case violated his constitutional rights. The IPS argued that its investigation was not double jeopardy, since the police used the KUHP to investigate the case, and the Prosecution Service used the Corruption Law. The IPS stated that the KUHAP allows an investigator to reinvestigate a case which was earlier waived, as long as there is strong evidence for doing so.

The police were involved as a party at the trial, and they asked the Constitutional Court to eliminate the IPS power to investigate the corruption case.[19] The police argued that the IPS should not conduct its own inves-

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15 *Concursus realis (*in Dutch*: meerdaadse samenloop).* See Article 65 of the KUHP. *Concursus idealis* (in Dutch: *eendaadse samenloop).* See Article 63 of the KUHP.

16 Personal Communication with a prosecutor in the Special Crimes Division, 2015.

17 Constitutional Court Decision 28/PUU-V/2007. See Hukum Online, *Istri Subarda Ajukan Uji Materi UU Kejaksaan* (Subarda's wife filed the constitutional review on the IPS Law) http://www.hukumonline.com/berita/baca/hol18096/istri-subarda-ajukan-uji-materi-uu-kejaksaan, accessed 23 February 2016. Apart from this case, the Constitutional Court also reviewed the IPS' authority in the corruption investigation. See Constitutional Court Decision 2/PUU-X/2012 and Constitutional Court Decision 16/PUU-X/2012. In both decisions, the Constitutional Court retains the IPS authority to investigate. Hukum Online, *Pertarungan Wewenang Polisi dan Jaksa Dalam Menyidik Perkara Korupsi* (Contestation between the police and prosecutors in investigating corruption cases) https://www.hukumonline.com/berita/baca/hol18538/pertarungan-wewenang-polisi-dan-jaksa-dalam-menyidik-perkara-korupsi-, accessed 12 June 2018.

18 In 2004, Subarda was already being investigated by the police for alleged embezzlement based on the KUHP (or, Criminal Code). Following a request from the Inspector General of the Department of Defence to drop the case, the police issued the cessation of the investigation - S.Tap/103/VII/2004/Dit-I, 20 July 2004. See Constitutional Court Decision 28/PUU-V/2007, p. 4.

19 The police argue that the heavy standards of the IPS burden their investigation work, while the IPS' investigation work is less burdened and more convenient. The police feel that the IPS prefers to conduct its own investigations into corruption cases, to gain more *rezeki*. The police also think that the IPS does not provide any serious supervision for small cases that are being investigated by the police (Rajab 2003, 199).

tigation and, if the IPS were to find new evidence, it should be given to the police, so that they could reopen the case.[20] The police also complained that the IPS often returns police investigation files in corruption cases, because of insufficient evidence. The police therefore had the impression that the IPS was underestimating police investigators' capacity to handle corruption cases.[21] The police ultimately believed that the IPS' power to investigate corruption cases had caused tension and unfair competition between them and, as a result, the public was suffering legal uncertainty.[22]

The Prosecution Service responded to police complaints by presenting data on corruption case investigations from 2003 to 2007, which showed that every year an average of 80% of the corruption cases in Indonesia were investigated by the IPS. Since the new government priority during the reform period was to eradicate corruption, repealing the IPS' power to investigate corruption cases had the potential to disrupt the government agenda.[23] The IPS also argued that prosecutors are more professional, and have more experience in handling corruption, than police officers. Moreover, the IPS argued that using a single institution to investigate and prosecute corruption is more effective, because public prosecutors can directly verify facts and evidence during the investigation process, thereby anticipating other possibilities that might arise during the trial process.[24] In its decision, the Constitutional Court admitted that corruption investigation by the IPS and the police overlaps, which may affect legal certainty. However, the Constitutional Court rejected Subarda's judicial review to repeal the Prosecution Service's power to investigate corruption cases, because Subarda did not have any legal standing.[25] It seems that the Constitutional Court was being cautious, and did not want to get involved in the tension between the IPS and the police. The court suggested that parliament and the President should draft a new law, to decide whether the IPS or the police should be the sole institution investigating corruption cases.

However, IPS duties regarding corruption issues are not limited to investigation and prosecution processes. Since the IPS is part of the executive, prosecutors have an additional duty to prevent government corruption. President Joko Widodo instructed the IPS and police not to investigate and prosecute regional heads for corruption, because of their discretion to accelerate infrastructure projects.[26] Chief Prosecutor Prasetyo then

20 Constitutional Court Decision 28/PUU-V/2007, p. 70.
21 Ibid, p. 71.
22 Compared to the KPK (which only handles 4% of corruption cases) and the police (who only investigate 16% of corruption cases). Ibid, p 77.
23 Ibid, p. 81.
24 Ibid, p. 84.
25 Ibid, p 102.
26 Tirto, *Ketika Jaksa Jadi Centeng Proyek Infrastruktur* (When the prosecutor became the government's hitman for infrastructure projects), https://tirto.id/ketika-jaksa-jadi-centeng-proyek-infrastruktur-bZ5z, accessed 12 June 2018.

responded to the instruction by establishing the Team for Guarding and Securing the Government and its Development Projects (or TP4).[27]

The team of prosecutors in the TP4 must ensure that government infrastructure projects are in line with legal procedures.[28] However, since TP4 can only oversee the formal documents and procedures for a project, there is no guarantee that the project will be free of corruption. TP4's position is vulnerable, because corruptors may use the TP4 assistance report as a shield, if they are involved in a corruption case which the Special Crimes Prosecutor wants to investigate. Although Chief Prosecutor Regulation 04/A/JA/11/2016 states that prosecutors must investigate and prosecute cases of corruption in a TP4-supervised project, as far as I have discovered, the IPS has never investigated any allegations of corruption in projects supervised by TP4. It is likely that the Corruption Eradication Commission (KPK) only investigates and prosecutes corruption in projects overseen by TP4 prosecutors.[29] In addition, some prosecutors gain *rezeki*[30] from the TP4. A NGO, *Masyarakat anti Korupsi Indonesia* (or MAKI) asked the Chief Prosecutor to dissolve TP4, because it found that the prosecutors were either extorting the contractor or asking to be involved in the project.[31]

4.2.2 The Public Prosecutor as State Attorney in Civil Law and Administrative Disputes

Originally, the prosecutor's function as state attorney was to handle civil law disputes related to criminal cases being handled by the IPS.[32] This role is adopted from Article 3 of *Staatsblad* 1922 No. 522 on the *landsadvocaat*, Article 123 (2) of the HIR, and Article 147 of the Rbg, which state that prosecutors can represent the government in civil law disputes. Therefore, the IPS positioned the Directorate of Civil Law disputes under the Directorate General of Crimes (Jusuf, 2014). The government then upgraded these

27 Chief Prosecutor Regulation 04/A/JA/11/2016 on the Team for Guarding and Securing the Government and its Development Projects.

28 Kompas.com, *Jaksa Agung Ancam Pecat Jaksa yang Tak Patuhi Instruksi Jokowi* (The Chief Prosecutor warns public prosecutors who do not obey the Jokowi's instructions), 20 July 2016 https://nasional.kompas.com/read/2016/07/20/13210581/jaksa.agung.ancam.pecat.jaksa.yang.tak.patuhi.instruksi.jokowi, accessed 12 June 2018.

29 Detik, *Soal OTT KPK di Pamekasan Wapres JK Soroti Peran Tim TP4 Kejagung* (The KPK's sting operation against Pamekasan District prosecutors - Vice President JK criticises the role of the TP4 team of the IPS) https://news.detik.com/berita/d-3587374/soal-ott-kpk-di-pamekasan-wapres-jk-soroti-peran-tim-tp4-kejagung, accessed 12 June 2018.

30 For more discussion on *rezeki*, see chapter 3.

31 Afdal Namakule, *Oknum Jaksa Diduga Peras Proyek Pemerintah di Bali, MAKI harap TP4D dibubarkan* (Prosecutor attempted to extort officials in Bali, and MAKI asked the IPS to dissolve TP4) https://fin.co.id/2018/09/13/oknum-jaksa-diduga-peras-proyek-pemerintah-di-bali-maki-harap-tp4-dan-tp4d-dibubarkan/, accessed 7 March 2019.

32 The prosecutor would file a civil lawsuit against the family of a defendant who had passed away.

functions to handle not only civil law disputes related to criminal cases, but also civil law cases related to the government and its companies.[33] When Law 5/1986 on the Administrative Court was enacted, the government added powers for the IPS to represent the state in disputes regarding administrative law (Jusuf 2014, 125). The IPS then created the special position of Deputy Chief Prosecutor for Civil Law and Administrative Disputes, because Prosecution Service Law 5/1991 had added the state attorney role for prosecutors.

As the state attorney[34] in civil law and administrative law,[35] the prosecutor has to provide legal assistance,[36] legal opinions[37], and other legal action[38] on behalf of the state or government.[39] The prosecutor's function as the attorney in civil law disputes has been regulated in various laws. Some provisions in the Civil Code[40] regulate: the prosecutor's role in child custody requests (Article 360); the prosecutor's right to request the power of attorney necessary to manage the property of a person who is untraceable by the court (*afwezigheid*) (Article 463); and the prosecutor's right to request a calculation report for disputed objects of sequestration status (Article 1737). Further, Law 1/1974 on Marriage gives prosecutors the authority to request that a judge cancels a marriage.[41] Also, Law 31/1999 mentions that the state attorney may lodge a civil suit, if s/he finds evidence of state

33 Chief Prosecutor Decision KEP-116/JA/6/1983.

34 Originally, this title was *pengacara wakil negara* (the State Lawyer), which was then adjusted to *Jaksa Pengacara Negara* (the State Attorney Prosecutor) (Jusuf 2014, 52).

35 Article 30 (2) of the IPS Law. Presidential Regulation 38/2010 jo 29/2016 mentions the state attorney's role in enforcing the law by filing civil suits to the court, such as marriage cancellation, company dissolution, and bankruptcy, as well as other tasks, such as providing legal service by giving legal counsel in civil law and administrative disputes within the community.

36 Legal Assistance means that the prosecutor functions as the State Attorney in civil and administrative law disputes, on behalf of state institutions, government agencies, and state-owned companies, in either the litigation or non-litigation process. The prosecutor can represent these entities as plaintiffs or defendants in civil law and administrative trials.

37 Once the IPS leadership approves a request from state institutions, government agencies (at local or national level) or state-owned companies, the operator can function as State Attorney, providing legal opinion or legal assistance in civil and administrative law disputes.

38 'Other legal action' means that the prosecutor functions as the mediator or facilitator in civil and administrative law disputes between state institutions, state-owned companies, and government agencies (at national and local levels).

39 Including state agencies or institutions, central or local government, and state-owned companies.

40 Indonesia still uses the Civil Code inherited from the Dutch Colonial Era, which has never been officially translated into Indonesian.

41 Article 26 (1) of Law 1/1974 on Marriage jo. Government Regulation 9/1975 regulates that, if a marriage takes place that is against the law, prosecutors can submit a request to court to annul the marriage.

financial losses in a corruption case wherein the defendant died during an investigation or trial.[42]

The Prosecution Service may file for a company's bankruptcy, in the public interest (Article 2, paragraph 1 of Law 37/2004 and Government Regulation 17/2000).[43] Law 40/2007 on companies also authorises prosecutors to examine a bankruptcy application (Article 138), and to request that the court dissolves the company in the public interest (Article 146).[44] In addition, the prosecutor may submit a request for the dissolution of a private foundation (Law 18/2001 jo. Law 28/2004).

However, the IPS rarely exercises the powers mentioned above. I found only one case where the IPS filed for company bankruptcy in the public interest (in 2005), which happened after intense demonstrations by employees of the company, demanding that their salaries be paid. The IPS filed a bankruptcy request against Aneka Surya Agung Company in the Medan Commercial Court, in order to force the company to pay the employees' salaries.[45]

Public Prosecutors also handle civil law disputes for state-owned companies (SOEs). Some lawyers have protested against the prosecutor's role in this regard, since it may lead to abuses of power.[46] One such example was the land dispute case between the Pelindo company and landowners in Makassar. The IPS prosecuted the land owners for illegal land grabbing. Since the court decided that the case was a civil law dispute, not a criminal case, the IPS (acting as the civil law attorney for PT Pelindo) summoned the

42 A notable example of this is when the IPS filed a civil law dispute on Soeharto corruption's case: Kompas, Kejagung Klaim Menangkan Kasus Perdata Soeharto (Supreme Prosecution Office claimed that they won the Soeharto civil law cases) https://nasional.kompas.com/read/2008/03/28/11573325/kejagung.klaim.menangkan.kasus.perdata.soeharto, accessed on 8 March 2019

43 Article 2 (2) states that the IPS may file a bankruptcy application for public interest reasons when: a) the debtor escapes; b) the debtor embezzles some of their wealth; c) the debtor owes a debt to state-owned enterprises, or any other enterprises that raise funds from the community; e) the debtor has no intention to repay the debt due, or is not being cooperative about solving their debt problem; or, f) there are any other conditions relating to public interest, according to the IPS.

44 There is no public interest definition in the Law on Companies.

45 Hukum Online, *Jaksa Pernah Ajukan Pailit Demi Kepentingan Umum*, (Prosecutors filing bankruptcy requests, for public interest reasons) http://www.hukumonline.com/berita/baca/lt4fe179a67ba94/jaksa-pernah-ajukan-pailit-demi-kepentingan-umum, accessed 12 June 2018.

46 Hukum Online, *Masalah Hukum Jika BUMN Gunakan Jaksa Pengacara Negara* (Legal Issues when the SOE requests (the IPS as) state attorneys (in civil law disputes)), https://www.hukumonline.com/berita/baca/lt53630f8713fa2/masalah-hukum-jika-bumn-gunakan-jaksa-pengacara-negara, accessed on 3 May 2018. Watch Indonesia, *Sebaiknya Kajati Baca Lagi UU Kejaksaan* (The Head of the High Prosecution Office should read the IPS Law): http://www.watchindonesia.org/1563/uu-kejaksaan-negara-pemerintah?lang=ID, accessed on 3 May 2018.

landowners and asked them to release the land for PT Pelindo[47] (MaPPI FH UI 2012, 20). The summoning method is also used by the IPS when it acts as the attorney for the State Health Care and Social Security Agency (BPJS), to gain contributions from private companies towards healthcare for their workers. As the Head of the District Prosecution Office himself summons the company to the Prosecution Office, most of the companies pay the contribution.[48] In 2012, the Supreme Court banned prosecutors from representing government companies at trial, because Article 11 of Law 19/2003 on State-Owned Companies categorises government companies as private legal entities.[49] However, the Supreme Court later revised its circular letter, and it now allows prosecutors to represent SOEs in civil cases, based on Article 24 Presidential Regulation 38/2010 jo 29/2016, which mentions the IPS' role in civil law disputes involving SOEs.

The IPS also functions as government attorney in administrative law cases. In such cases, prosecutors act as legal representatives of the government. However, although the prosecutor is recognised as a state lawyer, the government does not specifically mention the prosecutor's position as government state lawyer handling judicial review cases in the Supreme Court or Constitutional Court (Presidential Regulation 100/2016). Bedner found that some Administrative Court judges complain about the prosecutor's capacity in administrative cases (Bedner 2001), and the prosecutors I met indeed confessed that they do not have the skills required to handle administrative suits.[50] As I discussed in Chapter 3, this is likely to be caused by the poor management of training and the IPS' limited budget.[51] Besides, the promotion system creates problems regarding the prosecutor's placement as a state lawyer. Even if a prosecutor receives adequate training in administrative law, there is no guarantee that the IPS will place him/her in the administrative law division.

Most civil society organisations have criticised the prosecutor being given the role of state attorney since the government drafted the 2004 Prosecution Service Law. Indonesia Corruption Watch (ICW), a reputable NGO, argues that prosecutors functioning as state attorneys in civil law and administrative disputes hampers their main roles as corruption inves-

47 PT Pelabuhan Indonesia (Pelindo, or the Indonesian Port Corporation) is a state-owned company that is involved in port and harbour services.

48 Kejari Jakbar, *Perusahaan Penunggak Iuran BPJS Ketenagakerjaan Dipanggil Kejaksaan Negeri Jakarta Barat* (Companies that tried to avoid paying BPJS insurance were summoned by the West Jakarta District Prosecution Office): http://www.kejari-jakbar.go.id/index.php/arsip/berita/item/611-perusahaan-penunggak-iuran-bpjs-ketenagakerjaan-dipanggil-kejaksaan-negeri-jakarta-barat, accessed on 20 September 2018.

49 Supreme Court Circular Letter 07/2012.

50 Personal Communication, 2015. A judge in the Banten Administrative Court admitted that most prosecutors have poor skills for handling cases in the administrative court. Therefore, district governments also hired professional lawyers to assist with their case at trial. Personal Communication, 13 August 2019.

51 See. 3.4: Human Resources

tigator and prosecutor for the government and government companies.[52] ICW believes that a prosecutor could face difficulties in investigating and prosecuting government corruption, because s/he is also involved in the case in their capacity as attorney. Since the attorney must keep and secure his/her client's information regarding a case, it would be a contradiction of the prosecutor's duties to reveal and investigate acts that are not in line with the law.

In addition to their role as state attorney in civil law and administrative disputes, public prosecutors also function as legal consultants for the government. The IPS Annual Report notes that the prosecutor's predominant role in civil and administrative law is to provide legal assistance to the government.[53] Most government institutions involve prosecutors in their projects, in order to prevent a corruption prosecution arising because of maladministration. As I mentioned above, President Joko Widodo instructed the IPS to act as a consultant for government projects, rather than becoming more active in prosecuting corruption cases. This fact likely indicates that the government employs the IPS as legal consultant, not on the basis of the IPS' expertise, but on the basis of its important role as corruption investigator.

This is exactly why most government institutions propose that the IPS assists them, either as attorney or legal consultant.[54] If the IPS approves such a proposal, the top manager will sign a Memory of Understanding (MoU) stating that the IPS (at either district or provincial level) will assist the institution; this can include providing legal advice and acting as attorney at trial, for as long as the government institution covers an operating budget to include the prosecutor's honorarium.[55] Although prosecutors in the Civil and Administrative Law Disputes Division handle implementation of the MoU, the MoU is always signed by the top manager (for example, the Head of the District Prosecution Office). As I described above, any corruption prosecution of such an institution would be conducted only after receiving approval from the leadership.

4.2.3 The Public Prosecutor as State Intelligence

The intelligence division of the Prosecution Service is known as the *Indra Adhyaksa* (or, the Prosecutor's Eyes). This division adopted the colonial era intelligence division of the Dutch East Indies' *Procureur Generaal*, i.e.

52 Indonesia Corruption Watch, *Konflik Kepentingan Wewenang Jaksa* (The conflict of interest in prosecutors' powers), https://antikorupsi.org/id/news/konflik-kepentingan-wewenang-jaksa-130704, accessed on 30 October 2018.

53 See the IPS Annual Report 2014, p 65.

54 For example see Portal Berita Pemerintah Provinsi Jawa Tengah, *MOU PEMKAB Dengan Kejaksaan Batang* (MOU between the Batang District Government and District Prosecution Office): https://jatengprov.go.id/beritadaerah/mou-pemkab-dengan-kejaksaan-batang/, accessed on 30 October 2018.

55 Interview with HH, the Head of M District Prosecution Office, 30 August 2015.

the *Algemeene Recherchedienst*, (ARD, or General Criminal Investigation Service), which monitored Indonesian political movements and ensured political stability within the colony.[56] However (as I mentioned earlier, in Chapter 2), this was adjusted under the administration of Chief Prosecutor Soeprapto, when the division was made responsible for the investigation of important criminal cases.[57] According to former Deputy Chief Prosecutor for Intelligence, Prijatna Abdurrasyid, the division's role was to support the IPS in prosecuting top-level military officers involved in smuggling cases (Abdurrasyid 2001, 155,157). However, when the KUHAP repealed the IPS' power to conduct additional investigations, the IPS adjusted the intelligence division's authority to take preventative action (Hamzah 1984, 94).

The IPS' role in intelligence experienced another transformation when the New Order military regime came into power in 1965. With its anti-communist purge agenda, Army General Soeharto reorganised the IPS, appointing the Military Police Colonel as Deputy Chief Prosecutor for Operations and Intelligence. Soeharto ordered the Chief Prosecutor to cooperate with the Minister of Defence and Security, in order to maintain public order and to prosecute Indonesian Communist Party activists for an alleged coup (Article 14 of the Ampera Cabinet Presidium Decision 26/U/Kep/9/1966). In 1969, when Soeharto was appointed President, he upgraded the title of the IPS intelligence division's leader to Deputy Chief Prosecutor for Intelligence (Presidential Decree No. 29 of 1969). Deputies of Chief Prosecutors for Intelligence were appointed from among active military generals, which were recommended to the President by Army Commanders[58] (Lolo 2008, 131; Abdurrasyid 2001, 243-45). The intelligence division then played a role in prosecuting the regime's political opponents, using the draconian Anti-subversion Law.

In addition to prosecuting writers who opposed regime ideals, the IPS was authorised (by Martial Law 4/PNPS/1963) to search for and ban books that opposed or contained criticism of the regime's policies. During the New Order Regime,[59] the IPS also searched for and banned books related to communism (Soegiharto 1989, 288-98). In 2010, the Constitutional Court

56 See 2.3: The *Vereenigde Oostindische Compagnie* (VOC) and the Netherlands East Indies

57 See. 2.6: The Parliamentary Government

58 Prijatna Abdurrasyid confessed that Chief Prosecutor Soegiharto asked him to consult the Chief of Staff for the Armed Forces, Umar Wirahadikusumah, and the Commander in Chief of the Armed Forces (ABRI), Maraden Panggabean. In the following months, Prijatna asked President Soeharto himself about the candidate for the role of Deputy Chief Prosecutor for Intelligence. Soeharto questioned Prijatna in return: "Who do you want?" Prijatna said, "if I can choose it is better to have Ali Said, even though Ali Said and Suwandi are both good. Aren't they? (is that a) coincidence?" Soeharto said, "I will indeed appoint Suwandi to be MPR secretary". So, Ali Said was appointed Deputy Chief Prosecutor for Intelligence (Abdurrasyid 2001, 244–45).

59 See. 2.8: The New Order

repealed the Law, through its Decision 6-13-20/PUU-VIII/2010, but left in place the IPS power to oversee books in order to maintain public order, as stated in Article 30 of the 2004 IPS Law. The court stated that, for public order reasons, the IPS may seize books and prosecute authors, but it also stipulated that the IPS must respect legal due process.[60]

The IPS seems to maintain the New Order legacy when interpreting its function within state intelligence. Despite the fact that the IPS now appoints a Deputy Chief Prosecutor for Intelligence from its own ranks, it still retains military influence within the division, especially since intelligence prosecutors are trained at the army's intelligence training centre.[61] Since the IPS lacks prosecutors, the intelligence prosecutors in some offices are forced to function as criminal prosecutors. In addition, the promotion system creates further problems. There is no guarantee that a prosecutor with adequate intelligence skills will be appointed as an intelligence prosecutor.

Law 17/2011 on State Intelligence states that the IPS' intelligence function is similar to the police intelligence unit, when it comes to law enforcement intelligence (Article 13). However, there is no clear definition of 'law enforcement intelligence'. The State Intelligence Law delegates the description of IPS intelligence to the IPS Law, which contains only a vague definition of the IPS' intelligence role as: "the guardian of public order" (Article 30 (3) of the 2004 IPS Law).

The main task of the division is to act as a support system for other divisions, such as general crimes prosecution, special crimes investigation, or civil law and administrative law disputes. However, various intelligence division tasks may create a conflict of interest with criminal prosecution.[62] As stated in Article 15 (2) of Presidential Regulation 38/2010 jo 29/2016:

> "*The Prosecution Service intelligence duties, which include intelligence activities such as inquiry, security, and 'preconditioning', are intended to prevent criminal acts and to support the IPS' task of imposing the law by conducting preventative or repressive measures to guard state ideology, politics, economics, finance, socio-culture, defence and security (including banning people from leaving or entering Indonesia, where necessary)*[63]*, and to maintain public order.*"

60 Constitutional Court Decision 6-13-20/PUU-VIII/2010, pp. 245-246.

61 Pitu News, *Kabandiklat Kejaksaan Utus 40 Jaksa Belajar Intelijen Bersama TNI*, (the Head of the Prosecutor's Training Centre sent forty prosecutors to learn intelligence from the Indonesian Army): http://pitunews.com/kabandiklat-kejaksaan-utus-40-jaksa-belajar-intelijen-bersama-tni/, accessed on 8 October 2017.

62 Kejaksaan Republik Indonesia, *Peranan Intelijen Yustisial Kejaksaan Dalam Penyelesaian Perkara*, (The role of intelligence from prosecutors in investigating cases): https://www.kejaksaan.go.id/unit_kejaksaan.php?idu=28&idsu=34&idke=0&hal=2&id=1539&bc=, accessed on 4 December 2017.

63 Since only the Chief Prosecutor has the power to ban people, the intelligence function in this matter means that the intelligence division can give a suggestion or advice to the Chief Prosecutor about people who may be banned from going abroad or entering Indonesia.

Most intelligence prosecutors agree that their duties include conducting an inquiry (*penyelidikan*/LID), security (*pengamanan*/PAM), and preconditioning[64] (*penggalangan*/GAL), also known as LIDPAMGAL. IPS intelligence exercises its power of inquiry (LID) by gathering information from people who have been targeted via a procedure known as PULBAKET (*Pengumpulan Bahan Keterangan*, or Evidence Collection). IPS intelligence then conducts an interrogation of persons who they find 'suspect', based either on public reports or on the instructions of their leader. As I will also discuss in Chapter 5, the IPS authorises the intelligence prosecutor to conduct preliminary investigations of corruption cases. This power causes tension between intelligence prosecutors and prosecutors in the special crimes' division of the Supreme Prosecution Office. This is primarily because intelligence prosecutors may conduct the PULBAKET procedure in certain corruption case investigations, without consulting with the Special Crimes Division.[65]

The security function (PAM) of the IPS means that the intelligence prosecutor must secure the interests of the state, government, and government institutions against any threat or disruptions (Article 1 (19) of PERJA 037/A/J.A/09/2011). Furthermore, intelligence prosecutors must work and coordinate with other intelligence agencies such as the police and army, to ensure state security at both national and local levels via the Intelligence Committee (Article 1 jo. and Article 12 of Government Regulation 67/2013). During the New Order, the regime and army used this committee to support their political interests (Muradi 2013, 80-81). Since Law 17/2011 was enacted, this committee has been led by the district-level mayor, who acts as coordinator and gathers state intelligence to support security

64 Article 1 (21) Chief Prosecutor Regulation/PERJA 037 037/A/J.A/09/2011 states that Intelligence pre-conditioning" covers all attempts, events, works, and actions that are done in a planned, gradual and sustainable manner, by an intelligence organization in a cycle of intelligence activities, using an intelligence strategy and techniques to make, create, and/or change a condition or situation in a certain area, or to improve people's potential (most importantly, individual or group potential, but also people's potential generally) within a specific timespan, towards a level of state which is beneficial for carrying out IPS duties and efforts to overcome obstacles to the implementation of its main tasks, or to creating a condition and situation that is desired by the user.

65 Due to the tension, prosecutors' intelligence powers when investigating corruption cases were repealed under Chief Prosecutor Basrief Arief; later, Chief Prosecutor Prasetyo revised the policy and it now allows the intelligence prosecutor to investigate corruption cases. See 2.9: The Post-military Regime, and 5.2.1. Preliminary Investigation

during general elections,[66] international summits,[67] or presidential visits.[68] However, since the term 'security' has a broad definition, the government also asks the IPS to secure infrastructure projects. As I mentioned above, the IPS establishes a team to guard and secure government development projects (known as TP4), and appoints a Deputy Chief Prosecutor for Intelligence to lead the team.[69]

Among other duties, intelligence prosecutors are responsible for conducting preconditioning (or, GAL), which is defined as a component of their activities to promote public support for the IPS (Article 1 (21) of PERJA 37/A/JA/ 09/2011). The preconditioning procedure is commonly understood by intelligence prosecutors as securing, promoting and handling their superiors' tasks and orders.[70] Thus, most top managerial prosecutors believe that the intelligence unit must secure the public reputation of their office. Bad performance by any prosecutor would endanger the IPS' public image, and the prosecutor's leadership would suffer a negative evaluation from the IPS. Furthermore, intelligence prosecutors must have a good network (including journalists), in order to promote their performance and minimise their chances of getting a bad reputation.[71]

Intelligence prosecutors also have to serve the IPS by finding and providing off-budget funds for formal or informal IPS operations (Kristiana 2009). The IPS often holds routine or incidental parties or ceremonies which are not covered by the IPS budget, such as golf tournaments on

66 Forum Keadilan, *Kejaksaan Agung RI Siapkan 4000 Jaksa ikut membantu sukseskan Pengamanan Pemilu,* (The Supreme Prosecution Office provided 4,000 prosecutors to assist with general election security) https://forumkeadilan.com/2019/04/kejaksaan-agung-ri-siapkan-4000-jaksa-ikut-membantu-sukseskan-pengamanan-pemilu/, accessed on 5 December 2018. Kompas.com *Jaksa Agung Perintahkan Kajati Kerahkan Intelijen Awasi Konflik di Pilkada Serentak*" (The Chief Prosecutor asked the Office of the High Prosecutor to employ intelligence when dealing with conflicts connected with local leader elections) https://nasional.kompas.com/read/2015/06/17/13545421/Jaksa.Agung.Perintahkan.Kajati.Kerahkan.Intelijen.Awasi.Konflik.di.Pilkada.Serentak, accessed on 5 December 2018.

67 The Bandung Prosecution Office, for instance, was actively involved in a meeting to prepare for the security of the Asia-Africa Conference in 2015. Personal Communication with DH, the Head of Bandung Prosecution Office, 12 June 2015.

68 Kejaksaan RI, *Kunjungan Presiden RI Joko Widodo ke Kejari Sawahlunto* (The President visits Sawahlunto District Prosecution Office), https://www.kejaksaan.go.id/berita.php?idu=22&id=12135, accessed on 5 December 2018.

69 See 4.2.1: The Public Prosecutor in Criminal Cases

70 Article 848 of Chief Prosecutor Regulation 006/A/JA/07/2017.

71 Personal Communication with the Prosecutor in IW, 12 June 2015. During my fieldwork, I have found that some district prosecution office leaders hold meetings with journalists, in their office or in a restaurant, in order to promote their work and collect information. On this occasion, prosecutors shared out a *rezeki*, in order to avoid bad news for the IPS.

the anniversary of the IPS[72], or welcoming ceremonies for new officials.[73] The intelligence prosecutors exploit their networks in business circles and among district government officials, in order to request funding for the IPS agenda.[74] Another of the informal duties an intelligence prosecutor must perform at district level is to serve and prepare accommodation for the top-level managerial prosecutor, when s/he visits their office.[75] As I discussed in Chapter 3, the executive prosecutor will consider this to be a form of loyalty from his/her officers, and it may eventually contribute to the advancement of a prosecutor's career.

The findings of this study suggest that the role of the intelligence prosecutor has altered from carrying out primary tasks, such as supporting the IPS in ensuring adequate evidence at trial, to backing up IPS operational issues. The main reasons for this are that the IPS suffers from a limited budget and experiences frequent political intervention, as I discussed in previous chapters.[76] Public prosecutors' reliance on guiding intelligence action has continued beyond the New Order era, and has reduced the autonomy of the organisation. A good example of this is the failed role of the IPS as guardians of public order in blasphemy cases. Despite the fact that Chief Prosecutor Decision KEP-146/A/JA/09/2015 and Chief Prosecutor Regulation PERJA 019/A/JA/09/2015 on the Team for the Monitoring of Mystical Beliefs (or *Tim PAKEM*)[77] require intelligence prosecutors to gather data to support blasphemy prosecutions and guard public order, most of the intelligence prosecutors in district prosecution services believe that their role in coordinating PAKEM is ineffective (Nandan Iskandar et al., 2017). A Head of the Intelligence Division at one District Prosecution Service complained that no budget was provided by the IPS for holding a PAKEM meeting.[78] He admitted that the meeting is often initiated by

72 Kumparan, *Beredar Viral, Turnamen Golf Yang Diselenggarakn Jaksa*, (Going Viral! Golf Tournaments were organised by the prosecutor), https://kumparan.com/@kumparannews/beredar-viral-turnamen-golf-yang-diselenggarakan-jaksa, accessed on 7 November 2018.

73 Radar Kepri, *Pisah Sambut Kajati Kepri digelar di Hotel CK Tanjung Pinang* (A welcoming ceremony for the Head of the High Riau Islands Prosecution Office is held in CK Tanjung Pinang Hotel), https://radarkepri.com/pisah-sambut-kajati-kepri-digelar-di-hotel-ck-tanjungpinang/, accessed on 7 November 2018.

74 Tempo, *Jaksa Muda di Kejari Ketapang Edarkan Proporsal HUT Adhyaksa* (A junior prosecutor in the Ketapang District Prosecution Office circulates the proposal for IPS anniversary funding) https://nasional.tempo.co/read/783734/jaksa-muda-di-kejari-ketapang-edarkan-proposal-hut-adhyaksa, accessed 7 November 2018.

75 Observations and personal communications with intelligence prosecutors in Batu, Kepanjen, Bandung, Jakarta, and Surabaya 2015.

76 See chapters 2 and 3.

77 The BAKOR PAKEM was initially set up under the Ministry of Religion in 1952, but it was placed under the IPS in 1984. The role of the IPS in the PAKEM is currently based on Article 30 (3), sections d and e, Law of 16/2004 on the IPS, which authorises duties and prosecutorial functions in the field of intelligence, leading to investigations, security, and pre-conditioning to prevent crimes.

78 Personal Communication with the Head of Intelligence Division, 2015.

other actors. In most blasphemy cases, other organisations – such as the Indonesian Council of Ulema (MUI)[79] – hold regular meetings with the BAKORPAKEM (*Badan Koordinasi Pengawas Aliran Kepercayaan Masyarakat* or the Board for the Monitoring of Mystical Beliefs), at its own office. As a result, public order within blasphemy law is defined by other actors, not the IPS. The IPS prefers to adopt the *fatwa* from MUI (on specific cases) as the primary evidence in blasphemy cases (Crouch 2017), rather than initiating the investigation as PAKEM coordinator, in order to gain evidence before prosecuting those suspected of having committed a blasphemy.

4.3 The Prosecution Service and other Indonesian Criminal Justice Actors

The previous section demonstrates how, over the years, the IPS has accumulated different duties to perform. The Prosecution Service suffers from a heavy backlog, and it has become ineffective as an organisation. Moreover, the government has redesigned IPS powers, in order to serve its own political interests within the justice system. As I discussed in Chapter 2, the authoritarian military government has controlled the criminal justice system by manipulating (and intervening in) not only the IPS, but also the police, the courts, and other actors in the justice system. The regime has undermined the independence of the IPS, emphasising its loyalty to the government instead of promoting its legal professionalism (Lolo 2008; Pompe 2005; Bedner 2001; Muradi 2014; Lev 2000).

Lev (1965) notes that, since the 1950s Indonesian criminal justice actors have been competing with each other to gain more powers. In addition, actors have stopped referring to the comprehensive task division contained in the RO (*Reglement op De Rechterlijke Organisatie* en *Het Beleid der Justitie*, Stb, 1847-23 jo 1848-58, or the Law on Judicial Organisation) and the HIR (*Herziene Inlandsch Reglement*, or the Indonesian Legal Procedure Code). The 'ego-sectoralism'[80] of criminal justice actors has been caused, in part, by cooperative difficulties. The police, public prosecutors and judges had their own interpretations of their tasks within the criminal procedure. Yet, they applied Article 6 (1) of the Emergency Law 1/1951 when implementing the HIR:

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79 The role of Ulema, or Islamic clerics, in the MUI has become more significant in the Indonesian political sphere. In 2005, President Susilo Bambang Yudoyono asked the MUI to offer recommendations to shape government policy, including asking it to produce guidelines to be implemented by the government, to prevent the development of "deviant religious teaching" (Ichwan 2011; Amnesty International 2014). A former MUI chairman, Ma'ruf Amin, was elected as Vice President in the 2019 election.

80 Each sector tends to realise its own interests only - so-called, 'ego-sectoralism'. It means that the sectoral departments emphasise aspects which benefit themselves, rather than considering wider interests when making decisions. For further discussion, see (Arnscheidt 2009, 388).

> "*When this regulation comes into force in all District Courts, all the attached Prosecution Services, and all the High Courts in Indonesian territory, the updated HIR (Staatsblad 1941 No. 44) should be used as guidelines for criminal cases, as much as possible.*"

The phrase, "should be used as guidelines for criminal cases, as much as possible" makes it easy for criminal justice actors to use the HIR very loosely as a standard for criminal procedure. The police, public prosecutors and judges have all used this phrase to justify ignoring the HIR provisions when handling criminal cases (Utari 1986, 110). As a result, some HIR articles regulating the control of coercive measures have become ineffective. One such example was judges' power to control the coercive measures used by police and prosecutors, such as the arrest procedure in Article 83d of the HIR. Although this article authorised judges to order the police or prosecutor to release a suspect, if they found any aspect of the arrest procedure to be unlawful, the judges preferred to allow the arrest to be carried out without any legitimate reason (Yuwono 1982, 13).

Afterwards, this gradually worsened. For instance, the police were reluctant to comply with the provisions of the HIR and report all detentions to the Prosecution Service, so many people were detained for months (or years), without any certainty about when they would be brought to trial. The police argued, based on Article 14 of the 1961 Police Law, that detentions need only be reported to the National Police Chairman, via their superiors[81], and not to the prosecutor – as stipulated in Article 72 (1) of the HIR. Also, based on Article 12 of the 1961 Police Law, the police force claimed that it was the main actor at the investigation stage. However, the 1961 Prosecution Service Law stated that public prosecutors had the authority to control and supervise investigators (Article 7)[82], and the power to conduct additional investigations (*nasporing*) (Article 2). As a result, a suspect's rights could be violated, since prosecutors might investigate criminal cases that had already been investigated by the police (Harahap, 2007, p. 355). Since the 1961 Police Law and the 1961 Prosecution Service Law dispute the roles of each institution in the criminal procedure,[83] any coercive measures

81 See, for example, Articles 62, 71, and 72 of the HIR. Article 62 (2) of the HIR regulates the police to make a temporary arrest only for crimes that carry a sentence of five years' imprisonment or more. The exception to this article is if the defendant is caught and must be reported to the prosecutor (Article 71 (2) of the HIR). The prosecutor has control over such detention, and if the prosecutor sees an opportunity to prolong the detention, the police could prolong it by up to 20 days. If the police are willing to do so, they must first ask permission from the prosecutor. If the detention still needs to be prolonged, the prosecutor must ask permission to do so from the Chief of the District Court, and it could be prolonged by up to 30 more days (Article 83c (4) of the HIR).

82 Article 39 of the HIR noted that prosecutors had the authority to investigate (*opsporing*).

83 The 1961 Police Law, for instance, explicitly regulates that police investigators can start or discontinue an investigation of a criminal case, for public interest reasons, without the interference of a prosecutor. On the other hand, the 1961 IPS Law on Attorneys maintains the prosecutor's power to supervise police investigations, and even to conduct an independent investigation, if the police investigations are considered to be sub-optimal.

taken by the police or prosecutors were no longer based on the HIR, but rather on their own subjective decisions (Utari 1986, 113).

During the New Order regime (1966-1998), the military controlled criminal justice actors, including the police, prosecutors, and judges, through the KOPKAMTIB (Operational Command for the Restoration of Security and Order), which was led by the Army Commander.[84] The military government regularly ordered the police or prosecutors to arrest and detain the regime's political opponents. When it came to a trial, military intelligence oversaw judges in adjudicating such cases, and cautioned them to impose severe punishments on the defendant (Asrun 2004, 130). The KOPKAMTIB also supervised the implementation of policies for criminal justice actors on how to exercise their own tasks and powers.

In the late 1970s there were significant complaints about corruption issues among law enforcers. Therefore, the Commander of the KOPKAMTIB gathered together criminal justice actors, such as a Chief of Justice of the Supreme Court, a Chief Prosecutor, a National Police Chairman, and the Minister of Justice in Cibogo Bogor, to discuss the legal uncertainty within the justice system. The gathering is known as the Cibogo Convention, and it resulted in an agreement that criminal justice actors must exercise their powers within criminal procedure based on the HIR, as long as the government had not already established a new procedural law. However, it seems that the actors did not comply with the agreement, because of frequent political intervention (Utari 1986, 116).

The government enacted a new Code of Criminal Procedure – the KUHAP – in 1981, which includes better protection for the defendant. Unlike the HIR, which could be deviated from by criminal justice actors based on Law 1/1951, the government ensures that each criminal justice actor follows the KUHAP when handling criminal cases. In 1984 the government established a consultative forum of law-enforcement offices, called the MAHKEJAPOL.[85] This was an attempt to ensure that criminal justice actors were basing their work on the KUHAP, and it produced several agreements to overcome criminal procedure problems that had not been clearly stipulated in the KUHAP.

A number of Indonesian criminal law scholars believe that the MAHKEJAPOL may function as a forum for synchronising the policies of criminal justice actors, as long as there continue to be no guidelines similar to the RO, which link the tasks and powers of all the criminal justice actors

84 See 2.8: The New Order

85 MAHKEJAPOL is an abbreviation for *Mahkamah Agung* (Supreme Court), *Departemen Kehakiman* (Department of Justice), *Kejaksaan Agung* (Supreme Prosecution Service), and *Polisi* (Police). Now, the term MAHKEJAPOL has been changed into MAHKUMJAKPOL, since the Ministry of Justice has been renamed The Ministry of Law and Human Rights (*Menteri Hukum dan Hak Asasi Manusia*).

(Santoso 2000, 109).[86] The New Order regime enacted the Judicial Power Law, which is fairly similar to the RO, except that it only applies to the courts. The current Judicial Power Law 28/2009 also only regulates the courts and their authority.[87] Other judicial actors, such as the IPS and police, are regulated according to their own laws.[88] There are no provisions for how criminal justice actors should synchronise their tasks and powers. The absence of such regulation has contributed to high backlogs in the criminal justice system, which results in legal uncertainty for defendants. The main reason for this is that each actor decides on policies, without taking any others into consideration.[89] As a result, the suspect or victim may face legal uncertainty, since the investigator or prosecutor follows different guidelines for the same cases (Arief 2011, 22). Also, mutual mistrust between actors undermines the criminal justice system – the police do not trust prosecutors and prosecutors do not trust judges, while judges believe that prosecutors are untrustworthy. Each actor suspects that the other actor's decision on a particular case is made based on fraudulent behaviour.[90]

However, since the MAHKEJAPOL does not have a mechanism enforcing agreement between criminal justice actors, they find it easy to be reluctant about following the MAHKEJAPOL agreement. One such example is when the MAHKEJAPOL seeks to resolve the problem of the length of time it should take a police investigation notification letter (SPDP) to reach the prosecutor. The MAHKEJAPOL states that an investigator's agency may send the SPDP after issuing an Investigation Warrant (SPRINDIK), in order to avoid investigations being conducted without the prosecutor having been notified. If investigators cannot complete the investigation immediately, they must send a report on the progress of the investigation (and any problems with it) to the prosecutor. The prosecutor may then provide suggestions to accelerate the investigation (Santoso 2000, 105-6). However, the police are reluctant to follow this agreement. Since the police believe that they are the *dominus litis* in the investigation stage, they only send the SPDP after they have completed the investigation. They also refuse to request suggestions from the prosecutor during the investigation process.[91]

Another example of this is when the Supreme Court took the initiative to issue a Supreme Court Regulation (or PERMA 2/2012), in order to adjust the limitation for minor crimes and the number of fines within the Criminal Code. This initiative was taken because the government had never

86 As far as I know, no regulation revoking the RO exists. Many authors mention that the RO is still referred to, in order to elaborate on the actors' authority when it is not mentioned in their sectoral regulations.

87 The Law recently adds the Constitutional Court and Judicial Commission to its provisions.

88 See Article 41 of Law 4/2004 and Article 38 of Law 48/2009 on Judicial Power.

89 See Chapter 5

90 During my fieldwork and interviews with public prosecutors, police officers, judges and lawyers, I observed it is likely that they both mistrust and underestimate each other.

91 See 5.2.5: The Pre-Prosecution Process

changed the number of fines, following inflation in 1960. The Supreme Court then gathered other actors in the MAHKEJAPOL, in order to promote this PERMA. The police and prosecutors formally agreed to sign the agreement to operate the PERMA, in order to overcome the problem of prison overcapacity.[92] However, similarly to the previous case, the MAHKEJAPOL decision was not implemented effectively. Prosecutors seem reluctant to execute the PERMA, since the IPS has not published any technical instructions helping to enforce the agreement.[93]

The MAHKEJAPOL is also known as a forum that was established by the government to intervene in judicial independence, and act as a form of negotiating table (Santoso 2000; Lolo 2008). The police, for instance, can use it to ask the prosecutor not to apply the pre-trial procedure when examining their decision on the dismissal procedure. For instance, a MAHKEJAPOL meeting on 21 March 1984 agreed to ask the IPS to order its prosecutors not to use their pre-trial procedure power to examine police decisions to dismiss criminal cases. MAHKEJAPOL believed that the agreement could avoid friction between the police and IPS. However, the police still had to inform the public prosecutor if they had dismissed a case; further, in a situation where a prosecutor believed that an investigator's decision to dismiss a case did not have sufficient legal justification, they should coordinate with the investigator via a consulting forum (Hernanto et al. 1987, 157).

This section discusses how the IPS (as one of the criminal justice actors) needs other actors to assist its public prosecutors with tasks within the prosecution process. I will explore the role of public prosecutors versus that of the police, special investigators, lawyers, judges and other criminal justice actors. Although the KUHAP repealed the prosecutor's control over investigations, most public prosecutors still believe that they are the *dominus litis* within the criminal procedure. However, since the IPS has retained its military culture, and most prosecutors suffer from a heavy workload, the prosecutor's position is more like a postman, shuttling between the police and the courts.

4.3.1 The Criminal Investigators

Although post-authoritarian regimes established another prosecution agency, the Corruption Eradication Commission (*Komisi Pemberantasan Korupsi*, or KPK) to deal with corruption cases, the IPS still prosecutes most of the criminal cases which go to court. The IPS' position within the Indonesian criminal justice system is visualised in the following figure:

92 See Memory of Understanding between the Supreme Court, Ministy of Law and Human Rights. The Prosecution Service and the Police 131/KMA/SKB/X/2012, M.HH-07. HM.03.02 Tahun 2012, KEP-06/E/EJP/10/2012 dan 39/X/2012, October 2012.

93 See Constitutional Court Decision 42/PUU-XI/2013 p. 13. Personal Communication with the prosecutor in the Supreme Prosecution Office, 2015.

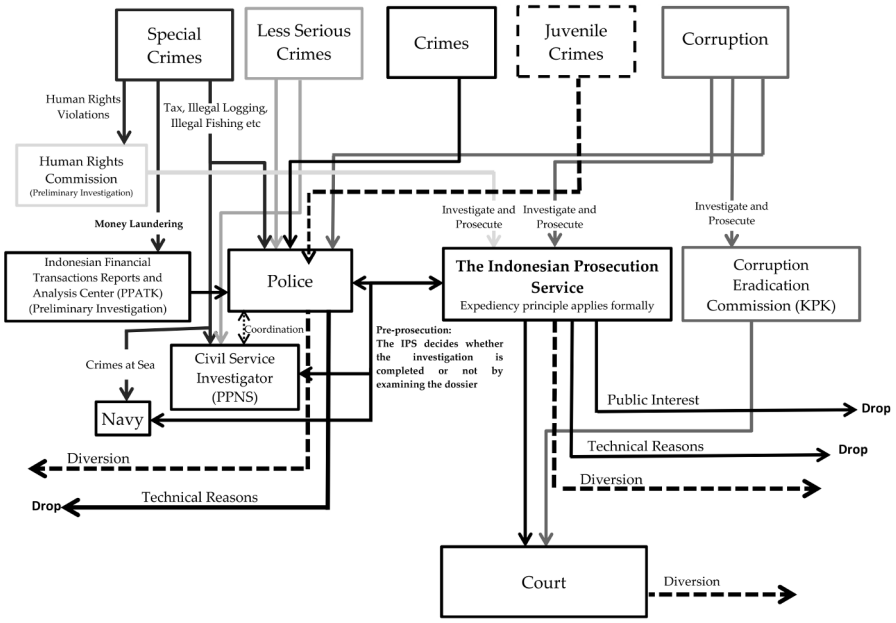

Figure 5: The position of the IPS within the criminal justice system[94]

The police claim that the Code of Criminal Procedure (KUHAP) only allows them to conduct criminal investigations. However, other actors have also retained some of their investigation powers, based on Article 284 of the KUHAP.[95] This provision allows them to investigate special crimes, based on special criminal laws. The Anti-corruption Law 2001, for instance, authorises the Prosecution Service and the Corruption Eradication Commission (KPK)[96] to investigate corruption. There are also some new state auxiliary institutions which employ special investigators, such as the National Anti-Narcotics Agency (BNN), the Centre for Financial Transaction Reports and Analysis (PPATK)[97], as well as the Human Rights Commission.[98]

The KUHAP also gives Civil Service Investigators (or PPNS, *Penyidik Pegawai Negeri Sipil*) authority to conduct criminal investigations, under police supervision. Unlike special investigators, the PPNS units are under ministries that are entitled, via a special law, to handle misdemeanours or

94 I designed this figure based on criminal justice actor laws prior to 2019.

95 Article 39 of the Dutch Colonial Law Procedure, or the HIR (*Herziene Inlandsch Reglement*), acknowledged officials who can investigate criminal cases, such as the head of a village, a village police officer, the head of the district, police officers, and all district court prosecutors.

96 Law 30/2002 on Corruption Eradication Commission, or *Komisi Pemberantasan Korupsi* (KPK) See also the Constitutional Court Decision 109/PUU-XIII/2015, which states that the KPK can recruit its own investigators outside of the police.

97 Law 8/2010 on the Prevention and Eradication of Money Laundering.

98 Law 39/1999 on Human Rights.

specific crimes within their specific areas of expertise. The Forest Ministry, for instance, has a PPNS to investigate illegal logging, and the Ministry of Fishery has a PPNS which can handle illegal fishing.

In summary, each actor conducts criminal investigations based on particular categories: the police investigate all crimes that are stipulated within and outside of the Criminal Code, while crimes that are regulated outside of the Criminal Code can be investigated not only by the police, but also by the PPNS, and possibly other special investigators.

4.3.1.1 The Police

> "*The Indonesian police force, as an instrument of the state that maintains public order and security, has the duty to protect, guard, and serve the people, and to uphold the law.*" *(Art 30 (4) of the Constitution)*

The 1945 Amended Constitution passes the role of the military[99], in maintaining public order and protecting civilian security, to the police. Following the amendment of the Constitution, some government bureaucracy positions formerly held by military personnel under the New Order regime were filled by members of the police force.[100] Even though the police force is a civilian institution, its employment status remains similar to the army and does not follow civil servant regulations. Unlike the IPS and other civilian

99 As I discussed in chapter 2, during the New Order regime the military had a strong political influence on civilian politics and the criminal justice system. When the authoritarian New Order regime stepped down in 1998, the reform movement pushed to separate the role of the military from civilian politics. In 2000, the People's Consultative Assembly (MPR) issued two resolutions: TAP MPR No.VI/MPR/ 2000 and TAP MPR NO.VII/MPR/2000, revoking military power over the police. The MPR also repositioned the police force as a civilian institution. The debate about whether the police should be divided and supervised by certain ministries intensified. For instance, the Prosecution Service requested that the police be under its supervision, because the police function is part of law enforcement. At the same time, the Ministry of Interiors requested that the police be under its guidance, because of its policing duties. The Minister of Defence also requested that the police be positioned under him, as the police function also relates to state security and defence. In the end, the police force successfully ensured that the government placed it under the President's control, and established KOMPOLNAS as a supervisory body with a limited role.

100 Some positions that had been held by military personnel were filled by the police, such as the Director General of Immigration in the Ministry of Law and Human Rights, and several Director Generals at the Ministry of Transportation. President Jokowi also appointed a former Vice National Police Chairman as Minister of Civil Servants and Bureaucratic Reform. See Tirto, *Bintang Berjatuhan dari Trunojoyo* (Stars have fallen from Trunojoyo) https://tirto.id/bintang-berjatuh-dari-trunojoyo-9eU, accessed on 7 November 2018. During the District Government election, Jokowi selected a police officer as acting governor, replacing the incumbent who also running for the election. Apart from replacing the army's position in state civilian bureaucracy, the police also took over the army's role in securing a large amount of *rezeki* from businesses (Muradi 2014; Baker 2013).

state institutions, which are subject to civil service rules, this employment status allows the police to determine their salary grades (and other staffing rules) more flexibly than the IPS. Furthermore, compared to other criminal justice actors, such as the IPS and the Ministry of Law and Human Rights, the police are politically more powerful.[101]

The police believe that they are the fourth branch of state power, as per Van Vollenhoven's *Catur Praja* theory (Rajab 2003); therefore, they must be positioned as an independent institution.[102] Apart from the role the police have as a law enforcement institution, maintaining public order and security, Article 24 of the Constitution includes the police as an institution with functions related to the judiciary. In addition, the Code of Criminal Procedure (KUHAP) positions the police as the *dominus litis*, able to investigate and exercise coercive measures with minimum supervision from prosecutors.[103] These regulations lead the police to believe that they are the leaders in directing criminal justice policies.

The post-authoritarian government has established the National Police Commission (KOMPOLNAS) to oversee the police (Article 37-40 of the Police Law 2/2002). Since the KOMPOLNAS functions only as an advisory board, it does not have the power to control and supervise the police. Therefore, the police may ignore the recommendations in the KOMPOLNAS if there happen to be any public complaints about their work (Meliala 2015).[104]

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101 The police budget is higher than the army and that of other criminal justice actors, such as the IPS, Ministry of Law and Human Rights, and the court. See Kornelius Purba, End police power to punish everything under the sun, https://www.thejakartapost.com/academia/2019/10/15/end-police-power-to-punish-everything-under-the sun.html?utm_campaign=newsletter&utm_source=mailchimp&utm_medium=mailchimp-oct&utm_term=police-state-commentary, accessed on 16 October 2019.

102 Many scholars of constitutional law believe that Van Vollenhoven's Catur Praja theory divides state power into four branches: executive (*bestuur*), police, judicative, and legislative. They believe that this theory is similar to Montesquieu's separation of power theory (Asshiddiqie 2006; Utrecht 1986). However, the director of Van Vollenhoven Institute, at Leiden Law School, Professor Adriaan Bedner, said that C. van Vollenhoven said nothing about police independence being one of the branches of state power. Although he indeed divided state functions into government, legislative, judicative, and police, van Vollenhoven opposed Montesquieu's theory. He argued that the four functions are interchangeable when exercised by state agencies. For example, the judiciary might exercise its function to adjudicate a case, administer its bureaucracy, and issue some regulations. Meanwhile, the executive might also issue some regulations, solve the case, and police society. See Van Vollenhoven's book, *Staatsrecht Overzee* (Vollenhoven 1934, 104–25).

103 See Chapter 5

104 Adrianus Meliala, one of the KOMPOLNAS commissioners, was investigated by the police for a hate speech he gave in 2015. He said that national police criminal investigation body (the BARESKRIM) is like an ATM (Automatic Teller Machine), from which the police can obtain illegal funding. In the end, Meliala apologised for this statement before the police closed its investigation. Tempo, *Kisah Kompolnas Dilaporkan Polisi Karena Ujaran Kebencian*, (Kompolnas' story - reported to the police for giving a hate speech) https://nasional.tempo.co/read/715928/kisah-kompolnas-dilaporkan-polisi-karena-ujaran-kebencian/full&view=ok, accessed on 17 November 2019.

Similar to the Prosecution Service, the police also have a Profession and Ethics Division (PROPAM/Internal Affairs). Its tasks are to investigate any incidents, suspicion of law-breaking, and professional misconduct attributed to police officers.[105] Since the police have retained their military bureaucracy and culture, the examination procedure for police misconduct adopts that of the army. It enables the police leadership to decide on whether criminal proceedings or disciplinary procedures are applicable to the case. Civil society organisations argue that this procedure provides police officers with impunity, since many officers reported for their crimes have never been prosecuted (Tim Penelitian dan Dokumentasi LBH Jakarta 2015; Amnesty Internasional 2009).

The National Police Chairman's Regulation, PERKAP 8/2009, was issued to ensure Human Rights Principles during the investigation process. Similar to the Indian police, as observed by Wahl (2014), "the political and legal systems in which these officers operate not only tolerate but encourage the use of torture, and [that] the police and military organizations expect officers to use it" (p. 831). As reported by legal aid activists and some researchers, the police cannot escape from their military authoritarian legacy (*Tim Penelitian dan Dokumentasi* LBH Jakarta 2015, 38). The police believe that the presumption of innocence must only be applied in court, not during the investigation. They believe that a suspect is someone guilty of committing a criminal offence. Thus, since police investigators can use a confession as evidence, they also use various methods (like physical torture) to force the suspect to make a confession ("Achievements, Challenges and Recommendations for Judicial Reform" 2018, 29).

Since the KUHAP adopts the principle of functional differentiation,[106] public prosecutors do not have the power to oversee the police during the investigation process. Thus, prosecutors cannot check whether an investigation has been conducted based on the appropriate procedures.[107] Furthermore, prosecutors may not be able to defend their indictment, if the defendant can prove that the police have conducted a malicious investiga-

105 After 'splitting up' from the army, the police adjusted its military police function by establishing the PROPAM (*Profesi dan Pengamanan*) for police internal affairs (National Police Chairman Decision KEP/53/X/2002 jo. National Police Chairman Decision KEP/97/XII/2003). The PROPAM tasks are to enforce discipline and order within the police, to conduct internal investigations, and to handle public complaints (National Police Chairman Regulation PERKAP 21/2010).

106 See Chapter 5

107 Most prosecutors I met refer to this process as "buying a pig in a poke". In fact, one of the functions of the IPS' intelligence division is to assist public prosecutors with the prosecution process. During my fieldwork, I found that most of the prosecutorial leaderships are afraid to be in conflict with the police. Moreover, the IPS does not provide a budget for this kind of task.

tion, fabricated evidence, or tortured the suspect in order to make them confess.[108]

This principle also affects technical matters within the prosecution process. The KUHAP divides detention powers between actors, depending on the stage in the process. Thus, the police believe that their responsibility for guarding detainees has ended when the public prosecutor takes over the process. Hence, the IPS recruit staff to guard detainees during the prosecution process. However, the IPS still needs police assistance to secure and guard its public prosecutors and detainees during the trial.[109] One Head of a District Prosecution Office admitted that the police have been known to ask the Prosecution Office to provide an operational budget to pay for expenditure, whenever the police provide security and guarding services during the prosecution process.[110]

As I have mentioned in the previous chapters, District Prosecution Offices suffer from limited budgets and heavy workloads. Therefore, the Prosecution Office leadership must have a good relationship with the police leadership, in order to ensure their assistance in prosecuting cases. While the police budget is higher than the IPS budget, some District Prosecution Offices handle more criminal cases than their budget can cover.[111] In some cases, the police provide a budget for the public prosecutor,[112] but they may also threaten prosecutors, forcing them to accept their investigation file.[113] It is not surprising when observers argue that the public prosecutor's function is to deliver the case, based on the interests of the police.

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108 Thousands of complaints about malicious investigations were received by legal activists from 2011 to 2017 - Tirto, *Polisi: Kami Akui Ada Kasus Salah Tangkap* (Police: "We confess that there have been cases of false arrest"), https://tirto.id/polisi-kami-akui-ada-kasus-salah-tangkap-cKi8, accessed on 17 November 2019.

109 See Joint Instruction of the Chief Prosecutor and Police Chairman INSTR-006/JA/10/1981 No. Pol INS/17/X/1981 on IPS and police cooperation when handling summons for suspects and witnesses, escorting detainees, guarding defendants during trials, and controlling suspects/defendants during criminal proceedings.

110 Personal communication, December 2015.

111 In 2015, for instance, the Malang District Prosecution Office prosecuted 406 criminal cases, whereas their budget only allows for 350 cases.

112 Personal communication with a prosecutor in Jakarta, 2015. He confessed that, in some narcotics cases, if the prosecutor believes that evidence provided by the police is insufficient, the police leader can reassure the prosecutor that they will assist the trial process, and provide a budget to support the prosecutor's work. This budget can be used to invite an expert witness or to keep the prosecutor and his family secure during the trial process.

113 Berita Satu, *Petinggi Polda Maluku ancam tembak Jaksa* (Police high official threatens to shoot prosecutor). https://www.beritasatu.com/nasional/287332/petinggi-polda-maluku-ancam-tembak-jaksa, accessed on 1 July 2015. AJNN *Kapolres Sabang Ajak Duel Kasi Pidum Kejari Sabang*, (The Chairman of the District Police challenged the public prosecutor to a duel), http://www.ajnn.net/news/kapolres-ajak-duel-kasi-pidum-kejari-sabang/index.html on, accessed on 23 May 2017.

4.3.1.2 The PPNS and Special Investigators

Civil service investigators, or the PPNS (*Penyidik Pegawai Negeri Sipil*), and special investigators can all investigate special crimes, based on criminal procedures outside the KUHAP. It is difficult to state the exact number of institutions with investigative powers, due to the absence of published data. Some observers say it is around 21 to 80 state institutions (N. Simanjuntak 2009, 57).[114] Besides, since the collapse of the New Order military regime in 1998, there have been demands to establish criminal investigation institutions that are more accountable and professional. The new administration responded to this by creating numerous state agencies with the authority to investigate (Mochtar 2016).[115]

It has been mentioned that Indonesia does not have a regulation, which would synchronise criminal justice actor powers, including the PPNS. The arrangement of PPNS tasks and powers can be found in the KUHAP and in Government Regulation 58/2010 jo. Government Regulation 27/1983 on Implementation of the KUHAP. The regulations arrange procedures for appointing PPNS officials, but do not set out procedures for establishing special investigation divisions in state agencies.[116] When the law was drafted, the decision to develop special investigation institutions was left to parliament and the government. Indonesian legal experts found that parliament and the government did not carefully consider the establishment of new institutions (Rosita, n.d.; Mochtar 2016). Instead of increasing the effectiveness of criminal investigation, the establishment of various state criminal investigators resulted in various problems. The Corruption Eradication Commission (KPK) alone has been successful in gaining public trust, in its capacity as a special investigator of corruption cases. The KPK has successfully investigated and prosecuted top-level officials – from ministers and national parliamentarians, to law enforcement officials, such as supreme judges, prosecutors, and police generals (Kristanto and Suhanda 2009). Law 30/2002 on the KPK even authorises the commission to act as

114 Hukum Online, *Ada Kemungkinan Korwas Akan Dihapus* (There is a possibility that Korwas will be dissolved), https://www.hukumonline.com/berita/baca/lt555edcc8d0f1c/ada-kemungkinan-korwas-akan-dihapus, accessed on 17 November 2019.

115 Some examples are the Corruption Eradication Commission (KPK), which was set up to investigate and prosecute corruption, and the National Anti-Narcotics Agency (BNN), set up to investigate illegal drug abuse.

116 Government Regulation 58/2010 jo. Government Regulation 27/1983 on Implementation of the KUHAP only regulate the procedures for appointing PPNS officials, and not the procedures on establishment of a criminal investigation division in specific institutions. Approval needs to be obtained from the Chief of the National Police and the Chief Prosecutor, before the PPNS is officially inaugurated by the Ministry of Law and Human Rights (Art 3C Government Regulation 58/2010 jo Government Regulation 27/1983).

supervisor in corruption investigations conducted by the police and the IPS.[117]

The KUHAP authorises the police to act as supervisor of the PPNS in the investigation process. There is no provision in the KUHAP for special investigator issues – such as who supervises the navy's criminal investigator in illegal fishing cases, or the IPS' investigator in corruption cases. As a result, the state's investigative institutions compete with one another to handle criminal case investigations.[118] Illegal fishing cases are good examples of this. The Fisheries Law gives powers not only to the police and the PPNS, but also to the navy,[119] to investigate illegal civilian fishing cases. This causes overlaps in the law enforcement process (cf. Saptaningrum 2019)[120], as reported by the Supreme Court in one illegal fishing case, which was investigated not only by the police but also the PPNS and the navy.[121]

The police have issued a regulation on the Management of PPNS Investigations.[122] It states that the police can supervise and coordinate with the PPNS to investigate a case, from its start date until it is complete. Furthermore, the PPNS must report its activities during the investigation to the police, including any coercive measures taken. The PPNS must also submit its investigation files to the police before sending them to the public prosecutor.[123]

117 Because of this the KPK has withstood several attempts to cripple it over the past decade, but it has always been able to count on strong civil society and public support to save it. It was not long until the government and parliament enacted law 19/2019, which reduced the KPK's power and its independence in investigating and prosecuting corruption cases.

118 As mentioned in 4.2.1, the police and the IPS investigator also compete in corruption cases.

119 The navy claims investigation powers, based on Article 9 (b) of Law 34/2004 on the Army, which states that the navy is the enforcer of law throughout the Indonesian Sea. Besides, the navy's role as a civilian criminal investigator is also mentioned in Law 5/1983 on the Indonesian Exclusive Economic Zones, Law 6/1996 on Indonesian Waters, and Law 17/2008 on Shipping.

120 CNN Indonesia, *Tumpang Tindih Aturan Penegakan Hukum Maritim* (Overlapping Maritime Enforcement Laws), https://www.cnnindonesia.com/nasional/20151004163018-20-82691/tumpang-tindih-aturan-penegakan-hukum-maritim, accessed on 17 November 2019.

121 Laporan Tahunan MA (The Annual Report of the Supreme Court), (2012), p. 208. See also, Hukum Online, *Kewenangan PPNS Tumpang Tindih Dengan Polri* (PPNS Authority Overlaps with that of the Police), https://www.hukumonline.com/berita/baca/hol16248/kewenangan-ppns-tumpang-tindih-dengan-polri, accessed on 17 November 2019.

122 See National Police Chairman Regulation 6/2010. Article 47 regulates that the police and PPNS leadership can control PPNS investigations. Certain PPNS investigators are under the coordination, supervision, and technical training of the national police, from the initial stages until the end of the investigation. PPNS must provide a report to the police, every time they conduct coercive measures.

123 Articles 6, 7 Paragraph (2), 107, 109 Paragraph (3) of the KUHAP. See also, Article 9 Government Regulation 43/2012 on Special Police Coordination, Supervision, and Technical Advancement.

However, some laws allow the PPNS to conduct investigations and submit a report directly to the public prosecutor, with no supervision from the police. One example is Law 32/2009 on the Environment, which allows the PPNS to send investigation files directly to the public prosecutor. The PPNS only makes a report to the police when they need assistance in technical matters (Article 94). The PPNS for the Ministry of Fisheries and the Ministry of Maritime Affairs can also conduct investigations and exercise coercive measures without coordinating with the police, and it can submit investigation files directly to prosecutors (Articles 73a and 73b of Law 45/2009 jo. and Law 31/2004). Furthermore, Law 18/2013 on Illegal Logging Eradication enables prosecutors to supervise the PPNS, and to conduct additional investigations if the PPNS cannot complete its investigation.[124] On the other hand, the IPS perceives this to be a good opportunity for it to try to restore its supervisory authority in a new draft of the criminal procedure.[125]

The police have complained about such regulations, since they cannot oversee any PPNS investigations, and because of the regulations they cannot guarantee the quality of the PPNS investigation (cf. Abdussalam and Zanibar 1998, 852). Unlike the police, the public prosecutors are pleased with the regulations, since they can directly supervise PPNS investigations without engaging the police.[126]

4.3.2 Advocates and Legal Aid Providers

The KUHAP imposes an obligation on criminal justice actors to provide legal assistance for suspects and defendants (Articles 54-56). The state must provide a free legal advisor for suspects or defendants who risk either a sentence of 15 years' imprisonment (or more) or the death penalty. Additionally, those who are charged with a crime carrying a sentence of five years or more, and who have no legal representation, are eligible for a

124 Detik, *Pertama Di Indonesia Jaksa Sidik dan Tuntut Kasus Illegal Logging*, (For the first time in Indonesia, prosecutors have investigated and prosecuted an illegal logging case), https://news.detik.com/berita/d-3809331/pertama-di-indonesia-jaksa-sidik-dan-tuntut-kasus-illegal-logging, accessed on 18 January 2019.

125 See Articles 42 and 46 of the new Draft KUHAP draft, which allows prosecutors to supervise investigations and to conduct additional examinations if the investigator cannot complete the investigation. The Draft KUHAP http://pantaukuhap.id/?cat=27, accessed on 18 January 2019.

126 Prosecutors complain about the quality of police supervision on the PPNS. In many cases, although the PPNS investigations have already been supervised by the police, the quality of the investigation has not met the prosecutor's standards (NJ, Personal Communication, 27 January 2019). See also, Kejaksaaan Negeri Jakarta Barat, *Reposisi Penyidik Pegawai Negeri Sipil dan Jaksa Penuntut Umum Dalam Tahap Penyidikan*, (Re-positioning of civil service investigators and public prosecutors in the investigation process), http://www.kejari-jakbar.go.id/index.php/component/k2/item/255-reposisi-penyidik-pegawai-negeri-sipil-dan-jaksa-penuntut-umum-dalam-tahap-penyidikan, accessed on 18 March 2019.

free legal advisor (Article 56). Criminal justice actors, such as investigators, prosecutors, judges, and correction staff, must provide legal representatives with access to the suspect's or defendant's documents, at all stages of the process (Articles 71-73).

There are two main actors in the provision of legal assistance to individuals accused of crimes: advocates, and legal aid providers. Advocates are professional lawyers who are registered as advocates with the Bar Association, and who can provide legal services inside or outside court (Article 1(1) of Law 18/2003 on Advocates).[127] Legal aid providers are legal aid offices, or civil society organisations providing legal assistance (Article 1(3) of Law 16/2011 on Legal Aid).[128]

Indonesia has no more than 30,000 advocates for a population of 260 million (Kouwagam and Bedner 2019).[129] Those who live in rural areas may find it difficult to get access to Legal Aid Providers (Achievements, Challenges and Recommendations for Judicial Reform, 2018, 30). In addition, advocates and legal aid providers are not equally distributed across Indonesia. This all contributes to the lack of control over illicit coercive measures taken by criminal investigators, such as illegal detention or confiscation. The Institute for Criminal Justice Reform reports that most of the pre-trial procedures to examine coercive measures were present in cases where advocates were assisting (Supriyadi W. Eddyono et al. 2014, 88),[130] which indicates the importance of such assistance.

As mentioned above, in addition to the lack of advocates and legal aid providers, the quality of legal assistance provided is considered to be poor. Access to justice is therefore moving further out of reach for average citizens (Bedner and Berenschot 2011, 19). A notable example of this is the case of the teenager, Yusman Telaumbanua, who was charged with murder in North Sumatra. Although the public prosecutor sought life imprisonment for him, Telaumbanua's advocate asked the court to sentence his client to death. Instead of giving Telaumbanua legal assistance, the advocate did not inform him that he could submit an appeal, and suggested that he accept the death sentence instead. KontraS, a reputable human rights NGO later found out that the police used ill-treatment to extract a confession from Telaumbanu (Anggara 2015, 36).

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127 Candidates must join the training, do an internship, and pass the exam held by the Bar Association, before taking the advocate oath before the court.

128 Other laws refer to legal aid providers by different terms. Law 23/2004 on the Elimination of Domestic Violence mentions '*relawan pendamping*', or a companion volunteer. Law 3/1997 on the Juvenile Court uses the term 'social worker', while Law 2/2004 on Industrial Relations Dispute Settlement states that the 'Labour Union' may represent its members at trial.

129 Compare this to neighbouring Malaysia, which has more than 20,000 lawyers for a population of 31 million, or Thailand, which in 2008 had 54,000 lawyers for a population of 60 million.

130 As reported by LeIP, out of 1,490 criminal cases, defendants only had assistance from advocates in 318 (Semendawai et al. 2011, 30).

In order to cope with the limited number of advocates, the Ministry of Law and Human Rights issued Regulation 1/2018 on Paralegals, allowing lawyers who had not registered as advocates to assist and provide legal assistance inside and outside of court. However, this regulation was repealed a month later, after some advocates filed a judicial review with the Supreme Court.[131] The Bar Association believed that this regulation caused legal aid quality to remain poor, since *Pokrol Bambu* (or, bush lawyers) were likely to make use of this law within the justice system.[132]

Prior to the Advocates Law, *Pokrol Bambu*[133] and legal aid activists[134] were allowed to provide legal assistance during a trial. Lev (2000) defines *Pokrol Bambu* as para-professional lawyers providing access to legal institutions, without holding any formal qualifications (p. 144). However, some observers include legal aid activists who have not registered as advocates within this definition.[135]

Despite their limited number, advocates intend to strengthen their positions in the justice system as the only actors who can provide legal assistance.[136] Article 31 of the Advocates Law criminalises those who are not registered as an advocate but are offering legal services. This arrangement prevents *Pokrol Bambu* and legal aid activists providing free legal

131 See Supreme Court Decision 22 P/HUM/2018.

132 RMOL, *Peradi Minta Menkumham Cabut Aturan Tentang Paralegal* (Peradi Asks the Ministry of Law and Human Rights to Repeal the Regulations on Paralegals), https://hukum.rmol.id/read/2018/03/20/331603/, accessed on 1 April 2017.

133 Lev (2000) refers to *Pokrol Bambu* as para-professional lawyers who have no formal qualifications but provide access to legal institutions (p. 144). During the Dutch colonial era, only Europeans or Javanese elites could afford advocates with a legal education, because their tariffs were quite expensive. Furthermore, the *Inlands Reglement* provided opportunities for natives to be assisted by the *zaakwaarnemer*, which were referred to as *Pokrol Bamboo* (or 'bush-lawyers') throughout the criminal process (Massier 2008; Ravensbergen 2018; Lev 1973).

134 The Legal Aid Office, or LBH (*Lembaga Batuan Hukum*), recruited not only advocates, but also law students and law lecturers who were not registered as advocates. The office was initiated by prominent lawyers, such as Adnan Buyung Nasution and Yap Thiam Hien. See, *No Concessions - The Life of Yap Thiam Hien, Indonesian Human Rights Lawyer*, for more details (Lev 2011). In 1972, the office was prohibited by KOPKAMTIB, since the government perceived it as disturbing political stability. This inspired some universities to establish a *Lembaga Bantuan Hukum* (Legal Aid Institution). In 1974, the Ministry of Justice allowed universities to establish LBHs (Afandi, 2013).

135 Anggara, *Menakar Peran Paralegal Gerakan Bantuan Hukum* (Measuring the Paralegal Role in the Legal Aid Movement), https://anggara.org/2010/11/23/menakar-peran-paralegal-gerakan-bantuan-hukum/, accessed on 18 January 2019. Medium, *Mengenal Paralegal* (Knowing Paralegal), https://medium.com/@imagili/mengenal-paralegal-e03029093984, accessed on 18 January 2019.

136 Article 5 (1) Advocates of Law states that advocates are law enforcers. A former advocate who was appointed as a parliamentarian, Nudirman Munir, argues that this law enforcer status is vital to strengthen the position of advocates among criminal justice actors. Hukum Online, *Status Advokat sebagai Penegak Hukum Dipersoalkan* (The Status of the Advocate as a Law Enforcer is Questioned), https://www.hukumonline.com/berita/baca/lt4fd979e0088e5/status-advokat-sebagai-penegak-hukum-dipersoalkan/, accessed on 18 January 2019.

assistance for 'have-not' people to fulfil their basic rights. Therefore, in 2004, the Constitutional Court declared that Article 31 of the Advocates Law was unconstitutional.[137] Since then, lawyers without advocate licences, such as law lecturers, legal aid institutions and campus legal clinics, may provide access to justice outside the court.

Since Law 16/2011 on Legal Aid was enacted, the government has accredited hundreds of legal aid offices and provided them with operational budgets. However, because not all legal aid institutions were able to report their budget accountability, their expenditures were not reimbursed by the government (Afandi et al., 2014). This situation forces legal aid providers to ask for operational funding from their clients.

Article 22 of Law 18/2003 obligates advocates to provide free legal assistance for poor people, but the Bar Association fails to enforce this provision. The association suffers from internal conflict, causing it to be broken down into numerous smaller associations.[138] None of these associations have evaluation or enforcement mechanisms to ensure that free legal aid can be provided by advocates. They also have no plans to distribute advocates, in order to improve access to justice across Indonesia (Caesar et al. 2019).

Competition between the various Bar Associations also causes a lack of control over the quality and ethical conduct of advocates. Advocates can move to another Bar Association if their current association imposes disciplinary sanctions. It is found that most advocates are categorised as brokers, and are not committed to enforcing the rule of law (Kouwagam and Bedner 2019).[139] Instead, according to Kouwagam and Bedner, they play by informal rules in providing *rezeki* to the police, prosecutors and judiciary:

137 See, Constitutional Court Decision 006/PUU-II/2004. Muhammadiyah University of Malang Legal Aid Institute filed this case at the Constitutional Court, because the police rejected their provision of legal assistance based on this article. The police even threatened the institute members with arrest, if they continued to provide legal assistance to their clients. Hukum Online, *Pasal 31 UU Advokat Menjadikan Dosen Hukum Acara Berorientasi Teori* (Article 31 of the Advocate Law caused law lecturers, who could not give practical lessons, to give students purely theoretical criminal procedure lessons), https://www.hukumonline.com/berita/baca/hol11149/pasal-31-uu-advokat-menjadikan-dosen-hukum-acara-berorientasi-teori/, accessed on 23 January 2019.

138 Since the Advocate Law only recognises one Bar Association, various bar associations claim that they are the legitimate one based on the law After the PERADI (*Persatuan Advokat Indonesia*, or Indonesian Advocates Union) was established in 2005, another advocate association was also established: the KAI (*Kongres Advokat Indonesia*, or Indonesian Advocates Congress). In 2015, the PERADI even split into three parts, all claiming to be the legitimate representative of all Indonesian advocates. The split had nothing to do with different visions of lawyers' roles in a democracy; instead, it expressed competition over who would administer the bar exam (Kouwagam and Bedner 2019).

139 For further elaboration see, *Lawyers in Indonesia: Professionals, Brokers and Fixers* (Kouwagam and Bedner 2019).

> "*Many will approach judges, play golf with prosecutors and police, and engage in other suspicious activities to realize their objectives, unafraid of sanctions because of the weak disciplinary system. They also charge most clients a discretionary 'professional fee' for the purpose of bribing public officials, part of which may end up in their own pockets.*" (Kouwagam and Bedner 2019)

Therefore, it is not surprising if criminal justice actors, including the police investigator and prosecutor, offer defendants hand-selected lawyers who want to cooperate with the police or prosecutor. A notable anti-corruption NGO, Indonesia Corruption Watch (ICW), confirms that some advocates ask for *rezeki* from their clients; in the indictment, advocates will negotiate with prosecutors about the charge (Zakiyah et al., 2002, 95).[140]

4.3.3 The Ministry of Law and Human Rights

Initially, all criminal justice actors, such as the police, prosecutors, and courts, were administered by the Ministry of Law and Human Rights (previously the Ministry of Justice) (Kusuma 2010, 512).[141] The Ministry's role was to harmonise and control government policies, including criminal justice policies. However, since the Minister was a cabinet member, the regime was able use the ministry to control the justice system, including the judiciary, in order to serve its own political interests[142] (Lindsey and Butt 2009, 205). The Ministry's function in the criminal justice system was adjusted in the 1960s, when the Prosecution Service and the police both upgraded their positions in the constitution. Since then, the IPS and police have administered their own bureaucracy, without consulting with the Ministry. When the New Order regime fell in 1998, the judiciary's administration was transferred from the Ministry of Justice to the Supreme Court.[143] Since then, the Ministry of Law and Human Rights (MLHR) has been responsible for law making, the storage of evidence, detention centres, prisons, immigration, and human rights protection.[144]

The MLHR plays an important role in the criminal justice system. The KUHAP instructs criminal investigators and public prosecutors to detain suspects and defendants in state detention houses or prisons,[145] and to store all evidence in the state's confiscated goods storage houses (*RUPBASAN/*

140 A number of advocates that I interviewed stated that prosecutors send them a signal during the trial process, if '*rezeki*' is need for them and their superior. Some prosecutors even promise that a verdict will be ensured, if they can also give the '*rezeki*' to the judge.

141 See the History of the Ministry of Law and Human Rights at: https://www.kemenkumham.go.id/profil/sejarah, accessed on 3 April 2019.

142 See Chapter 2.

143 See Law 35/1999 on Judicial Power.

144 Presidential Regulation 44/2015.

145 Article 22 KUHAP.

Rumah Penyimpanan Barang Sitaan)[146], which are managed by the MLHR.[147] However, the ministry has a limited number of detention houses and confiscated goods storage houses[148], so it allows the police and IPS to build their own detention rooms in their own offices. As a result, the IPS and police prefer to detain suspects and store evidence in their own offices. This imposes on their operational budgets, but they can always obtain *rezeki* by threatening detainees (Domingo and Sudaryono 2015, 16).

Since the KUHAP adopts the principle of functional differentiation, the police and prosecutors prefer to detain all suspects and prosecute them themselves, in almost all the cases that they manage.[149] The ministry seems to be powerless, and cannot supervise *and* control detention and confiscation by other actors. Correction officers seem to feel inferior to other criminal justice actors.[150] Furthermore, they cannot release detainees who have over-stayed,[151] as Article 28 (1) of the Minister of Justice Regulation M.04-UM.01.06 of 1983 asks them to first seek approval for such release from the police or prosecutors who detained the suspect. One Head of a District Prosecution Office admitted that, since it was suffering from a heavy workload, it had not been giving enough attention to controlling the detention period at the investigation stage.[152] In some cases, correction officers allow the police to detain suspects in their detention centre without a warrant[153] (Supriyadi Widodo Eddyono et al. 2012, 66). As a result of all

146 Article 44 KUHAP.

147 Article 21, 30 Government Regulation 27/1983 jo. Government Regulation 58/2010. See also, Article 17-20 Presidential Regulation 44/2015.

148 The Elucidation of Article 22 (1) KUHAP states that, in cases of emergency, if a district detention centre is not available, the police and prosecutor may detain a suspect or defendant in their office, in prison, in hospital, or in another place.

149 The prosecutors are aware that they have no budget to search for the fugitive. Thus, they choose to detain all suspects who do not give bail, in order to guarantee that they will not escape. The prosecutors argue that this is neither risky nor costly, since the budget for detention centres is the responsibility of the Ministry of Law and Human Rights (Personal Communication with a Head District Prosecution Office, 20 January 2016).

150 Different from the Prosecution Service and the police, which are regulated by laws enacted by the government and parliament, the Ministry's function is governed only by a presidential regulation. See Presidential Regulation 44/2015, concerning the Ministry of Law and Human Rights.

151 Even though the KUHAP obligates the police or prosecutors to extend the detention period, once the time is up, as reported by the Centre for Detention Studies, 31 of 71 detainees overstayed in Medan Detention Centre, while 159 detainees overstayed in Jakarta Detention Centre (Semendawai et al. 2011, 29).

152 The KUHAP states that the police must have permission from the prosecutor to extend the detention period. However, in most cases, the police send the permission in late, i.e. when they submit the investigation file (Personal Communication with a Head District Prosecution Office, 2015).

153 The KUHAP obligates criminal justice actors to have a detention warrant to use on the suspect.

these issues, the MLHR suffers from over-crowding in prisons[154] and an insufficient budget; it therefore cannot guarantee either detainees' or defendants' rights.

The weakness of the MLHR's powers in this respect also creates severe problems when managing evidence. The ministry's function is limited to storing evidence only, and it cannot return a confiscated object to its owner without the prosecutor's approval. Due to the prosecutor's workload, this results in delays in the auctioning process for confiscated pieces of evidence seized by the government (Ifani et al. 2016, 88),[155] and the RUPBASAN is full of confiscated goods which are almost worn out.[156] In addition, prosecutors keep evidence in their offices, because the MLHR does not have a RUPBASAN in every district of Indonesia. In 2014, in order to cope with these storage issues, the IPS established the Asset Recovery Centre (*Pusat Pemulihan Aset*)[157], and issued regulations on the management of confiscated assets.[158] However, the centre only has one location (in Jakarta) and the IPS has a very small budget for asset management (Niniek Suparni et al. 2017). Therefore, regional District Prosecution Offices cannot manage the confiscated goods properly, because they suffer from heavy workloads and limited budgets.

The KUHAP only provides a mechanism to examine coercive measures, such as detention and confiscation, at the pre-trial stage. However, the KUHAP has no complaints procedure for suspects or witnesses, if their evidence is damaged during their criminal procedure. NGOs, such as the

154 In 2015, the Directorate General of Corrections reported that there were 178,063 occupants, spread across 477 prisons/detention centres, 34% of which were pre-trial detainees. The report does not include the number of detainees in police custody. The density of inmates in the prison/detention centre is around 145%, but in many large prisons the number of occupants can reach 662% of the available capacity (Domingo and Sudaryono 2015, 1).

155 Personal Communication with IW, the Head of the General Crimes Division and a Head of a District Prosecution Office, 2015.

156 Tempo, *Barang Bukti di RUPBASAN Nyaris Jadi Rongsokan* (Evidence in RUPBASAN almost turned out to be junk), https://fokus.tempo.co/read/1039275/barang-bukti-di-rupbasan-nyaris-jadi-rongsokan, accessed on 5 May 2019. A management and security coordinator in Rupbasan said that some timber had begun to rot, and some was already rotten, after it had been sitting in the office yard for years. As a result, its value has declined and the state has lost hundreds of millions of rupiah. Jubi, *Confiscated Timber about to Decay* https://eng.jubi.co.id/confisted-timber-about-to-decay/, accessed on 5 May 2019.

157 See Chief Prosecutor Regulation 006/A/JA/3/2014 and 013/A/JA/06/2014 on Asset Recovery. Chief Prosecutor Regulation 027/A/JA/2014 on Asset Recovery Guidelines.

158 See Chief Prosecutor Circular Letter SE-010/A/JA/08/2015 on the prosecutor's obligation to auction either the fragile confiscated goods, or those which need to be stored at high cost, Chief Prosecutor Circular Letter SE- 011/A/JA/08/2015 on Confiscated Goods that can be used by the IPS, and Chief Prosecutor Circular Letter No. B-079/A/U.1/05/2016 on the Administration of Settlements for Confiscated Goods which are deposited in the *RUPBASAN*.

Institute for Criminal Justice Reform, have suggested that the government should give the MLHR more power to manage detention centres and confiscated goods.[159]

4.3.4 The Courts

The courts initially played an important role in the Dutch colonial HIR and the RO. The courts controlled coercive measures imposed by criminal investigators and prosecutors.[160] Then, when the New Order regime drafted the KUHAP, court control was limited.[161] The government instead promoted internal control by each actor, known as the 'built-in control mechanism'[162] (Hart & Nusantara, 1986, pp. 8-9). During the authoritarian government period, (similar to the Prosecution Service and police) the court also became a tool for protecting the interests of the regime (Pompe 2005). It was not surprising if the court favoured the government and its cronies in cases that involved their political interests (Zakiyah et al. 2002, 7).

When the New Order fell, in 1998, the new constitution provided new guarantees of judicial independence (Article 24 (1) of the 1945 Constitution).[163] As well as entrenching the Supreme Court, the constitution established a New Constitutional Court to review legislation.[164] The Constitutional Court plays a pivotal role in mediating political contestation among criminal justice actors. As mentioned above, the police attempted to repeal "the IPS power in corruption case[s]" investigation through the courts.[165] Besides, the Constitutional Court is more powerful than the MAHKEJAPOL, since it can force the police to send their notification of investigation letter (SPDP) to the prosecutor a maximum of 7 days after starting the investigation.[166]

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159 ICJR, *ICJR Dorong Reformasi Rumah Penyimpanan Benda Sitaan Negara (Rupbasan) dan Eksekusi Barang Sitaan.* (The ICJR encourages reform of the State Confiscated Goods Storage Houses (Rupbasan) and the Execution of Confiscated Goods), https://icjr.or.id/icjr-dorong-reformasi-rumah-penyimpanan-benda-sitaan-negara-rupbasan-dan-eksekusi-barang-sitaan/, accessed on 7 June 2019.

160 Therefore, the warrant and documents relating to the coercive measures are entitled *Pro Yustisia*. This originally meant that coercive measures must be examined at court. But the term *Pro Yustisia* was redefined after the KUHAP introduced the principle of functional differentiation (meaning that the police and prosecutor had powers to use coercive measures without being supervised by the judiciary).

161 The regime rejected the concept of the *Rechter Commissaris* (which allows judges to control coercive measures directly), which was replaced by the pre-trial procedure, with less potential to control coercive measures (Supriyadi W. Eddyono et al. 2014, 39).

162 Built-in control means that the control and supervision of criminal investigators and public prosecutors are under the authority of their leadership (Rosjadi and Badjeber 1979; Harahap 2007).

163 It also guarantees the judicial independence of institutions relating to the judicial power, such as the IPS and the police (Article 24 (3) of the Constitution).

164 Articles 24 (2), 24C, 7B of the Constitution.

165 See 4.2.1 The Public Prosecutor in Criminal Cases

166 See chapter 5 for further elaboration.

The new Constitution gives the Supreme Court the authority to manage judicial administration, in order to eliminate government intervention via the Ministry of Justice.[167] The government also increased judge's salaries and added to the judiciary's budget, since a judge's status is no longer equivalent to a civil servant; it is equivalent to a state official. The new Constitution also creates a Judicial Commission, intended to monitor the ethical conduct of judges (Art. 24B (1) of the Constitution). However, the Supreme Court later reviewed the commission's power to control supreme judges' performance. The Supreme Court argued that the commission's power can be used to interfere with judges' independence.[168] Since then, the Supreme Court has been ignoring the commission's recommendation to impose disciplinary sanctions on judges who have been examined by the commission.[169]

As Bedner (2008) puts it, "there is no one-model-shortcut-fits-all solution when it comes to judicial reform. However, if it is based on sound knowledge and carried out by capable people, under relatively favourable conditions, a strategic, small-step and long-term approach will ultimately make a difference" (p. 27). These issues are apparent in the reform of the judiciary. Compared to the IPS, I found court reform to have been more successful. In addition to most of the Supreme Judges having the political will to reform their institution, the Institute for Independence of the Judiciary (LeIP) supports legal efforts in the Supreme Court. The LeIP is backed up by senior, capable legal experts, who assist and supervise the court administration in planning and implementing reform.

In 2011 the Supreme Court implemented the Chamber System[170], in order to achieve legal unity and consistent court decisions. However, it seems that the Chamber System cannot fully achieve its objective to eliminate inconsistency in court decisions. As reported by the LeIP, most judges understand that compliance with jurisprudence is a form of intervention in judicial independence in determining court decisions (Achievements, Challenges and Recommendations for Judicial Reform 2018, 16).

The court's complicated relationship with other state agencies and criminal justice actors, and its dependency on the quality of legislation can be obstacles in the reform effort (Bedner 2008, 5). As I discussed in Chapter 3, the new government has kept some institutions from the former authoritarian regimes in position – such as the FORKOPIMDA. The President

167 For further discussion see (Rositawati 2019).

168 See Constitutional Court decision 005/PUU-IV/2006. The case was controversial, because the Constitutional Court repealed the Judicial Commission's supervision of constitutional court judges, even though the constitutional complaint was filed by supreme judges, excluding constitutional court judges.

169 Emerson Yuntho in Kompas, *Korupsi Hakim* (Corrupt Judge), https://kompas.id/baca/opini/2018/12/11/korupsi-hakim/, accessed on 16 June 2019.

170 See Supreme Court Decree No. 142/KMA/SK/IX/2011 jo. Supreme Court Decree No. 213/KMA/SK/XII/2014 on the Supreme Court chamber system guidelines.

of the District Court and the Head of the District Prosecution Office both joined FORKOPIMDA, which is managed by the local government.[171] The local government may even provide facilities for the court, such as buildings or official cars.[172] Therefore, judges will consider these facilities prior to making a decision on a case involving government interests.

Besides, criminal justice actors use the MAHKEJAPOL (or DILJAPOL) at district level as a forum for the police, Prosecution Service, and court. The court seems to maintain good relations with the police and public prosecutors; therefore, it permits almost every coercive measure used by the police and public prosecutors (cf. Irianto et al. 2017, 169-75). It is common for judges to have a similar outlook to, and sympathy with, other government executives. These bonds are strengthened by their shared university experiences, often in the same law faculties, and by their frequent professional contact (cf. Shapiro, 1981). Instead of implementing the presumption of innocence and taking a more neutral stance, judges' views often lean more towards those of the prosecutors (Achievements, Challenges and Recommendations for Judicial Reform, 2018, 38). Senior judges have stated that they often assist junior prosecutors in reviewing and revising their indictments.[173]

The principle of functional differentiation in the Criminal Procedure Code, which makes judges responsible for detention during a trial, causes judges to be dependent on prosecutors. In practice, prosecutors (not judges) are responsible for ensuring the defendant is detained, and are allocated a budget for picking up detainees from detention centres during the trial. In addition, even though the judge has to maintain a detainee's health during trial, the prosecutor is responsible for taking care of the detainees if they get sick and need to go to hospital.[174] Since the IPS does not allocate a budget

171 Sulselsatu, *Ramah Tamah di Selayar, Ketua Pengadilan Tinggi Sulsel Pamit* (Farewell party in Selayar – the President of the High Court says goodbye), https://www.sulselsatu.com/2019/08/07/sulsel/selatan/ramah-tamah-di-selayar-ketua-pengadilan-tinggi-sulsel-pamitan.html, accessed on 16 June 2019.

172 When I did my fieldwork in 2015, in three different cities, I found that all three district governments provided an official car for the president of their district court. This situation seems to be quite common in other places too. See, for example, *Brebes Beli Mobil untuk Kepala Pengadilan Negeri* (The Brebes District Government buys cars for its district court president), https://nasional.tempo.co/read/518502/brebes-beli-mobil-untuk-kepala-pengadilan-negeri, accessed on 14 September 2019, and *Mobil Dinas Ketua PN Surabaya Diminta Kembali oleh Pemkot Surabaya* (The Surabaya District Government demands that the district court president returns his official car), http://kelanakota.suarasurabaya.net/news/2017/186265-Alasan-Mendesak,-Mobil-Dinas-Ketua-PN-Surabaya-Ditarik-Pemkot-Surabaya, accessed on 28 September 2019.

173 Interview with Indonesian Supreme Court Judges Delegation in Leiden, July 2018.

174 Hukum Online, *Kebijakan Pembantaran dilaporkan ke KY* (The policy of postponing detention for sick leave is reported to the Judicial Commission) https://www.hukumonline.com/berita/baca/lt517e292d85f38/kebijakan-pembantaran-dilaporkan-ke-ky, accessed on 16 October 2019.

for placing and protecting a defendant in hospital, in some cases the prosecutor will ask a defendant to fund the operational expenditure.[175]

As has been mentioned above, in criminal trials court dependency on other criminal justice actors (such as prosecutors and the police) may cause the court to grant almost every request from police and prosecutors. I will elaborate further on this in Chapter 5.

4.4 Conclusion

The Indonesian Prosecution Service's position as a government instrument influences its role within the criminal justice system. Various regimes have adjusted the IPS' tasks and powers, in order to serve their own political interests. As elaborated above, some IPS functions were no longer in line with its core duties within the prosecution process. The government set the public prosecutors up as state lawyers, who assisted the government and its companies in both civil and administrative law disputes. The prosecutor's intelligence function was no longer designed only to support the prosecution process, but also to protect government interests by maintaining public order.

The IPS created special divisions to serve these additional functions, and to arrange the division of tasks and powers. In some cases, more than one division had similar tasks, making prosecutors confused about how to achieve their goals. Wilson observes: "When goals are vague, circumstances become important" (Wilson 1989, 36). The broad discretion of IPS top-level managers' in performing their tasks eventually became a guide for operators in handling their various duties. So their work patterns changed: they were no longer simply to enforce the law, they should also handle a situation as defined by the leader (cf. Wilson, 1989, p. 37). This can be seen in the next chapter, when I elaborate on the public prosecutors' functions within criminal procedure.

Additionally, this chapter shows that the IPS must maintain its relationship with other actors, since the KUHAP introduces the principle of functional differentiation – dividing a criminal justice actor's powers, based on the four stages of criminal procedure. As discussed in Chapter 2, the New Order government created this principle to entrench military power within the criminal justice system, because the police were part of the army at the time. The KUHAP transfers the *dominus litis* from the public prosecutor to the police, who are now the masters of the pre-trial procedure.

Apart from this principle, the Indonesian criminal justice system has no special regulation that bridges between each actor's authority. Therefore, similar to Lev's picture 50 years ago (1965), political contestation among

175 Interview with a Head of the General Crimes Division of a District Prosecution Office, 6 January 2016.

criminal justice actors remains. Although the government established the MAHKEJAPOL as a coordinating forum to harmonise criminal justice policies, the institution taking part in the MAHKEJAPOL just follows its own policies, without fear of any repercussions.

The amended Constitution gives the police authority to replace the military in maintaining public order. The public prosecutor and judges need the assistance of the police to guard and secure defendants, evidence, and their own safety during criminal proceedings. As the most powerful criminal justice actors, the police may interfere with a public prosecutor's decision if a case is prosecuted at trial. However, since the police force is not the sole actor with investigative powers, it also competes with the PPNS and special investigators when handling a case. Thus, because of the lack of supervision by prosecutors and control by judges, a person may be investigated and detained several times, by various investigators, for a single case. However, unlike the previous criminal procedure (HIR), the KUHAP states that those suspected of having committed a crime may ask for legal assistance during the proceedings.

The KUHAP even obligates criminal justice actors to provide free legal assistance for suspects or defendants who are unable to afford such services. However, the number of advocates and legal aid providers is not equally distributed across Indonesia. In addition, political contestation among advocates within the Bar Association, and between advocates and legal aid providers, results in a lack of quality control when providing legal assistance. It seems that actors such as the police and public prosecutors take advantage of this condition, since only a few complaints about their performance during the prosecution process have ever been filed by defendants.

Previously, in the early years of Indonesian independence, the Ministry of Justice administered and harmonised policies for all criminal justice actors – such as the police, prosecutors, and courts. However, the Ministry of Law and Human Rights' role in the criminal justice system is currently minimal. Although the ministry manages detention houses, prisons, and confiscated storage houses, the KUHAP gives them limited power within criminal procedure. Therefore, it seems that prosecutors perceive the ministry as a recycling bin. As a result, the criminal justice system suffers from under-capacity in prisons, detention houses, and evidence storage houses. Although the ministry still has the power to harmonise government policies, including for the police and IPS, the 'ego-sectoralism' of criminal justice actors causes them to produce policies which are not in line with one another, which I will elaborate on in the next chapter.

The amended constitution guarantees the independence of the judiciary. Many people have high hopes that the court can control and supervise criminal justice actors who are working in line with the rule of law. However, since the courts' role in the pre-trial stage is limited, they cannot actively examine whether coercive measures have been employed by the police and prosecutor. Besides, the court seems to maintain good relationships with the police and public prosecutors; therefore, almost all coercive measures

used by the police and public prosecutors are permitted by the court. Because of this court practice, the public prosecutor believes that every case prosecuted in court must be accepted, and that the defendant must be punished as requested by the prosecutor. Therefore, as I will discuss in the next chapter, if the court rejects the prosecutor's indictment, or gives a less severe punishment than is required by the prosecutor, the prosecutor will either appeal the court decision or file a cassation in the Supreme Court, in order to ensure that the court accepts their charge.

5 The Indonesian Prosecution Service in Action: The Interpretation of Criminal Procedure and Prosecutorial Discretion

5.1 Introduction

As I have discussed in the previous chapter, political legacies from previous regimes and the Indonesian Prosecution Service's (IPS') limited budget do not enable prosecutors to uphold the rule of law. This chapter will explain how the IPS' military culture, which is inherited from the New Order regime, influences the way public prosecutors interpret the Code of Criminal Procedure (KUHAP). One of the results of this culture is that only the IPS leadership has the authority to use discretion, as stipulated in the criminal process. This chapter will show how a prosecutor's role within the criminal justice system is similar to that of a 'postman'. Ultimately, a prosecutor's subservient position means that s/he will defend the investigation files at trial and insist on prosecuting defendants, even though this requires him/her to breach procedural rules.

In addition, this chapter elaborates on the main prosecution process concepts within the Criminal Code (KUHP) and the Code of Criminal Procedure (KUHAP), analysing how the two codes are interpreted in daily practice. More specifically, it will analyse how public prosecutors perform their tasks and powers during the pre-trial stage, trial stage, appeal stage, and execution stage, for an ordinary examination (*pemeriksaan biasa*).[1] Since the current KUHAP was drafted and enacted under the New Order authoritarian regime, criminal proceedings are marked by military features. One such feature is the use of a coercive measure procedure called 'warrant as an

1 Apart from ordinary examinations (*pemeriksaan biasa*), the KUHAP also recognises two other types of trial: summary examinations (*acara pemeriksaan singkat*) and expedited examinations (*acara pemeriksaan cepat*). Summary examinations are for cases which the public prosecutor considers to be simple - the application of the law is straightforward, and the case can easily be proved (Article 203(1) of the KUHAP). See, for instance, Chief Prosecutor Circular Letter SEJA 029/A/EJP/03/2019 on summary examination for narcotics prosecution. On the other hand, expedited examinations are for crimes that are result in either a three-month detention (*kurungan*) or a Rp 7,500 fine, minor insult or slander (*penghinaan ringan)* (Article 205(1) of the KUHAP), or traffic violations (Articles 205, 211 of the KUHAP).

order letter'.[2] The KUHAP seems to adopt the military unity of command,[3] introducing the built-in control principle, wherein the leadership fully controls its investigators and prosecutors (Harahap, 2007, p. 79).

As mentioned in a previous chapter, the KUHAP divides criminal procedure into four stages[4] – preliminary investigation, investigation, prosecution, and trial – and strongly emphasises three main actors: the police, public prosecutors and judges. This division, referred to as the principle of functional differentiation, results in a situation where each criminal justice actor has their own interpretation of their own powers. The police lead preliminary investigations and the investigation stages.[5] Public prosecutors only enter at the prosecution stage, when they prepare for and present their case against the defendant in court.[6] Judges take the lead at the trial stage, when a panel of judges examines the case and decides whether the defendant is guilty or innocent; if the defendant is found guilty, the judges impose a punishment.

The KUHAP does not comprehensively regulate the procedure that should be carried out by criminal justice actors. Therefore, this chapter also considers other statutes and regulations, such as the Police Law, Prosecution Service Law, Judiciary Law, and other internal rules and circular letters from criminal justice actors. However, instead of providing a complete and consistent procedure, the regulations are often very complex, with ambiguous or contradictory provisions. I will also refer to court decisions and opinions from Indonesian legal scholars, in order to analyse the public prosecutor's authority and duties under the KUHAP.

2 See, for instance, Order Letter for Arrest (*Surat Perintah Penangkapan)* (Article 18 of the KUHAP), Order Letter for Detention (*Surat Perintah Penahanan)* (Article 21 of the KUHAP), and Order Letter for Searches (*Surat Perintah Penggeledahan)* (Article 33 of the KUHAP).

3 The unity of command principle emphasises a single command for each unit, and limits interference from other parties in the supervision and control of unit members. The army believes that supervision and control from other institutions, without the leaders' permission, will interfere with the preparation of military operations (Zen and Sirait 2006, 12).

4 Compared to the HIR, which divides the stage into just two procedures: the Preliminary Examination, in which the public prosecutor controls and supervises the investigation (Articles 41 (2) and (3)), and the Trial Examination, in which the prosecutor presents the case to the court (Ranoemihardja 1980, 34).

5 The PPNS, or civil service investigators (CSIs), are also mentioned in the KUHAP. However, since they supervise and coordinate CSI investigations before passing the dossier on to the prosecutor, the police effectively position themselves as the supervisor and leader during this phase.

6 Articles 1 (6), (7), 13-15 and Chapter XV KUHAP.

5.2 Pre-Trial Process

This section discusses how provisions on laws and regulations such as the KUHAP (and other regulations on the pre-trial stage, including those concerning the rights of suspects and defendants) work in practice. The KUHAP makes the police and other criminal investigators the main actors in the pre-trial phase, but they lack controls and supervision. Furthermore, the KUHAP authorises Civil Service Investigators (PPNS) and special investigators to exercise coercive measures, such as detention and confiscation, without the prosecutor's supervision. This frequently leads to the use of coercive measures for improper purposes during the investigation stage of the prosecution process. As a result, those suspected of having committed a crime can suffer due to the lack of due process, and they may not receive a fair trial (Tim Penelitian dan Dokumentasi LBH Jakarta 2015; Supriyadi Widodo Eddyono et al. 2012; Domingo and Sudaryono 2015).

5.2.1 Preliminary Investigation (*Penyelidikan*)

The KUHAP defines preliminary investigation as follows:

> "*... a series of acts by a police investigator to seek and find an event that is presumed to be a criminal offence, in order to determine whether or not an investigation may be carried out via the means regulated in this law.*" (Article 1, Number 5 of the KUHAP)

The above definition adopts some concepts from the HIR[7] which regulated the prosecutor and *hulpmagistraat* (prosecutor's assistant) in conducting a criminal examination to determine if a crime had been committed (Hamzah 1984, 6). Unlike the HIR, which positioned the police as the *hulpmagistraat*[8] and authorised the public prosecutor as the main actor at the investigation stage,[9] the KUHAP makes the police the main actor at this stage.[10] Besides,

7 See Articles 38, 43, and 73 of the HIR.

8 Emergency Law 1/1951 translated the term *Hulpmagistraat* as *Pembantu Jaksa*, which carries a connotation of being a prosecutor's 'maid'.

9 Article 74 of the HIR stated that the police and other investigators could investigate a criminal case, as long as the public prosecutor decided that s/he would not be investigating it. Meanwhile, if the police and other investigators were investigating a case, prosecutors might get involved and supervise the investigation.

10 Neither the HIR nor the Draft KUHAP 1979 had provisions on preliminary investigation. The Draft KUHAP 1979 divided the pre-trial process into two phases: investigations by the police and the PPNS; and additional investigations by prosecutors to complete the police report (Rosjadi and Badjeber 1979). An additional investigation would be when the prosecutors do not investigate directly, but instead the police investigator had to follow the prosecutors' orders in order to complete the file. See the government statement by Minister of Justice Mudjono in a DPR meeting discussion RKUHAP, on 9 October 1979 (Rosjadi and Badjeber 1979, 181).

the term 'prosecutor's assistant' in the HIR is changed to the term 'assistant police investigator' in the code; the assistant police investigator can initiate preliminary investigations (Articles 1 (3), 10, 11, and 12 of the KUHAP).[11]

The KUHAP states that the police can run an independent preliminary investigation, without any control or supervision from either the prosecutor or the court. At this stage, the police cannot impose coercive measures, such as detention and confiscation.[12] The Criminal Procedure Code only gives the police the power to arrest and detain a person suspected of having committed a crime for one day (Article 16 of the Criminal Procedure Code). If the police do not name an arrested person as a suspect, they must release him or her. Initially, the KUHAP designed this stage as a preliminary filter to determine whether a case can be investigated based on the criminal provisions.[13]

The KUHAP only grants the police the power to initiate a preliminary investigation.[14] Criminal law scholars believe that this provision authorises a police monopoly during the investigation phase, since the KUHAP stipulates that every investigation process must begin with this stage. Thus, other criminal investigators, such as the PPNS and special investigators, cannot initiate an investigation before a preliminary investigation has been held by the police (Harahap 2007, 103). However, ignoring the KUHAP, in practice the PPNS and special investigators *can* investigate a case without a preliminary investigation.[15]

Some special laws allow state agencies to handle preliminary investigations for specific criminal offences, such as the National Narcotics Agency (BNN), the National Human Rights Commission (KOMNASHAM), and the Corruption Eradication Commission (KPK).[16] This means that the police force is no longer the sole actor in preliminary investigations. Furthermore, as I have discussed in the previous chapter, the Prosecution Service can

11 Government Regulation 27/1983 states that police officers of Bintara rank (a non-commissioned officer) can be appointed as police assistance investigators.

12 Article 12 of the National Police Chairman Regulation PERKAP 14/2012 on Managing the Investigation of Crimes states that an investigation is carried out via: a) crime scene processing; b) observation; c) interviewing; d) surveillance; e) undercover work; and, f) tracking and document analysis.

13 See the National Police Chairman Circular Letter 7/VII/2018 on Stopping a Preliminary Investigation, which states that an investigation can cease if the investigator cannot find facts or evidence for an event which is alleged to be a crime.

14 See Article 1 (4) of the KUHAP.

15 The police implicitly allow the PPNS to investigate, without holding a preliminary investigation. See National Police Chairman Regulation PERKAP 6/2010 on the Management of Investigations by the PPNS.

16 See Article 70(i) of Law 35/2009 on Narcotics, Article of 6 (c) Law 30/2002 on KPK, Article 18 of Law 26/2000 on the Human Rights Court.

also conduct preliminary investigations of corruption cases.[17] Because of these developments, the government is considering removing preliminary investigation from the new KUHAP.[18]

The IPS has two regulations on preliminary investigation: Chief Prosecutor Regulation 039/A/JA/10/2010 on the Standard Operating Procedure for Handling Special Crimes, and Chief Prosecutor Regulation 037/A/J.A/09/2011 on the Standard Operating Procedure for Intelligence. As stated in the previous chapter,[19] the two regulations create competition between the Intelligence and the Special Crimes Divisions, when handling corruption cases. In practice, the Prosecutorial Intelligence Division argues that its preliminary investigations are independent, i.e. not related to the Special Crimes Division. As a result, the prosecutor's Head of the Special Crimes Division does not receive any information on preliminary investigations which have been carried out by the Prosecutorial Intelligence Division (Kristiana 2009, 96). Besides, the special crimes prosecutor repeats the procedure when s/he receives the preliminary investigation files from prosecutorial intelligence; this is because the court only recognises evidence that is presented in investigation files.

Although the preliminary investigators cannot impose coercive measures, they may force those who have been targeted during this stage to obtain *rezeki*.[20] Special investigators may summon a targeted person and then threaten him/her to get the *rezeki* (Zakiyah et al. 2002, 87). The IPS' special criminal investigator may arrest a person and name him/her as a suspect, recommending that their superiors continue the investigation. However, a targeted person or his/her advocates may negotiate with a preliminary investigator by providing *rezeki* to close the case[21] (Zakiyah et al. 2002, 78). The IPS seems to allow prosecutorial intelligence to conduct

17 See Supreme Court Decision No. 1148 K/Pid/2003 on 10 January 2005, and No. 1205 K/Pid/2003 on 10 October 2005, stating that (based on Laws 31/1999, 28/1999, and 5/1991, and Government Statement 19/2000 on The Joint Team to Eradicate Corruption) prosecutors have the right to investigate and prosecute corruption cases, then compare these to Supreme Court Ruling (*Fatwa MA*) KMA1102/I1I/2005, which states that, "based on Article 30 (1) (d) of Law 16/2004 on the IPS, it has tasks and rights to investigate specific crimes, based on several different laws."

18 Hukum Online, *Pro Kontra Peniadaan Penyelidikan dalam RKUHAP,* (The pros and cons of repealing preliminary investigation provisions in the Draft KUHAP) https://www.hukumonline.com/berita/baca/lt52ef88bda5026/pro-kontra-peniadaan-penyelidikan-dalam-rkuhap, Vivanews, *KPK: Revisi KUHAP Hilangkan Penyelidikan dan Pembuktian Terbalik* (KPK revision of the KUHAP repealed a provision on preliminary investigation and the shifting burden of proof) https://www.viva.co.id/arsip/454866-kpk-revisi-kuhap-hilangkan-penyelidikan-dan-pembuktian-terbalik, accessed 3 March 2018.

19 See 4.2.3: The Public Prosecutor as State Intelligence

20 See Chapter 3 for further discussion of *rezeki*.

21 Another term for *"Rezeki"* that is known within the police force is 86 (*delapan enam*), which means that the police can negotiate a case based on the money provided by an advocate. For example, Lawyer IS acknowledges that it is easier to cease the process of crime investigation during this phase, since the police do not have to report any cessation to the prosecutor. Interview with IS, lawyer, Malang, 25 April 2015.

unofficial preliminary investigations.[22] In some cases, prosecutorial intelligence does not register such preliminary investigations in its official record (cf. Kristiana, 2006, pp. 109-110).

The IPS regulates that reports from preliminary investigations for corruption cases must be discussed in a forum called *ekspose perkara.* At district level, a criminal investigator from the Intelligence Division organises the *ekspose perkara.* Prosecutorial leaders, such as the Head of the District Prosecution Office, the Head of the Intelligence and Special Crimes Division, and the prosecutorial investigator are involved in the forum. Members of the forum can then make a recommendation confirming that the preliminary investigation is complete and can thus be investigated further by determining a suspect. The recommendation will then be submitted to the prosecutorial leadership, in order to obtain a final decision (Kristiana 2009, 82). However, in many cases, the choice either to close or continue a case onto the next investigation stage depends on the prosecutor's leadership discretion, with no consideration of the recommendation (Kristiana 2009, 86).[23] Furthermore, if the prosecutorial leaders decide to close a case, the *ekspose perkara* member must compile a preliminary investigation report, based on the decision of the leadership. The preliminary investigator must then adjust the legal facts, and find reasons to close the corruption case[24] (Kristiana 2009, 122).

5.2.2 Investigation (*Penyidikan*)

The KUHAP defines investigation as follows:

> "*…investigation is a series of acts by an investigator, in matters and by means regulated in this law, to seek and gather evidence with which to clarify whether an offence has occurred, and to locate the suspect.*" (Article 1, Number 2 of the KUHAP)

During the investigation phase, investigators gather evidence, identify suspects, examine witnesses, and (if necessary) carry out a crime scene reconstruction. Under the KUHAP, only five types of evidence are considered to be legally valid proof at trial. These are: (1) a witness testimony;[25] (2) an expert

22 My respondents from the IPS call this unofficial preliminary investigation *LID BODONG*, or *Penyelidikan Bodong.*

23 Some prosecutors I met complained about this situation, since they have had to adjust the evidence and facts in files in order to meet leadership expectations. Personal Communication, 2015.

24 In Semarang District Prosecution Service, for example, only one out of nine investigations registered eventually progressed to court. There were actually eight other investigations which had sufficient evidence, but most of these were stopped. He argues that this was possibly either because of pressure from senior IPS leadership, or because of higher compensation, i.e. money given to stop the investigation process (Kristiana 2006, 109–10).

25 The Constitutional Court Decision No. 65/PUU-VIII/2010 allowed a person to give testimony as a witness, even if s/he may not have heard, seen, or experienced the evidence themselves.

testimony; (3) a 'document', i.e. a public record, written affidavit, or another document relating to the contents of another means of proof; (4) an 'indication', i.e. testimony, or documentary evidence, of an act that intends to establish either that an offence has occurred or the identity of the perpetrator; and, (5) a defendant statement (Articles 184-189). Investigators must have testimonies from at least two witnesses, or evidence from at least two out of the five categories of proof, in order to name a person as a suspect.

Article 1 (14) of the KUHAP defines a suspect as a person who, based on preliminary evidence, is suspected of committing an offence. Also, Article 1 (21) of the National Police Chairman Regulation 14/2012 defines 'preliminary evidence' as a police report, plus one other piece of legal evidence. This provision frequently leads to the use of two kinds of witness testimonies, i.e. one from victims or informants, and one from experts. Although the latter does not inform or prove any criminal facts, in some cases criminal investigators use it to determine that a person is a suspect.[26]

Article 4 of the National Police Chairman Regulation 14/2012 on Criminal Investigation Management states that the administrative basis for an investigation should be formed by administrative documents, such as a police report (*LP*, or *Laporan Polisi*), an operation order (*Surat Perintah Tugas*), a preliminary investigation report (*Laporan Penyelidikan*), an investigation order, or a notification letter to open the investigation (*Surat Pemberitahuan Dimulainya Penyidikan/SPDP*). The police argue that, since the goal of an investigation is to find a suspect, the documents should mention the suspect's identity. Based on this argument, most investigators believe that they must name their suspect before starting their investigation.[27]

This practice has serious consequences, because the suspect's status prevents them from exercising certain civil rights. The government may issue a civil servant with a temporary discharge notice, if s/he is named as a suspect in a criminal case.[28] Most job vacancies require a Police Certificate of Good Conduct, stating that the applicant is neither a suspect, nor convicted under criminal law.[29] Consequently, 'suspect' status blocks a person from applying for scholarships and certain positions in the government and companies. The Constitutional Court has made an effort to overcome this situation with its Decision 21/PUU-XII/2014, which provides an opportunity for a suspect to examine his/her status at the pre-trial hearing.[30]

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26 Since the KUHAP has no clear definition of 'expert witness', criminal investigators also use the testimony of criminal law lecturers to assist them in determining if elements of a criminal offence fit a suspect's actions (A'yun 2014). The investigator also relies heavily on such testimony to convince the prosecutor to accept their investigation files.

27 Kompas.com *Terbitkan SPDP Wajib Ada Tersangka* (Issuing an SPDP - There Must be Suspect), https://nasional.kompas.com/read/2011/10/11/10275976/Terbitkan.SPDP.Wajib.Ada.Tersangka, accessed 1 February 2019.

28 Article 276 of Government Regulation 11/2017 on Civil Servant Management.

29 See National Police Chairman Regulation PERKAP 18/2014 on the Police Certificate of Good Conduct (*Surat Keterangan Catatan Kepolisian/SKCK*).

30 Constitutional Court Decision 21/PUU-XII/2014, p. 69, 105.

Since both the police and the IPS apply militaristic culture and centralise their bureaucracy, the leadership plays an important role in determining a person as a suspect. In a similar way to that mentioned in the previous section, the IPS leadership has the power to determine suspects in corruption cases. For example, the IPS' decision in 2003 to prosecute certain members of the Central Java provincial parliament, while letting others go free. The prosecutorial investigator cannot name certain members of parliament as suspects, even if there is strong evidence for doing so, because the IPS leadership wants to let them go free (Kristiana, 2009, p 143).

Article 50 (1) of the KUHAP mentions that a suspect has the right to be examined immediately by an investigator, and to have his/her case referred to a public prosecutor. Since, in most cases, the investigation process lasts for more than a year, a judicial review was filed to the Constitutional Court in 2015, asking the court to interpret the word "immediately" in Article 50 (1) of the KUHAP. A specific time frame should be given, within which criminal investigators must complete their investigation: either within 60 days of a suspect being detained, or within a maximum of 90 days, if a suspect has not been detained. The claimant argued that this interpretation might prevent a person having suspect status for years. However, the Constitutional Court rejected this objection in its Decision 123/PUU-XIII/2015. The court argues that the word "immediately" in Article 50 (1) and (2) of the KUHAP is hard to measure, because the completion of a case investigation cannot be generalised. It depends on how difficult it has been to search for evidence.[31]

Another issue is that suspect status can be attributed to a person for years, as long as the investigators have not issued an SP3 (*Surat Perintah Penghentian Penyidikan*, or a Letter Ordering the Cessation of an Investigation). Issuing an SP3 is also problematic, because it means the police may close the case. This situation may affect an investigator's career, since the perception is that s/he is spending the nation's budget on random cases. A number of criminal law experts believe that when a case is closed the investigator cannot use evidence from that case to investigate another case. For even one case, a criminal investigator must find new evidence and compile new investigation files for every new suspect. A notable example of this is the Mataliti case. A pre-trial hearing judge decided that the prosecutor's investigation of Mataliti's corruption case was illegal, because the IPS used

31 In its consideration, the Constitutional Court made comparisons with the previous Constitutional Court Decision 3/PUU-XI/2013, which argued that the word "immediately" in Article 18 paragraph 3 of the KUHAP means a maximum of seven days. The reason behind this is that Article 18 of the KUHAP only regulates administrative matters. The court argued that the word "immediately" in Article 50 (1) and (2) of the KUHAP is hard to measure, because the completion of a case investigation cannot be generalised. It depends on how difficult it is to search for evidence. See Constitutional Court Decision 123/PUU-XIII/2015 p. 48-50.

evidence from a previous case to prosecute Mataliti.[32] The judge cited the argument of a criminal law professor, who was an expert witness testifying that evidence used in previous cases cannot be used in another case.[33]

National Police Chairman Regulation 14/2012 states that an investigation process is supervised and controlled by the investigator's superior. In some cases, if police investigators find it challenging to construct a case based on evidence, they may organise a discussion called *gelar perkara* (or case exposé), inviting experts (including prosecutors) to attend.[34] In response to this, the IPS issued Chief Prosecutor Circular letter 001/A/JA/02/2008, prohibiting prosecutors from attending *gelar perkara* organised by a police investigator. The IPS does not want the opinions of prosecutors invited to the *gelar perkara* to be used to force the IPS to accept police investigation files. The IPS prefers to have its own *gelar perkara*, to decide whether the investigation files are complete or not. For this reason, the investigator now carries out *gelar perkara* without involving the prosecutor,[35] whereas the IPS organises *gelar perkara* without inviting the criminal investigator,[36] even when cases are serious.

When the Prosecution Service receives an SPDP from the investigator, the Head of the District Prosecution Service will appoint a public prosecutor to be the examining prosecutor (*Jaksa Peneliti*) during the investigation.[37] The examining prosecutor must then coordinate with the investigator and provide technical instructions that are applicable to the suspect, in accordance with the KUHAP and with criminal qualifications based on the Criminal Code.[38] However, the police seem unaware of this IPS regulation, arguing that they can investigate without public prosecutor supervision, based on the principle of functional differentiation. For this reason, the police do not obligate their investigators to coordinate with the public prosecutor.

Article 109 of the KUHAP states that an investigator must send a notification (SPDP) to the prosecutor when starting the investigation process. The Ministry of Justice Decision M.14-PW.07.03/1983 on Additional Guidelines for the KUHAP states that sending a written SPDP is a must. Criminal investigators must send the SPDP to the prosecutor, even before the inves-

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32 See pre-trial hearing decisions 11/PRAPER/ 2016/ PN.SBY and 19/PRA.PER/2016/PN.SBY.

33 I made some legal annotations on this decision. For more details, see Afandi (2015), Memeriksa Keabsahan Penetapan Tersangka atau Menguji pokok perkara? (Are we checking the validity of a suspect status or examining a case?) Hukum Online, https://www.hukumonline.com/berita/baca/lt574e7c88a8193/memeriksa-keabsahan-penetapan-tersangka-atau-menguji-pokok-perkara-broleh--fachrizal-afandi-/, accessed 19 February 2019.

34 Article 70 of National Police Chairman Regulation PERKAP 14/2012.

35 See Articles 69-72 of National Police Chairman Regulation PERKAP 14/2012.

36 Personal Communication with a public prosecutor, 2015.

37 Article 9 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011.

38 Articles 9 and 10 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011.

tigator summons witnesses or takes coercive measures, such as arrest or detention.[39] Likewise, if an investigator wants to stop the investigation, they must inform the prosecutor of their intention.

However, since the IPS and police do not coordinate effectively during the investigation process, most coercive measures or suspect determinations are undertaken by the police alone, without notifying the public prosecutor. The IPS stipulates that an investigator must report investigation files to a public prosecutor for a maximum of 30 days after the IPS receives an SPDP. The prosecutor is required to request a progress report for the investigation. If the investigator has not sent the investigation files 30 days after the prosecutor has requested them, the prosecutor must return the SPDP to the investigator.[40] However, the police will not stop the case when the prosecutor returns the SPDP. Instead, the police examine and evaluate the investigator, because an incomplete investigation is generally viewed as a failure.[41] In practice, the police investigator strategises by sending the SPDP, along with the investigation files, when they have completed the investigation process. Research by LBH and MaPPI FHUI in 2016 revealed that, between 2012 and 2014, the data for investigation processes carried out by the IPS and police were asynchronous. The police claimed that they investigated 643,063 cases, while the IPS only received 463,697 SPDPs. This means that 179,366 cases were not reported to the Prosecution Service (Zikry, Ardhan, and Tiara 2016).

This phenomenon may be linked to police efforts to mediate cases and internal corruption issues. The police keep their investigations away from the public prosecutor, because they are trying to reconcile and resolve cases outside of the criminal justice system (Afandi 2013, 392; 2015, 29); corruption issues can also be attributed to this phenomenon. Recent cases, reported by Muradi (2014), also support the fact that the police use *parmin*[42] (criminal participation) to support their operational budget and low salaries (*Polri & KKN* 2004, 29, 43). In some cases, the police will offer a suspect a change of articles in an investigation file. They may also manipulate evidence and witness statements, if the suspect provides *rezeki* (cf. Zakiyah et al. 2002, 82).

In 2015, in its Decision 130/PUU-XIII/2015, the Constitutional Court obliged the investigator to send an SPDP – no later than two weeks after the investigator decides to start the investigation process – to prosecutors, and to those who report on (or are reported in) criminal cases. The court argued that a delay in SPDP notification from the criminal investigator

39 Joint Instruction Chief Prosecutor and National Police Chairman 6 October 1981 Inster 006/JA/10/1981 jo. No. pol: Ins/17/K/1981 stated that, from the beginning of the investigation, the public prosecutor should advise the investigator on the Criminal Code and Criminal Procedure.

40 Article 12 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011.

41 Article 2 of National Police Chairman Regulation PERKAP 14/2012.

42 *Partisipasi Kriminal (Parmin)* is a well-known term for payment generated by criminal activity (Muradi 2014).

might violate the due process of law, since prosecutors could not monitor the investigation process from the beginning. Besides, those who either reported a crime or were reported for alleged criminal acts could not prepare further action to defend their rights.[43] Because of the decision, the IPS asked prosecutors to reject SPDPs which are sent more than two weeks after the start of an investigation.

5.2.3 Coercive Measures (*Upaya Paksa*)

Once criminal investigators start the investigation process, they can use coercive measures, which can be any one of the following: (a) summons; (b) arrest; (c) detention; (d) searches; (e) confiscation; or (f) the examination of letters (Article 26 of The National Police Chairman14/2012). After receiving an order from their leadership, investigators can arrest a person who is suspected of committing a crime, based on sufficient preliminary evidence (Article 16-17 of the KUHAP).[44] The investigators must immediately[45] send a copy of the warrant to the family of the suspect (Article 18 (3) of the KUHAP). The only situation in which the investigator does not need to send a copy of the warrant to the suspect's family is when the suspect is caught red-handed (Article 18 (2) of the KUHAP).

The investigators may search the suspect's body or house for the sake of investigation[46] (Article 32 of the KUHAP). However, in order to search a house, investigators must obtain permission and a warrant from the Chief of the District Court. Two people and a village leader, or the coordinator of the suspect's neighbourhood, must also witness this search process (Article 33 of the KUHAP). On the other hand, in urgent circumstances[47] investigators can conduct a house search without permission from the court, or even

43 Constitutional Court Decision 130/PUU-XIII/2015, p. 146-147.

44 An Arrest Order Letter is not issued by the court, but by the investigator's superior. Those suspected of misdemeanors can only be arrested if they have been absent from summonses several times, without clear legal reasons (Article 19 (2) of the KUHAP).

45 The term "immediately" has been reviewed at the Constitutional Court by Hendry Batoarung Ma'dika. The police detained him for 24 hours, without sending a letter of notification to his family. The court then decided that the word "immediately" in Article 18 (3) of the KUHAP should be interpreted as meaning not exceeding seven days following detention. The Constitutional Court set a time limit of seven days because of differences in distance and geographical conditions in several regions in Indonesia. The Constitutional Court Decision 3/PUU-XI/2013, pp. 33–34.

46 Article 1 number 17 of the KUHAP states that a search is defined as an investigator entering a person's house for an examination, confiscation, and/or arrest. However, the criminal investigator often arrests a suspect in his/her house, bringing an arrest warrant only (i.e. without bringing a house search permit). See, for example, the pre-trial hearing at South Jakarta District Court, 37/Pid.Prap/2015/PN.Jkt.Sel.

47 Elucidation of Article 34 (1) of the KUHAP defines "urgent circumstances" as criminal investigators becoming concerned about a suspect who might escape, repeat a crime, or destroy or change evidence, if a permit cannot be obtained from the Chief of the District Court in a manner (suitable way) and in a short time.

the presence of witnesses (Article 34 (1) of the KUHAP). The investigator must immediately report their house search to the Chief of the District Court, in order to obtain retroactive approval (Article 38 (2) of the KUHAP). Since the courts always approve requests, criminal investigators no longer ask for permission in advance. They prefer to use 'urgent circumstances' as a reason to conduct a house search, to ease the procedure.[48] In Jakarta, for instance, only 9 out of 368 suspects received a warrant when their houses were searched by investigators (R. Gunawan et al. 2012, 80-81).

Similar procedures are also imposed during the confiscation process. An investigator may confiscate goods by force at a suspect's house, using confiscate and search warrants from the District Court (Article 38 jo. Article 1 (17) of the KUHAP). In urgent circumstances, the investigator can confiscate movable objects without permission from the District Court, and report the confiscation to the court as soon as possible, in order to obtain an approval (Article 38 of the KUHAP). When a suspect is caught red-handed, the investigator can immediately confiscate the goods without the court's permission (Article 40 of the KUHAP). However, since prosecutors are not involved in the investigation process, certain evidence collected by criminal investigators from the search and confiscation process cannot be used to support a prosecutor's indictment.[49]

The KUHAP allows investigators, prosecutors, and judges to detain suspects for two reasons. First, if they are afraid that the suspect will repeat a crime, escape, or damage or dispose of the evidence (Article 21 (1) of the KUHAP). Secondly, investigators, prosecutors, or judges can place a suspect in custody if the suspect commits a particular crime[50] (Article 21 (b) of the KUHAP), or a criminal offence carrying a sentence of at least five years in prison (Article 21 (4) (a) of the KUHAP).[51] Even if the first reason does not apply to a suspect, in practice the criminal investigator and prosecutors can detain the suspect, as long as the second reason applies. As I have mentioned in the previous chapter, this results in overcrowded detention centres (Pandupraja, Santoso, and Prasetyo 2010, 72).[52]

The table below shows how the KUHAP limits the length of detention each of the criminal justice actors can apply to a suspect or defendant:

48 Article 34 (1) of the KUHAP restricts an urgent search to a suspect's residence, any other place where a suspect is located, the place where the crime was committed, hotels, and other public places.

49 Personal Communication with a Head of the District Prosecution Office, 2015.

50 Particular crimes under the Criminal Code (KUHP) can be seen in Articles 282 (3), 296, 335 (1), 351 (1), 353 (1), 372, 378, 379a, 453, 454, 455, 459, 480, and 506. Also, other crimes are mentioned under the customs, immigration, and narcotics laws.

51 Compare this to the detention process in the Netherlands. Apart from the severity of a sentence, a criminal investigator must consider the public interest, prior to deciding to detain a suspect.

52 Prosecutors consider their detention power to be their subjective authority. Personal communication with DH, the Head of the Bandung District Prosecution Service, 2015.

Procedure	Detention/Extended by	Maximum	Legal Ground
Investigation	Investigator	20 days	Article 24 (1) of the KUHAP
	Extended by the Public Prosecutor	40 days	Article 24 (2) of the KUHAP
Prosecution	Public Prosecutor	20 days	Article 25 (1) of the KUHAP
	Extended by the District Court President	30 days	Article 25 (2) of the KUHAP
Court Trial	District Court Judge	30 days	Article 26 (1) of the KUHAP
	Extended by the District Court President	60 days	Article 26 (2) of the KUHAP
Appeal	High Court Judge	30 days	Article 27 (1) of the KUHAP
	Extended by the High Court President	60 days	Article 27 (2) of the KUHAP
Cassation	Supreme Court Judge	50 days	Article 28 (1) of the KUHAP
	Extended by the Chief of Supreme Court	60 days	Article 28 (2) of the KUHAP
Total		400 days	

Table 3: Duration of detention during the criminal process

As I discussed in the previous chapter, the power to detain a suspect has become an economic commodity for investigators and prosecutors, since they can use it to gain *rezeki* to cover their operational costs (Supriyadi Widodo Eddyono et al. 2012, 225-27). In some cases, the police threaten a suspect by saying they will put them in the same cell as murderers and rapists if they not provide *rezeki* (Zakiyah et al. 2002, 84).

Articles 71 and 62 jo. 83 c of the HIR gave the prosecutor authority to control the investigator's detention process, but the KUHAP only gives the prosecutor the power to extend the investigator's detention period. However, prosecutors rarely refuse an extension of the detention period proposed by the police. Prosecutors admit that, in order to maintain a good relationship, they allow police to extend the detention to a maximum of 40 days.[53] As discussed in Chapter 4, the prosecutor needs the assistance of the police in keeping themselves and the defendant secure during trials.

Article 31 (1) of the KUHAP allows suspects to suspend or postpone their detention, by paying bail and meeting the conditions determined by the investigator, public prosecutor, or judge. Such circumstances include an obligation to report to authorities, stay at home, or not leave the city of residence during the detention suspension. The detainer can lift or postpone the detention suspension if one of these requirements are violated (Article 31 (2) of the KUHAP). Article 35 of the Government Regulation 27/1983

53 Personal Communication with the heads of the district prosecution offices in three cities, 2015.

on Implementation of the KUHAP states that a detainer can determine the amount of bail money. The suspects, or their lawyer, must pay the bail to the District Court, in order to get a receipt.[54] If a suspect escapes and cannot be found after three months, the bail will be transferred to the state. However, in practice, suspects or legal advisors post the bail to the police investigator or prosecutor, not to the court clerk.[55] Government Regulation 27/1983 does not stipulate a mechanism for how bail should be returned if the suspect does not escape during the detention period. As a result, bail money is rarely returned to suspects, in practice (Gunawan et al. 2012). In this way, the criminal investigator or prosecutor can use this procedure to gain *rezeki* from suspects (Simanjuntak 2009, 86-87; *Polri & KKN* 2004, 37, 41).

5.2.4 Pre-Trial Hearings (*Pra-peradilan*)

To control coercive measures, Minister of Justice Oemar Seno Adji introduced the concept of the Examining Judge *(Rechter Commissaris)* in the 1974 Draft of the KUHAP. The concept was adopted from the Dutch Colonial Criminal Procedure *(Reglement op de Strafordering).* However, both the IPS and the police rejected this concept, since it had the potential to reduce their criminal proceedings powers as stipulated in the HIR (Supriyadi W. Eddyono et al. 2014, 31-34). As a result, the KUHAP drafting discussions reached deadlock. In 1979, Minister of Justice Mudjono eliminated the concept of the Examining Judge from the Draft of the KUHAP and let the police and prosecutor control their coercive measures respectively, via internal supervision. The KUHAP calls internal supervision "built-in controls", which means that the police and prosecutorial leadership are in charge of monitoring coercive measures (Supriyadi W. Eddyono et al. 2014, 35-37). The Draft of the KUHAP then became controversial, and it was criticised by academics and legal aid activists. Due to these protests, parliament and the government adopted a pre-trial hearing mechanism in the 1981 KUHAP, which was conceptually weaker in controlling coercive measures than the Examining Judge concept (Hart & Nusantara, 1986, pp. 8-9).[56] Through this procedure, the court could only check coercive measures after the fact, and it had limited time and powers to examine the legality of the coercive measures (Articles 77-83 of the KUHAP).

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54 Three copies of the proof of bail should be made. This is regulated in 8a of the attachment to Ministry of Justice Decision No. M.14-PW.07.03/1983. The three copies are: (i) for the clerk's archive at the District Court; (ii) for those who pay the bail, to be handed to the authorities at the institution detaining the suspect; and, (iii) for the clerk, to send to the authorities at the institution detaining the suspect (via courier) as a control tool.

55 Community Legal Aid Institute Report, 2012.

56 The concept of a pre-trial hearing is adopted from the American concept of habeas corpus. However, because of the compromising politics within the parliament, the pre-trial concept is seen as weaker than the concept already proposed (Supriyadi W. Eddyono et al. 2014, 39).

A pre-trial judge examines an application and decides within ten days of the application being submitted (Articles 78 and 82 (1) of the KUHAP).[57] Since the judge has such limited time for examination, in practice s/he tends to examine coercive measures based on administrative completion, without delving into material facts. As a result, pre-trial judges rarely decide that coercive measures are invalid (Supriyadi W. Eddyono et al. 2014). Besides, during the authoritarian New Order regime, the pre-trial procedure never granted public complaints about coercive measures being against human rights, especially in cases that had an impact on the government's political interests[58] (Hart and Nusantara, 1986, p. 39).

The pre-trial hearing can also be used to ask for compensation for illegal arrests or detention. An acquitted defendant may even sue for compensation for being subjected to illegal coercive measures (Article 95 of the KUHAP). Government Regulation 92/2015 changes the value of compensation from a minimum of 5,000 rupiahs and a maximum of 1,000,000 rupiahs, to a minimum of 500,000 rupiahs. If the suspect or defendant dies during trial, the family may receive compensation up to a maximum of 600,000,000 rupiahs. However, because the government has not issued a technical regulation relating to compensation disbursement, in practice, a defendant who wins pre-trial cannot get compensation.[59]

The pre-trial judge's decision has an impact on police criminal investigators. If a pre-trial judge decides that the coercive measures are illegal, investigators and their leaders will be examined by the Division of Internal Affairs. Based on the pre-trial decision and their examination, the division will determine whether the investigators and their leaders have used sloppy procedures or abused their coercive measures powers. The investigators and their leadership will receive administrative sanctions for any carelessness evidenced in their pre-trial procedure, and disciplinary penalties if they abuse their power (Faal 1991; Rajab 2003). One example of this is the demo-

57 The police usually cheat the time limit by not attending the initial hearing to make concessions on the pre-trial hearing examination. Personal Communication with a legal aid activist at LBH Jakarta, 2016

58 Since the New Order era, lawyers such as OC Kaligis have used pre-trial as an occasion to question an investigator's responsibility, if the suspect dies during detention. Even though Kaligis lost his pre-trial hearing, it is important to note that the investigator's testimony about the suspect's death was used as evidence for a civil suit against the police. Both the district and high courts then asked the police to pay compensation to the suspect's family (Kaligis et al. 2000, 109–10).

59 Andro, who was freed by a cassation decision of the Supreme Court, sued the police, claiming he was a victim of miscarriage of justice, and he was supported by legal aid activist. Even though the pre-trial judge granted Andro's claim, the compensation was not received. It was because the Ministry of Finance had no procedure for pre-trial compensation. detikNews, *Ganti Rugi Tak Kunjung Cair, Korban Salah Tangkap Gugat Menkeu* (Compensation not yet received - victim of false arrest sues the Ministry of Finance), https://news.detik.com/berita/4167913/ganti-rugi-tak-kunjung-cair-korban-salah-tangkap-gugat-menkeu, accessed 13 March 2019.

tion of Surabaya District Police Chief, Takdir Mattanette, to the position of a 'non-job officer'. The Division of Internal Affairs believed that Mattanette was responsible for the district police's loss in the pre-trial hearing.[60]

Therefore, criminal investigators tend to avoid and prevent pre-trial hearings filed by a suspect. Indeed, they will try to force a suspect not to file a pre-trial hearing case. In some cases, investigators will even ask a suspect to replace his/her legal representative, if they advise filing a pre-trial hearing. The lawyer selected by the investigators will then revoke the pre-trial hearing. Further, the Chief of the District Police may lobby the District Court President to ask a pre-trial judge to reject the suit from the suspect (Kaligis, Nurima, Kailimang, and Lontoh, 2000, pp. xx1, 19, 61). On the other hand, when criminal investigators or prosecutors see that there is a chance of their investigation process being annulled during the pre-trial hearing, they transfer their case files to the court before the pre-trial judge has a chance to decide the case.[61] Since Article 82 (1) of the KUHAP states that the pre-trial hearing is cancelled when the court starts its trial, the examination of the legality of coercive measures used will end.[62]

In 2014, the Constitutional Court extended the pre-trial mechanism power to not only examine coercive measures (such as detention, arrest, and confiscation), but also to examine the process of determining a suspect.[63] The police decision to determine a person as a suspect, for instance, can be seen in the Investigation Order (*Sprindik/Surat Perintah Penyidikan)* and the SPDP (the Letter of Notification to Open the Investigation).[64] Article 25 of National Police Chairman Regulation or PERKAP 14/2012 stipulates

60 Kompas.com, *Kapolres digugat karena penetapan tersangka kasus korupsi di Dinas Tenaga Kerja Surabaya,* (Chief of District Police was sued (in the Pre-trial Hearing) for determining a (wrongful) suspect of corruption in the Surabaya Manpower Division) https://regional.kompas.com/read/2016/12/09/14125041/polisi.kalah.praperadilan.kapolres.tanjung.perak.diperiksa.propam, accessed 29 March 2019. DetikNews, *Usai diperiksa Mabes Polri, AKBP Takdir tinggalkan kursi Kapolres Tanjung Perak,* (After being examined at Police Headquarters, Takdir left his position as Chief of Tanjung Perak District Police), https://news.detik.com/berita-jawa-timur/d-3373404/usai-diperiksa-mabes-polri-akbp-takdir-tinggalkan-kursi-kapolres-tanjung-perak, accessed 29 March 2019.

61 Berita Satu, *Pelimpahan Berkas Cara KPK Gugurkan Praperadilan Sutan* (Transferring the Dossier allows the KPK to annul Sutan's Pre-trial Hearing), https://www.beritasatu.com/nasional/260368/pelimpahan-berkas-cara-kpk-gugurkan-praperadilan-sutan, accessed 2 April 2019.

62 Constitutional Court Decision 102/PUU-XIII/2015 stated that, once a prosecutor begins their first hearing, the pre-trial hearing must be cancelled.

63 Constitutional Court Decision 21/PUU-XII/2014.

64 See the attachment on SPDP Formats in the National Police Chairman Regulation PERKAP 6/2010 about the PPNS' investigation management. See also, Detiknews, *Wakapolri: SPDP dari Kepolisian Tak Identik dengan Status Tersangka,* (Vice Police Chairman: the SPDP has no equivalent term for Suspect Determination), https://news.detik.com/berita/d-3724593/wakapolri-spdp-dari-kepolisian-tak-identik-dengan-status-tersangka, accessed 2 April 2019.

that a suspect's identity does not need to be included in the SPDP and the *Sprindik*. However, in practice police investigators mention suspects' names and criminal law articles in both the *Sprindik* and the SPDP.[65] In contrast with the police, the IPS has a procedure for naming a person as a suspect in a corruption case (Article 331 of Chief Prosecutor Regulation or PERJA 039/A/JA/10/2010). After the IPS investigator has completed the preliminary investigation report, the IPS will issue a warrant determining the suspect (Pidsus-18).

In practice, the pre-trial hearing mechanism can examine the process of suspect determination in the *Sprindik*. Thus, a pre-trial judge can state that the *Sprindik* is illegal in its decision. In some cases, the police or IPS criminal investigator will not release the suspect after the ruling. They respond to the decision by issuing a new *Sprindik* to process the case further. One example of this is the La Nyala Matalitti corruption case.[66] The IPS rejected three pre-trial judge decisions ordering the IPS to release Matalitti because the *Sprindik* is illegal. The IPS issued a new *Sprindik* every time a pre-trial judge annulled it. The IPS argued that the pre-trial judge's decision was not independent, because Matalitti was the nephew of the Chief Justice of the Supreme Court at the time.[67] Finally, Matalitti preferred not to file a pre-trial mechanism again, and let his case be tried. In the end, the Supreme Court acquitted Matalitti, because the prosecutor could not present sufficient evidence.[68]

Article 80 of the KUHAP provides an opportunity for investigators, public prosecutors, or third parties to examine either the termination of an investigation (SP3) or the cessation of a prosecution (SKPP) during pre-trial

65 Both the *Sprindik* and the SPDP emphasise the suspect's name.

66 Fachrizal Afandi, *Memeriksa Keabsahan Penetapan Tersangka atau Menguji pokok perkara?* (Are we checking the validity of a suspect's status or examining a case?) https://www.hukumonline.com/berita/baca/lt574e7c88a8193/memeriksa-keabsahan-penetapan-tersangka-atau-menguji-pokok-perkara-broleh--fachrizal-afandi-, accessed 22 March 2019.

67 The public prosecutor argued that a pre-trial judge was careless in weighing the prosecutor's evidence. Additionally, the public prosecutor viewed the judge as not being independent, since the Chief of the Supreme Court was La Nyala's relative. Republika *La Nyalla kerabat dekat ketua MA, Ini tanggapan Jaksa Agung*, (La Nyala is a Supreme Court President's relative: this is the Chief Prosecutor's response) https://www.republika.co.id/berita/nasional/hukum/16/06/03/o86bb9377-la-nyalla-kerabat-dekat-ketua-ma-ini-tanggapan-jaksa-agung, accessed 23 March 2019.

68 NewsDetik, *La Nyalla Bebas, Kajati Jatim: Lawannya ini yang punya pengadilan* (La Nyalla is acquitted, the Head of East Java High Prosecution Office says: "Our enemy is the person who owned the court") https://news.detik.com/berita/d-3381454/la-nyalla-bebas-kajati-jatim-lawannya-ini-yang-punya-pengadilan, Sindo News, *Sudah diputus bebas MA, 2 rekening La Nyalla masih diblokir* (Supreme Court acquitted La Nyalla, but La Nyalla's bank account is still blocked), https://daerah.sindonews.com/read/1323065/23/sudah-diputus-bebas-ma-2-rekening-la-nyalla-masih-diblokir-1531966637, accessed 23 March 2019.

hearings.[69] It is designed to have a 'checks and balances' effect on police and prosecutors, when waiving criminal cases. Unfortunately, neither the police nor prosecutors use this opportunity.[70] Some public prosecutors admit that they are not willing to enter into conflict with the police.[71] They know that the decision to investigate and stop an investigation also relates to the gaining of *rezeki* to cover police operational costs. In 2013, the Constitutional Court expanded the list of those eligible to file a pre-trial hearing to include non-governmental organisations.[72] It enables various NGOs which may represent the public interest to examine a criminal case dismissal by the police. A notable example of this is when a pre-trial judge accepted a claim from WALHI, an environmental protection NGO, to reopen the investigation of illegal mining cases conducted by 12 mining companies in West Java.[73] Because of this decision, the police continued its investigation of the case.[74]

5.2.5 The Pre-Prosecution Process (*Pra-Penuntutan*)

As I stated earlier, the functional differentiation principle in the KUHAP categorises criminal procedure according to the actors involved – the police, for both preliminary and primary investigations, and the public prosecutor for the prosecution process. To bridge the investigation and prosecution stages, the KUHAP introduces a step stage called the pre-prosecution process. The term 'pre-prosecution'[75] was introduced to replace an additional investigation by the prosecutor as stipulated in the HIR (Hamzah 1983, 159). Article 14 (b) of the KUHAP states that the prosecutor has authority to conduct pre-prosecution, to provide instructions for the investigator, and to complete the investigation file.

69 The KUHAP makes an exception for the case dismissal due to the public interest (*Seponering*)), as it is a mechanism which cannot be tried by pre-trial judges (Explanation of Article 77 of the KUHAP).

70 Based on searching for information in Supreme Court decisions, and an interview with prosecutors during my fieldwork.

71 Personal Communication with a senior prosecutor DG, 2015.

72 See the Constitutional Court Decision 98/PUU-X/2012.

73 Tempo, *WALHI gugat pra-peradilan Polda Jabar* (WALHI submits a pre-trial hearing application against the West Java Provincial Police), https://nasional.tempo.co/read/650514/walhi-gugat-praperadilan-polda-jabar, accessed 12 March 2018. WALHI asked me to be one of its expert witnesses for the pre-trial hearing.

74 Pojok Satu, *Kasus Cirangsad mulai digarap serius*, (Cirangsad case is to be investigated seriously) https://jabar.pojoksatu.id/bogor/2015/08/05/kasus-cirangsad-mulai-digarap-serius/, accessed 23 March 2018.

75 The pre-prosecution process is considered complete when an investigator hands their case files in to the prosecution office. If a public prosecutor argues that the investigation is not complete, the prosecutor can give the case files back, and urge that an additional investigation is conducted, based on advice from the public prosecutor.

The KUHAP regulates the pre-prosecution process in Articles 110 and 138.[76] Criminal experts criticised the separation of pre-prosecution arrangements in these two articles, details of which are presented in different chapters of the KUHAP.[77] The experts argue that the provision for pre-prosecution should be set out in one single article, because the provision stated in each of the articles is connected (Sofyan and Asis 2017; Hamzah 1983).[78] It seems that the government wants to create an impression that the KUHAP sharply divides the authority of the police and prosecutors into investigations and prosecutions. Because of this arrangement, the police can both collect evidence and apply particular articles to their investigation files, without being supervised by the prosecutor. This procedure also limits the opportunity for the public prosecutor to use a different article in his/her indictment, because evidence in the investigation file will not support it.

In essence, the KUHAP does not elaborate explicitly on the definition of pre-prosecution. The KUHAP simply obligates prosecutors to refer to

76 Article 110 of the KUHAP:
(1) If an investigator has completed conducting an investigation, s/he is obliged to pass the relevant case dossier on to the public prosecutor, immediately.
(2) If the public prosecutor believes that the result of an investigation is still inconclusive, s/he shall immediately return the case dossier to the investigator, with directives for its completion.
(3) If the public prosecutor returns the results of an investigation for completion, the investigator is obliged to carry out additional investigation immediately, in line with the public prosecutor's directives.
(4) An investigation shall be considered complete if the public prosecutor does not return the result of the investigation within fourteen days, or if before the end of the fourteen-day time limit the investigator has already been notified by the public prosecutor about the matter.
Article 138 of the KUHAP:
(1) After receiving the result of an investigation from an investigator, a public prosecutor shall immediately study and examine it carefully and is obliged, within seven days, to inform the investigator of whether or not the result of the investigation is complete.
(2) If the result of the investigation has been determined as not yet complete, the public prosecutor shall return the case dossier to the investigator, accompanied by directives on what must be done to make it complete within fourteen days of the investigator receiving the dossier.

77 Article 110 of the KUHAP is located in Chapter XIV on the Investigation while Article 138 KUHAP is located in Chapter XV on the Prosecution.

78 Topo Santoso contends that an investigation cannot stand by itself, since the investigation supports the prosecution in court. This is because the success of a prosecution is determined by the success of the relevant investigations (Santoso 2000, 95). Santoso's opinion is based on the Ministry of Justice decision M.01.PW.07.03/1982 on Guidelines for Implementing the KUHAP, which states that the position of the police cannot be separated from the functions of prosecution and the court, leading to the idea that this job division does not mean segmentation. In fact, according to Luhut Pangaribuan, the relationship between the police and judges in pre-prosecution process can sometimes be seen as ineffective and inharmonious, with the actors potentially blaming one another (Pangaribuan 2016).

Articles 110 (3) and (4), when conducting pre-prosecution. Article 138 of the KUHAP obliges the public prosecutor to examine the investigation files within seven days (Article 138 (1)). The public prosecutor will later decide whether or not the investigation has been completed. If the prosecutor does not return the files to the investigator within 14 days, the prosecutor must prosecute the case based on the investigation files. However, if the public prosecutor believes that the case does not have sufficient evidence, s/he can return the files to the police. The public prosecutor makes an annotation, as a starting point from which the police can conduct an additional investigation within the next 14 days (Article 14(b) and 138(2) of the KUHAP). This back-and-forth process is commonly referred to the P-19 process.[79]

However, the IPS defines the pre-prosecution process differently from the KUHAP. Chief Prosecutor Regulation PERJA 36/A/JA/09/2011 on Standard Operating Procedures for Handling General Crimes, defines pre-prosecution as follows:

> *"…. the prosecutor's action in following the progress of an investigation, after receiving a letter of notification of the start of the investigation (SPDP) from the investigator, in analysing and examining the completeness of the investigation file from the investigator, and in providing instructions to be completed by the investigator, to be able to determine whether or not the investigation file is complete."*

According to this PERJA, the pre-prosecution process starts when an investigator sends an SPDP to the Prosecutor's Office. The IPS appoints an examining prosecutor to follow the progress of the investigation, and to coordinate with an investigator before the investigation is completed.[80] However, the police choose to follow the KUHAP definition of the pre-prosecution process, and involve the examining prosecutor only when their investigator has completed the investigation. In practice, the examining prosecutor chooses to wait for police investigators to come to their office, instead of directly checking the facts during the police investigation,[81] and the investigator sends the file after the investigation has been completed. The file also contains the investigator's juridical analysis relating to the

79 P-19 is the number of the IPS form that is attached to a document, when a prosecutor passes files back to investigators. The P-19 is sent to investigators, then signed by the public prosecutor and the Head of the General Crime Division, who represents the Head of the District Prosecution Office (Article 92 of Chief Prosecutor Regulation PERJA 36/A/JA/09/2011).

80 As has been elaborated in Chapter 4, the IPS follows the principle of equality. This means that the High Prosecution Office prosecutor receives an investigation file from provincial level investigators. On the other hand, Supreme Prosecution Office prosecutors receive investigation files from national level investigators. (Article 59 of Chief Prosecutor Regulation PERJA 36/A/JA/09/2011).

81 Interview with DG, 6 May 2015. Even though Article 10 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011, about standard operation for general crimes, urges the prosecutor to supervise actively, the limited budget available means that the prosecutor works passively. For more details, see 3.4.4: Budget.

selection of articles.[82] The prosecutor then checks the application of the articles and the evidence specified by the investigator, and makes an indictment based on this.

One of the performance indicators for investigators is when they successfully convince prosecutors to accept their investigation files. Therefore, in some cases investigators press public prosecutors to receive their files. [83] Although Article 142 of the KUHAP states that a prosecutor has the power to split a case, in practice the police decide to split a case, enabling them to spend the investigation budget, since they are tied to a budget limit per case.[84] In this regard, the police split a case which has more than one suspect into two cases, without coordinating with the prosecutors.

In practice, the pre-prosecution process is carried out in two stages. The first stage is when the criminal investigator submits investigation files to the public prosecutor, who checks whether the files are complete and can be forwarded to the court. The second stage is when criminal investigators transfer the evidence and suspect(s) to the Prosecution Office, after the examining prosecutor states that the files are complete (Article 74 of National Police Chairman Regulation PERKAP 14/2012). Criminal experts consider the term 'complete' to be unclear. It does not address the issue of whether the application of the law is correct, or whether an action alleged by the criminal investigator is in accordance with the selected criminal law provision. Not to mention the fact that, in the second stage of the pre-prosecution process, the prosecutor only assesses the completeness of investigation files based on two conditions: whether or not the suspect or evidence is described in the investigation files; and, whether or not the files have met the evidentiary requirements based on the KUHAP.[85] As a result, the prosecutor drafts the indictment based solely on files formulated by the investigator, without being able to verify the accuracy of the criminal law application (Hamzah 1984, 132-33).[86] In some cases, the investigator

82 Article 73 (2) of National Police Chairman Regulation PERKAP 14/2012. On the one hand, the police consider themselves to be cooks, preparing ingredients, then cooking them. On the other hand, a prosecutor is more like a waitress, serving dishes to the judge. Personal Communication with S, the Head of Criminal Investigation, Malang District Police, 2015.

83 In some cases, the District Police Chief lobbies the Head of the District Prosecution Office, in order to command the public prosecutor to accept the file. Personal Communication with HH, the Head of the M Prosecution Office, 2015 The police even threaten or force the public prosecutor into receiving the dossier. Berita Satu, *Petinggi Polda Maluku ancam tembak Jaksa* (Police high official threatens to shoot prosecutor), 1 July 2015, http://www.beritasatu.com/hukum/287332-petinggi-polda-maluku-ancam-tembak-prosecutor.html, AJNN, *Kapolres Sabang ajak Duel Kasi Pidum Kejari Sabang*, (The chairman of the district police challenges the public prosecutor to a duel), http://www.ajnn.net/news/kapolres-ajak-duel-kasi-pidum-kejari-sabang/index.html,.acessed 23 May 2018

84 See Chapter 3.

85 Chief Prosecutor Circular Letter SEJA 013/JA/8/1981, 20 August 1981.

86 With this type of procedure, the KUHAP applies *dominus litis* (master of the procedure) to investigators (Surachman and Hamzah 2015, 287).

submits evidence that does not match the description in the investigation files. Because of this, the prosecutor finds it difficult to prove the criminal act during trial, and to execute the judge's verdict.[87]

The KUHAP does not regulate the prosecutor's power to stop a case if s/he considers that the evidence presented by investigators is insufficient. Furthermore, the KUHAP does not regulate whether prosecutors can ask investigators to change the articles selected for their investigation files (Hamzah 1984, 135). The KUHAP does not stipulate how an additional investigation process can be carried out by an investigator, or what legal consequences may emerge if the investigator does not complete the additional investigation within fourteen days. As a result, a suspect suffers legal uncertainty, because their case is not being processed properly. The following figure shows that almost half of the investigation files on general crime cases that were returned to investigators were not followed up within the time limit regulated in the KUHAP.

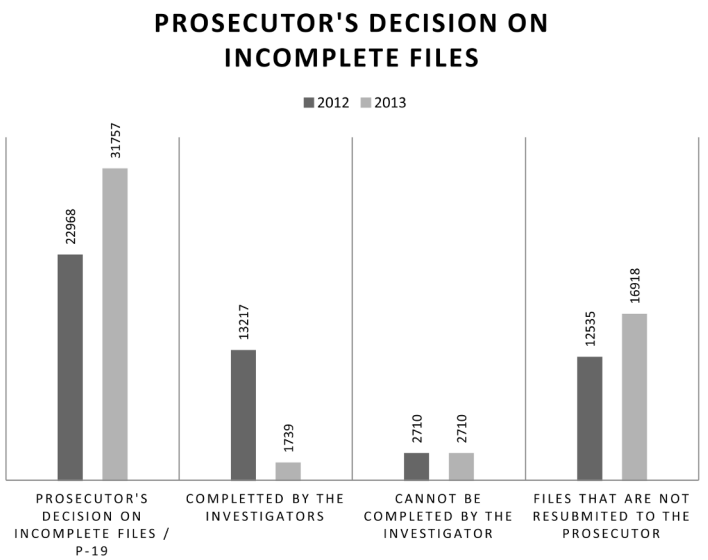

Figure 6: Prosecutor's decision on incomplete investigation files (data from the IPS Annual reports for 2012 and 2013)

It can be seen from the above figure that, in 2012 and 2013, the police investigator failed to re-submit around 55% of the investigation files, after the prosecutor had decided that the files were incomplete. Thus, the police are in the possession of thousands of cold cases. It seems that the police have

87 In many cases where a vehicle is part of the evidence, an investigator might replace a car's machine specification with another (worse) specification, so that prosecutors find it difficult to return the vehicle if the judge wants them to do so. Some legal representatives complain, and ask prosecutors to restore the original car. Personal Communication with WW, the Head of the Prosecution Office General Crimes Division, 2015.

no procedure to follow if the prosecutor rejects their files.[88] Apart from legal reasons, the prosecutor's decision to reject the files is likely to be influenced by the *rezeki* provided by the broker (Zakiyah et al. 2002, 93).

However, when an investigator returns the files to the prosecutor, informing that their investigation is 'optimal' but they still cannot fulfil the prosecutor's instructions, the IPS itself may conduct an additional examination. It aims to complete the files, in order either to allow the case to proceed further to the prosecution stage or to stop the prosecution. Article 30 of the IPS Law states that prosecutors can conduct additional examinations before files are submitted to court. However, the prosecutor must coordinate with investigators during additional examinations. The prosecutor may check the evidence and witnesses, but not the suspect. Article 28 of Chief Prosecutor Regulation PERJA 36/A/JA/09/2011 states that an additional examination can also be conducted, to decide whether or not a case may be prosecuted at trial. Since the IPS has a limited budget and cannot examine suspects, prosecutors are reluctant to use their authority to conduct additional examinations.[89]

5.3 Prosecutorial Discretion in Criminal Case Dismissal

In European criminal justice system literature, prosecutorial discretion in criminal case dismissal refers mostly to solutions for filtering criminal cases and decreasing case backlogs at court (Fionda 1995; Tak 2008; Jehle and Wade 2006; Geelhoed 2016). Public prosecutor discretion plays an important role, both in coping with the limited state budget, and in implementing restorative justice in the juvenile justice system.[90] However, criminal case dismissal practice in Indonesia often connotes opportunities for corruption (Zakiyah et al. 2002; Kristiana 2010; Reksodiputro 2002; Lindsey and Butt 2009; *Polri & KKN* 2004). This negative connotation[91] influences Indonesian criminal justice system regulations, leading to tighter procedures or

88 Article 98 and Article 70 of National Police Chairman Regulation PERKAP 14/2012 regulates that an investigator's superior can give instructions to the investigator when the files are returned, and conduct a case exposé *(Gelar Perkara*) to meet the prosecutor's instructions.

89 Data from SIMKARI 2013-2014 shows that not even one additional examination is done by the prosecutor. See also 2.3 on the case of prosecutors in the Nyo Ben Seng case; Those prosecutors was arrested by police because they conducted an additional examination.

90 In 2012 the Indonesian government enacted Law 11/2012 on the Juvenile Justice System, which requires judges, police and prosecutors to implement restorative justice by applying a diversion to cases where the suspect is a juvenile. Unfortunately, this diversion process cannot run optimally, since the government is not yet able to provide any alternative sentences (such as community service orders or training orders) to those stipulated in the Juvenile Justice System Law (Afandi 2015; Sutriadi Pinim and Erasmus Napitupulu 2013).

91 Hukum Online, *Mencermati Pemberian SP3 Kasus Korupsi,* (Observing corruption case dismissals) https://www.hukumonline.com/berita/baca/hol11608/mencermati-pemberian-sp3-kasus-korupsi, accessed on 11 February 2019.

the removal of power to dismiss cases. We can see these provisions in the KUHAP, which binds the investigator and prosecutor to obtain permission from their superiors and hold a *gelar perkara* (case exposé), before ceasing a criminal case for technical reasons.[92] Another regulation is the IPS law, which only allows the Chief Prosecutor to dismiss a case for public interest reasons (*Seponering*). Besides, previously the government imposed the Commission Eradication Corruption (KPK), which could prosecute all corruption cases with sufficient evidence, but did not have the power to waive any such cases.[93]

However, these strict procedures on criminal case dismissal do not prevent investigators and prosecutors from being corrupt and abusing their power. As I have elaborated in the previous section, at district level the leadership's control over criminal case dismissal allows them to force their investigator or prosecutor to dismiss a case in order to gain more *rezeki* (cf. Kristiana 2006, 114; Zakiyah et al. 2002).[94] The discretion to stop a case thereby becomes a commodity, which is traded based on the severity of the criminal law punishment and the suspect's profile. The investigator or prosecutor may gain more *rezeki* if a suspect has a high-level political background (Kristiana 2009, 156-57). Therefore, criminal justice actors are likely to be reluctant to waive small cases, since they can gain no compensation or *rezeki* from suspects.

Further, this procedure cannot prevent any political intervention in prosecutorial discretion. Since the position of a Chief Prosecutor is politically dependent on the President, the IPS meets the President's request to stop certain criminal cases. One example of this is the IPS decision to terminate a corruption case dealing with an Indonesian Central Bank bailout loan in 2004. The case was controversial, since the IPS decision was based on Presidential Instruction 8/2002, which asked the Chief Prosecutor to stop the case if suspects returned the bailout. However, the IPS later waived cases, even though the suspects did not return the bailout.[95]

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92 See Article 76 of National Police Chairman Regulation 14/2012 and Article 25 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011 on Standard Operational Procedure for General Crimes. In corruption cases which are being processed by a District Prosecution Office, a prosecutor can only propose the cessation of a prosecution to the Head of the District Prosecution Office. After the case has been decided, the prosecutor should report the cessation to the High Prosecution Office, as well as sending a copy to the Deputy Chief Prosecutor for General Crimes. See also Article 558 of Chief Prosecutor Regulation PERJA- 039/A/JA/10/2010.

93 Article 40 of Law 30/2002 on Corruption Eradication Commission. However, in 2019, Jokowi's administration through Law 19/2019 changed this provision and allowed the KPK to dismiss corruption cases

94 This is also acknowledged by a number of lawyers, who prefer to negotiate with the Head of the District Prosecution Office prior to ceasing a case. Personal Communication with advocate IS, 2015.

95 Tirto.id *Yang Perlu Diketahui dari Persidangan Kasus BLBI dan Peran Boediono* (What must be known from the trial of BLBI and Boediono's role in the case), https://tirto.id/yang-perlu-diketahui-dari-persidangan-kasus-blbi-dan-peran-boediono-cPq6, accessed 11 March 2019.

This sub-section will discuss how a criminal case dismissal is processed within the Indonesian Criminal Justice System[96] which has two main kinds of dismissal, according to the KUHAP. The first kind is criminal case dismissal for technical reasons, because the case lacks evidence, the action or omission does not constitute a criminal offence under national law, or the criminal case is terminated for legal reasons. The second kind is prosecutorial discretion for public interest reasons. This condition only applies to the Chief Prosecutor.[97]

5.3.1 A Criminal Case Dismissal for Technical Reasons (SKPP)

The KUHAP provides three reasons for the termination of an investigation or prosecution: (1) insufficient evidence; (2) the case does not cover a criminal offence; and (3) the case is closed for legal reasons (Articles 109 and 140 (2) of the KUHAP).[98] Article 25 of Chief Prosecutor PERJA 036/A/JA/09/2011 states that:

> "*The Public Prosecutor may terminate the prosecution, if s/he believes that the investigation file does not have sufficient evidence, or that the case does not cover a criminal act, or that the case should be closed for legal reasons, considering any legal developments and the community's sense of justice.*"[99]

The KUHAP and IPS internal regulations do not offer any further explanation of what is meant by a closed case for legal reasons (*vervolgingsuitsluitingsgronden*). The IPS even adds a clause mentioning that a case may be closed following consideration of any legal developments and the community's sense of justice. This clause was likely added by the IPS in order to broaden criminal case dismissal for legal reasons, which is not limited to legal doctrine. Indonesian criminal law observers connect these legal reasons with the provisions in the Criminal Code (*Kitab Undang-undang Hukum Pidana*/KUHP). The KUHP stipulates that a case must be stopped if a person revokes their complaint regarding a crime (*klacht delicten*) (Articles 72-75 of the KUHP), a criminal event has been prosecuted before or *Nebis in idem* (Article 76 of the KUHP), the suspect dies (Article 77 of the KUHP),

96 The 2012 Juvenile Justice System Law introduces the concept of case cessation through a process of diversion.

97 The division is similar to that stipulated in an Instruction from the Chief Prosecutor on 7 June 1962, No 7/Inst/HK1962, which states that the Head of the District Prosecution Office and High Prosecutor can cease a case for a technical reasons, such as a lack of evidence. On the other hand, only the Chief Prosecutor has the power to dismiss a case for public interest reasons.

98 A public prosecutor can open up a dismissed case, only if they find a new reason for doing so (Article 140 (2) huruf d KUHAP).

99 Compare with Article 76 (1) of National Police Chairman Regulation Perkap 14/2012.

or because the case has expired/*Verjaring* (Article 78 of the KUHP).[100] In addition, if a suspect in a misdemeanour case (*Overtredingen*) pays fines as stipulated in Article 82 of the KUHP, the prosecutor can stop the case (commonly called *Afdoening Buiten Proces*).[101] However, prosecutors never use this mechanism, because the value of fines in the KUHP has not been renewed since 1960, resulting in very minimal penalties due to inflation.[102]

Although Article 14 (h) of the KUHAP allows a public prosecutor to close a case for legal reasons, this does not mean that an operator can stop the case if they think it is not feasible to proceed. Article 25 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011 states that the public prosecutor must obtain permission from the Head of the Public Prosecutor Office, in order to dismiss the case. If the Head of the Public Prosecutor Office approves the public prosecutor's proposal, s/he shall issue a Decree on the Termination of Prosecution (*Surat Ketetapan Penghentian Penuntutan*, or SKPP). Article 25 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011 shows that the IPS also implements a command system, when interpreting prosecutorial discretion in criminal case dismissal for legal reasons.[103]

Apart from the prosecutor's decision to prosecute, which is based only on the investigation files, this procedure makes prosecutors reluctant to stop prosecutions for technical reasons, or if they find that a case lacks evidence. Prosecutors prefer to return the investigation files to investigators and ask them to stop the investigation. Furthermore, if the investigator insists on sending their files to the prosecutor and states that they cannot fulfil the prosecutor's instructions, the prosecutor may suggest to the Head of the District Prosecution Office that the prosecution should be stopped. This proposal may be submitted after the prosecutor conducts additional examinations (Article 28 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011). This situation may explain the statistics data in the following table, which shows that prosecutors rarely stop criminal cases, compared to police investigators.

100 When the HIR was still valid, a prosecution would start with an initial process of investigation, which is supervised by a prosecutor. Furthermore, a case expiry date would be planned for a certain time after the investigator had begun an investigation. This is different from the KUHAP, in which the beginning of a prosecution is the submission of a file/files to the court, and a case expiry date would be planned according to when a public prosecutor submits the case to the court (Abidin 1983, 278).

101 This is called 'completion outside the process', or *Afdoening buiten proces*. In general, it relates to the payment of fines to prevent or end the prosecution of a criminal case, except for crimes that require a six-year imprisonment or more, or crimes such as violations (Remmelink 2003, 442).

102 The amount of fine requested in the KUHP follows the Government Regulation in Lieu of Law Perppu 16/1960. This causes some mischief, and may trigger unwanted consequences, as has been regulated in Article 480 of the KUHP on Rp 250 fines. It can cause articles to become irrelevant, and law enforcers use other articles instead, to impose heavier sentences.

103 See Chapter 3.

	Police Investigation (reported to the IPS)	Case Dismissal by the Police Investigator	Percentage	Completed Investigation	Case Dismissal by the IPS	Percentage
2013	129.301	851	0,66%	109.072	26	0,02%
2014	143.187	1.081	0,75%	122.710	67	0,05%
2015	132.338	1660	1,25%	133.830	43	0,03%
2016	142.374	2.201	1,55%	135.842	20	0,01%

Table 4: Dismissal of general crimes cases for legal reasons[104]

Although only the Head of the District Prosecution Office has the power to issue an SKPP, higher-level prosecutors have a significant influence over whether or not the IPS decides to stop the prosecution process, especially if a case starts to be of public concern. One notable example of this is the involvement of Chief Prosecutor Prasetyo in the dismissal of a criminal case involving a KPK investigator, Novel Baswedan, in the Bengkulu District Prosecution Office. Baswedan was a former police investigator, who arrested several Police Generals for corruption.[105] NGO activists and leaders of civil societies suspected that the police investigation was an act of revenge. Due to public pressure, the Chief Prosecutor ordered the Head of the Bengkulu District Prosecution Office, I Made Sudarwan, to issue SKPP: B-03/N.7.10/Ep.1/02/2016 on Baswedan's case dismissal.[106] This

104 I collected the data in this table from the annual IPS reports from 2013, 2014, 2015, and 2016. According to several Executive Prosecutors and operators working in the Statistics Centre for Crime and Information Technology (*Pusat Data Statistik Kriminal dan Teknologi Informasi* /PUSDAKRIMTI), within the Supreme Prosecution Office; the number or cases in this report therefore may not depict the true regional situation. One reason for this is the limited skills of regional operators in inputting case data to SIMKARI—on SIMKARI, for more detail, please see 3.8: Reform Effort. It is interesting to note that the annual reports do not show the number of special crimes cases which were dismissed, such as corruption. Instead, the reports present successes in investigating and prosecuting corruption cases, exceeding the targets and budget provided by the government.

105 Novel Baswedan was investigated by the police in 2012, for the mistreatment of a swallow nest thief in Bengkulu in 2004. See Tim Taktis, *Catatan Kriminalisasi Pada Kasus Novel Baswedan*, 2015.

106 The IPS closed Novel's case for legal reasons, and because it had expired, Detik, *Ini 2 alasan Kejagung hentikan kasus Novel tak cukup bukti dan kadaluwarsa*, (Two reasons why the Supreme Prosecution Office stopped Novel's case: insufficient evidence and expiry of the case), https://news.detik.com/berita/3147896/ini-2-alasan-kejagung-hentikan-kasus-novel-tak-cukup-bukti-dan-kadaluwarsa. "The case expiry date is calculated from the first day after the crime is committed," said the Deputy Chief Prosecutor for General Crimes, Noor Rohmat See Detik, *Begini Penjelasan Kejagung Soal Kedaluwarsa dan Bukti Tak Kuat di Kasus Novel* (The Supreme Prosecution Office's explanation of expiration and insufficient evidence in Novel's case) https://news.detik.com/berita/3147948/begini-penjelasan-kejagung-soal-kedaluwarsa-dan-bukti-tak-kuat-di-kasus-novel., accessed 8 June 2019.

SKPP was later declared to be illegal by the pre-trial judge at the Bengkulu District Court.[107] However, even though the pre-trial judge asked the IPS to continue Baswedan's prosecution, the IPS seemed reluctant to comply with the court's decision. Although there was massive pressure on the Chief Prosecutor to issue a *Seponering* (a case dismissal for public interest reasons), the IPS seemed unwilling to use this power.[108]

However, criminal case dismissal for legal reasons has been used in cases which needed to be stopped, by using the *Seponering* mechanism. One example is the cessation of the theft of 15 bananas case, by Kuatno and Topan, in 2012. The Head of the Central Java Prosecution Office, Bambang Waluyo, ordered the Head of the Public Prosecution Service, Cilacap Sulijati, to stop the case due to massive protests (called the '1,000 Bananas Movement') against the police over the arrests of Kuatno and Topan[109] (Purwowidagdo et al. 2012, 102-3). According to Waluyo, the decision to issue the SKPP was based on the community's sense of justice. Waluyo then ordered the Head of the Cilacap District Prosecution Office to find a legal reason for granting the SKPP. The Cilacap District Prosecution Office then asked a hospital to examine Kuatno and Topan, who were believed to be incapable of criminal liability. Cilacap Regional Hospital then concluded that they suffered from mental retardation.[110] However, although the police denied this conclusion and presented a comparative analysis from a psychologist, the IPS insisted that the prosecution of Kuatno and Topan be stopped. [111]

The IPS also issued an SKPP due to public interest, when it stopped the prosecution of two KPK Commissioners, Bibit Samad Rianto and Chandra

107 SKPP: B-03/N.7.10/Ep.l/02/2016 makes it clear that the IPS seems not to be serious about studying a case before ceasing it. The IPS did not explain the reasons why the case lacks evidence, or why it should be dismissed for legal reasons. In the SKPP the IPS even explains the case chronology, showing how Novel is guilty by looking at the chronology generated by the police.

108 Vivanews, *Jaksa Agung pertimbangkan Deponeering kasus novel* (The Chief Prosecutor considers issuing a 'Seponering' for Novel's case), http://nasional.news.viva.co.id/berita/nasional/755234-jaksa-agung-pertimbangkan-deponering-kasus-novel, accessed 8 June 2019.
The Advocacy Team for the Baswedan case, from the Legal Aid Institute, said that the Chief Prosecutor refused to issue a *Seponering*, because he considered that Novel was not a state official. The IPS believes that a *Seponering* is given to high state officials, while the SKPP is for ordinary people. Personal Communication MR, 2016.

109 Jawa Pos, *1000 Pisang Untuk Polisi*, (One thousand bananas for the police), https://www.jpnn.com/news/1000-pisang-untuk-polisi, accessed 1 April 2019.

110 Kompas, *Kuatno and Topan Terbukti Lemah Mental*, (Kuatno and Topan were proven to be mentally disabled), https://megapolitan.kompas.com/read/2012/01/06/13051651/kuatno.dan.topan.terbukti.lemah.mental, accessed 1 April 2019.

111 Even though the police did not use their power to examine a prosecutor's decision at a pre-trial hearing, Waluyo mentioned that, because of his decision, his relationship with the Head of the Central Java Police had worsened. This may be because the IPS decision to cease the case of Kuatno and Topan proves the public assumption that the police are not professional when conducting investigations. Interview with Bambang Waluyo, a former Head of the Central Java Prosecution Office, 5 February 2014.

Hamzah. Anti-corruption activists and the public urged the IPS to halt the case, because they believed it had been fabricated by the police.[112] The South Jakarta Prosecution Office then issued an SKPP to stop the case.[113] Although the police believed that there was sufficient evidence to prosecute Bibit Samad Rianto and Chandra Hamzah, the IPS issued the SKPP on sociological grounds, in order to maintain the integration/harmonisation of law enforcement agencies (the IPS, the National Police, and the Corruption Eradication Commission) and to respond to a sense of community justice. The legal basis for the SKPP was challenged in a pre-trial hearing at the South Jakarta District Court and later cancelled, because the KUHAP does not allow an SKPP to be issued for sociological reasons.[114] The IPS then appealed to the High Court and filed a cassation to the Supreme Court, which they lost. The Chief Prosecutor decided to stop the case for public interest reasons (*Seponering*).

This section shows how the IPS leadership, in both district and high provincial prosecution offices, uses the SKPP mechanism to dismiss criminal cases for public interest reasons, because only a Chief Prosecutor may exercise the *Seponering* mechanism. However, since this practice is not in line with the KUHAP, a pre-trial hearing may annul this dismissal decision.

5.3.2 A Criminal Case Dismissal for Public Interest (*Seponering*)

Some Indonesian criminal law observers believe that the Indonesian criminal justice system adopts the legality principle, rather than the opportunity principle. This is mainly because the KUHAP recognises criminal case dismissals for technical reasons but limits a prosecutor's power to accept or reject the investigation files from a criminal investigator (Harahap 2007, 38; Rachman 2016; Siregar 1983). However, other experts argue that Indonesia adopts the opportunity principle, since the KUHAP recognises the Chief Prosecutor's power in the IPS Law to dismiss cases for public interest

112 Detik, *Kronologi Kasus Suso, Cicak v. Buaya Hingga Korupsi Pilgub Jabar* (Chronology of Susno's Case: from the Cicak v. Buaya case to the corruption of the West Javan Governor Election), https://news.detik.com/berita/d-2229197/kronologi-kasus-susno-cicak-vs-buaya-hingga-korupsi-pilgub-jabar, Kompas, *Bibit Chandra Ditahan, Polri Dikecam* (Bibit Chandra Arrested - National Police Criticised) https://nasional.kompas.com/read/2009/10/29/20260077/bibit.dan.chandra.ditahan.polri.dikecam, accessed 17 November 2018.

113 SKPP Nomor: Tap-01/0.1.14/Ft.1/12/2009 dated 1 December 2009, for defendant Chandra Hamzah, and SKPP Nomor: Tap-02/0.1.14/Ft.1/12/2009 dated 1 December 2009, for defendant Bibit Samad Rianto. Kejaksaan Negeri Jakarta Selatan, *Kejari Jaksel Menerbitkan SKPP Perkara Bibit dan Chandra* (South Jakarta District Prosecution Office Issues an SKPP for Bibit and Chandra's Case), http://www.kejari-jaksel.go.id/read/news/2009/12/01/46/kejaksaan-negeri-jakarta-selatan-menerbitkan-skpp-perkara-bibit-dan-chandra-46, accessed 17 November 2018.

114 DKI Jakarta High Court No. 130/Pid/Prap/2010/PT.DKI Judicial Review Decision No. 152 PK/Pid/2010 rejects the prosecutors' appeal regarding the pre-trial decision, since it considers that the District Court's pre-trial decision is final and binding.

reasons (Surachman and Hamzah 2015; Karniasari 2012; Afandi 2016).[115] Compared to other countries, such as the Netherlands, France, England, and Poland, which apply the opportunity principle in order to filter out more trivial cases (Fionda 1995; Tak 2008; Jehle and Wade 2006), the IPS uses the opportunity principle only for cases that have a political impact on the government, not for small cases (Karniasari 2012, 109).

The first IPS Law 15/1961 stated that only the Chief Prosecutor can stop a criminal case for public interest reasons (Article 8), but it provides no definition of 'public interest'. IPS Law 15/1961 only regulated that the Chief Prosecutor might consult with high-ranking officials, such as the Minister/Chief of the National Police, the Minister for National Security, or even the President, before deciding to stop a case for public interest reasons. This provision was then adjusted in Article 32 of IPS Law 5/1991, which provides a vague explanation of public interest reasons – limited to either the interests of the nation and state, or the interests of the wider community. Similar to the previous elucidation, Article 32 of IPS Law 5/1991 states that the Chief Prosecutor can dismiss a case only after taking into account suggestions and opinions from state agencies that have an interest in the case. The Chief Prosecutor may then report this to the President in order to obtain a direction. Likewise, the Criminal Case Procedure was not altered much by Article 35 (c) of IPS Law 16/2004; it continues to limit the application of the opportunity principle to the Chief Prosecutor, and obligates him/her to consider suggestions and opinions from state power agencies that have an interest in the case. However, in contrast with the previous rule, the current law removes the procedure to obtain an instruction from the President before applying the opportunity principle. In addition, no further explanation is given for when the Chief Prosecutor's decision to dismiss a case is not in line with state agency suggestions.

As has been mentioned above, the 2004 IPS Law contains no clear definition of public interest reasons. Chief Prosecutor Regulation PERJA 036/A/JA/09/2011 has no provision defining 'public interest'. The 1982 Minister of Justice Decree M.01.PW.07.03 on the Guidelines for KUHAP Implementation, in fact hands the power to define public interest to a meeting between the Chief Prosecutor and high-level state officials, such as the Minister for Defence and Security, the Chief of the National Police, or the President. Because of this arrangement, most Chief Prosecutors believe that the power to dismiss a criminal case because of public interest is their prerogative.[116] Unlike the decision to dismiss a case for technical reasons, which can be examined at the pre-trial hearing stage, the Chief Prosecutor's decision to stop a case for public interest reasons cannot be examined.[117]

115 Article 35 of the IPS Law.

116 Kompas.com, *Jaksa Agung: Deponering itu Hak Prerogatif saya*, (Chief Prosecutor: "*Deponering* is my Prerogative"), https://nasional.kompas.com/read/2016/02/11/21371781/Jaksa.Agung.Deponering.Itu.Hak.Prerogatif.Saya, accessed 4 March 2018.

117 Elucidation of Article 77 of the KUHAP.

Besides, a case closed due to public interest can no longer be opened, even if new evidence (*novum*) arises.[118] Vice Chief Prosecutor Darmono thus illustrates that the *Seponering* is equivalent to being given clemency (Darmono 2013, x, 31).

Indonesian scholars argue that a vague definition of public interest provides the IPS opportunity to stop the prosecution of economic crimes. The IPS may issue a *Seponering* after a suspect pays a fine (or *schikking*) and undergoes mediation, as regulated in Emergency Law 7/1955[119] (Prakoso 1986, 76). As practiced during Chief Prosecutor Soeprato's reign,[120] the IPS may also dismiss cases for this reason, if a criminal case has been resolved based on *Adat* Law/Customary Law (Amiati 2014, 102). Besides, the broad definition of public interest also allows the Chief Prosecutor to stop criminal cases that are connected with the regime's political affairs. One example of this is the IPS' decision to terminate the prosecution of a case of corruption within PERTAMINA (the State Oil Company), because the suspect was a close colleague of President Soeharto (Nababan 2009).

The Chief Prosecutor's position as a cabinet member allows the President to ask the Chief Prosecutor to stop a case. During the New Order regime, *Seponering* was used as an exchange tool for opponents of the regime who were subordinate to the President. For example, former Army General M. Yusuf was prosecuted for subversion after criticising President Soeharto. The IPS issued a *Seponering* for him after he publicly apologised to Soeharto (Sumarkidjo 2006). Another example is the case of Adnan Buyung Nasution, a human rights lawyer who was prosecuted for subversion. He stated that the IPS offered him a *Seponering* if he signed an apology letter to the President, which he refused to do (Nasution 2004).

In the post-New Order era, the Chief Prosecutor seemed to be issuing *Seponering* in order to maintain political stability. The Chief Prosecutor only dismissed criminal cases involving key figures who had strong political positions. A notable example is the *Seponering* for two KPK Commissioners, Bibit Samad Rianto and Chandra Hamzah, in 2012. In this case, the IPS issued the *Seponering* after the pre-trial judge decided that the SKPP was illegal. Acting Chief Prosecutor Darmono explained the public interest reasons behind the decision. He stated that, since both commis-

118 Chapter II on the Prosecution Process of Ministry of Justice Decision: M.01.PW. 07.03-year 1982 states that, "…when a case is set aside because of public interest, the public prosecutor cannot prosecute against the suspect in the same case in future".

119 Emergency Law 7/1955 introduced *schikking*, or a payment which is made to the state outside of the prosecution process; the prosecutor may also seize items owned by the suspect from a third party. Compare this with Article 34 of Government Regulation 80/2007 on Taxation, which allows the Chief Prosecutor to cease the prosecution process due to national budget restrictions. One example of an SKPP is TAP-009/A/JA/09/2014 for Agung Bagus Santoso and Rusman, who obtained an IPS decision to stop the investigation of a falsified taxation report; the suspects were willing to pay both fines and tax, in order to stop the investigation.

120 See Chapter 2.

sioners were named as suspects, the KPK could not perform its work to eradicate corruption.[121] In this case, the IPS defined the public interest as the problem of fighting corruption if the case was not dismissed. In 2016, Chief Prosecutor Prasetyo also used similar reasons to stop a case involving KPK Commissioners, Abraham Samad and Bambang Widjojanto, because of massive protests.[122] It is worth mentioning that, even though other state agencies suggested that the Chief Prosecutor should not issue a *Seponering*, the Chief Prosecutor *did* issue a *Seponering* in this case.[123] Because of this decision, various organisations affiliated with the police, such as the Police Association and Professional Association, Indonesian Police Watch, and the Police and Children's Families, urged the DPR (House of Representatives) to question Chief Prosecutor Prasetyo's decision. They also submitted three separate claims to the Constitutional Court, aiming to repeal the Chief Prosecutor's power to issue a *Seponering*. The court later rejected the lawsuits and retained the Chief Prosecutor's authority to issue a *Seponering*.[124]

The IPS has no specific internal regulations on how the public prosecutor proposes a *Seponering* to the Chief Prosecutor.[125] As a result, prosecutors at district or provincial levels never recommend criminal case dismissal because of public interest to the Chief Prosecutor. As mentioned above, the prosecutor at district level prefers to use the SKPP mechanism to stop prosecuting, even for public interest reasons. This confirms that the *Seponering* arrangement is designed for cases that have an impact on political order, and not for filtering trivial cases.

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121 The public urged the Chief Prosecutor to cease the case, since the police investigation of the KPK commissioners was presumed to be malicious. President SBY also suggested that the Chief Prosecutor should respond to the case. See the Decree on Dismissal of a Prosecution for Public Interest Reasons TAP-001/A/JA/01/2011, for Chandra M Hamzah, and TAP-002/A/JA/01/2011 for Bibit Samad Rianto.

122 In response to increased public outrage, generated by the belief that criminal cases being investigated by the police were a retaliation for the KPK's investigation of corruption within the police force. See the Decree on the of Prosecution Dismissal for Reasons of Public Interest TAP-012/A/JA/03/2016, for Abraham Samad and TAP-013/A/JA/03/2016, for Bambang Widjojanto.

123 The DPR suggested that the Chief Prosecutor should continue the prosecution and not issue a *Seponering*. However, other institutions, such as the police and Supreme Court, let the Chief Prosecutor decide at his own discretion.

124 See Constitutional Court Decision Nos. 29/PUU-XIV/2016, 40/PUU-XIV/2016, and 43/PUU-XIV/2016, rejecting the Chief Prosecutor's power to issue a *Seponering*. However, Constitutional Court Decision No. 29/PUU-XIV/2016 states that the Chief Prosecutor must consider advice from state institutions before issuing a *Seponering*. The Constitutional Court did not explain how the suggestions received by the Chief Prosecutor are different to those made in the case of Samad and Widjojanto. In this case, the DPR rejected the *Seponering*, and two other institutions let the Chief Prosecutor decide. In the end, the Chief Prosecutor was still able to choose which suggestion s/he should act on.

125 There is a column in the *Seponering* which reports on the SIMKARI, for all public prosecutors. However, prosecutors at district and provincial level have never proposed that the Chief Prosecutor should issue a *Seponering*. The reason for this is that the IPS has no guidelines on the *Seponering*.

5.4 The Trial Process

When an examining prosecutor decides that an investigation is complete,[126] the Head of the District Prosecution Office appoints the public prosecutor to draft an indictment based on the investigation file(s).[127] The public prosecutor then submits the case to the District Court (Article 1 (7) of the KUHAP). Similar to the pre-prosecution process, the IPS leadership controls and supervises the public prosecutor's work at this stage. Usually, the Head of the District Prosecution Office controls the prosecution process, excluding some cases which are considered important by the IPS leadership, whereas either the Chief Prosecutor or the Head of the High Prosecution Office takes control of the prosecution (Article 56 Chief Prosecutor Regulation PERJA 036/A/JA/09/2011). The public prosecutor may organise a case exposé (*Gelar Perkara*) if s/he finds the case difficult to prove, or if there is public pressure surrounding the case. A case exposé may be held with other prosecutors, after obtaining approval from the IPS leadership (Article 62 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011). The case exposé results in a recommendation on how the leadership should handle the case.

This case handling mechanism shows that the IPS' military culture influences how the public prosecutor implements and interprets the KUHAP. Article 58 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011 allows public prosecutors to make their own decisions, only under circumstances which prevent them being directed by the IPS leadership. However, if direction by the leadership contributes to an unsuccessful prosecution, the prosecutor is nevertheless held responsible for the failure (Article 61 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011).[128] According to the IPS, a prosecution is successful when the public prosecutor successfully convinces the judge to impose a sentence on a defendant. On the other hand, if the judge acquits the defendant, the IPS considers a prosecution to have failed.[129]

126 This decision is taken after criminal investigators have completed both stages of the pre-prosecution process. See 2.5: The Pre-Prosecution Process.

127 Article 30 of the Chief Prosecutor Regulation PERJA 036/A/JA/09/2011 states that, even though the High Prosecution and Supreme Prosecutor Office receive the case file, due to the principle of equality, the District Prosecution Office *submits* the case files. Thus, it is the Head of the District Prosecution Office who appoints a prosecutor to prosecute a case at trial (see Chapter 3).

128 Other than public prosecutors and heads of the General Crime Division, the Head of a District Prosecution Office will also be evaluated if a judge frees a defendant. Interview with DG, Coordinator at the Office of the Deputy Chief Prosecutor for General Crimes, on 6 May 2015.

129 See, for instance, Deputy Chief Prosecutor for Special Crimes Circular Letter B-711/F/Fu.1/1212004, which states that failure to prosecute a corruption case may be because the public prosecutor does not manage to provide adequate proof to convince judges to sentence the defendant.

5.4.1 Indictment (*Dakwaan*)

An indictment plays an essential role in the prosecution process during trial. It leads the judges, prosecutors, defendants, and their advocates to examine evidence and witnesses during the trial.[130] Article 140 (1) of the KUHAP states that the public prosecutor should draft an indictment based on the investigation files within 30 days, and submit it to the court after a criminal investigator has completed the second stage of the pre-prosecution process.[131] The public prosecutor must take into account the legal requirements of the indictment, as referred to in Article 143 (2) of the KUHAP.[132] A notable example of this is the problem a prosecutor faces when drafting an indictment for a corporate crime. Since the KUHAP still does not have provisions on how to identify a corporation as a defendant, advocates often file an exception (*exceptie*). It is argued that the format of the prosecutor's indictment does not comply with Article 143 (2) of the KUHAP, which requires the inclusion of the defendant's identity, such his/her as gender and religion. To deal with this, prosecutors may make a note of the religiosity of a corporation, based on its operation. In some cases the prosecutor may mention the corporate religiosity status of a non-Islamic company, since the company does not operate based on Sharia (Maradona 2018, 134).

When drafting an indictment, public prosecutors seem puzzled when interpreting the Criminal Code (*Kitab Undang-undang Hukum Pidana/KUHP*), which originated from the 1918 Dutch Colonial Criminal Code (*Wetboek van Straftrecht voor Nederlandsch-Indie*/WvS-NI). Since it has never officially been translated into Indonesian, each criminal justice actor prefers to use the KUHP translation which fits their interests.[133] As a result, defendants

130 Chief Prosecutor Circular Letter SEJA 004/JA/11/1993 mentions that, for courts or judges, an indictment letter can function as the basis for limiting the scope of an investigation, and it may be a consideration when deciding the case. For public prosecutors, an indictment letter can be used as a basis for proof, juridical analysis, crime prosecution, and the legal effort required. On the other hand, for the defendant or public prosecutors, an indictment letter can be used as a basis for preparing a defence.

131 Article 30 and 32 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011. See 5.2.5: The Pre-Prosecution Process.

132 Formal requirements for an indictment are based on Article 143 (2.a) of the KUHAP, stipulating that an indictment should be dated, signed, and contain the following: a full name, a place and date of birth, age, sex, nationality, address, religion, and occupation. Additionally, material requirements which need to be met at the time of drafting an indictment include a careful, clear, and complete elaboration on the crime being charged, mentioning the time and place where the crime was committed (Article 143 (2) b of the KUHAP). If the formal requirements are not met, the indictment letter can be annulled, whereas if the material requirements not met, the indictment is invalid for legal reasons.

133 At least fifteen versions of the KUHP were published between 1915 and 1983 (Massier 2008, 21).

are regularly charged using provisions in the KUHP that would not have fitted their wrongdoings originally.[134]

The Deputy Chief Prosecutor for General Crimes Circular Letter B-607/E/11/1993 on the Technical Procedure for Making an Indictment states that, before the public prosecutor determines the form of indictment,[135] s/he must review evidence, and analyse the criminal provisions relevant to the case. The prosecutor then outlines their 'indictment plan' *(Rencana Dakwaan/Rendak*) in the matrix[136], and shares it with the IPS leadership, in order to obtain approval prior to submitting it to the District Court.[137]

Initially, the supervision procedure aimed to guarantee the quality of the prosecution process, prevent its failure, and minimise the ability of prosecutors to abuse their powers. One reason for this was that the IPS found the quality of prosecutors' indictments was not meeting the requirements of Article 143 (2) of the KUHAP. Some indictments did not explain how the crime was committed, or which elements of the KUHP fitted the defendant's crime. Also, the unlawful element (*wederechtelijk*) and the role

134 One such example is the way the word *aanslag* was translated to *makar* in Article 104 of the KUHP. The Indonesian word *makar* conveys deception, or an attempt to commit a coup d'etat. Mistranslating *aanslag* as *makar* can lead to a miscarriage of justice; for example, if people wave separatist flags peacefully, they can still be charged with *makar* based on Article 104 of the KUHP (Wulandari and Moeliono 2018).

135 There are five types of indictment letters based on the Circular Letter of Chief Prosecutor SEJA 004/JA/11/1993. These are: (1) a singular indictment, where there is a charge for one crime only; and (2) an alternative indictment, which can be used by prosecutors if they are not sure which of the crimes being charged can be proven, i.e. if one charged crime has been proven, it is not necessary to prove the other; (3) a subsidiary indictment, where layered accusations are applied and the first accusation functions as a substitute for the others, i.e. all accusations default to the most serious accusation; (4) a cumulative indictment, which is an accumulation of several accusations, all of which can be proven during trial (unfounded accusations should be made clear and dismissed from the indictment), i.e. when the defendant commits certain criminal acts which have different consequences; and (5) a combined indictment, where a cumulative indictment can be combined with an alternative or subsidiary indictment.

136 The matrix of an indictment is transformed into a flow chart including qualifications for the crime, flouted article(s), elements of the crime, facts of the defendant's actions, supportive evidence, and evidence that can help the prosecutor to prove their indictment.

137 When the HIR was still valid, judges controlled prosecutors when drafting an indictment *(acte van verwijzing).* After the 1961 IPS Law was enacted, the role of the judge was limited only to giving suggestions to prosecutors for changes or additions to an indictment, as long as it has not been filed at court. The judges' limited role is regulated by Article 282 of the HIR. See Joint Circular Letter 6/MA/1962/24/SE on 20 October 1962 (Pradja 1985, 10–11).

of the defendant (*deelneming*) were not mentioned for certain offences.[138] As a result, the court declared that the prosecutors' indictments were void (Supramono 1991; Harahap 2007; Mulyadi 2012).

However, public prosecutors often complain about the obligation to have an indictment plan. They argue that the interlocking procedure allows the IPS leadership to intervene in cases, and fails to prevent corruption during the drafting of an indictment (Komisi Hukum Nasional 2005d, 80; Kristiana 2009, 100).[139] Apparently, advocates provide a *rezeki* to the prosecutor's superior to ease the charge in the indictment, by choosing weaker evidence and criminal law provisions which carry a less serious charge (Zakiyah et al. 2002, 92).[140]

As mentioned in the previous section, the principle of functional differentiation (in the KUHAP) also contributes to limitations placed on prosecutors when drafting indictments. A prosecutor drafts an indictment based on the file(s) compiled by the investigators, without being able to verify the facts in the file(s) (Santoso 2000, 154).[141] Compared to Article 282 of the HIR, which allows public prosecutors to amend an indictment during trial,[142] Article 144 of the KUHAP limits the prosecutor to changing the indictment once, within seven days prior the trial. Because of this, prosecutors must prepare their indictments as well as they can. Many scholars have criticised this provision, because when a witness or defendant appears in court, they tend to change their testimony from that which is given in the investigation files (Hamzah and Dahlan 1984, 197). To cope with these problems, prosecutors often stick to the witness statements provided in the files, ignoring the witness statements presented at the trial.

138 See, for instance, Hukum Online, *Ketika Deelneming Tak Terbukti, Rohadi Pun Lolos dari Suap Bersama-sama Hakim* (When *Deelneming* Cannot be Proven, Rohadi Even Escaped from Bribery Together with the Judges), https://www.hukumonline.com/berita/baca/lt584a6c708f6ab/ketika-ideelneming-i-tak-terbukti--rohadi-pun-lolos-dari-suap-bersama-sama-hakim/, accessed 2 June 2018. Hukum Online, *Delik Penyertaan Tak Terbukti, Susno Bisa Bebas* (Participatory Offenses Cannot be Proven, Susno Can be Acquitted), https://www.hukumonline.com/berita/baca/lt4d42786bd9562/delik-penyertaan-tak-terbukti-susno-bisa-bebas, accessed 2 June 2 2018.

139 Some prosecutors believe that "the indictment plan" (*Rencana Dakwaan*) is crucial, because of the prosecutor's negative image as possessing weak legal knowledge and being corrupt. Personal communication with W, the Deputy Chief Prosecutor for Supervision, DG, the Coordinator at the Office of the Deputy of Chief Prosecutor for General Crimes, and DH, the Head of the Bandung District Prosecution Office, 2015.

140 Personal communication with IS, a lawyer in Malang, 2015.

141 Some prosecutors say this is like buying a cat in a sack, because holistic indictment is dependent on the facts collected by investigators. Personal communication with the Head of the Centre for Supreme Prosecution Office Legal Information and the Head of the West Java High Prosecution Office, 2015.

142 This change did not cause any additional issues. The Supreme Court Decision No. 15/Kr/1969 on February 13 1971 states that changes to an indictment cannot cause any other crime(s) to emerge (Prakoso 1988, 153).

5.4.2 Presenting Evidence at Trial

Article 184 of the KUHAP divides evidence into five types that can be used in criminal proceedings. These are witness statements,[143] expert witness statements,[144] documents/letters,[145] indications,[146] and the defendant's testimony.[147] The KUHAP has not yet adopted more modern forms of evidence, such as photographs, telephone records, videos, and electronic transmissions.[148] In practice, the judge classifies the more modern forms of evidence as 'indications'. Much of the literature on Indonesian criminal procedure states that the KUHAP applies a negative system for legal proof (*Negatief-wettelijk bewijsstelsel*). It states that the conviction is based not only on the evidence, but also the judge's belief (Harahap 2000; Hamzah 1993; Hiariej 2012).[149] Therefore, as well as preparing strong evidence, prosecutors must have an ability to convince judges.

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143 A witness is someone who gives testimony on what they saw, heard, and experienced themselves; such testimony is given during investigation, prosecution, and trial (Article 1 (26) of the KUHAP). However, a testimony from one witness may not be sufficient on its own; testimonies should come from at least two different witnesses (Article 185 (2) of the KUHAP), or a testimony may come from one witness but be supported by other valid evidence (Article 185 (3) of the KUHAP). The Constitutional Court Decision No. 65/PUU-VIII/2010 provides a broader definition of a witness as "a person who can give testimony during the investigation, prosecution, and hearing of an alleged crime, which they perhaps did not hear, see, and experience themselves".

144 In this case, expert witness testimony can only be obtained from doctors, not from legal experts. However, due to the limited knowledge of judges, prosecutors and police officers when they refer to legal doctrine, legal experts are also included as possible expert witnesses.

145 Utilising a document or letter as evidence is limited by Article 184 (1) (c) of the KUHAP. The article limits documents to: (1) evidence with the status of an "official document", drafted by "state officials", and regarding an event that they heard, saw, or experienced themselves, including an interview note (Article 187 (a) of the KUHAP); (2) documents containing expert opinion, including complaints (Article 187 (b) of the KUHAP); and, (3) other documents, "as long as" they are related to the substance of other types of evidence (Article 187 (c) of the KUHAP).

146 Indications, which are largely an 'indirect' form of evidence, are hard to describe and implement. Two formal definitions of proof of guidance, covering acts, events, or a condition - due to their consistency with one another, or with the crime itself - show either the wrongdoer's identity, or that the criminal act has been committed (Article 188 (1) of the KUHAP). In the HIR, an indication is usually referred to as 'the judge's belief'. In the KUHAP, this is broadened to include investigators and prosecutors also being allowed to use this evidence.

147 It is permissible to present the defendant's testimony in court, but it must be supported by at least one other type of evidence (Article 189 (2) of the KUHAP).

148 Other laws, such as Law 11/2008 on Electronic Information and Transactions, permit digital evidence, and Law 20/2001 on Corruption Eradication recognises modern forms of evidence as 'indications'.

149 Article 183 of the KUHAP states that judges can only impose a sentence if there is a minimum of two valid forms of evidence, and the judges are certain that a crime has been committed by the defendant.

The trial commences when a presiding judge opens the hearing[150] and asks the public prosecutor to read the indictment (Article 145 (1) – (4) of the KUHAP). The defendant or his/her legal advisor can submit an exception to the prosecutor's indictment or court jurisdiction. If the panel of judges approves an exception, it then decides that the hearing is stopped. If the panel of judges does not approve the exception, the hearing proceeds further by examining witnesses and evidence (Article 156 (1), (2) of the KUHAP). In practice, legal representatives will try to stop the hearing for procedural reasons, such as criminal investigators' mistakes not guaranteeing a suspect's right to have legal representation during the investigation process.[151] Both the public prosecutor and the defendant, or his/her legal representative, may appeal against this decision. However, unlike legal representatives, who can declare appeals when a judge decides a case, the prosecutor must obtain permission from the Head of the District Prosecution Office before appealing a decision[152] (Article 35 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011).

During trial hearings, public prosecutors must present the defendant at court. Since the IPS has a limited budget, prosecutors tend to detain defendants at the pre-prosecution stage, and the judge also seems to follow this process by detaining defendants during trial. Although the judge is responsible for the defendant's detention during trial, based on the principle of functional differentiation, in practice the prosecutor is responsible for ensuring the defendant's condition before they are presented at trial. The IPS also covers any expenditure for transporting detainees from the detention house to the court – this is not within the court's budget.[153] Public

150 All trials must be held in Indonesian, and the Chief Judge should ensure that the defendant and witnesses can answer questions freely. All trials must also be open to the public, except those regarding a sexual misconduct or juvenile case. Violating these requirements will cause all decisions made to be invalid (for legal reasons) (Article 153 (1) – (4) of the KUHAP).

151 Hukum Online, *Salah satu contoh Penyidikan Tidak Sah, Hakim Batalkan Dakwaan* (An example of an invalid investigation, where the judge cancels the indictment), https://www.hukumonline.com/berita/baca/lt4dcac4e944fc9/penyidikan-tidak-sah-hakim-batalkan-dakwaan, accessed 8 June 2018.

152 If the decision cancels the indictment for legal reasons, causing the defendant to be free, the prosecutor can make an appeal to the higher court. However, if the indictment is cancelled due to formal reasons, the prosecutor can revise the indictment and re-submit it to the court (Harahap 2000).

153 The budget *does* include a police salary for guarding the defendant during the trial. The Head of the Malang District Prosecution Office said that, legally, it is the police force's duty to send their personnel to guard the defendant in hospital, but the Prosecution Office still needs to pay them. Personal communication, 2015.

prosecutors even have the task of keeping the defendant secured, if s/he has to stay in hospital during the trial.[154]

The prosecutor is also responsible for presenting witnesses mentioned in investigation file(s). Suffering from a limited budget, prosecutors can only intimidate witnesses[155] into voluntarily coming to court.[156] Article 162 (1) of the KUHAP provides an opportunity for prosecutors not to present witnesses, if the witnesses live a long way from the court, or due to urgent circumstances, death, or other reasons related to state interests. The prosecutor then can read the witness testimony from the file.

If the witness' or defendant's testimonies are found to be different from the statement recorded on file, the prosecutor may ask the Chief Judge to remind the witness of the obligation to be truthful, and ask for an explanation for the discrepancy (Article 163 of the KUHAP). The prosecutor also can ask the judge to detain the witness and charge him/her with providing a false statement (Article 174 of the KUHAP). However, in some cases the witness or defendant has revoked the statement they gave during an investigation. This was usually because they claimed that the criminal investigator forced and tortured them during the investigation process. To avoid an acquittal decision because of this admission, the prosecutor will ask the investigator to give a contra-statement at the trial.[157] The prosecutor then will use the contra-statement to maintain the prosecution process and validity of the investigation files. Because of this, judges rarely accept a complaint against illegal coercive measures ("Achievements, Challenges and Recommendations for Judicial Reform" 2018, 29).

5.4.3 *Requisitoir* and Court Decisions

After all the witnesses have been heard at court, the public prosecutor proposes a sentencing demand (*Requisitoir/Tuntutan*) (Article 162 (1) of the KUHAP). Similar to the indictment mechanism, the prosecutor must make a sentencing demand plan (*Rencana Tuntutan/Rentut)* that is controlled and supervised by the IPS' leadership. If the IPS superiors consider that a case is important and is attracting public attention, they may instruct the

154 This is called *pembantaran tahanan* (or, *stuiting*). See SEMA 1/1989 on 15 March 1989, for more details regarding this procedure. IA, the Head of the General Crime Division in the M District Prosecution Office, complained about this procedure, since he had to find the budget to pay police to guard a defendant in hospital. He said that the IPS does not have such budget for the *stuiting* procedure. Personal communication, 2015.

155 Those who do not want to give testimony as a witness can be charged with nine months in prison (Article 224 (1) of the KUHP).

156 Witnesses often complain about the absence of a state budget to cover their expenditures. Since there is no fixed schedule for criminal trials, most witnesses spend a whole day at court, and therefore cannot earn money on that day. Personal communication with a prosecutor, 2015.

157 See Deputy Chief Prosecutor for General Crimes Circular Letter B-3358/E/Ejp/11/2013 on 12 November 2013.

prosecutor to organise another case exposé (*Gelar Perkara*).[158] The *Rentut* procedure aims to avoid disparity between the demands of different prosecutors.[159] However, in several cases prosecutors ask judges to postpone hearings, because they cannot propose sentencing demands before the IPS leadership has approved their *Rentut*. Because of this, some defendants must stay at the detention centre longer, while the court decides their case. To cope with the lengthy administrative process of the *Rentut*, the IPS asks the prosecutor not to postpone hearings and allows him/her to ask for approval by telephone, fax, or email.[160] In practice, the IPS leadership usually reviews the length of the charge and the criminal law articles proposed by the public prosecutor, but it does not take into consideration the examination process during the trial.[161]

Some advocates may take advantage of the *Rentut* mechanism, in order to achieve a lighter sentence for their clients, by providing *rezeki* to the IPS leadership so that the public prosecutor will propose a lighter sentence in his/her demand (Zakiyah et al., 2002, pp. 96-97). Similarly, prosecutors may abuse this procedure in order to seek *rezeki* from defendants. The prosecutor may also offer to help a defendant by giving *rezeki* to a judge, to encourage him/her to decide on a minimum sentence (Zakiyah et al., 2002, pp. 103-104).[162] A prosecutor may lodge an appeal or file a cassation, if the court rejects his/her demands. Furthermore, it seems that judges prefer their judgement not to be appealed and approved, in at least two-thirds of the prosecutors' demands (Domingo and Sudaryono, 2015, p. 36).

As I have mentioned before, most prosecutors avoid proposing an acquittal or discharge in their sentencing demands, even though the facts and evidence presented at hearings might support such proposals. Prosecutors will propose a minimum sentence, which matches the detention period

158 Article 37 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011.

159 Chief Prosecutor Circular Letter SEJA 001/J.A/4/1995.

160 Chief Prosecutor for General Crimes Circular Letter B-410/E/Ejp/8/2003.

161 The Superior Officer at the Supreme Prosecution Office has limited time in which to check the *Rentut*, since the document delivery process consumes time. See, for example, Serambinews.com *Rentut Belum Turun dari Kejagung, Tuntutan Kasus Sabu 50 Kg Ditunda Hingga 28 Januari*, (The *Rentut* has not been issued by the Supreme Prosecution Office, and an indictment for possessing 50 kg heroine is postponed until 28 January), https://aceh.tribunnews.com/2019/01/14/rentut-belum-turun-dari-kejagung-tuntutan-kasus-sabu-50-kg-ditunda-hingga-28-januari, accessed 3 April 2019. Tempo, *Dua Kali Jaksa Minta Sidang Pembunuhan Dufi Ditunda, Kenapa?* (The prosecutor asks for the Dufi murder trial to be postponed: Why?), https://metro.tempo.co/read/1189674/dua-kali-jaksa-minta-sidang-pembunuhan-dufi-ditunda-kenapa/full&view=ok, accessed 3 April 2019.

162 Antaranews, *Pengusaha dan advokat didakwa suap Aspidum Kejati DKI Jakarta*, (A businessman and his lawyers are charged with bribing a General Crimes Assistant at the High Prosecution Office of Jakarta), https://www.antaranews.com/berita/1071278/pengusaha-dan-advokat-didakwa-suap-aspidum-kejati-dki-jakarta, accessed 22 September 2019.

served by the defendants. [163] The prosecutor must obtain an approval from the Supreme Prosecution Office, before proposing an acquittal (*Vrijspraak*), [164] a discharge (*ontslag van rechtsvervolging*), or a death sentence at a trial hearing.[165] The IPS considers that an acquittal or discharge proposal indicates that a prosecutor has failed in handling the case. The IPS argues that prosecutors have a chance to reject a case at the pre-prosecution stage, if they are not sure that they can win it. Furthermore, the IPS will evaluate and examine the prosecutor's work during the process, and this could affect his/her career.[166]

The defendant may respond to the prosecutor's sentencing demand by presenting his/her defence (*pleidooi*). Following this, two more hearings may be conducted to provide opportunities for prosecutors to present their response to the defence (*repliek*) and for defendants to answer the prosecutor's *repliek* (*dupliek*). The Chief Judge then holds a meeting with two other judges, to decide the case based on the indictment, as well as on the facts and evidence presented at previous hearings (Article 182 (4) of the KUHAP). The judges may issue three kinds of decision. The first is an acquittal (*Vrijspraak*), meaning that the defendant is declared not guilty. The second is a discharge (*ontslag van rechtsvervolging*); pursuant to Article 191 (2) of the KUHAP, if the judges believe that a defendant's action has been proven but is not a criminal offence, the judges issue a discharge and release the defendants from prosecution.[167] The third is a criminal sentence, whereby the judges charge the defendant with criminal punishment, based on the prosecutor's indictment that the defendant has legally and convincingly been proven to have committed a criminal offence.

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163 Personal communication with, G, a prosecutor's manager from B District Prosecution Office, 2014.

164 One notable example of this was in 2008, when the public prosecutor prosecuted Sugik for murdering Asrori in Jombang, East Java. This case was controversial, because the public prosecutor insisted on prosecuting Sugik, while there was strong evidence that a police investigator had tortured Sugik into confessing. Even though police headquarters found that Asrori had been killed by another person (named Ryan, not Sugik), the public prosecutor at the Jombang District Office persisted in prosecuting Sugik, based on the dossier. The public prosecutor's plan was to summon the police investigator to defend the dossier. However, since there was public pressure and strong evidence to release Sugik, the district office ordered the public prosecutor to recommend acquittal for Sugik. For further details, see (Chazawi 2011, 143–74).

165 Chief Prosecutor Circular Letter SE-013/A/JA/12/2011.

166 Deputy Chief Prosecutor for General Crimes Circular Letter SEJAMPIDUM B-572/E/10/1994 mentions that the public prosecutor cannot be allowed to fail. According to the IPS, some indictments fail because public prosecutors have weak control of a case, and they violate the ethics. Therefore, when a prosecutor receives case files from the investigators, there is no choice but to successfully win the case. Personal communication with prosecutors in seven district prosecution offices, 2015.

167 Based on Article 191 (1) of the KUHAP, a defendant can be freed if the court has decided (after the defendant has been heard) that s/he has not been proven guilty, and there is no proof that s/he has been involved in wrongdoing.

5.4.4 Appellate Procedure

The Chief Prosecutor Circular Letter SE-013/A/JA/12/2011 states that prosecutors must respond to a defendant's appeal against conviction by appealing to the High Court, which is located in the capital city of each province.[168] A prosecutor may file an appeal against a District Court decision, if it provides a lesser sentence than s/he has demanded.[169] However, the public prosecutor must either obtain permission from his/her superior or hold an exposé, prior to filing an appeal.[170] Because of this procedure, prosecutors may not respond to the District Court decision in the final hearing; instead, they ask judges to give them some time to decide whether to file an appeal or not.[171] Article 240 of the KUHAP states that the High Court may either correct the District Court decision or order it to amend its decision on a case. The High Court may also issue a decision that is different from that of the District Court.[172]

Public prosecutors may file a cassation (*Kasasi*) to the Supreme Court, if they believe that the High Court judges have applied the law wrongly, or exceeded their jurisdiction when deciding the case (Article 253 (1) of the KUHAP).[173] This provision ensures that the procedure of cassation continues to examine whether the High Court decision has applied the law correctly. However, in practice, prosecutors use cassation to object to High Court decisions that issue lighter criminal sentences than the equivalent District Court decisions. In their cassation file, prosecutors argue that those decisions are not in line with the KUHAP, which asks judges to issue a sentence with a proper argument (Arsil, Hertanto, Farihah, and Puslitbang Mahkamah Agung, 2016, p. 15). The Supreme Court seems to be inconsistent in responding to prosecutors' actions. Although the Supreme Court rejects the prosecutor's argument, in some cases supreme judges grant a

168 Since Article 43 of the Supreme Court Law states that only those who file an appeal can lodge a cassation. The IPS obligates the prosecutor to send an appeal memorandum and appeal contra memorandum, in order to respond to the defendant's appeal. See Chief Prosecutor Circular Letter SE-013/A/JA/12/2011, point 4.1.

169 Chief Prosecutor Circular Letter SE-013/A/JA/12/2011 states that public prosecutors may file an appeal against the district court decision, if judges issue a sentence which is half what the prosecutor demands, or the judge's decision does not take the prosecutor's argument into account in its sentencing demands.

170 Article 41-42 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011.

171 If, seven days after the decision is presented, a defendant or public prosecutor does not take the chance to appeal, they are considered to be in agreement with the District Court decision (Articles 87, 233, and Article 234 (1) of the KUHAP).

172 An appeal is not generally done directly, and there is no option to do it verbally. A court of appeal bases its decision on the appeal document only (Article 238 (1) of the KUHAP).

173 See also Chief Prosecutor Circular Letter SE-013/A/JA/12/2011. Similar to the reason for appeal, prosecutors must either obtain permission from their superiors or hold a case exposé, before filing a cassation. (Article 43 of Chief Prosecutor Regulation PERJA 036/A/JA/09/2011).

prosecutor's cassation and overturn the High Court decision (Arsil et al. 2016, 15-16).

The KUHAP formally limits the cassation process to examination of the High Court decision only.[174] However, the cassation can also be filed in order to review an acquittal that has been decided by the District Court. Article 244 of the KUHAP prohibits prosecutors from appealing an acquittal.[175] However, the IPS obligates the public prosecutor to file a cassation if a District or High Court issues an acquittal decision or a discharge decision.[176] The IPS argues that the prosecutor is allowed to file a cassation, based on the 1983 Ministry of Justice Decision M.14-PW.07.03 on Implementation of the KUHAP, and the Supreme Court's jurisprudence 275/K/Pid/1983, which overturns the acquittal of the Natalegawa case.[177] A notable NGO on reform of the judiciary, LeIP, reports that public prosecutors dominate the total number of cassation applicants to the Supreme Court[178] (Arsil et al. 2016, 13-16).

In 2013, the Constitutional Court ended the debates on whether a prosecutor may file a cassation for an acquittal decision. In its Decision 114/PUU-X/2012, the court allowed the prosecutor to do so.[179] The Constitutional Court bases its decision on Supreme Court practices for receiving a

174 Parties have fourteen days from when the High Court decision is presented to them (Article 244 and 245 (1) of the KUHAP). In the cassation process, the Supreme Court can cancel the lower court decisions if, for example, they run out or surpass their jurisdiction, or apply legal principles wrongly (Article 253 (1) of the KUHAP).

175 The defendant and public prosecutors may file a cassation with the Supreme Court for a decision handled by the district or high court, except for an acquittal.

176 Chief Prosecutor Circular Letter SE-013/A/JA/12/2011 and Chief Prosecutor Circular Letter B-036/A/6/1985.

177 In its Decision 275/K/Pid/1983 the Supreme Court differentiates between pure acquittals (*bebas murni*)) - loosely, acquittal on the merits (*bebas tidak murni*) – and other forms of acquittals; for example, acquittal because of a procedural error. This jurisprudence was used by the government as a basis for legalising the prosecutor's cassation in Ministry of Justice Decision M.14-PW.07.03 on the Implementation of the KUHAP.

178 If prosecutors do not file an appeal or cassation, they may be examined by their superior. Personal communication with IW, a prosecutor of B District Prosecution Office, 2015. For this reason, the Supreme Court Annual Report 2017 noted the prosecutors who filed the most cassations in that year. See also the Supreme Court Annual Report 2017. Hukum Online, *Laporan Tahunan MA 2017: Jaksa Paling Banyak Ajukan Kasasi pada 2017, Ini Sebabnya* (Prosecutors who filed the most cassations in 2017: here are their reasons for doing so), https://www.hukumonline.com/berita/baca/lt5aa01a52a143f/jaksa-paling-banyak-ajukan-kasasi-pada-2017--ini-sebabnya/, accessed 21 September 2019.

179 Following this decision, the Supreme Court changed the format of the form to request a cassation to no longer differentiate between pure and impure acquittals. Hukum Online, *bebas murni atau tidak murni sudah tak relevan* (Whether an acquittal is pure or impure is no longer relevant), https://www.hukumonline.com/berita/baca/lt526dcda563378/bebas-murni-atau-tidak-murni-sudah-tak-relevan, accessed 10 June 2015.

prosecutor's cassation on an acquittal decision.[180] Some observers criticise this decision, because protection of acquitted defenders is effectively weaker than that given to defendants convicted by District Courts. This is mainly because convicted defendants are offered a fact examination in the High Court *and* its legal application in the Supreme Court, whereas acquitted defendants only have one chance to defend their rights in the Supreme Court (Kadafi 2019).

The Chief Prosecutor may file a cassation under the interest of the law, to correct the final and binding decision of a District or High Court to maintain the application of unity of the law. This cassation must not have any legal consequences for the defendant (Article 259 of the KUHAP)[181]. However, Deputy Chief Prosecutor for General Crimes Circular Letter R-32/E/6/1994 states that the prosecutor may propose a cassation in the interest of the law to the Chief Prosecutor, if the prosecutor finds a binding District or High Court Decision which is not in line with the IPS interest.[182] For example, cassations filed by the Chief Prosecutor to annul pre-trial hearings deciding that confiscation by the IPS was illegal, and that the government must pay compensation to the defendant. The Chief Prosecutor argued that this decision was not in line with the KUHAP. Although Article 259 (2) of the KUHAP states such a cassation shall not harm the defendant, in its Decision 1828 K/PID/1989, on 5 July 1990, the Supreme Court nevertheless annulled the pre-trial hearing decision, and stated that pre-trial hearings do not have authority to examine confiscation, because the KUHAP does not mention this explicitly (Silaban 1997, 401-2). Moreover, the IPS is likely to exercise these authorities in order to achieve its goal of winning the case at trial.

Another procedure for reviewing the final and binding decision of the court, at all levels[183], is the review (*Peninjauan Kembali*, or PK). A review is also designed to protect defendants' rights, by prohibiting the Supreme Court from issuing a sentence that is heavier than that of the previous deci-

180 The Constitutional Court argues that legalising cassation practices might not affect the defendant aversely, since the Supreme Court can always support the District Court decision. See Constitutional Court Decision No. 114/PUU-X/2012 p. 28-29, in which a constitutional judge (Harjono) expresses a dissenting opinion, regarding the protection of the defendant's human rights as more important than the decision in Article 67 of the KUHAP. Harjono argues that the Supreme Court practice is not a basis for saying that Article 244 of the KUHAP is against the Constitution.

181 Arsil and Yura, *Kasasi Demi Kepentingan Hukum, Penunjang Fungsi Mahkamah Agung yang Terlupakan,* (Cassation in the interests of the law: the forgotten supporting function of the IPS to the Supreme Court), www.leip.or.id/artikel/101-kasasi-demi-kepentingan-hukum-penunjang-fungsi-mahkamah-agung-yang- terlupakan.htm, accessed 10 June 2015.

182 Article 259 (1) of the KUHAP states that the Chief Prosecutor may file a cassation in the interests of the law, for a district or high court decision that has permanent legal force and can only be used once.

183 Article 263 of the KUHAP states that the review may examine any court decision, from district to supreme court level, excluding the constitutional court.

sion[184] (Article 266 (3) of the KUHAP). Article 263 of the KUHAP states that requirements for filing a PK include determinative circumstances (novum), inconsistent court decisions, or judicial error.[185] Although the KUHAP explicitly does not allow the public prosecutor to lodge a PK,[186] the IPS uses it to overturn Supreme Court cassations which issue an acquittal. The IPS argues that its action is based on the Supreme Court jurisprudence 55PK/Pid/1996, which granted a prosecutor review and overturned a Supreme Court decision acquitting Muchtar Pakpahan, a labour activist in the New Order era, who was prosecuted for subversion.[187]

In 2016, Anna Buntaran, Djoko S. Tjandra's wife, who was being prosecuted for corruption, challenged the constitutionality of the prosecutor's power to lodge a review based on Article (1) 263 of the KUHAP with the Constitutional Court. She claimed that this practice is not in line with the due process of law, which is promoted by the KUHAP and Article 28 of the Indonesian Constitution. Because of this practice, her husband, who was acquitted by South Jakarta District Court in 2000 and by the Supreme Court in 2001, had to stay in prison because the Supreme Court had decided to convict Tjandra of corruption, based on the prosecutor's review of the 2009 decisions. The Constitutional Court decided that public prosecutors would not be allowed to file a review.[188] The justices argued that Article 263 (1) of the KUHAP limits the applicant of the review only to those convicted as guilty and his/her beneficiaries (heirs). They believed that the prosecutor could not review an acquittal decision, since the KUHAP aims to protect citizens' rights before the state. However, the Chief Prosecutor refused to comply with this Constitutional Court decision, and ordered public prosecutors to lodge reviews to protect victims and state interests instead.[189] In addition, the Supreme Court seems to agree with the Chief Prosecutor, and

184 A review is filed to the first court handling the case, and there is no time limit for when it should be filed (Article 264 (3) of the KUHAP). If a novum is being reviewed, the District Court handles it in the first instance (including a witness hearing), and if the evidence is considered to be strong enough, the case will be sent on to the Supreme Court.

185 See also Article 248(2) of Law 31 of 1997 on the Military Court.

186 Article 263 (1) of the KUHAP states that only those convicted or their heir may file a review with the Supreme Court for binding decisions, except for acquittal or discharge.

187 Justice Andi Andojo, who is well known for his for his integrity, freed Muchtar Pakpahan through a cassation: Decision no. 395 K Pid/1995. Afterwards, the New Order regime pressed the Supreme Court to grant the prosecutor's review and sentence Muchtar (Pakpahan and Tambunan, 2010; Pompe, 2005).

188 See Constitutional Court Decision 33/PUU-XIV/2016.

189 Detik.com *Dilarang MK Ajukan PK, Jaksa Agung: Kami Akan Tetap Ajukan* (The Constitutional Court prohibits the IPS from filing a review, but the Chief Prosecutor says, "we will still file it"), https://news.detik.com/berita/d-3226703/dilarang-mk-ajukan-pk-jaksa-agung-kami-akan-tetap-ajukan, accessed 2 September 2019.

it gives judges the right to accept or reject a review which has been filed by the prosecutor.[190]

Initially, a convicted person or his/her heirs could only file a review once.[191] In 2013, the Constitutional Court, through its Decision 34/ PUU-XI/2013, removed the restrictions in Article 268 (3) of the KUHAP and allowed a review to be lodged more than once. However, the Supreme Court refuses to implement this Constitutional Court decision, since the Supreme Court Law and the Judicial Power Law limits the lodging of a review to only one instance. The Chief Prosecutor supports the Supreme Court's decision, because the IPS finds it difficult to execute death row prisoners when they file more than one review to avoid execution.[192] In order to follow the decisions, the Constitutional Court stated that the provisions on reviews in the two previous laws must be in line with the previous Constitutional Court decision on the KUHAP. Furthermore, following these decisions, the Supreme Court does seem to be accommodating the lodging of reviews more than once.[193]

5.4.5 Execution

Apart from cassation decisions, District or High Court decisions have final and binding status, so the prosecutor can execute those decisions. Article 270 of the KUHAP states that the prosecutor is the only executor of court decisions. Therefore, the prosecutor is responsible for managing the implementation of criminal sentences. For example, putting the accused in prison,

190 Hukum Online, *MA: Larangan Jaksa Ajukan PK Mengikat Kejaksaan* (The Supreme Court: Prosecutors are prohibited from proposing a review which binds the IPS), https://www.hukumonline.com/berita/baca/lt57412b95477b5/ma--larangan-jaksa-ajukan-pk-mengikat-kejaksaan, accessed 2 September 2019.

191 Article 263 of the KUHAP, Article 24 (2) of the 2009 Judicial Power Law, and Article 66 (1) of the Supreme Court Law.

192 Detik.com, *Jaksa Agung: PK Berkali-kali jadi Hambatan Eksekusi Mati* (Chief Prosecutor says that reviewing more than once may hinder capital punishment), https://news.detik.com/berita/2769044/jaksa-agung-pk-berkali-kali-jadi-hambatan-eksekusi-mati?nd 771106com, accessed 2 September 2019.

193 Constitutional Court Decisions 108/ PUU- XIV/ 2016, 1/ PUU- XV/ 2017, and 23/ PUU- XV/ 2017. However, the Supreme Court website requires a review at least once, see Kepaniteraan Mahkamah Agung, *Prosedur Penanganan Perkara Peninjauan Kembali Putusan Pengadilan Yang Telah Memperoleh Kekuatan Hukum Tetap,* (The review procedure for any binding court decision), https://kepaniteraan.mahkamahagung.go.id/index.php/prosedur-berperkara/prosedur-peninjauan-kembali, accessed 3 March 2019 Another Supreme Court's website mentioned that there had been seventeen review cases, of which 78% were cassation decisions that had been objected. Kepaniteraan Mahkamah Agung, *Objek PK adalah Putusan Kasasi* (Review objection is the cassation decision), https://kepaniteraan.mahkamahagung.go.id/index.php/kegiatan/1272-78-objek-pk-adalah-putusan-kasasi, accessed 3 March 2019.

or releasing them from prison (either on parole or not), seizing the evidence for the state, or returning evidence to its owners.[194]

However, public prosecutors can only execute a court decision after obtaining decision minutes from the clerk, and after receiving directions from the Head of a District Prosecution Office. In practice, because of this provision the IPS finds it difficult to enforce court decisions. The IPS complains of a long wait when delivering the minutes of court decisions, which can result in delays in execution.[195] The defendant, or his/her legal representative, may exploit the procedure by bribing the clerk to delay (or not send) the minutes of a decision. As a result, the public prosecutor cannot execute the decision.[196] Another strategy for postponing the execution is to file an injunction to the District Court. In some cases, the court decides to suspend an execution of a final and binding decision.[197]

In some cases, the accused or his/her advocates try to obstruct the execution of a court decision, for instance, by reporting prosecutors who put the accused in the prison to the police. One Criminal Division Head states that the police want to arrest him, because he put powerful political actors in jail. Even though the execution process was carried out according to the Chief Prosecutor's orders, and there was a final and binding decision, the

194 Article 30 (1) of 2004 IPS Law; Article 54(1) of Law 48 of 2009 on Judicial Power; Articles 270–83 of the KUHAP.

195 HukumOnline.com, *MA Akui Lamban Kirim Salinan Putusan,* (The Supreme Court acknowledges that it has been less responsive in delivering a copy of the decision), https://www.hukumonline.com/berita/baca/lt4f8ee3937dcce/ma-akui-lamban-kirim-salinan-putusan, *MA Perketat Pengawasan Proses Minutasi*, (The Supreme Court supervises the process of drafting meeting minutes), https://www.hukumonline.com/berita/baca/lt56d699271544a/ma-perketat-pengawasan-proses-minutasi-putusan, accessed 3 March 2019.

196 LeIP, *Korupsi Lewat Celah Administrasi Penanganan Perkara: Urgensi Reformasi Manajemen Perkara Pada MARI*, (Corruption via an administration gap in the of handling cases: urgent reform of case management in the Supreme Court), http://leip.or.id/korupsi-lewat-celah-administrasi-penanganan-perkara-urgensi-reformasi-manajemen-perkara-pada-ma-ri/, accessed 2 March 2019. A report on simplifying the format of the Supreme Court decision by MaPPI FHUI finds that one of the reasons why drafting meeting minutes can take so much time is because the criminal decision-making format, based on Article 197 (1) KUHAP, is inefficient. In cassation, for example, a decision should contain all the investigations, from the first to the last stages. In fact, judges' arguments on a cassation decision generally consist of no more than two pages, http://mappifhui.org/wp-content/uploads/2016/01/Laporan-simplifikasi_COMPLETED.pdf.

197 See, for example, the Bandung District Court Injunction (*Penetapan*) No. 132/Pid/B/1997/PN.Bdg on 30 September 2002, regulating that a sentence cannot be imposed before the President grants clemency, so the defendant may not reside outside of prison. See Architia Dewi, 2017, Legal certainty of the deadline to impose an imprisonment by public prosecutors based on the KUHAP and Law 16/2004 on the IPS. University of Pasundan, Bandung.

Head admitted that executing such people was costly and risky.[198] To avoid such problems, most prosecutors prefer to detain the defendant at an early stage in the prosecution process. Since the budget for execution is small,[199] it cannot cover the prosecutor's expenditures for jailing an accused person who does not want to go to prison voluntarily, following the court decision. Besides, as discussed in the previous section,[200] the prosecutor often cannot execute the court's decision, because the assets or goods specified in the files are different from the actual assets or goods.

Article 273 (3) of the KUHAP states that the prosecutor must seize any evidence selected by the court for the state. The poor management of confiscated goods, as discussed in Chapter 4, also affects the prosecutor's work throughout the execution process.[201] Since the value of the seized goods decreases when they are stored, the prosecutor cannot maximise state revenue from the execution process (Niniek Suparni, Sri Humana, Imas Sholihah, and Suryadi Agoes, 2017, pp. 4-6). This relates to the IPS annual budget, since the government may increase the annual budget for the IPS after considering its revenue.

5.5 Conclusion

Most Indonesian criminal law experts perceive that current Indonesian criminal procedure adopts the Dutch Civil Law system, with its opportunity principle. However, this chapter finds that legal norms, in both criminal proceedings and the practice thereof, have developed and changed, i.e. not keeping strictly to the previous system, but based on the regime's interest. Some common law systems – such as the pre-trial hearing mechanism in the 1981 Code of Criminal Procedure (KUHAP) – have not been adopted because the regime wants to protect citizens' rights, but in order to find a more agreeable institution than an Examining Judge (*rechter commissaris*). As stated in Chapter 2, Law 8/1981 on the KUHAP was drafted and enacted under the New Order military regime. The regime controlled the criminal justice system by positioning the police as a part of the army.[202] Therefore,

198 An interview with the Head of the General Crimes Division of the Bandung District Prosecution Office, 2015. See also, Berita Satu, *Eksekusi Dinilai Cacat Hukum, Pengacara Susno Laporkan Jaksa* (An execution is considered to have legal defects, Lawyer Susno reports a prosecutor to the police), https://www.beritasatu.com/nasional/254374/eksekusi-dinilai-cacat-hukum-pengacara-susno-laporkan-jaksa, accessed 2 March 2019.

199 See Chapter 3.

200 See 2.2: Investigation.

201 TEMPO, *Barang Bukti di Rupbasan Nyaris Jadi Rongsokan* (Evidence obtained from seizures is almost worn-out), https://fokus.tempo.co/read/1039275/barang-bukti-di-rupbasan-nyaris-jadi-rongsokan, accessed 22 April 2019.

202 In the New Order era, the police were a part of the Indonesian Army and reported to the Army Commander. See Chapter 2.

the KUHAP gives the prosecutor certain supervisory powers over police coercive measures and positions the police as the *dominus litis* during the pre-trial stage. The regime also controlled the IPS by appointing chief prosecutors with a military background and instilling military culture into IPS bureaucracy. As I have discussed in this chapter, the New Order's legacies are retained by the IPS, which affects public prosecutors when interpreting the criminal procedure.

Public prosecutors are bound by IPS internal regulations, when interpreting the KUHAP and exercising their discretion. The internal regulations, which adopt the command system, transfer public prosecutors' KUHAP powers to their superiors. Although the KUHAP grants public prosecutors discretion in exercising coercive measures, and in prosecuting or dismissing cases, as well as in demanding high or low sentences at trial, the IPS obligates prosecutors to first obtain approval from their superior.

As I have elaborated in this chapter, this procedure changes the work of prosecutors from enforcing the law to merely handling situations (cf. Wilson, 1989, p. 36-37). The decision to demand a high or low sentence, for instance, is based on the leader's direction, rather than on the facts at trial. The IPS seems to treat public prosecutors like soldiers who have a responsibility to win a case at court.[203] Therefore, prosecutors will do anything to ensure that, once they are prosecuting a criminal case, they must win it in court.[204] Thus, most public prosecutors perceive a trial to be like battle, and position the defendants or their legal representatives as the enemy. Even if the KUHAP is needed, the IPS allows its prosecutors to violate its stipulations, which can be seen in IPS decisions which order a prosecutor to file a cassation or review for an acquittal decision, which was initially prohibited by the KUHAP. Notwithstanding the IPS performance regarding criminal procedure, this chapter has found that the court prefers to side (in part) with the prosecutor, rather than promoting due process and protecting defendants.

Besides, as I elaborated in Chapter 4, the functional differentiation principle in the KUHAP empowers the police force's position at the pre-trial stage. The KUHAP bridges the investigation stage of the prosecution process by establishing the pre-prosecution process. This results in the prosecutor being incapable of screening evidence and witnesses during the investigation process. The IPS attempts to solve this issue by asking the public prosecutor to supervise the criminal investigators from the beginning of the investigation. However, the police force's refusal to cooperate with the IPS' initiatives, the IPS' small budget, and its heavy workload all make the prosecutors prefer to rely on fact-checking in the investigation files. Not

203 Article 61 PERJA 036/A/JA/09/2011.

204 Personal communication with the Head of the General Crimes Division of the M District Prosecution Office, 2014.

only does the KUHAP limit the time available for the prosecutor to examine investigation files, but the police superior may also intervene in the leadership of the IPS, in order to get their own files accepted. Consequently, public prosecutors seem to prosecute the case, even though they are uncertain about the evidence presented in the files.

The IPS cannot be positioned as a criminal justice filter, simply because of its opportunity principle. It cannot be positioned as such, because prosecutorial discretion is designed to dismiss any case with high political impact on the government. The IPS Law stipulates that only the Chief Prosecutor can dismiss a criminal case for public interest reasons (*Seponering*). This is decided later by the Chief Prosecutor, after s/he receives advice from the high official state institution. Since there is no specific procedure for public prosecutors to use when proposing a *Seponering*, they prefer to stop a case either by returning the investigation files to the criminal investigator or by dismissing a case for legal reasons.[205]

The IPS relies on other criminal justice actors exercising their power. Since they must cover any police expenditure if the defendant escapes, prosecutors prefer to detain the defendant during the prosecution process. This scheme seems more affordable from the prosecutor's point of view, since the IPS only provides a small budget for execution. Other problems during the execution process relate to court administration and the Ministry of Law and Human Rights' poor storage management. In some cases, the prosecutor must postpone an execution, because the court cannot send minutes of the decision on time. Besides, the prosecutor cannot guarantee that evidence seized from defendants or other parties would remain the same, because the Ministry only has limited storage for such evidence.

In addition to criminal procedure, public prosecutors deal with the 1918 Dutch Colonial Criminal Code, or KUHP, with a few adaptations to the current situation. The government has never published an official translation of the KUHP. As a result, numerous different translations and interpretations deviating from the original provisions have created problems in the prosecution process. The KUHP has also been amended several times, but incomprehensively.[206] One relevant provision, which has not been changed since 1960, relates to the categorisation of minor crimes and the amounts of related fines.[207] Since Indonesia's currency has since inflated severely, the

205 Article 25 of PERJA 036/A/JA/09/2011.

206 According to the ICJR, the government has amended the KUHP sixteen times. In 1999, for instance, the parliament added several articles on crimes against state security to the KUHP, via Law 27/1999. The Law prohibits the publication, broadcasting or spreading of communist teachings, Marxism/Leninism, and the expression of desires to overturn or abolish Pancasila as the national ideology.

207 The Government Regulation in Lieu of Law/Perppu 16/1960, on amendments to the KUHP.

1960 provisions are no longer enforceable.[208] Public prosecutors therefore never use provisions to prosecute trivial cases for minor crimes, and never use their prosecutorial discretion to filter out the smaller cases.[209]

This chapter finds that centralised power in the IPS leadership, the IPS' military culture, the vagueness of the KUHAP provisions, and the outdated KUHP make the public prosecutor's role within the criminal justice system equivalent to a postman, who delivers a case based on the government's (and other powerful actors, such as political parties', companies' or the police force's) interests. The IPS is lacking in budgetary support, and political intervention (as I have elaborated in the previous chapters) makes the prosecution process more like a market process. Prosecutors offer their powers as commodities to the regime, in order to show their loyalty, as well as to the market, in order to gain incentives for their organisation.

208 An example from the definition of 'light theft' is: if an item costed 250 IDR in 1960, its value in 2012 is equal to 2.500.000 IDR. This kind of assumption can cause all theft to be defined as 'heavy theft', carrying a sentence of 5 years or more, and can mean that a defendant is detained during the investigation process. The Institute for Criminal Justice Reform, *Menghidupkan kembali Tindak Pidana Ringan dalam KUHP,* (Re-activating trivial crimes in the KUHP), http://icjr.or.id/menghidupkan-kembali-tindak-pidana-ringan-dalam-kuhp/, accessed 3 September 2019. In 2012, the Supreme Court issued PERMA 2/2012, in order to adjust the value of items and fines in the KUHP. However, this PERMA is no longer valid, since the police and prosecutors consider this regulation non-binding.

209 Article 82 of the KUHP regulates the *Afdoening Buiten Process*, carried out by prosecutors and regarding misdemeanours. However, since the fines in the KUHP have never been updated, this regulation cannot be applied.

6 The Indonesian Prosecution Service and The Political Order: Conclusions on the Performance of Public Prosecutors in the Post-Authoritarian State

6.1 Introduction

This thesis has presented and analysed the role of the Indonesian Prosecution Service as a government agency, whose tasks and powers are to maintain security and order. The discussion in this thesis focussed specifically on the legal, historical, and political aspects of the prosecution process in Indonesia's criminal justice system, across different political regimes. After 1998, Indonesia began to reform its constitutional system, including its criminal justice system. The post-military authoritarian regimes have enacted several regulations promoting due process within the criminal justice system. For instance, in 2005 the government ratified the International Covenant on Civil and Political Rights via Law 12/2005. A year after, Law 13/2006 was enacted to protect the witnesses and victims of crimes. Further, a number of Constitutional Court decisions marked changes in the criminal procedure. As discussed in this thesis, in the constitution the position of the Indonesian Prosecution Service remains similar to its position under previous authoritarian regimes, while the code of criminal procedure (KUHAP) continues to position the public prosecutor as "a justice postman".

Recently, in June 2020, the public was shocked and angered by the performance of public prosecutors in the controversial case of a reputable KPK (Corruption Eradication Commission) criminal investigator – Novel Baswedan (Novel). In this case, public prosecutors demanded one-year imprisonments for two of Novel's attackers. The charge was considered to be too light and laden with conflicts of interest, since the two defendants were active police officers.[1] In addition, at trial the prosecutors did not complain about the status of the defendants' lawyers, who were also

1 Prosecutors argued that the motives of both defendants were personal, and that they had no intention of harming Novel by throwing acid on his face, causing serious injury to his eyes. During the trial, the public prosecutors only followed the police investigation files, ignoring a fact-finding report by the National Human Rights Commission and reports from the fact-finding team (TPF), which all mentioned that the attack was related to his job in the KPK. Jakarta Post, House to question attorney general on 'light' sentence sought for suspects in Novel case https://www.thejakartapost.com/news/2020/06/15/house-to-question-attorney-general-on-light-sentence-sought-for-suspects-in-novel-case.html, accessed 22 June 2020.

police officers.[2] For this reason, anti-corruption and human rights activists protested against the prosecutors' performance at trial, stating that the prosecutors had acted on behalf of the defendants, rather than acting on behalf of the victim.[3] This is just one of many controversial cases, in which the public prosecutor was more likely to support the interests of the police and police investigation files, rather than carefully checking and impartially considering fact finding during the trial.

This chapter summarises the findings of this research, and addresses the research questions on the role of the prosecution service in post-authoritarian Indonesia, and the ways in which the public prosecutor operates in practice. The discussion and analysis in this thesis were structured around the following driving questions: *How have subsequent Indonesian political regimes positioned and regulated the Prosecution Service, and how has this affected its performance? What do post-authoritarian Indonesian public prosecutors do in practice, during the criminal procedure? How can this be assessed from the perspective of the rule of law, and in what way can it be improved?*

In the following sections I will present a summary of the key findings of the previous chapters, while revisiting the research questions and making theoretical reflections on the topic. The contribution of this research to relevant academic discussions on the performance of post-authoritarian prosecution services is presented, empirically and theoretically. The chapter ends by offering ideas regarding what can be learned from Indonesia about public prosecutors in authoritarian states. This will provide the basis for several recommendations and suggestions for further research.

6.2 The Indonesian Prosecution Service within the Constitution and its Political Context

The Indonesian Prosecution Service (IPS) has its origins in the colonial state, and some of its features can only be understood through historical analysis. Essential changes took place during many years of authoritarian regimes, and these still define the performance of current public prosecutors. In order to understand this, Chapter 2 considered the influence of the political

2 The defendants' legal team was led by the National Police Law Division Head, Insp. Gen. Rudy Heriyanto Adi Nugroho, who was serving as Head of the Jakarta Police General Crime Division during the investigation of the acid attack, in April 2017. The Jakarta Post, KPK urged to take on Novel's acid attack case after prosecutors demand light sentence, https://www.thejakartapost.com/news/2020/06/20/kpk-urged-to-take-on-novels-acid-attack-case-after-prosecutors-demand-light-sentence.html, accessed 22 June 2020. For this reason, Novel objected to the prosecutors' performance at trial, in which they positioned themselves on behalf of the defendants, rather than acting on his behalf as victim.

3 Benarnews, Indonesia: Rights groups question acid-attack case trial https://www.benarnews.org/english/news/indonesian/trial-questioned-06222020161932.html, accessed 23 June 2020.

environment and institutional development of the IPS, before, during and after the authoritarian regimes of Guided Democracy and the New Order.

Like other post-colonial states, Indonesia has an ambition to apply the rule of law, in order to provide its citizens with better protection and justice. However, as this thesis found, Indonesian political regimes during most periods have prioritised the maintenance of order as their main goal for justice administration. Further, a vague constitution, interpreted in the regime's best interests (i.e. to maintain political order), influenced the public prosecutor's role in criminal procedure. This was different during the 1950s, which was a period of political effort to foster the rule of law within the criminal justice system. At the time, a clear provision in the 1950 constitution, promoting the due process of law, helped to prevent political intervention in criminal procedure. In addition, a prosecutor's status as magistrate and the IPS' institutional setting as part of the judiciary both seemed to help the Prosecution Service maintain the rule of law within the criminal procedure.[4]

During Guided Democracy, President Soekarno declared the end of the separation of powers doctrine and re-enacted the 1945 Constitution, which contained no provisions on either due process or judicial independence. He obtained full support from the army to place all the political power in his hands. From that time onwards, the prosecution service and police were militarised. The IPS was detached from the judiciary, and the Chief Prosecutor was positioned as a cabinet member. All public prosecutors were indoctrinated with military values, to ensure their loyalty to the regime. The government applied colonial law with Indonesian-based interpretations, while trying to create Indonesian legal norms to replace the colonial model. In the Guided Democracy era (1959-1965), the *Pengayoman* concept was proposed and established as an Indonesian way to make legal interpretations. According to this concept, the rule of law must be based on community wisdom, represented by the leader's wisdom. Therefore, the idea of the President as the greatest leader and wisest man in the community was promoted. For this reason, the President could intervene in criminal procedure.

During the New Order period, the military took the lead in the criminal justice system. KOPKAMTIB (Operations Command for the Restoration of Security and Order) was created for political policing, devoting a criminal police force to the maintenance law and order. It could, for security reasons, instruct and intervene in the criminal procedural process, via the police, Prosecution Service or court. Military influence over the Prosecution Service was quite obvious. Five military generals were also Chief Prosecutors during Soeharto's era. Although a Chief Prosecutor had the same structural status in the cabinet as the Commander of the Armed Forces (ABRI), in practice the two were not equal. Since the military rank of Chief Prosecutor

4 See 2.6 Parliamentary Governments

was only a two-star or three-star General (lower than a four-star military commander), the Chief Prosecutor's level was below that of the ABRI Commander.

The New Order military regime enacted the criminal procedure code (KUHAP) in 1981, and gave it military features. The KUHAP applies the principle of Functional Differentiation, which was designed to entrench military power in the criminal justice system, via the police. This principle allows the police to initiate an investigation and exercise coercive measures, without the prosecutor's supervision and with a minimum of judicial control. In addition, the KUHAP adopts military unity of command by implementing the built-in control principle, wherein the leaders monitor their investigators and prosecutors. For this purpose, both investigators and prosecutors must seek approval from their leadership, before making decisions on criminal procedure.[5]

This situation was not easy to change after the 1945 Constitution was amended during the post-authoritarian military regime. The amended constitution indeed guarantees the independence of the judiciary, but it still bears some features of the authoritarian model, including the application of repressive legislation.[6] In addition, the post-authoritarian government seemed not to take criminal procedural rights seriously. The amended constitution has no provision guaranteeing due process in criminal procedure, as in the 1950 Constitution. By way of comparison, the 1987 South Korean post-authoritarian constitution explicitly stipulates the value of due process and gives detailed provisions on criminal procedure (Cho 2006). Since 1988, enormous effort has been made to reform the criminal justice system, including eliminating the strict hierarchical bureaucracy in the 2004 Prosecutor's Law, in order to gain a more independent prosecutor and prevent the regime making political interventions in the prosecution process (Lee 2014a, 77). In opposition to this, the Indonesian post-authoritarian government retained certain provisions obliging the IPS to serve the rulers' political interests. As I discussed in Chapter 2, the President lost most of his/her control over the judiciary, the police and the KPK during the constitutional amendment process. Thus, s/he exploited the Prosecution Service's vague position in the constitution. The government succeeded in hindering the parliament's draft of the IPS Law, and replaced it with its own draft. Unlike the parliament's draft, which was adjusted to support reform of the Prosecution Service by preventing the Chief Prosecutor becoming a member of the cabinet, the IPS Law 2004 retains the President's control over the Chief Prosecutor and sets the IPS up as the executive body.

The case of Indonesia constitutes an example of the way in which prosecution services evolve within countries that are marked by authoritarian tendencies. Unlike post-authoritarian governments in Latin America, such as Chile, Guatemala and Mexico (which recreated and reorganised

5 See Chapter 5
6 See Chapter 2 and Chapter 5

their prosecution agencies to be more independent and accountable, by reforming their codes of criminal procedure and establishing private prosecution to improve victims' access to the criminal justice system (Michel 2018; Hafetz 2002)), Indonesian post-authoritarian governments have kept the prosecution service functioning as a government instrument, similar to previous regimes; they have also not reformed the KUHAP. A new special agency (the KPK) was established to prosecute corruption, but it has no aims to promote due process in the criminal justice system. In contrast with the post-authoritarian South Korean and Japanese prosecution services, each of which adopted the inquisitorial system (Lee 2014a; Johnson 2002), the Indonesian Prosecution Service repealed the prosecutor's status as magistrate, by limiting their discretion and independence in handling criminal cases. This indicates that designing the prosecution service to strengthen its control over society is a dominant feature of the Indonesian criminal justice system. In short, post-authoritarian governments in Indonesia have retained the IPS' authoritarian design. Furthermore, there are no clear regulations guaranteeing the prosecutor's independence during the prosecution process. In fact, the IPS' status in the constitution remains similar to its status under the previous authoritarian regime.

6.3 The Nature of the Indonesian Prosecution Service

On 22 July 2016, during my fieldwork, I attended the IPS anniversary in the Supreme Prosecution Office. I was struck by the military atmosphere of the ceremony.[7] I saw prosecutors stand and line up neatly in the field, like soldiers, while the leaders and guests sat in a shady tent in front of them. I heard background music from a marching band, hired from army headquarters especially for this ceremony. At the same time, three junior prosecutors folded and presented the *Panji Adhyaksa* (the military flag bearing the IPS symbol). This *Panji* is only presented publicly once a year, during the IPS anniversary ceremony.[8] On this occasion, the Chief Prosecutor – as the supreme leader of the IPS – delivered a speech called the "Daily Order", which was intended as a guideline for all prosecutors, throughout the countries, for a year.[9]

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7 I was attending the ceremony with the delegation of the Dutch SSR (*Studiecentrum Rechtspleging*/the Judicial Training and Study Centre). During the ceremony, a prosecutor said to me (guessing at the SSR's impression of the IPS anniversary): "I believe that the SSR delegation might question our status as a former Dutch Colony. Since they have seen that this military ceremony is more like those which happen in other communist totalitarian prosecution services, they might be forgiven for thinking that Indonesia was a colony of the Soviet Union". Personal Communication, 22 July 2016.

8 See Chapter 3, section 3.2: The *Één en Ondeelbaar* Doctrine and Organisational Culture

9 See the official website of the West Jakarta District Prosecution Office, *Perintah Harian Jaksa Agung RI* (Chief Prosecutor's Daily Order): http://www.kejari-jakbar.go.id/index.php/profil/perintah-harian-jaksa-agung-ri, accessed 22 August 2018.

This thesis has found that the IPS' problems with promoting due process relate to issues of an institutional nature. In essence, there are problems with the Prosecution Service's position within the state organisation and hierarchical bureaucracy, as well as with its military culture, limited budget, and the lack of professionalism shown by prosecutors when handling their tasks and powers. Together, analysis of each of these aspects contributes to explaining the behaviour of the Prosecution Service as an institution. Apart from the IPS' lack of political power within the constitution, the root of its bureaucratic dysfunction is found in making prosecutors behave like the military; this generates an important erosion in the administrative quality of criminal justice, for three reasons.

The first reason is that skills decline. Since military hierarchical orientation does not fit the prosecutor's role as magistrate, the Prosecution Service finds it difficult to manage its human resources. Most prosecutors do not want to be operators, instead desiring to become managers, with more power. The IPS organises its prosecutor placement system based on a prosecutor's rank. A high-ranking prosecutor cannot occupy a position as an operator in a District Prosecution Office, because the office should be led by a prosecutor of a lower rank. As a result, high-ranking prosecutors accumulate in the High and Supreme Prosecution offices, even though the District Prosecution offices lack skilled operators. In addition, since the IPS employs a promotion and transfer procedure to control prosecutors' loyalty to their leaders, prosecutors' career paths depend on such loyalty. Although the IPS provides training programmes in specific legal techniques, such as administrative law, prosecutors who pass such training too often do not get a promotion compatible with their training background.[10] The leaders assess prosecutors' loyalty based on their performance when carrying out orders within the prosecution process, even if they must break the law by doing so. As a result, a skilled public prosecutor, who would promote the rule of law, may find it difficult to get a promotion.

The second reason is that the prosecutor's job has become harder. As I elaborated in chapters 3 and 4, the post-authoritarian regimes have a preference in common with the previous regime: using the IPS as a government instrument, to accomplish the government's agenda. This applies not only to prosecuting criminal cases, but also to maintaining political stability as the state intelligence agency, and to providing legal assistance as the state attorney in civil and administrative law disputes. Although the IPS suffers from a lack of prosecutors, such additional functions can be served by exploiting the prosecutor's position in a similar way to that of a soldier. As a result, prosecutors suffer from a heavy workload.[11] However, in some cases more than one division had similar tasks, meaning that prosecutors were confused about how to achieve their goals. The IPS leadership's broad discretion in performing their tasks eventually becomes a guide for pros-

10 See 3.4.1 Recruitment and Training

11 See 3.3 The Prosecution Service Structure and Hierarchical Control

ecutors in handling their various duties. Therefore, their work patterns have changed—they no longer simply have to enforce the law, but instead need to handle the situation as defined by the leader (cf. Wilson, 1989, p. 37).

The third reason is corrupt practice within the IPS. Compared to other criminal justice actors, such as the police and judiciary, the IPS receives the smallest budget. Thus, a prosecutor's salary is lower than that of both a policeman/woman and a judge. Surprisingly (as reported in its annual report), the Prosecution Service is capable of exceeding the government target for handling criminal cases, even though its budget is limited.[12] As this thesis found, IPS managers must strategise this limited budget, by: transferring any allocation which cannot be spent in other divisions to divisions which lack operational funding; and allowing operators to fund their operations with *rezeki* (illicit money) donated by those with an interest in the prosecution process.[13]

The Prosecution Service leadership monitors the overall performance of its operators, from their success in overcoming and processing limitations, to their achievement of organisational goals. Further, since the Prosecution Service adopts military-style bureaucracy, a prosecutor's career path depends on his/her loyalties. One way of demonstrating loyalty that is common among prosecutors is to provide their leadership with *upeti*[14] (cf. Butt 2012; Lolo 2008; Kristiana 2010).

These organisational norms have succeeded, as long as those shaping IPS structure and promoting rule-breaking have stayed in line with the government's political interests. It is no wonder that public prosecutors prefer to serve their leadership's interests and reinforce the regime's values (cf. King 1981, 27; Wilson 1989, 26). In addition to internal barriers imposed by top managers, who benefit from maintaining the current status quo within the IPS, the approach of donor agencies and NGOs seems to ensure that the IPS bureaucracy remains unreformed.[15] These all create an image of the Prosecution Service as an institution whose leadership, general culture and institutional dynamics all conspire to protect its own interests, condone corruption, and prevent change.

12 The Prosecution Service is always proud of its performance when criminal prosecutions exceed the target set by the government. See the IPS annual reports from 2011 to 2016. See also chapters 3 and 5.

13 Similar money-making practices via criminal cases have also happened in in Myammar, Bangladesh and China (Cheesman 2015, 190–91).

14 *Upeti* means 'gifts', which are provided by subordinates to their superior as a symbol of the willingness of children to be under *Bapak*'s protection.

15 See 3.5: A Reform Effort

6.4 Public Prosecutors in the Criminal Procedure: Crime Fighters and Guardians of Political Order

The criminal justice system study also relates to the study of legal actors who apply and interpret the system. In this sense, this thesis has attempted to analyse the extent to which the post-authoritarian public prosecutors define, investigate and prosecute crime. This research has found that the role of the public prosecutor in the Indonesian criminal justice system cannot be isolated from the political preferences of the various Indonesian political regimes.

The 2004 IPS law mentions that a public prosecutor's function is to prosecute a criminal case based on justice and truth, by considering whether or not the evidence is legitimate.[16] However, this provision seems to be relatively weak, and it contradicts other rules which position the IPS as the regime's political instrument. As I discussed above, the authoritarian government promoted a military culture within the IPS, and placed public prosecutors in a similar position to military troops, obliging them to follow IPS leadership decisions when handling criminal cases; this has remained unchanged.

As this thesis has demonstrated, post-authoritarian governments have relied on criminal justice actors, such as the police and public prosecutors, to maintain order and achieve higher rates of arrest, prosecution, conviction and incarceration. Furthermore, unlike public prosecutors in other inquisitorial countries (such as the Netherlands, Germany or France), who have managerial roles, control an increasing workload, and restore public trust and the balance disrupted by an offence (Fionda 1995), Indonesian public prosecutors work merely as crime fighters for and guardians of the political order.[17]

The construction of the prosecutor's position is also connected with his/her relationship with the police. Compared with current inquisitorial procedure in countries like the Netherlands, France and Germany, which put judicial supervision at the centre of the procedural model of criminal justice (Crijns, Leeuw, and Wermink 2016; Tak 2003; Boyne 2017; Hodgson 2005; Fionda 1995; Jehle and Wade 2006), in Indonesia it is the police who dominate the criminal process. Since the Indonesian Code of Criminal Procedure (KUHAP) currently applies the principle of functional differentiation, which defines the stages of criminal procedure based on the actors involved, the public prosecutor and the court have limited powers to supervise the investigation process and control its coercive measures (such as arrest and detention).

As this thesis has demonstrated, the amended constitution set the police up to replace the military's role in maintaining security and order. Although the post-authoritarian government positioned the police as a civilian

16 See Article 8 of the 2004 IPS Law.

17 See 3.4.4: The Budget

institution, they kept its military bureaucracy and culture. Therefore, it is not surprising that the police cannot escape their military authoritarian legacy, when handling criminal cases.[18] In some cases the police provide a budget for the public prosecutor, but they may also threaten prosecutors, forcing them to accept the police investigation file. Since the public prosecutor needs the assistance of the police to guard and secure defendants and evidence, as well as their own safety during criminal proceedings, the Prosecution Office leadership must have a good relationship with the police leadership. As a result, some District Prosecution offices handle more criminal cases than their budget can cover.

In order to discuss the role of the public prosecutor in criminal procedure, in the first chapter of this thesis I presented some general criminal justice model theories, which might influence the performance of public prosecutors.[19] Although Indonesia has become more democratic, its criminal justice system model cannot simply be described as Packer's due process and crime control model.[20] All of the models underline how criminal justice actors must perform their tasks and powers in line with the rule of law, and that they must not break the rules of the game during that process.

However, as this thesis has shown, the Indonesian government tends to promote the family model within its criminal justice system; as a system which is based on the government's love for its citizens as its children, and on mutual respect via the *Pengayoman* model. This model depends on significant trust in public officials, because it provides them with great discretion at almost all stages of the system (cf. Foote 1992). A notable example of this model is the benevolent paternalism of the Japanese criminal justice system, which emphasises the prevention of criminal cases. In this manner, criminal justice officials use their discretion for at least three reasons: encouraging leniency (including diversion) at the pre-trial stage, de-emphasising imprisonment, and promoting community dispute resolution (Foote 1992). However, the Indonesian criminal justice system is designed to strengthen its control over society, and to achieve higher rates of arrest, prosecution, conviction, and incarceration. Furthermore, the political order model indeed suits the Indonesian situation during authoritarian regimes. Indonesian criminal justice actors regularly ignore the rules of the game in order to achieve their goals. They apply the criminal procedure, as long as it is in line with their interests, but they prefer to ignore rules which do not suit their objectives.

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18 See 4.3.1.1: The Police

19 See 1.3.3: The Role of the Public Prosecutor in Criminal Procedure

20 Although Griffiths' family model has been promoted, in order to help offenders reintegrate into society through the *Pengayoman* concept, in practice, detention centres and prisons could not run serious lessons or training for offenders, since they were already suffering from over-crowding and limited budgets. See Chapter 4.

Since 1998 there have been many efforts to promote due process within the criminal procedure. However, as I have discussed in previous chapters, the regime has little intention of promoting due process, tending more towards features which apply either crime control or the political order model in the criminal procedure. The public prosecutor is bound to IPS internal regulations, when interpreting the KUHAP and exercising discretion. The internal regulations, which adopt the command system, transfer the public prosecutor's power within the KUHAP to his/her superior. Although the KUHAP grants public prosecutors discretion to exercise coercive measures, to prosecute or dismiss cases, and to demand a low or high sentence at trial, the IPS obligates prosecutors to first obtain approval from their superiors.[21] The IPS treats public prosecutors like crime fighters with a responsibility to win cases at court. Most public prosecutors perceive a trial to be a battle, and they position defendants or their legal representatives as their enemy. This procedure changes the work of prosecutors from enforcing the law to merely handling situations. The decision to demand a high or low sentence, for instance, is based on the leader's direction, rather than on the facts at trial. Since one of their goals is winning cases in order to achieve a high conviction rate, they tend to ignore legal controls. Just how important it is for the IPS to win a criminal case is demonstrated when the KUHAP prohibition on filing a cassation or review for an acquittal is ignored.[22]

In 2012, the post-authoritarian government enacted Law 11/2012 on the Juvenile Justice System. The law promoted and reinforced restorative justice in the victim's interest, while also trying to find the best resolution for repairing harm caused by juvenile criminal behaviour. However, as the ICJR reported, public prosecutors preferred to not implement this restorative model fully. As shown in four district courts in Jakarta Province, public prosecutors still demanded prison sentences for more than 80% of 259 juvenile cases (Maya and Napitupulu 2019). Although the restorative model is also promoted, it seems that public prosecutors still perceive themselves as crime fighters.

Apart from being crime fighters, public prosecutors have a function to maintain political order. As I discussed in the previous section, the IPS' dependency on the government and parliament force public prosecutors to consider their political preference when performing their tasks and exercising their powers. In addition, public prosecutors must reinforce the government agenda, in order to maintain stability. One such example is how public prosecutors respond to the developmentalist values of the Joko Widodo administration. Instead of prosecuting corruption cases related to infrastructure projects, the public prosecutor prefers to offer legal assistance to those projects. Another example is the case of former Governor of Jakarta,

21 See 5.2.3: Coercive Measures (*Upaya Paksa*)

22 The Supreme Court allowed prosecutors to appeal the acquittal decision, instead of promoting due process and protecting defendants. See Chapter 5 for further discussion.

Basuki Tjahaja Purnama (also known as Ahok), who was charged under anti-blasphemy law. Although there was much criticism from criminal law observers, who believed that the prosecution process against Ahok was anything but political,[23] the IPS insisted on prosecuting and sending Ahok to jail for two years, because of the enormous political pressure from his political opponent and from conservative Muslim groups.[24] As a result, Ahok lost the governor election. However, in response to the criticism from Ahok supporters, the IPS also prosecuted Buni Yani (a man who helped send Ahok to jail by sharing the edited version of Ahok's controversial comments), and sent him to prison for one and a half years, for hate speech.[25] Such cases show how the IPS uses its prosecutorial powers to maintain political stability.

As this thesis has demonstrated, prosecutorial discretion is only exercised in order to maintain the political order. Since only the Chief Prosecutor can exercise prosecutorial discretion, only cases with high political impact on the government have been dismissed for public interest reasons (cf. Chambliss and Seidman 1971, 503). Furthermore, unlike the Dutch prosecutor, the Indonesian public prosecutor cannot be positioned as a criminal justice filter, simply because of its opportunity principle. I argued that such a provision was designed to prevent problems caused by public prosecutors' exercising of discretion in criminal cases dismissal. As a result, public prosecutors prefer to stop a case either by returning the investigation files to the criminal investigator or by dismissing a case for legal reasons[26] (cf. Chambliss and Seidman 1971, 506).

The experiences of Indonesian post-authoritarian public prosecutors within criminal procedure demonstrate that the rule of law is far from having been implemented. The centralised power in the IPS leadership, the IPS' military culture, and the vagueness of the criminal procedure provisions all seem to contribute to the role of public prosecutor as being a crime fighter for, and guardian of, political order. In the next section I will discuss policy recommendations for strengthening the rule of law in the prosecution process.

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23 Rafiqa Qurrata A'yun, Politics complicate blasphemy investigations in Indonesia and around the world https://theconversation.com/politics-complicate-blasphemy-investigations-in-indonesia-and-around-the-world-68817, Simon Butt, Why is Ahok in prison? A legal analysis of the decision https://indonesiaatmelbourne.unimelb.edu.au/why-is-ahok-in-prison-a-legal-analysis-of-the-decision/, accessed 10 November 2020

24 BBCNews, Mass prayer rally in Jakarta against governor 'Ahok', https://www.bbc.com/news/world-asia-38178764 accessed 10 November 2020

25 The Jakarta Post, Prosecutors seek two years for Buni Yani https://www.thejakartapost.com/news/2017/10/03/prosecutors-seek-two-years-for-buni-yani.html, accessed 10 November 2020

26 See 5.3: Prosecutorial Discretion in Criminal Case Dismissal

6.5 Towards the Rule of Law Approach in the Prosecution Process: Policy Recommendations

The IPS, in general, suffers from a lack of authority, budget and independence. This has serious implications for public prosecutors' performance within the criminal justice system. These problems are very difficult to solve, since they are rooted in political patterns that have developed over many years. The future of the IPS depends, to a large extent, on the political future of Indonesia in general, and it is therefore difficult to predict. Some of the findings in this thesis, however, point in the direction of possible solutions which would help prosecutors' performance in following the demands set by the rule of law.

First and foremost, due process features within the criminal procedure should be better guaranteed, and even mentioned in the Constitution. In addition, the current criminal procedure (KUHAP) must be revised. Actually, the revision effort was initiated in 2004.[27] The draft was previously discussed in the house of representatives (DPR), and would have been enacted in 2014, if criminal justice actors such as the KPK[28], police[29] and NGOs had not rejected the plan.[30] In the 2012 Draft of the KUHAP, some obstacles are implemented to protect the defendant from the arbitrary power of criminal justice actors. The draft established a new actor – *Hakim Pemeriksa Pendahuluan/HPP* – who is, to a certain extent, similar to the Dutch Examining Judge (*Rechter Commissaris*), in that they can control all coercive measures, such as detention, arrest, wiretapping and seizure, at

27 Komite Masyarakat Sipil untuk Pembaharuan KUHAP (The Civil Society Committee for reform of the KUHAP), *Perjalanan Rancangan KUHAP* (The Pathway of the Draft KUHAP) http://blog.pantaukuhap.id/perjalanan-rancangan-kuhap/, accessed 15 June 2020.

28 Tempo, *12 Poin RUU KUHAP yang bikin KPK lemah* (12 Points in the Draft KUHAP which weaken the KPK). https://nasional.tempo.co/read/551038/12-poin-ruu-kuhap-yang-bikin-kpk-lemah?page_num=2, accessed 15 June 2020.

29 Gressnews, *Hakim Komisaris ganjalan Polisi terapkan KUHAP baru* (The Examining Judge makes the Police Reluctant to Apply the New KUHAP) http://www.gresnews.com/berita/hukum/84539-hakim-komisaris-ganjalan-polisi-terapkan-kuhap-baru/, accessed 17 December 2019.

30 LBH Jakarta, *Hentikan pembahasan rancangan KUHAP pada DPR periode ini* (Stop the Draft KUHAP Deliberations in the House of Representatives Immediately!) https://www.bantuanhukum.or.id/web/hentikan-pembahasan-rancangan-kuhap-pada-dpr-periode-ini/. As I observed during my fieldwork, not all NGOs rejected the Draft KUHAP entirely. The ICJR and LeIP, for instance, believed that the draft was better than the current criminal procedure code, because it had more features for implementing due process within the criminal procedure, as the judge would control any coercive measures. The strongest opponent of such features was the ICW, which had support from the KPK. The KPK did not want coercive measures supervised by the judge; instead, it wanted to keep the current KUHAP concept, with minimum supervision by the judge. However, most NGOs agreed that the draft discussion should be postponed, since the parliamentary discussion was inaccessible. They were afraid that such a discussion would result in the worst KUHAP provisions.

the pre-trial stage.[31] Further, the draft returns the *dominus litis* to the public prosecutor, authorising him/her to supervise the police investigation, as well as granting him/her prosecutorial discretion to dismiss a case, in the public interest. Such features would have positive effects on promoting due process during the pre-trial procedure. Another crucial issue in achieving a more efficient criminal justice system is the establishment of a law that regulates the tasks and powers of criminal justice actors. Apart from repealing the functional differentiation principle in the current KUHAP, a law that governs and bridges the criminal justice actor authorities is also needed. The law must clearly regulate which institution is responsible for the policies of criminal justice, and ensure the security of criminal justice officials. Moreover, since all criminal justice actors have their own laws that are not harmonised and synchronised, such laws must be amended in order to prevent siloism (or *ego-sectoralism*). Another revolutionary measure is the merger of the National Police Criminal Investigation Body (BARESKRIM/ *Badan Reserse dan Kriminal*) with the IPS. As we can learn from the KPK's success in prosecution corruption, the investigation and prosecution process should be undertaken by one institution. By merging the BARESKRIM into the IPS, the tension between criminal investigators and public prosecutors could be reduced.

A better criminal justice system cannot be achieved solely by such revisions of criminal procedure. Another important change to ensure promotion of the rule of law is institutional reform of the IPS. As I argue elsewhere, the position of Chief Prosecutor, the IPS' military culture, the public prosecutor's status (which is similar to that of a military civil servant), and the IPS' limited budget have all contributed to the prosecutor's performance within the criminal justice system. Therefore, several regulatory measures would be required in order to remedy these flaws.

First, the Chief Prosecutor's position within the state organisation should be limited to high state official status (*Pejabat Negara*), rather than cabinet status. This is less revolutionary than it seems, since the amended constitution would position the IPS as part of the judiciary.[32] Furthermore, the mechanisms for the Chief Prosecutor's appointment and term should be clearly defined. The government could copy the selection process for the KPK Commissioner, who is selected by an independent committee with a good political record. In addition, the IPS' responsibility to parliament should be limited to general policies on budgets and bureaucracy. Thus, parliamentary members would not be able to interfere with the prosecution process in particular cases.

A second measure would be to redefine the *en een ondeelbaar* doctrine, which became a fundamental principle in the implementation of military culture. This doctrine has resulted in complicated problems with IPS

31 See the 2012 Draft KUHAP in https://icjrid.files.wordpress.com/2012/12/r-kuhap.pdf
32 See 2.9: Post-military Regimes: The *Reformasi* (1999-2019)

bureaucracy.[33] By repealing its military culture, the IPS bureaucracy could promote professionalism among prosecutors handling criminal cases. The prosecutor's status as a civil servant could be redefined. The IPS could imitate the German or Dutch prosecution system, which positions the public prosecutor not only as a civil servant but also as a magistrate. The IPS could merge prosecutor training with the training of judges, and give prosecutors independence in handling cases by repealing military procedures such as RENDAK or RENTUT.[34] Another issue – the IPS' limited budget – should be addressed by the government. The government is obliged to cover a prosecutor's expenditure during the prosecution process, in order to prevent corrupt practices, such as the prosecutor accepting *rezeki* from defendants or victims. Since it is almost impossible to gain a sufficient budget for prosecuting all criminal cases, the government should provide guidelines for public prosecutors on criminal case dismissal in the public interest.

However, the IPS must gain political support from civil society organisations, academia, politicians, and donor organisations, to promote the above recommendations. The IPS may use intelligence prosecutors to conduct preconditioning,[35] to promote public support for the IPS and to identify reformers in the political party who can assist the IPS in achieving its ends via the legislative process. As we can learn from criminal justice reform in South Korea and in Latin American post-authoritarian countries, support from civil society activists, human rights lawyers, and academia could assist the government in restructuring its prosecution system to guarantee the rule of law (Hafetz 2002; Lee 2014a).

6.6 Suggestions for Further Research

This thesis was an initial effort to understand the post-authoritarian public prosecutor in Indonesia. Since this thesis focuses only on the prosecution service, further research could be carried out on several themes and topics, including legal and non-legal issues with the post-authoritarian criminal justice system.

The first topic is of a legal nature and was already mentioned above: it concerns developing criminal procedure that has more due process features, and which harmonises laws on criminal justice actors in order to develop a better criminal justice system. A study on other criminal justice actors, especially the Ministry of Law and Human Rights, is also urgently needed in Indonesia. Since Indonesia still adopts the inquisitorial civil law system, as I discussed in this thesis, the MLHR plays an essential role in maintaining criminal justice policies, as well as in guaranteeing due process during the

33 See 3.4: Human Resource and Budget Management
34 See 5.4: The Trial Process
35 See 4.2.3: The Public Prosecutor as State Intelligence

criminal procedure.[36] Such a study would enrich our understanding of post-authoritarian governments' power within the criminal justice system

The second topic is more of a political nature. It relates to political contestation among and between criminal justice actors and NGO activists. This thesis has shown that the police are probably the most powerful criminal justice actors in post-authoritarian Indonesia; replacing the military, when dealing with security issues.[37] It would therefore be useful to investigate the role of the police in the deliberation of criminal procedure in parliament. Further, as illustrated by this thesis, in post-authoritarian Indonesia NGO reformers with international donor support play an important role in legal reform, including the reform of criminal justice actors. Despite some resistance from criminal justice actor organisations, internally, the reformers' approaches in promoting their agenda seemed to contribute their success.[38] Thus, research on NGO strategies to promote their reform programmes would assist our knowledge of criminal justice reform strategies in post-authoritarian countries.

36 See 4.3.3: The Ministry of Law and Human Rights
37 See 4.3.1.1: The Police
38 See 3.5: A Reform Effort

Summary

Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia

Despite the demise of the New Order authoritarian military regime in 1998, Indonesian post-authoritarian governments have continued to rely on criminal justice actors, such as public prosecutors, to maintain political order. Although the post-military authoritarian regimes have enacted several regulations promoting the rule of law in the criminal justice system, they have a preference in common with the previous regime which is to use it to accomplish their political agenda.

The aim of this thesis is to provide an analysis which considers the context in which the Indonesian Prosecution Service (IPS) conducts its relationship with different regimes, as well as with other criminal justice actors, societal actors, and the public at large. Moreover, this thesis tries to locate the study of the IPS within a broader literature on public prosecutors and prosecution services in post-authoritarian countries, and to examine the socio-legal dimensions of the public prosecutor's role, in promoting the rule of law or in maintaining the political status quo via the criminal justice system.

Chapter 1 sets the scene for the thesis, by providing an introduction to the topic and elaborating the theoretical framework underlying the research. This includes discussion of the rule of law concept within the criminal justice system, institutional theory within public administration, and the social function theory within criminal procedure. The chapter also discusses the socio-legal research approach used in this thesis: doctrinal research to understand the normative system of the IPS; empirical research to examine what the IPS does in practice.

Chapter 2 deals with the Prosecution Service's legal history and its transformation from the pre- colonial eras up until the present. Essential changes took place during many years of authoritarian regimes, and these still define the performance of current public prosecutors. This chapter explores how the position of the Prosecution Service within the criminal justice system has been used by various regimes to retain their political power and maintain order. A vague constitution, interpreted according to the regime's interests (i.e. maintaining political order), has influenced the public prosecutor's role in the criminal procedure. This was different in the 1950s, which was a period of political effort to foster the rule of law in the criminal justice system. A clear provision in the 1950 constitution, promoting the due process of law, helped prevent political intervention in the criminal procedure. In addition, the prosecutor's status as magistrate and the IPS' institutional setting as part of the judiciary seemed to help their

role in maintaining the rule of law in the criminal procedure. However, the rise of military-political power in 1959 halted this effort. The re-enactment of the 1945 constitution, which had no provisions on either judicial independence or due process, allowed the authoritarian regimes to intervene in criminal procedure at will. This situation did not change following the most recent amendment of the 1945 Constitution in 2002. Although the new constitution guarantees judicial independence and the protection of human rights, it has no provisions on due process like those in the 1950 constitution. Besides, the Prosecution Service Law 2004 still makes the IPS' position dependent on the President's political power. As this thesis finds, the Prosecution Service indeed follows the President's political decisions, when managing its prosecution policies.

Chapter 3 examines the way in which the Indonesian Prosecution Service manages its bureaucracy. There are problems with the Prosecution Service's hierarchical bureaucracy, as well as with its military culture, limited budget, and the lack of professionalism shown by prosecutors when handling their tasks and powers. The Prosecution Service maintains its military interpretation of the één en ondeelbaar (one and indivisible) doctrine, in order to impose loyalty on its prosecutors. This militaristic culture affects the bureaucratic structure of the IPS, which emphasises a command hierarchy. Moreover, the IPS uses human resource management, such as promotion and transfer procedures, to control prosecutors' loyalty to their leadership. It is no wonder that in these conditions public prosecutors prefer to serve their leadership's interests, and reinforce the regime's values or interest as well.

The performance of the IPS is also affected by its budget constraint, in the sense that public prosecutors do not have the possibility to perform all the actions required to handle criminal cases properly. For example, most prosecutors tend to remain passive in using their powers to supervise the investigation process, since the IPS pre-trial budget does not cover the cost of prosecutors being actively involved from the beginning of an investigation. On the other hand, although its budget is limited, the Prosecution Service is still capable of exceeding the government target for handling criminal cases. This is because top-level managers in the IPS allow operators to seek additional funds to cover their operational expenditures.

Chapter 4 seeks to understand how the Indonesian Prosecution Service's position as a government instrument influences its role within the criminal justice system, and the IPS' relationship with other criminal justice actors. Since the IPS' tasks and powers have been adjusted to serve the regime's political interests, public prosecutors' functions are no longer in line with their core duties within the prosecution process. The IPS adjusts public prosecutors' functions within IPS law – i.e. as public prosecutors in criminal cases, as state lawyers in civil law disputes and administrative cases, and as state intelligence – so that the functions remain in line with the demands of political actors. This has resulted in confusion amongst public prosecutors, in terms of how to achieve their goals. As this study reveals,

public prosecutors basically rely on the orders of IPS top-level managers in performing their tasks.

The KUHAP (*Kitab-Undang-undang Hukum Acara Pidana*/ Code of Criminal Procedure) introduces the principle of functional differentiation – defining three main powers for criminal justice actors, which are based on the four stages of criminal procedure. The police lead preliminary investigations and the stages of investigation. Public prosecutors only enter at the prosecution stage, when they prepare for and present their case against the defendant in court. Judges take the lead at the trial stage, when a panel of judges examines the case and decides whether the defendant is guilty or innocent; if the defendant is found guilty, the judges impose a punishment.

In addition to this principle, the Indonesian criminal justice system has no special regulation similar to RO (*Reglement op De Rechterlijke Organisatie* en *Het Beleid der Justitie*, Stb, 1847-23 jo 1848-58, or the Law on Judicial Organisation), that bridges each actor's authority. Therefore, similar to Lev's picture 50 years ago (1965), political contestation among criminal justice actors persists. Since the IPS must maintain its relationship with other actors – such as criminal investigation institutions, advocates and legal aid providers, the ministry of law and human rights, and the courts – public prosecutors have developed strategies to influence such actors, in line with their own mission.

Chapter 5 demonstrates how legal norms (both in criminal proceedings and in practice) have developed and changed, based on different regimes' interests. The IPS' military culture, which is inherited from the New Order regime, influences the way in which public prosecutors interpret the KUHAP. One of the results of this culture is that, when interpreting the KUHAP and exercising their discretion, public prosecutors are bound by IPS internal regulations. The IPS indeed has exercised the opportunity principle to drop a criminal case for public interest, but it was used only very occasionally to dismiss a case which has a serious political impact on the government. As this book found, public prosecutors prosecute almost all criminal case files received from the police. As a result, the Indonesian criminal justice system suffers from a heavy caseload and overcrowding in prisons.

Although the KUHAP grants public prosecutors discretion in exercising coercive measures, in prosecuting or dismissing cases, and in demanding high or low sentences at trial, the IPS obligates prosecutors to obtain approval from their superiors first. The IPS seems to treat public prosecutors like soldiers, who have responsibility for winning cases at court. In this regard, loosing may hurt their careers. Therefore, once they are prosecuting a criminal case in court, they must win it, even if this requires them to breach procedural rules.

Chapter 6 concludes with the main findings of the thesis, situating them more explicitly within the theoretical framework in the first chapter; it also provides a number of recommendations. The IPS, in general, suffers from a lack of authority, budget and independence. This research has shown

that making prosecutors behave like the military is at the heart of the IPS' bureaucratic dysfunction; it generates a significant erosion of the quality of criminal justice administration. This has serious implications for public prosecutors' performance within the criminal justice system.

Although Indonesia has become more democratic since the fall of the New Order regime, its criminal justice system cannot be analysed in terms of Packer's due process and crime control model only. This model emphasises how criminal justice actors must perform their tasks and powers in line with the rule of law, and that they must not break the rules of the game during that process. Nevertheless, Indonesian criminal justice actors (including public prosecutors) regularly ignore the rules of the game in order to achieve their goals. They apply criminal procedure, as long as it is in line with their interests, but they prefer to ignore rules which do not suit their objectives.

The case of Indonesia constitutes an example of the way in which prosecution services tend to evolve in countries marked by authoritarian tendencies. The Indonesian criminal justice system is designed to strengthen its control over society, and to achieve higher rates of arrest, prosecution, conviction, and incarceration. Overall, this reflection on the post-authoritarian public prosecutor in Indonesia shows that a better criminal justice system cannot be achieved solely through institutional reform of the IPS. The government must invest more in guaranteeing due process within criminal procedure, or even within the constitution. Strengthening the control mechanism of coercive measures at the pre-trial stage, returning the *dominius litis* to public prosecutors, and granting prosecutors the discretion to dismiss a case for public interest reasons, must all be addressed properly in the code of criminal procedure, if the government is serious about promoting the rule of law within its criminal justice system. These changes would result in institutional reform not only for the IPS, but also for other criminal justice actors, such as the police, detention centres and courts.

Samenvatting (Summary in Dutch)

Om de orde te handhaven: Officieren van justitie in post-autoritaire landen. Een studie over Indonesië

Ondanks het feit dat er in 1998 een einde kwam aan het autoritaire militaire regime van president Soeharto, leunt de Indonesische regering voor de handhaving van de politieke orde nog steeds op strafrechtelijke actoren. Hoewel er allerlei wetgeving is uitgevaardigd ter bevordering van de rechtsstatelijkheid van het strafrechtelijk systeem, hebben de achtereenvolgende regeringen na 1998 er toch allemaal voor gekozen dit strafrechtelijk systeem mede te gebruiken om hun politieke agenda te verwezenlijken.

Het doel van dit proefschrift is een analyse te bieden van het functioneren van het Indonesisch Openbaar Ministerie (IOM) en van de context waarbinnen het zijn betrekkingen onderhoudt met verschillende regeringsinstanties, andere actoren binnen het strafrecht, maatschappelijke actoren en het publiek in het algemeen. Daarnaast plaatst dit proefschrift de studie van het IOM binnen de wetenschappelijke literatuur over openbare aanklagers en openbaar ministeries in post-autoritaire landen. Tevens worden de rechtssociologische dimensies onderzocht van de rol van het openbaar ministerie in het bevorderen van de rechtsstaat tegenover het handhaven van de politieke status quo via het strafrechtelijk systeem.

In hoofdstuk 1 wordt de opzet van het proefschrift uiteengezet: het biedt een inleiding op het onderwerp en een uitwerking van het theoretisch kader dat ten grondslag ligt aan het onderzoek. Dit omvat de bespreking van het concept rechtsstaat binnen het strafrechtelijk systeem, de institutionele theorie binnen het openbaar bestuur en de sociale functietheorie binnen het strafprocesrecht. Dit hoofdstuk gaat bovendien in op de rechtssociologische onderzoeksbenadering die in het proefschrift wordt gehanteerd: doctrinair onderzoek om het normatieve systeem van het IOM te begrijpen en empirisch onderzoek om te onderzoeken wat het IOM in de praktijk doet.

In hoofdstuk 2 worden de geschiedenis van het IOM behandeld en de transformatie van het IOM vanaf het pre-koloniale tijdperk tot heden. Veel aandacht wordt besteed aan de bepalende rol van autoritaire regimes bij het vormgeven van het IOM en hoe deze invloed nog steeds bepalend is voor zijn huidige functioneren. In dit hoofdstuk wordt onderzocht hoe de positie van het IOM binnen het strafrechtelijk systeem door verschillende regimes is gebruikt om politieke macht te behouden en de orde te handhaven. Een onduidelijke grondwet die geïnterpreteerd werd conform de belangen van de regering heeft de rol van het Openbaar Ministerie in het strafprocesrecht beïnvloed. Een uitzondering hierop vormt de periode in de jaren vijftig van de vorige eeuw; een periode van politieke inspanningen om de rechtsstatelijkheid van het strafrechtelijk systeem te bevorderen. Een duidelijke

bepaling in de grondwet van 1950 om een eerlijke rechtsgang te garanderen, heeft ertoe bijgedragen dat politieke inmenging in het strafprocesrecht werd voorkomen. De status van de officier van justitie als magistraat en het institutionele kader van het IOM als onderdeel van de magistratuur leek bovendien te helpen bij hun rol in de handhaving van de rechtsstatelijkheid van het strafprocesrecht. De opkomst van een autoritair regime in 1959 maakte echter een einde aan deze inspanningen. Het opnieuw invoeren van de grondwet van 1945, welke geen bepalingen bevatte over de onafhankelijkheid van de rechterlijke macht of over een eerlijk proces, maakte het de regering mogelijk om naar believen in te grijpen in het strafprocesrecht. Deze situatie veranderde niet na de meest recente wijziging in 2002 van de grondwet van 1945. Hoewel de nieuwe grondwet de onafhankelijkheid van de rechterlijke macht en de bescherming van de mensenrechten garandeert, bevat zij geen bepalingen over een eerlijke rechtsgang zoals die in de grondwet van 1950 waren geformuleerd. Bovendien maakt de Wet op het Openbaar Ministerie van 2004 de positie van het IOM nog steeds afhankelijk van de politieke macht van de president. Zoals uit dit proefschrift blijkt, volgt het IOM in het vervolgingsbeleid inderdaad de politieke beslissingen van de president.

In hoofdstuk 3 wordt ingegaan op de manier waarop het Indonesisch Openbaar Ministerie is georganiseerd. Er zijn problemen met de hiërarchische bureaucratie, maar ook met de militaire cultuur, het beperkte budget en het gebrek aan professionaliteit van de aanklagers bij de uitvoering van hun taken en bevoegdheden. Het IOM houdt vast aan de militaire interpretatie van de 'één en ondeelbaar doctrine' om loyaliteit van de aanklagers af te dwingen. Deze militaristische cultuur beïnvloedt de bureaucratische structuur van het IOM, die de nadruk legt op een commando-hiërarchie. Bovendien maakt het IOM gebruik van personeelsmanagement, zoals promotie- en overdrachtsprocedures, om de loyaliteit van aanklagers te controleren. Het is niet verwonderlijk dat openbare aanklagers er in deze omstandigheden de voorkeur aan geven om de belangen van de leiding van het IOM en die van de regering te dienen.

De prestaties van het IOM worden ook beïnvloed door de budgettaire beperkingen, in die zin dat de officieren van justitie niet de financiële mogelijkheid hebben om alle strafzaken naar behoren af te handelen. De meeste officieren van justitie zijn bijvoorbeeld geneigd om passief te blijven in het aanwenden van hun bevoegdheden om toezicht te houden op het onderzoeksproces door de politie, aangezien in het budget van het IOM geen kosten zijn opgenomen voor de betrokkenheid van openbare aanklagers bij het vooronderzoek. Aan de andere kant is het Openbaar Ministerie, hoewel het budget beperkt is, nog steeds in staat om de streefcijfers van de regering voor de behandeling van strafzaken te overschrijden. Dat is mogelijk omdat managers op het hoogste niveau in het IOM de uitvoerders de mogelijkheid bieden extra middelen te zoeken om hun operationele uitgaven te bekostigen.

In hoofdstuk 4 wordt getracht inzicht te krijgen in de manier waarop de positie van het IOM als instrument van de regering zijn rol binnen het

strafrechtelijk systeem beïnvloedt, net als de relatie van het IOM met andere actoren in het strafrechtelijk systeem. Aangezien de taken en bevoegdheden van het IOM zijn aangepast om de politieke belangen van de regering te dienen, zijn de functies die openbare aanklagers vervullen niet langer in overeenstemming met hun kerntaken binnen het strafrechtelijk proces. Het IOM heeft de functies van officieren – d.w.z. als openbare aanklagers in strafzaken, als staatsadvocaat in civielrechtelijke geschillen en administratieve zaken, en als staatsinlichtingendienst – zodanig aangepast dat ze voldoen aan de eisen van de politieke actoren. Dit leidt bij officieren van justitie tot verwarring over de wijze waarop zij hun doelen kunnen bereiken. Zoals uit dit proefschrift blijkt, vertrouwen officieren van justitie bij de uitvoering van hun taken in principe op de opdrachten van de managers op het hoogste niveau van het IOM.

Het Indonesische Wetboek van Strafvordering (*Kitab-Undang-undang Hukum Acara Pidana*) heeft het beginsel van functionele differentiatie ingevoerd. Daarbij zijn drie hoofdbevoegdheden voor strafrechtelijke actoren gedefinieerd, die zijn gebaseerd op de vier fasen van een strafrechtelijke procedure. De politie leidt het vooronderzoek en de overige stadia van onderzoek. De officieren van justitie komen pas in beeld in de fase van de gerechtelijke vervolging, wanneer zij hun zaak tegen de verdachte voorbereiden en voor de rechter brengen. Rechters nemen de leiding in de fase van het proces wanneer een college van rechters de zaak onderzoekt en beslist of de verdachte schuldig of onschuldig is. Als de verdachte schuldig wordt bevonden, leggen de rechters een straf op.

Naast dit principe kent het Indonesische strafrechtelijk systeem geen speciale regeling die vergelijkbaar is met het RO (*Reglement op De Rechterlijke Organisatie* en *Het Beleid der Justitie*, Stb, 1847-23 jo 1848-58, oftewel de Wet op de Rechterlijke Organisatie), die een brug sloeg tussen het gezag van elke actor. Dit veroorzaakt, zoals Daniel Lev in 1965 al schetste, een voortdurende politieke strijd tussen actoren in het strafrecht. In hun relaties met andere actoren- zoals met opsporingsinstanties, advocaten en rechtshulpverleners, het ministerie van Justitie en Mensenrechten, en de rechtbanken – hebben de openbare aanklagers strategieën ontwikkeld om hen te beïnvloeden zodat ze hun eigen missie kunnen realiseren.

In hoofdstuk 5 wordt aangetoond hoe juridische normen (zowel in strafzaken als in de praktijk) zijn ontwikkeld en veranderd, op basis van de belangen van verschillende politieke regimes. De militaire cultuur van het IOM – een erfenis van het Soeharto-regime – is van invloed op de manier waarop officieren van justitie het Wetboek van Strafvordering interpreteren. Een van de uitvloeisels van deze cultuur is dat zij bij de uitoefening van hun discretionaire bevoegdheid gebonden zijn aan de interne regels van het IOM. Het IOM heeft inderdaad gebruik gemaakt van het opportuniteitsbeginsel om een strafbaar feit niet te vervolgen op grond van het algemeen belang, maar slechts heel af en toe en alleen om een zaak te seponeren die ernstige politieke consequenties zou kunnen hebben voor de regering. Zoals in deze studie wordt vastgesteld, vervolgen officieren van justitie bijna

alle strafzaakdossiers die zij van de politie hebben ontvangen. Als gevolg daarvan heeft het Indonesische strafrechtelijk systeem te lijden onder een grote hoeveelheid zaken en overbevolkte gevangenissen.

Hoewel het Wetboek van Strafvordering officieren van justitie een discretionaire bevoegdheid toekent bij het uitvoeren van dwangmaatregelen, bij het vervolgen of seponeren van zaken en bij het eisen van hoge of lage straffen tijdens het proces, verplicht het IOM de aanklagers om eerst de goedkeuring van hun superieuren te verkrijgen. Het IOM lijkt de officieren van justitie te behandelen als soldaten, die verantwoordelijk zijn voor het winnen van zaken bij de rechtbank. Het verlies van een zaak kan negatieve gevolgen hebben voor hun carrière. Daarom moeten ze een strafzaak die ze voor de rechter brengen ook winnen, zelfs als dit betekent dat ze hiertoe wettelijke procedureregels moeten overtreden.

In hoofdstuk 6 worden conclusies getrokken op grond van de belangrijkste bevindingen van het proefschrift. Deze bevindingen worden geplaatst in het theoretisch kader dat in het eerste hoofdstuk is uitgewerkt. Tevens worden in dit hoofdstuk aanbevelingen gegeven. De kern is dat het IOM in het algemeen te lijden heeft onder een gebrek aan gezag, budget en onafhankelijkheid. De cultuur binnen het IOM, waarin officieren van justitie zich moeten gedragen als militairen speelt een centrale rol in het bureaucratisch disfunctioneren van het IOM; het leidt tot een aanzienlijke erosie van de kwaliteit van de strafrechtelijke organisatie en heeft ernstige gevolgen voor de kwaliteit van het werk van de officieren van justitie binnen het strafrechtelijk systeem.

Hoewel Indonesië sinds het einde van het Soeharto-regime democratischer is geworden, is het niet zinvol het strafrechtelijk systeem alleen te analyseren op basis van het model van Packer dat uitgaat van een spanning tussen de twee doelen van het strafrecht: een eerlijke rechtsgang tegenover criminaliteitsbestrijding. Dit model benadrukt hoe de actoren in het strafrecht hun taken en bevoegdheden in overeenstemming met het recht moeten uitvoeren en dat ze de spelregels tijdens het proces niet mogen breken. Indonesische strafrechtactoren (inclusief officieren van justitie) negeren regelmatig de spelregels om hun doelen te bereiken. Zij passen de strafrechtelijke procedures toe zolang deze in overeenstemming zijn met hun belangen, maar geven er anders de voorkeur aan de regels te negeren.

Deze studie over Indonesië is een voorbeeld van de manier waarop het openbaar ministerie zich ontwikkelt in landen die worden gekenmerkt door autoritaire tendensen. Het Indonesische strafrechtelijk systeem is erop gericht om de controle over de samenleving te versterken en om hogere aantallen arrestaties, vervolgingen, veroordelingen en opsluiting te bereiken. Over het geheel genomen toont deze studie over de openbare aanklager in Indonesië aan dat een beter strafrechtelijk systeem in een post-autoritaire staat niet alleen door een institutionele hervorming van het openbaar ministerie kan worden bereikt. De regering moet meer investeren in het waarborgen van een eerlijke rechtsgang in het strafprocesrecht, of zelfs in de grondwet. De versterking van het controlemechanisme van

dwangmaatregelen in het stadium van het vooronderzoek, het teruggeven van de *dominius litis* aan de openbare aanklagers en het verlenen van discretionaire bevoegdheid aan de officieren van justitie om een zaak om redenen van openbaar belang te seponeren, moeten worden vastgelegd in het Wetboek van Strafvordering, althans als de regering de bevordering van de rechtsstaat binnen het strafrechtsysteem serieus neemt. Deze veranderingen zullen leiden tot institutionele hervormingen, niet alleen bij het openbaar ministerie, maar ook bij andere actoren in het strafrechtelijk systeem, zoals de politie, de gevangenissen en de rechtbanken.

Ringkasan (Summary in Bahasa Indonesia)

Menjaga Ketertiban: Jaksa Penuntut Umum di Negara Pasca Otoriter, Studi Kasus Indonesia

Meski rezim militer otoriter Orde Baru telah jatuh pada tahun 1998, pemerintah Indonesia pasca rezim otoriter tetap mengandalkan para aktor peradilan pidana, seperti jaksa penuntut umum, untuk menjaga ketertiban politik. Pemerintah pasca rezim otoriter memang telah memberlakukan beberapa peraturan yang mempromosikan supremasi hukum dalam sistem peradilan pidana, namun di sisi lain, pemerintah pasca Orde Baru tetap mempertahankan posisi Kejaksaan sebagai instrumen politik, sama dengan posisi Kejaksaan di bawah rezim sebelumnya.

Tujuan dari penulisan tesis ini adalah untuk memberikan analisis kontekstual dengan memperhatikan posisi dan hubungan Kejaksaan dengan berbagai rezim yang berbeda, lembaga peradilan pidana lainnya. aktor sosial, dan masyarakat pada umumnya. Selain itu, tesis ini mencoba untuk menempatkan studi tentang Kejaksaan Indonesia dalam literatur yang lebih luas tentang jaksa penuntut umum dan Kejaksaan di negara-negara pasca-otoriter, dan untuk menguji dimensi sosial-hukum dari peran penuntut umum, baik dalam mempromosikan prinsip Negara Hukum dan mempertahankan status quo kekuasaan rezim melalui sistem peradilan pidana.

Bab 1 memberi gambaran tesis, dengan memberikan pengantar terkait topik yang diteliti dan menguraikan kerangka teoritis yang mendasari penelitian tesis ini. Hal ini meliputi pembahasan tentang prinsip negara hukum dalam sistem peradilan pidana, teori kelembagaan dalam administrasi publik, dan teori fungsi sosial dalam hukum acara pidana. Bab ini juga membahas pendekatan sosio-legal yang digunakan: penelitian doktrinal untuk memahami sistem normatif Kejaksaan Indonesia; penelitian empiris untuk mendapatkan pemahaman lebih luas tentang apa yang dilakukan Kejaksaan dalam praktiknya.

Bab 2 membahas sejarah hukum Kejaksaan dan transformasinya sejak era pra-kolonial hingga saat ini. Bab ini mencatat perubahan penting terjadi selama bertahun-tahun rezim otoriter, dan ini masih menentukan kinerja jaksa penuntut umum saat ini. Bab ini membahas bagaimana posisi Kejaksaan dalam sistem peradilan pidana telah digunakan oleh berbagai rezim untuk mempertahankan kekuasaan politik mereka dan menjaga ketertiban. Konstitusi yang tidak jelas, ditafsirkan sesuai dengan kepentingan rezim (yaitu menjaga ketertiban politik), telah mempengaruhi peran jaksa penuntut umum dalam acara pidana. Berbeda dengan tahun 1950-an, yang merupakan masa di mana terdapat upaya politik untuk menegakkan prinsip Negara Hukum dalam sistem peradilan pidana. Ketentuan yang jelas dalam konstitusi 1950, yang mendorong *due process* membantu mencegah intervensi politik dalam

acara pidana. Selain itu, status jaksa sebagai *Magistraat* (pejabat peradilan) dan pengaturan kelembagaan Kejaksaan sebagai bagian dari kekuasaan yudisial tampaknya membantu mereka tetap bekerja dalam koridor Negara Hukum dalam prosedur pidana. Namun, menguatnya kekuatan politik militer pada tahun 1959 menghentikan upaya ini. Pemberlakuan kembali UUD 1945, yang tidak memiliki pengaturan tegas terkait independensi kekuasaan yudisial dan *due process*, memberi peluang rezim otoriter untuk melakukan intervensi dalam proses acara pidana. Situasi ini nampaknya tidak mungkin berubah setelah amandemen terakhir UUD 1945 pada tahun 2002. Meskipun konstitusi baru menjamin independensi peradilan dan perlindungan hak asasi manusia, tidak ada ketentuan tentang *due process* seperti yang ada dalam konstitusi 1950. Selain itu, UU Kejaksaan 2004 masih memposisikan Kejaksaan bergantung pada kekuatan politik Presiden. Sebagaimana temuan tesis ini, Kejaksaan pada akhirnya menjadi tergantung pada keputusan politik Presiden, saat mengeluarkan kebijakan terkait penuntutan.

Bab 3 membahas cara Kejaksaan Indonesia mengelola birokrasinya. Terdapat beberapa masalah terkait birokrasi Kejaksaan yang hirarkis, budaya militer, anggaran terbatas, serta kurangnya profesionalisme yang ditunjukkan oleh para jaksa saat menjalankan tugas dan kewenangannya. Kejaksaan mempertahankan interpretasi ala militer atas doktrin *én en ondeelbaar* (Satu dan Tidak Terpisahkan), untuk menekankan loyalitas para jaksa. Budaya militeristik ini berpengaruh pada struktur birokrasi Kejaksaan yang mengedepankan hierarki komando. Selain itu, Kejaksaan nampak menggunakan manajemen sumber daya manusia, seperti prosedur promosi dan mutasi, untuk mengontrol loyalitas para jaksa kepada para pimpinan mereka. Tidak heran jika kemudian para jaksa penuntut umum lebih memilih untuk melayani kepentingan pimpinan mereka dan menegakkan kepentingan dan nilai-nilai rezim.

Kinerja Kejaksaan juga dipengaruhi oleh anggaran yang terbatas. Akibatnya para jaksa, tidak mendapatkan kesempatan untuk menunjukkan kinerja yang dibutuhkan untuk menangani perkara pidana secara baik. Sebagai contoh, sebagian besar jaksa cenderung pasif dalam menggunakan kewenangannya untuk mengawasi proses penyidikan disebabkan karena anggaran Kejaksaan untuk proses pra-penuntutan tidak cukup jika harus menanggung biaya operasional jaksa untuk aktif sejak awal penyidikan. Di sisi lain, meski dengan anggaran terbatas, Kejaksaan masih mampu melampaui target yang ditetapkan pemerintah dalam penanganan perkara pidana. Ini karena pimpinan Kejaksaan mengizinkan operator mereka untuk mencari dana tambahan yang digunakan untuk menutupi pengeluaran operasional mereka.

Bab 4 berupaya memahami bagaimana posisi Kejaksaan Indonesia sebagai instrumen pemerintah berpengaruh pada perannya dalam sistem peradilan pidana, dan hubungan Kejaksaan dengan institusi dalam sistem peradilan pidana lainnya. Karena tugas dan wewenang Kejaksaan telah disesuaikan untuk melayani kepentingan politik rezim, fungsi jaksa penuntut umum tidak lagi sejalan dengan tugas inti mereka dalam proses penuntutan.

Kejaksaan menyesuaikan fungsi penuntut umum dalam Undang-undang Kejaksaan – sebagai penuntut umum dalam kasus pidana, sebagai pengacara negara dalam sengketa hukum perdata dan tata usaha negara,, serta sebagai intelijen negara – agar fungsinya tetap sejalan dengan tuntutan para aktor politik. Berbagai fungsi ini menimbulkan kebingungan di kalangan jaksa penuntut umum, dalam hal bagaimana mencapai tujuan mereka. Sebagaimana diungkap dalam studi ini jaksa pada dasarnya bergantung pada perintah pimpinan Kejaksaan saat mengerjakan berbagai tugas mereka.

Kitab Undang-undang Hukum Acara Pidana (KUHAP) memperkenalkan prinsip diferensiasi fungsional yang mendefinisikan tiga kewenangan utama bagi pelaku peradilan pidana, yang didasarkan pada empat tahapan acara pidana. Polisi memimpin tahap penyelidikan dan penyidikan. Penuntut umum hanya masuk pada tahap penuntutan saat mereka mempersiapkan dan melakukan pembuktian atas dakwaan mereka di pengadilan. Hakim memimpin pada tahap persidangan, ketika majelis hakim memeriksa kasus tersebut dan memutuskan apakah terdakwa bersalah atau tidak; jika terdakwa terbukti bersalah, hakim menjatuhkan hukuman.

Selain asas tersebut, tidak terdapat peraturan khusus seperti RO (*Reglement op De Rechterlijke Organisatie* en *Het Beleid der Justitie*, Stb, 1847-23 jo 1848-58, atau Undang-undang tentang Organisasi Peradilan) dalam sistem peradilan pidana Indonesia yang menjembatani kewenangan masing-masing lembaga penegak hukum. Oleh karena itu, sebagaimana digambarkan Lev 50 tahun lalu (1965), kontestasi politik di antara aktor peradilan pidana masih terus berlangsung. Dikarenakan Kejaksaan harus menjaga hubungannya dengan lembaga penegak hukum lain -seperti lembaga-lembaga yang memiliki kewenangan penyidikan pidana, advokat dan penyedia bantuan hukum, Kementerian Hukum dan Hak Asasi Manusia, dan pengadilan- jaksa penuntut umum mengembangkan strategi untuk mempengaruhi lembaga-lembaga tersebut agar sejalan dengan misi mereka.

Bab 5 menunjukkan bagaimana norma hukum (baik dalam proses pidana maupun dalam praktik) telah berkembang dan berubah, berdasarkan kepentingan berbagai rezim. Budaya militer Kejaksaan yang diwarisi dari rezim Orde Baru mempengaruhi cara Jaksa Penuntut Umum menafsirkan KUHAP. Salah satu akibat dari budaya ini adalah, dalam menafsirkan KUHAP dan menggunakan diskresinya, Jaksa Penuntut Umum terikat oleh peraturan internal Kejaksaan. Kejaksaan memang menggunakan asas oportunitas untuk menghentikan perkara pidana demi kepentingan umum, namun asas ini jarang sekali digunakan dan terbatas pada perkara yang berdampak politik serius pada pemerintah. Seperti yang ditemukan dalam buku ini, jaksa penuntut umum menuntut hampir semua perkara pidana berdasarkan berkas yang diterima dari kepolisian. Akibatnya, sistem peradilan pidana Indonesia mengalami beban kasus yang berat dan penjara yang melampaui kapasitas.

Meskipun KUHAP memberikan diskresi kepada jaksa penuntut umum dalam hal menggunakan upaya paksa, menuntut atau menghentikan perkara, dan dalam menentukan tinggi atau rendahnya hukuman yang

dituntut di pengadilan, Kejaksaan mewajibkan jaksa penuntut untuk terlebih dahulu mendapatkan persetujuan dari atasan mereka. Kejaksaan nampaknya memperlakukan jaksa penuntut umum layaknya prajurit, yang bertanggung jawab untuk memenangkan kasus di pengadilan. Dalam hal ini, kalah dapat berarti merusak catatan karir mereka. Oleh karena itu, begitu mereka menuntut kasus pidana di pengadilan, mereka harus memenangkannya, meskipun hal ini mengharuskan mereka untuk melanggar hukum acara.

Bab 6 diakhiri dengan temuan-temuan utama tesis ini, menempatkannya secara lebih eksplisit dalam kerangka teoretis di bab pertama; juga memberikan sejumlah rekomendasi. Secara umum Kejaksaan memiliki masalah terkait dengan kurangnya otoritas, anggaran dan kemandirian. Penelitian ini menunjukkan bahwa memaksa jaksa berperilaku seperti tentara adalah inti dari disfungsi birokrasi Kejaksaan; hal ini menyebabkan kemerosotan yang signifikan terhadap kualitas administrasi peradilan pidana secara keseluruhan. Ini pada gilirannya memiliki implikasi serius bagi kinerja penuntut umum dalam sistem peradilan pidana.

Meskipun Indonesia menjadi lebih demokratis sejak jatuhnya rezim Orde Baru, model sistem peradilan pidana tidak cukup dianalisa sebagaimana teori Packer tentang *due process* dan *crime control model*. Dua model ini menekankan bagaimana aparatur sistem peradilan pidana harus menjalankan tugas dan kekuasaannya sesuai dengan aturan hukum, dan mereka tidak boleh melanggar aturan main selama proses beracara. Namun demikian, Lembaga dalam sistem peradilan pidana Indonesia (termasuk jaksa penuntut umum) dalam banyak kasus mengabaikan hukum acara demi mencapai tujuan mereka. Mereka hanya menerapkan hukum acara pidana, sepanjang sejalan dengan kepentingan mereka, tetapi lebih memilih mengabaikan hukum acara jika tidak sesuai dengan tujuan mereka.

Kasus Indonesia merupakan contoh bagaimana Kejaksaan berkembang di negara-negara yang ditandai dengan kecenderungan otoriter. Sistem peradilan pidana Indonesia dirancang untuk memperkuat kontrol terhadap masyarakat, dan untuk mencapai tingkat penangkapan, penuntutan, penghukuman, dan penahanan yang lebih tinggi. Secara keseluruhan, refleksi terhadap penuntut umum di era pasca rezim otoriter di Indonesia menunjukkan bahwa sistem peradilan pidana yang lebih baik tidak dapat dicapai hanya melalui reformasi kelembagaan Kejaksaan. Pemerintah harus berinvestasi lebih banyak dalam menjamin *due process* dalam hukum acara pidana, atau bahkan dalam konstitusi. Penguatan mekanisme kontrol terhadap upaya paksa pada tahap pra adjudikasi, pengembalian *dominius litis* kepada jaksa penuntut umum, dan pemberian diskresi kepada jaksa penuntut umum untuk menghentikan perkara pidana untuk kepentingan umum, semua harus diperhatikan dengan baik dalam Kitab Undang-undang Hukum Acara Pidana, jika pemerintah serius dalam mempromosikan prinsip Negara Hukum dalam sistem peradilan pidana. Perubahan ini akan menghasilkan reformasi kelembagaan tidak hanya untuk Kejaksaan, tetapi juga untuk Lembaga Penegak hukum lainnya, seperti polisi, rumah tahanan dan pengadilan.

Bibliography

A'yun, Rafiqa Qurrata. 2014. "The Problems of Expert Witness in Criminal Law." *Indonesia Law Review* 4 (3): 340-57.

___, Politics complicate blasphemy investigations in Indonesia and around the world https://theconversation.com/politics-complicate-blasphemy-investigations-in-indonesia-and-around-the-world-68817, accessed 10 November 2020

Abdurrasyid, H. Priyatna. 2001. *Dari Cilampeni Ke New York Mengikuti Hati Nurani*. Jakarta: Pustaka Sinar Harapan.

Abdussalam, and Zen Zanibar. 1998. *Refleksi Keterpaduan Penyidikan, Penuntutan Dan Peradilan Dalam Penanganan Perkara*. Dinas Hukum Polri.

Abidin, A Zainal. 1983. *Bunga Rampai Hukum Pidana*. Jakarta: Pradnya paramita.

Aditjondro, George Junus. 2006. *Korupsi Kepresidenan : Reproduksi Oligarki Berkaki Tiga : Istana, Tangsi, Dan Partai Penguasa*. Yogyakarta: LKiS.

Adityanta, Alan. *Perjalanan Menuju Calon Jaksa* (The Journey of a Candidate for the Position of Prosecutor), http://www.adityanta.com/2018/02/22/perjalanan-menuju-calon-jaksa-2/, accessed on 6 June 2019

Afandi, Fachrizal, Nabilla Desyalika Putri, Muhammad Fajar Sidiq Widodo, and Lathifah Aini Rahman. 2014. "Problematika Pemberian Bantuan Hukum Pasca Pemberlakuan Undang Undang Nomor 16 Tahun 2011 Tentang Bantuan Hukum." *Keadilan Sosial* IV.

Afandi, Fachrizal. 2013. "Diskresi Kepolisian Republik Indonesia Resort Malang Kota." *Arena Hukum* 6 (3): 379-93.

___. 2015. "Problematika Pelaksanaan Diversi Dalam Penyidikan Pidana Dengan Pelaku Anak Di Kepolisian Resort Malang." *Arena Hukum* 8 (1): 19-34.

___. 2016. "Polemik Asas Oportunitas: Kewenangan Yang Rentan Disalahgunakan?" *Majalah Gatra*, June 2016. http://www.gatra.com/kolom-dan-wawancara/207606-polemik-asas-oportunitas-kewenangan-yang-rentan-disalahgunakan.

___. 2016. Memeriksa Keabsahan Penetapan Tersangka atau Menguji pokok perkara? (Are we checking the validity of a suspect status or examining a case?) Hukum Online, https://www.hukumonline.com/berita/baca/lt574e7c88a8193/memeriksa-keabsahan-penetapan-tersangka-atau-menguji-pokok-perkara-broleh--fachrizal-afandi-/, accessed 19 February 2019.

AJNN *Kapolres Sabang Ajak Duel Kasi Pidum Kejari Sabang*, (The Chairman of the District Police challenged the public prosecutor to a duel), http://www.ajnn.net/news/kapolres-ajak-duel-kasi-pidum-kejari-sabang/index.html on, accessed on 23 May 2017.

Ali, R. Moh. 2005. *Pengantar Ilmu Sejarah Indonesia*. Edited by Rahmat Widada. Yogyakarta: LKIS Pelangi Aksara.

Allen, Francis A. 1996. *The Habits of Legality : Criminal Justice and the Rule of Law*. Oxford University Press.

Amiati, Mia. 2014. *Memaknai Kepentingan Umum Dalam Oportunitas Jaksa Agung (Tinjauan Perspektif Teoritis)*. Jakarta: Miswar.

Amnesty Internasional. 2009. "Urusan Yang Belum Selesai : Akuntabilitas Polisi Di Indonesia."

___, 2014. "Prosecuting Beliefs: Indonesia's Blasphemy Laws." https://www.amnesty.org/download/Documents/8000/asa210182014en.pdf.

Andinni, Alfani Roosy. *Faktor Utama Jokowi Layak Reshuffle Jaksa Agung* (The main reason why Jokowi should reshuffle the Chief Prosecutor), https://nasional.sindonews.com/read/1072742/12/faktor-utama-jokowi-layak-reshuffle-jaksa-agung-1451288609, accessed on 17 February 2017.

Anggara. 2010. *Menakar Peran Paralegal Gerakan Bantuan Hukum* (Measuring the Paralegal Role in the Legal Aid Movement), https://anggara.org/2010/11/23/menakar-peran-paralegal-gerakan-bantuan-hukum/, accessed on 18 January 2019.

___. 2015. *Judicial Killing: Dibunuh Demi Keadilan Fair Trial Dan Hukuman Mati Di Indonesia*. Jakarta: Institute For Criminal Justice Reform.

Antaranews, *Pengusaha dan advokat didakwa suap Aspidum Kejati DKI Jakarta*, (A businessman and his lawyers are charged with bribing a General Crimes Assistant at the High Prosecution Office of Jakarta), https://www.antaranews.com/berita/1071278/pengusaha-dan-advokat-didakwa-suap-aspidum-kejati-dki-jakarta, accessed 22 September 2019.

___, *Pansel cari calon Komisi Kejaksaan RI yang berani ambil alih laporan* (Selection committee try to find the KOMJAK commissioner who have guts to take over a complaint (from the IPS)) https://www.antaranews.com/berita/965310/pansel-cari-calon-komisi-kejaksaan-ri-yang-berani-ambil-alih-laporan, accessed 6 November 2020

Aradila Caesar Ifmaini Idris, Siska Trisia, Meyriza Violyta, and Gita Nadia Pramesa. 2019. *Pro Bono: Prinsip Dan Praktik Di Indonesia*. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia. http://mappifhui.org/wp-content/uploads/2019/06/Buku-Pro-Bono.pdf.

Arief, Barda Nawawi. 2011. *Kapita Selekta Hukum Pidana Tentang Sistem Peradilan Pidana Terpadu (Integrated Criminal Justice System)*. Semarang: Badan Penerbit Universitas Diponegoro.

Arnscheidt, Julia. 2009. "'Debating' Nature Conservation: Policy, Law and Practice in Indonesia. A Discourse Analysis of History and Present." Leiden. https://openaccess.leidenuniv.nl/bitstream/handle/1887/13409/000-Arnscheidt-18-11-2008.pdf?sequence=2.

Arsil and Yura, *Kasasi Demi Kepentingan Hukum, Penunjang Fungsi Mahkamah Agung yang Terlupakan*, (Cassation in the interests of the law: the forgotten supporting function of the IPS to the Supreme Court), www.leip.or.id/artikel/101-kasasi-demi-kepentingan-hukum-penunjang-fungsi-mahkamah-agung-yang-terlupakan.htm, accessed 10 June 2015.

Arsil, Hasril Hertanto, Liza Farihah, and Puslitbang Mahkamah Agung. 2016. "Pengurangan Arus Perkara Ke Mahkamah Agung." Jakarta. http://leip.or.id/wp-content/uploads/2017/05/Kertas-Kebijakan-Pengurangan-Arus-Perkara-ke-MA_Final-versi-PDF.pdf.

Ashworth, Andrew. 1984. "Prosecution, Police and Public — A Guide to Good Gatekeeping?" *The Howard Journal of Criminal Justice* 23 (2): 65-87. https://doi.org/10.1111/j.1468-2311.1984.tb00495.x.

___. 2011. "Criminal Justice, Not Criminology?" In *What Is Criminology?*, edited by Mary. Bosworth and Carolyn Hoyle. Oxford: Oxford University Press. https://doi.org/10.4324/9781315568270-8.

Asp, Petter. 2012. "The Prosecutor in Swedish Law." *Crime and Justice* 41 (1): 141-65. https://doi.org/10.1086/666490.

Asrun, A. Muhammad. 2004. *Krisis Peradilan Mahkamah Agung Di Bawah Soeharto*. Jakarta: Elsam.

Asshiddiqie, Jimly. 2006. *PENGANTAR ILMU HUKUM TATA NEGARA JILID I*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi. http://dkpp.go.id/_file/publikasi/pengantar_ilmu_hukum_tata_negara.pdf.pdf.

___. 2008. *Menuju Negara Hukum Yang Demokratis*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi.

___. 2014. *Konstitusi Dan Konstitusionalisme*. Jakarta: Sinar Grafika.

Atmasasmita, Romli. 2010. *Sistem Peradilan Pidana Kontemporer, Jakarta*. Jakarta: Kencana.

Badan Pembinaan Hukum Nasional.1976 *Simposium Sejarah Hukum.* Bandung: Penerbit Bina Cipta.

Baker, Jacqui. 2013. "The Parman Economy: Post-Authoritarian Shifts In The Off-Budget Economy Of Indonesia's Security Institutions." *Indonesia*, no. 96: 123-50.

Balk, G L, F Van Dijk, and Diederick J Kortlang. 2007. "The Archives of the Dutch East India Company (VOC) and the Local Institutions in Batavia (Jakarta)." *The Economic History Review* 62: 571. http://books.google.com/books?id=6LHLH_7a5rYC&pgis=1.

Banakar, Reza, and Max Travers. 2005. "Introduction to Theory and Method in Socio-Legal Research." In *Theory And Method In Socio-Legal Research*, edited by Reza Banakar and Max Travers. Oxford and Portland: Hart Publishing. https://doi.org/10.4324/9781315622446.

Bangsa Online, *Banyak Kasus Korupsi Yang Ditangani Kejari Kepanjen Diduga Mengendap* (Some corruption cases handled by the Kepanjen Prosecution Office seem to have been stopped), https://www.bangsaonline.com/berita/21386/banyak-kasus-korupsi-yang-ditangani-kejari-kepanjen-diduga-mengendap, accessed on 17 January 2019.

BAPPENAS and UNDP. 2008. *Studi Evaluasi Dampak Pemekaran Daerah 2001-2007*.

BBCNews, Mass prayer rally in Jakarta against governor 'Ahok', https://www.bbc.com/news/world-asia-38178764, accessed 10 November 2020

Bedner, Adriaan, and Ward Berenschot. 2011. "Akses Terhadap Keadilan: An Introduction to Indonesia's Struggle to Make the Law Work for Everyone." In *Akses Terhadap Keadilan: Perjuangan Masyarakat Miskin Dan Kurang Beruntung Untuk Menuntut Hak Di Indonesia*, edited by W. Berenschot, A. Bedner, E. Laggut-Terre, and D. Novrianti, 3-25. HuMa, Van Vollenhoven Institute, KITLV-Jakarta and Epistema Institute.

Bedner, Adriaan. 2001. *Administrative Courts in Indonesia A Socio-Legal Study*. The Hague, London, Boston: Kluwer Law International.

___. 2008. "Court Reform." Leiden: Leiden University Press.

___. 2010. "An Elementary Approach to the Rule of Law." *Hague Journal on the Rule of Law* 2: 28-74.

___. 2017. "The Need for Realism: Ideals and Practice in Indonesia's Constitutional History." In *Constitutionalism and the Rule of Law: Bridging Idealism and Realism*, edited by Maurice Adams, Anne Meuwese, and Ernst Hirsch Ballin. Cambridge University Press.

Benarnews, Indonesia: Rights groups question acid-attack case trial https://www.benarnews.org/english/news/indonesian/trial-questioned-06222020161932.html, accessed 23 June 2020.

Berita Satu, *Eksekusi Dinilai Cacat Hukum, Pengacara Susno Laporkan Jaksa* (An execution is considered to have legal defects, Lawyer Susno reports a prosecutor to the police), https://www.beritasatu.com/nasional/254374/eksekusi-dinilai-cacat-hukum-pengacara-susno-laporkan-jaksa, accessed 2 March 2019.

___. *Pelimpahan Berkas Cara KPK Gugurkan Praperadilan Sutan* (Transferring the Dossier allows the KPK to annul Sutan's Pre-trial Hearing), https://www.beritasatu.com/nasional/260368/pelimpahan-berkas-cara-kpk-gugurkan-praperadilan-sutan, accessed 2 April 2019.

___. *Petinggi Polda Maluku ancam tembak Jaksa* (Police high official threatens to shoot prosecutor). https://www.beritasatu.com/nasional/287332/petinggi-polda-maluku-ancam-tembak-jaksa, accessed on 1 July 2015.

Bloembergen, Marieke. 2011a. *Polisi Zaman Hindia Belanda Dari Kepedulian Dan Ketakutan*. Jakarta: Penerbit Buku Kompas.

___. 2011b. "The Perfect Policeman: Colonial Policing, Modernity, and Conscience on Sumatra's West Coast in the Early 1930s." *Indonesia*, no. 91: 165-91. https://doi.org/10.5728/indonesia.91.0165.

Boolell, Satyajit. 2012. "Prosecutorial Discretion and Its Challenges." *Commonwealth Law Bulletin* 39 (November): 5-15. https://doi.org/10.1080/03050718.2012.751192.

Bosch, A G, P M Frielink, G C Haverkate, M E de Meijer, and L Plas. 2011. *Twee Eeuwen Openbaar Ministerie 1811-2011*. http://www.om.nl/actueel/publicaties/twee-eeuwen-openbaar/.

Boyne, Shawn Marie. 2017. "Prosecutorial Accountability in the Rechtsstaat: The Tension between Law, Politics, and the Public Interest." In *Prosecutors and Democracy: A Cross-National Study*, edited by Máximo Langer and David Alan Sklansky. https://doi.org/10.2139/ssrn.2805457.

Bunt, Henk van de, and Jean-Louis van Gelder. 2012. "The Dutch Prosecution Service." *Crime and Justice* 41 (1): 117-40. https://doi.org/10.1086/666491.

Butt, Simon. 2012. *Corruption and Law in Indonesia*. Routledge.

___, Why is Ahok in prison? A legal analysis of the decision https://indonesiaatmelbourne.unimelb.edu.au/why-is-ahok-in-prison-a-legal-analysis-of-the-decision/, accessed 10 November 2020

Chambliss, William J., and Robert Seidman. 1971. *Law, Order, and Power 2nd Ed., Reading, Mass. [Etc.]: Addison-Wesley.* Reading, Massachusetts: Wesley Publishing Company.

Chase, Oscar G. 1997. "LEGAL PROCESSES AND NATIONAL CULTURE." *Cardozo Law Review* 5 (1). https://doi.org/10.3366/ajicl.2011.0005.

Chazawi, Adami. 2011. *Lembaga Peninjauan Kembali (PK) Perkara Pidana: Penegakan Hukum Dalam Penyimpangan Praktik Dan Peradilan Sesat*. Jakarta: Sinar Grafika.

Cheesman, Nick. 2015. *Opposing the Rule of Law How Myanmar's Courts Make Law and Order*. Cambridge: Cambridge University Press.

Cho, Kuk. 2006. "The Ongoing Reconstruction of the Korean Criminal Justice System." *Santa Clara Journal of International Law* 5 (1). http://digitalcommons.law.scu.edu/scujilhttp://digitalcommons.law.scu.edu/scujil/vol5/iss1/6.

Choe, Dae Hyun. 2018. "Prosecutors' Role and Their Relationship with the Police in South Korea: In a Comparative Perspective." *International Journal of Law, Crime and Justice* 55 (December): 88-96. https://doi.org/10.1016/j.ijlcj.2018.10.003.

Chorus, Jeroen, Ewoud Hondius, and Wim Voermans, eds. 2016. *Introduction to Dutch Law*. Alpen aan den Rijn: Kluwer Law International.

Clark, Samuel. 2013. "Enforcing Corruption Laws The Political Economy of Subnational Prosecutions in Indonesia." Oxford. https://ora.ox.ac.uk/objects/uuid:ddb1684e-217d-453e-9c1c-820552ad3089/download_file?file_format=pdf&safe_filename=THESIS01&type_of_work=Thesis.

CNN Indonesia, *Jaksa Selingkuh Dapat Dikenai Sanksi oleh Kejagung*, (Prosecutors who are unfaithful in their marriages can be sanctioned by the Supreme Prosecution Office), https://www.cnnindonesia.com/nasional/20151013081702-12-84597/jaksa-selingkuh-dapat-dikenai-sanksi-oleh-kejagung, accessed on 22 December 2017.

___. *Tumpang Tindih Aturan Penegakan Hukum Maritim* (Overlapping Maritime Enforcement Laws), https://www.cnnindonesia.com/nasional/20151004163018-20-82691/tumpang-tindih-aturan-penegakan-hukum-maritim, accessed on 17 November 2019.

Contini, Francesco, and Davide Carnevali. 2010. "The Quality of Justice in Europe : Conflicts , Dialogue and Politics." *Business*. http://www.coe.int/T/dghl/cooperation/cepej/default_en.asp.

Cribb, Robert. 2000. "From Petrus to Ninja: Death Squads in Indonesia." In *Death Squads in Global Perspective*, edited by Bruce B. Campbell and Arthur D. Brenner, 181-202. New York: Palgrave Macmillan.

___. 2010. "Legal Pluralism and Criminal Law in the Dutch Colonial Order." *Indonesia*, no. 90: 47-66.

Crijns, Jan., B. Leeuw, and H. Wermink. 2016. "Pre-Trial Detention in the Netherlands: Legal Principles versus Practical Reality." https://openaccess.leidenuniv.nl/bitstream/handle/1887/46471/Pre-trialdetentionintheNetherlands-legalprinciplesversuspracticalreality.pdf?sequence=1.

Crijns, Jan. 2010. "De Strafrechtelijke Overeenkomst : De Rechtsbetrekking Met Het Openbaar Ministerie Op Het Grensvlak van Publiek- En Privaatrecht." Leiden.

Crouch, Melissa. 2017. "Negotiating Legal Pluralism in Court : Fatwa and the Crime of Blasphemy in Indonesia." In *Pluralism, Transnationalism and Culture in Asia: A Book in Honour of M B Hooker.*, edited by Gary Bell, 231-57. Singapore: ISEAS.

___, ed. 2019. The Politics of Court Reform. Cambridge, Massachusetts, London, England: Cambridge University Press.

Cunliffe, Ann L, and Rafael Alcadipani. 2016. "The Politics of Access in Fieldwork: Immersion, Backstage Dramas, and Deception." *Organizational Research Methods* 19 (4): 535-61. https://doi.org/10.1177/1094428116639134.

Dammert, Lucía. 2019. "Challenges of Police Reform in Latin America." In *Routledge Handbook of Law and Society in Latin America*, edited by Rachel Sieder, Karina Ansolabehere, and Tatiana Alfonso. New York: Routledge. https://doi.org/10.4324/9781315645193-17.

Darmono. 2013. *Penyampingan Perkara Pidana Seponering Dalam Penegakan Hukum Studi Kasus Ketetapan Mengesampingkan Perkara Demi Kepentingan Umum Atas Nama Dr Bibit Samad Rianto Dan Chandra M Hamzah*. Edited by Ahmad Bahar. Depok: Solusi Publishing.

Detik.com, *Begini Penjelasan Kejagung Soal Kedaluwarsa dan Bukti Tak Kuat di Kasus Novel* (The Supreme Prosecution Office's explanation of expiration and insufficient evidence in Novel's case) https://news.detik.com/berita/3147948/begini-penjelasan-kejagung-soal-kedaluwarsa-dan-bukti-tak-kuat-di-kasus-novel., accessed 8 June 2019.

--___. *Ini 2 alasan Kejagung hentikan kasus Novel tak cukup bukti dan kadaluwarsa*, (Two reasons why the Supreme Prosecution Office stopped Novel's case: insufficient evidence and expiry of the case), https://news.detik.com/berita/3147896/ini-2-alasan-kejagung-hentikan-kasus-novel-tak-cukup-bukti-dan-kadaluwarsa.
___. *Kronologi Kasus Suso, Cicak v. Buaya Hingga Korupsi Pilgub Jabar* (Chronology of Susno's Case: from the Cicak v. Buaya case to the corruption of the West Javan Governor Election), https://news.detik.com/berita/d-2229197/kronologi-kasus-susno-cicak-vs-buaya-hingga-korupsi-pilgub-jabar, accessed 17 November 2018.
___. *Pertama Di Indonesia Jaksa Sidik dan Tuntut Kasus Illegal Logging*, (For the first time in Indonesia, prosecutors have investigated and prosecuted an illegal logging case), https://news.detik.com/berita/d-3809331/pertama-di-indonesia-jaksa-sidik-dan-tuntut-kasus-illegal-logging, accessed on 18 January 2019.
___. *Soal OTT KPK di Pamekasan Wapres JK Soroti Peran Tim TP4 Kejagung* (The KPK's sting operation against Pamekasan District prosecutors – Vice President JK criticises the role of the TP4 team of the IPS) https://news.detik.com/berita/d-3587374/soal-ott-kpk-di-pamekasan-wapres-jk-soroti-peran-tim-tp4-kejagung, accessed 12 June 2018.
___. *Dilarang MK Ajukan PK, Jaksa Agung: Kami Akan Tetap Ajukan* (The Constitutional Court prohibits the IPS from filing a review, but the Chief Prosecutor says, "we will still file it"), https://news.detik.com/berita/d-3226703/dilarang-mk-ajukan-pk-jaksa-agung-kami-akan-tetap-ajukan, accessed 2 September 2019.
___. *Jaksa Agung: PK Berkali-kali jadi Hambatan Eksekusi Mati* (Chief Prosecutor says that reviewing more than once may hinder capital punishment), https://news.detik.com/berita/2769044/jaksa-agung-pk-berkali-kali-jadi-hambatan-eksekusi-mati?nd771106com, accessed 2 September 2019.
___. *Ganti Rugi Tak Kunjung Cair, Korban Salah Tangkap Gugat Menkeu* (Compensation not yet received – victim of false arrest sues the Ministry of Finance), https://news.detik.com/berita/4167913/ganti-rugi-tak-kunjung-cair-korban-salah-tangkap-gugat-menkeu, accessed 13 March 2019.
___. *Usai diperiksa Mabes Polri, AKBP Takdir tinggalkan kursi Kapolres Tanjung Perak,* (After being examined at Police Headquarters, Takdir left his position as Chief of Tanjung Perak District Police), https://news.detik.com/berita-jawa-timur/d-3373404/usai-diperiksa-mabes-polri-akbp-takdir-tinggalkan-kursi-kapolres-tanjung-perak, accessed 29 March 2019.
___. *Wakapolri: SPDP dari Kepolisian Tak Identik dengan Status Tersangka,* (Vice Police Chairman: the SPDP has no equivalent term for Suspect Determination), https://news.detik.com/berita/d-3724593/wakapolri-spdp-dari-kepolisian-tak-identik-dengan-status-tersangka, accessed 2 April 2019.
___. Sepenggal Kisah Gerbong Maut di Museum Brawijaya Malang http://travel.detik.com/read/2016/07/14/142000/3251578/1025/4/sepenggal-kisah-gerbong-maut-di-museum-brawijaya-malang, accessed 4 April 2016.
Djamin, Awaloeddin, I Ketut Ratta, I Gde Putu Gunawan, and G. Ambar Wulan. 2006. *Sejarah Perkembangan Kepolisian Di Indonesia : Dari Zaman Kuno Sampai Sekarang*. Yayasan Brata Bhakti.
Djamin, Awaloeddin. 1995. *Awaloedin Djamin Pengalaman Seorang Perwira Polri*. Jakarta: Pustaka Sinar Harapan.
Domingo, Pilar, and Leopold Sudaryono. 2015. *Ekonomï Politïk Dari Penahanan Pra-Persidangan Di Indonesia*. Jakarta: Institute For Criminal Justice Reform.

DPR, *Uang Tilang Rp 400 M Mengendap di BRI* (Ticket fine money was held in the bank) http://www.dpr.go.id/berita/detail/id/7304/t/Uang+Tilang+Rp+400+M+Mengendap+di+BRI, accessed on 12 April 2018.

Drooglever, P. 1997. "The Genesis of the Indonesian Constitution of 1949." *Bijdragen Tot de Taal-, Land- En Volkenkunde* 153. http://booksandjournals.brillonline.com/docserver/22134379/153/1/22134379_153_01_s04_text.pdf?expires=1510164354&id=id&accname=guest&checksum=4AE1D162B714BF49A6F5F90593A5F21C.

Duta.co *Komandan Lanud Abd Saleh Jamin Tidak Ada Titipan Dalam Pantukhir* (Abd Saleh Air Base Squadron Commander Guarantees Fair Selection in Pantukhir), https://duta.co/komandan-lanud-abd-saleh-jamin-tidak-ada-titipan-dalam-pantukhir/, accessed on 6 June 2019.

Dworkin, Ronald. 1963. "Judicial Discretion." *The Journal of Philosophy*, 624-39. http://www.getcited.org/pub/102703608.

Eddyono, Supriyadi W., Wahyudi Djafar, Sufriyadi, Erasmus A. T. Napitupulu, and Sriyana. 2014. *Praperadilan Di Indonesia: Teori, Sejarah Dan Praktiknya*. Edited by Anggara. Jakarta: ICJR.

Eddyono, Supriyadi Widodo, Sriyana, Syahrial Martanto Wiryawan, Wahyu Wagiman, and Wahyudi Djafar. 2012. *Potret Penahanan Pra-Persidangan Di Indonesia : Studi Tentang Kebijakan Penahanan Pra-Persidangan Dalam Teori Dan Praktek*. Edited by Muhammad Yasin. Jakarta: Institute For Criminal Justice Reform.

Effendy, Marwan. 2005. *KEJAKSAAN RI Posisi Dan Fungsinya Dari Perspektif Hukum*. Jakarta: PT. Gramedia Pustaka Utama.

Eriyanto. 2000. *Kekuasaan Otoriter: Dari Gerakan Penindasan Menuju Politik Hegemoni (Studi Atas Pidato-Pidato Politik Soeharto)*. Edited by Eko Prasetyo. Yogyakarta: INSIST.

Faal, M. 1991. *Penyaringan Perkara Pidana Oleh Polisi: Diskresi Kepolisian*. Jakarta: Pradnya paramita.

Fahlevi, Fahd.i *Jabatan Wakil Jaksa Agung Akhirnya Diisi Arminsyah Setelah Setahun Kosong* (the Vice Chief Prosecutor position was finally filled by Arminsyah, after remaining vacant for a year), http://www.tribunnews.com/nasional/2017/11/15/jabatan-wakil-jaksa-agung-akhirnya-diisi-arminsyah-setelah-setahun-kosong, accessed on 13 February 2017.

Fakih, Farabi. 2014. "The Rise of the Managerial State in Indonesia: Institutional Transition during the Early Independence Period, 1950-1965." https://doi.org/10.1080/00074918.2014.938411.

Federico, Giuseppe Di. 1998. "Prosecutorial Independence And The Democratic Requirement Of Accountability In Italy Analysis of a Deviant Case in a Comparative Perspective." *British Journal of Criminology* 38 (3): 371-87. https://doi.org/10.1093/oxfordjournals.bjc.a014253.

Feeley, Malcolm M. 1973. "Two Models of the Criminal Justice System : An Organizational Perspective." *Law & Society Review* 7 (3).

Feith, Herbert. 2007. *The Decline Of Constitutional Democracy In Indonesia*. Jakarta: Equinox Publishing.

FGD *Pusat Penelitian dan Pengembangan Kejaksaan Agung: Disparitas Kesejahteraan Antar Aparatur Penegak Hukum* (Focus Group Discussion by the Centre of Research and Development for the Supreme Prosecution Office: The Wealth Disparity between Law Enforcers), https://www.kejaksaan.go.id/unit_kejaksaan.php?idu=28&idsu=35&idke=0&hal=1&id=4181&bc=, accessed on 8 April 2017.

Fionda, Julia. 1995. *Public Prosecutors and Discretion A Comparative Study*. Oxford: Clarendon Press.
Fioretos, Orfeo, Tulia G. Falleti, and Adam Sheingate, eds. 2016. *The Oxford Handbook of Historical Institutionalism*. Oxford: Oxford University Press.
Fitzgerald, Patrick J. 2009. "Thoughts on The Ethical Culture of A Prosecutor's Office." *Washington Law Review Association* 84 (11).
Foote, Daniel H. 1992. "The Benevolent Paternalism of Japanese Criminal Justice." *California Law Review* 80 (2): 317. https://doi.org/10.2307/3480769.
Forum Keadilan, *Kejaksaan Agung RI Siapkan 4000 Jaksa ikut membantu sukseskan Pengamanan Pemilu*, (The Supreme Prosecution Office provided 4,000 prosecutors to assist with general election security) https://forumkeadilan.com/2019/04/kejaksaan-agung-ri-siapkan-4000-jaksa-ikut-membantu-sukseskan-pengamanan-pemilu/, accessed on 5 December 2018.
Foucault, Michel. 1995. *Discipline and Punish, The Birth of the Prison*. New York: Vintage Books.
Friedman, Lawrence M. 1969. "Legal Culture and Social Development." *Verfassung in Recht Und Übersee* 2 (3): 261-74. https://doi.org/10.5771/0506-7286-1969-3-261.
___. 2002. "A Few Thoughts on Ethnography, History, and Law." In *Practicing Ethnography in Law – New Dialogues, Enduring Methods*, edited by June Starr and Mark Goodale. Palgrave Macmillan.
Galligan, D. J. 1990. *Discretionary Powers A Legal Study of Official Discretion*. Oxford: Clarendon Press.
___. 2007. *Law in Modern Society*. Oxford: Oxford University Press.
Garth, Bryant. 2010. *Asian Legal Revivals : Lawyers in the Shadow of Empire*. Chicago: University of Chicago Press.
Gautama, Sudargo. 1983. *Pengertian Tentang Negara Hukum*. 3rd ed. Bandung: Alumni.
Geelhoed, Willem. 2013. "Het Opportuniteitsbeginsel En Het Recht van de Europese Unie : Een Onderzoek Naar de Betekenis van Strafvorderlijke Beleidsvrijheid in de Geëuropeaniseerde Rechtsorde." Leiden.
___. 2016. "Embedding The European Public Prosecutor's Office in Jurisadictions with A Wide Scope of Prosecutorial DIscretion : The Dutch Example." In *The European Public Prosecutor's Office and National Authorities*, edited by C Nowak. Milan: Wolters Kluwer Italia.
Glasius, Marlies, Meta De Lange, Jos Bartman, Emanuela Dalmasso, Aofei Lv, Adele Del Sordi, Marcus Michaelsen, and Kris Ruijgrok. 2017. *Research, Ethics, and Risk in the Authoritarian Field*. https://doi.org/10.1007/978-3-319-68966-1.
Glesne, Corrine, and Alan Peshkin. 1992. *Becoming Qualitative Researchers: An Introduction*. New York: Longman.
Goldsmith, Andrew. 2003. "Fear, Fumbling and Frustration:Reflections on Doing Criminological Fieldwork in Colombia." *Criminology & Criminal Justice* 3 (1): 103-25. https://doi.org/10.1177/1466802503003001458.
Gressnews, *Hakim Komisaris ganjalan Polisi terapkan KUHAP baru* (The Examining Judge makes the Police Reluctant to Apply the New KUHAP) http://www.gresnews.com/berita/hukum/84539-hakim-komisaris-ganjalan-polisi-terapkan-kuhap-baru/, accessed 17 December 2019.
Griffiths, John. 1970. "Ideology in Criminal Procedure or A Third 'Model' of the Criminal Process." *The Yale Law Journal* 79 (3): 359. https://doi.org/10.2307/795141.

Gunawan, Andri. 2016. "Mengelola Reformasi Administrasi Penanganan Perkara Tindak Pidana Di Kejaksaan: Tantangan Dan Peluang."

Gunawan, Ricky, Dhoho A Sastro, Ajeng Larasati, Antonius Badar, Alex Argo Hernowo, Pebri Rosmalina, and Maria Magdalena. 2012. "Membongkar Praktik Pelanggaran Hak Tersangka Di Tingkat Penyidikan." Jakarta. http://www.lbhmasyarakat.org.

Hamzah, Andi, and Irdan Dahlan. 1984. *PERBANDINGAN KUHAP HIR DAN KOMENTAR*. Jakarta Timur: Ghalia Indonesia.

Hamzah, Andi. 1983. *Pengantar Hukum Acara Pidana Indonesia*. Jakarta: Ghalia Indonesia.

___. 1984. *Pengusutan Perkara Kriminal Melalui Sarana Teknik Dan Sarana Hukum*. Jakarta Timur: Ghalia Indonesia.

___. 1993. *Hukum Acara Pidana Indonesia Untuk Fakultas Hukum*. Jakarta: Arikha Media Cipta. https://doi.org/10.1145/2505515.2507827.

Hafetz, J. 2002. "Pretrial Detention , Human Rights , and Judicial Reform in Latin America." *Fordham International Law Journal* 26 (6): 1752-77.

Harahap, M. Yahya. 2000. *Pembahasan Permasalahan Dan Penerapan KUHAP. Jilid 2: Pemeriksaan Sidang Pengadilan, Banding, Kasasi, Dan Peninjauan Kembali*. Jakarta: Sinar Grafika.

___. 2007. *Pembahasan Permasalahan Dan Penerapan KUHAP (Penyidikan Dan Penuntutan)*. Jakarta: Sinar Grafika.

Harian Dialog, *Jaksa Agung Seharusnya memanfaatkan Jaksa Fungsional yang Makan Gaji Buta*, (The Chief Prosecutor should evaluate senior prosecutors who get paid without doing much work), http://www.hariandialog.com/index.php/nasional/politik-a-hukum/8814-jaksa-agung-seharusnya-memanfaatkannya-jaksa-fungsional-makan-gaji-buta, accessed on 12 December 2017.

Hart, A.C. 't, and Abdul Hakim G. Nusantara. 1986. *Hukum Acara Pidana Dalam Perspektif Hak Asasi Manusia*. Jakarta: Yayasan Lembaga Bantuan Hukum Indonesia.

Hernanto, Yudowidagdo, Suryanata Kesuma Anang, Usman Adji Sution, and Ismunarto Agus. 1987. *Kapita Selekta Hukum Acara Pidana Di Indonesia*. Jakarta: PT Bina Aksara.

Hiariej, Eddy O S. 2012. *Teori Dan Hukum Pembuktian*. Jakarta: Erlangga.

Hodgson, Jacqueline. 2005. *French Criminal Justice a Comparative Account of the Investigation and Prosecution of Crime in France*. Hart Publishing. https://doi.org/10.5040/9781472559760.

Huis, Stijn Cornelis van. 2015. "Islamic Courts and Women's Divorce Rights in Indonesia : The Cases of Cianjur and Bulukumba." Leiden University. https://openaccess.leidenuniv.nl/bitstream/handle/1887/35081/Proefschrift_Van_Huis_def_inhoud.pdf?sequence=19.

Hukum Online, *Ada Kemungkinan Korwas Akan Dihapus* (There is a possibility that Korwas will be dissolved), https://www.hukumonline.com/berita/baca/lt555edcc8d0f1c/ada-kemungkinan-korwas-akan-dihapus, accessed on 17 November 2019.

___. *bebas murni atau tidak murni sudah tak relevan* (Whether an acquittal is pure or impure is no longer relevant), https://www.hukumonline.com/berita/baca/lt526dcda563378/bebas-murni-atau-tidak-murni-sudah-tak-relevan, accessed 10 June 2015.

___. *Delik Penyertaan Tak Terbukti, Susno Bisa Bebas* (Participatory Offenses Cannot be Proven, Susno Can be Acquitted), https://www.hukumonline.com/berita/baca/lt4d42786bd9562/delik-penyertaan-tak-terbukti-susno-bisa-bebas, accessed 2 June 2 2018.
___. *Gara-Gara 'Memo Sakti', Ketua MK Dijatuhi Sanksi Etik*, (Because of 'a Magic Letter', the Chief of the Constitutional Court faced Ethical Sanctions), http://www.hukumonline.com/berita/baca/lt57233338a0eaf/gara-gara-memo-sakti--ketua-mk-dijatuhi-sanksi-etik, accessed on 3 December 2017.
___. *Istri Subarda Ajukan Uji Materi UU Kejaksaan* (Subarda's wife filed the constitutional review on the IPS Law) http://www.hukumonline.com/berita/baca/hol18096/istri-subarda-ajukan-uji-materi-uu-kejaksaan, accessed 23 February 2016.
___. *Jaksa Pernah Ajukan Pailit Demi Kepentingan Umum*, (Prosecutors filing bankruptcy requests, for public interest reasons) http://www.hukumonline.com/berita/baca/lt4fe179a67ba94/jaksa-pernah-ajukan-pailit-demi-kepentingan-umum, accessed 12 June 2018.
___. *Kebijakan Pembantaran dilaporkan ke KY* (The policy of postponing detention for sick leave is reported to the Judicial Commission) https://www.hukumonline.com/berita/baca/lt517e292d85f38/kebijakan-pembantaran-dilaporkan-ke-ky, accessed on 16 October 2019.
___. *Kejaksaan Boleh Terima Hibah asal bukan uang* (The IPS is allowed to receive grants, as long as these are not paid in cash), https://www.hukumonline.com/berita/baca/lt4ec23389cb0ce/kejaksaan-boleh-terima-hibah-asal-bukan-uang, accessed on 23 January 2019.
___. *Ketika Deelneming Tak Terbukti, Rohadi Pun Lolos dari Suap Bersama-sama Hakim* (When *Deelneming* Cannot be Proven, Rohadi Even Escaped from Bribery Together with the Judges), https://www.hukumonline.com/berita/baca/lt584a6c708f6ab/ketika-ideelneming-i-tak-terbukti--rohadi-pun-lolos-dari-suap-bersama-sama-hakim/, accessed 2 June 2018.
___. *Kewenangan PPNS Tumpang Tindih Dengan Polri* (PPNS Authority Overlaps with that of the Police), https://www.hukumonline.com/berita/baca/hol16248/kewenangan-ppns-tumpang-tindih-dengan-polri, accessed on 17 November 2019.
___. *Laporan Tahunan MA 2017: Jaksa Paling Banyak Ajukan Kasasi pada 2017, Ini Sebabnya* (Prosecutors who filed the most cassations in 2017: here are their reasons for doing so), https://www.hukumonline.com/berita/baca/lt5aa01a52a143f/jaksa-paling-banyak-ajukan-kasasi-pada-2017--ini-sebabnya/, accessed 21 September 2019.
___. *MA: Larangan Jaksa Ajukan PK Mengikat Kejaksaan* (The Supreme Court: Prosecutors are prohibited from proposing a review which binds the IPS), https://www.hukumonline.com/berita/baca/lt57412b95477b5/ma--larangan-jaksa-ajukan-pk-mengikat-kejaksaan, accessed 2 September 2019.
___. *Masalah Hukum Jika BUMN Gunakan Jaksa Pengacara Negara* (Legal Issues when the SOE requests (the IPS as) state attorneys (in civil law disputes)), https://www.hukumonline.com/berita/baca/lt53630f8713fa2/masalah-hukum-jika-bumn-gunakan-jaksa-pengacara-negara, accessed on 3 May 2018.
___. *Mencermati Pemberian SP3 Kasus Korupsi*, (Observing corruption case dismissals) https://www.hukumonline.com/berita/baca/hol11608/mencermati-pemberian-sp3-kasus-korupsi, accessed on 11 February 2019.

___. *Pasal 31 UU Advokat Menjadikan Dosen Hukum Acara Berorientasi Teori* (Article 31 of the Advocate Law caused law lecturers, who could not give practical lessons, to give students purely theoretical criminal procedure lessons), https://www.hukumonline.com/berita/baca/hol11149/pasal-31-uu-advokat-menjadikan-dosen-hukum-acara-berorientasi-teori/, accessed on 23 January 2019.

___. *Pertarungan Wewenang Polisi dan Jaksa Dalam Menyidik Perkara Korupsi* (Contestation between the police and prosecutors in investigating corruption cases) https://www.hukumonline.com/berita/baca/hol18538/pertarungan-wewenang-polisi-dan-jaksa-dalam-menyidik-perkara-korupsi-, accessed 12 June 2018.

___. *Pro Kontra Peniadaan Penyelidikan dalam RKUHAP,* (The pros and cons of repealing preliminary investigation provisions in the Draft KUHAP) https://www.hukumonline.com/berita/baca/lt52ef88bda5026/pro-kontra-peniadaan-penyelidikan-dalam-rkuhap,

___. *Salah satu contoh Penyidikan Tidak Sah, Hakim Batalkan Dakwaan* (An example of an invalid investigation, where the judge cancels the indictment), https://www.hukumonline.com/berita/baca/lt4dcac4e944fc9/penyidikan-tidak-sah-hakim-batalkan-dakwaan, accessed 8 June 2018.

___. *Status Advokat sebagai Penegak Hukum Dipersoalkan* (The Status of the Advocate as a Law Enforcer is Questioned), https://www.hukumonline.com/berita/baca/lt4fd979e0088e5/status-advokat-sebagai-penegak-hukum-dipersoalkan/, accessed on 18 January 2019.

___. *MA Akui Lamban Kirim Salinan Putusan,* (The Supreme Court acknowledges that it has been less responsive in delivering a copy of the decision), https://www.hukumonline.com/berita/baca/lt4f8ee3937dcce/ma-akui-lamban-kirim-salinan-putusan,

___. *MA Perketat Pengawasan Proses Minutasi*, (The Supreme Court supervises the process of drafting meeting minutes), https://www.hukumonline.com/berita/baca/lt56d699271544a/ma-perketat-pengawasan-proses-minutasi-putusan, accessed 3 March 2019.

Hurst, William. 2018. *RULING BEFORE THE LAW The Politics of Legal Regimes in China and Indonesia*. Cambridge: Cambridge University Press.

Ichwan, Moch Nur. 2011. "Ulama, State And Politics: Majelis Ulama Indonesia After Suharto." *Islamic Law and Society* 12 (1): 45-72. www.brill.nl.

ICJR, Rancangan KUHAP 2012 https://icjrid.files.wordpress.com/2012/12/r-kuhap.pdf, accessed on 18 January 2019.

___. *ICJR Dorong Reformasi Rumah Penyimpanan Benda Sitaan Negara (Rupbasan) dan Eksekusi Barang Sitaan.* (The ICJR encourages reform of the State Confiscated Goods Storage Houses (Rupbasan) and the Execution of Confiscated Goods), https://icjr.or.id/icjr-dorong-reformasi-rumah-penyimpanan-benda-sitaan-negara-rupbasan-dan-eksekusi-barang-sitaan/, accessed on 7 June 2019.

Idema, H. A. 1938. "Leerboek Landraad-Strafprocesrecht in Zaken van Misdrijf." Leiden.

Ifani, Inggrit, M Fauzan Azim, Khairul Fahmi, and Ismail Hasani. 2016. "Fair Trial Dalam Sistem Peradilan Pidana Terpadu Di Indonesia Studi Pada Institusi Kepolisian Dan Lembaga Pemasyarakatan." Edited by Ismail Hasani. Jakarta. https://drive.google.com/file/d/0B4eJ2y7BQKwKbk54d0JBdEt0R2pCWWc2cHBBdVBSYjJHQWlr/view.

Ihsanuddin, *Jaksa Agung Ancam Pecat Jaksa Yang tak Patuhi Instruksi Jokowi* (The Chief Prosecutor threatens to fire prosecutors who do not follow Jokowi's instructions), https://nasional.kompas.com/read/2016/07/20/13210581/jaksa.agung.ancam.pecat.jaksa.yang.tak.patuhi.instruksi.jokowi, accessed on 16 April 2017.

Ikatan Adhyaksa Dharmakarini. 2013. *Anggaran Dasar/Anggaran Rumah Tangga Adhyaksa Dharmakarini*

Indonesia Corruption Watch, *Konflik Kepentingan Wewenang Jaksa* (The conflict of interest in prosecutors' powers), https://antikorupsi.org/id/news/konflik-kepentingan-wewenang-jaksa-130704, accessed on 30 October 2018.

Institute for Criminal Justice Reform, *Menghidupkan kembali Tindak Pidana Ringan dalam KUHP,* (Re-activating trivial crimes in the KUHP), http://icjr.or.id/menghidupkan-kembali-tindak-pidana-ringan-dalam-kuhp/, accessed 3 September 2019

Irianto, Sulityowati, Widodo Dwi Putro, Fajri Nursyamsi, Ikhsan Azhar, Munafrizal Manan Nurkholis Hidayat, Elza Faiz, Hendro Sukmono, Muhamad Ilham, and Nur Aini Fatmawati. 2017. *Problematika Hakim Dalam Ranah Hukum, Pengadilan Dan Masyarakat Di Indonesia : Studi Sosio-Legal*. Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia.

Jakarta Globe, Setya Novanto: Finally Sentenced After Decades of Scandals, https://jakartaglobe.id/context/setya-novanto-finally-sentenced-decades-scandals, accessed on 3 May 2018.

___. Top Prosecutor Denies Involvement Nasdem Bribery Case, https://jakartaglobe.id/news/top-prosecutor-denies-involvement-nasdem-bribery-case/, accessed 6 March 2016

Jawa Pos, *1000 Pisang Untuk Polisi*, (One thousand bananas for the police), https://www.jpnn.com/news/1000-pisang-untuk-polisi, accessed 1 April 2019.

___. *Lompatan Karir Anak Jaksa Agung, Kini Dipromosikan Jadi Kajari* (The Chief Prosecutor's Son Makes a Career Leap: Now Promoted to Head of the District Prosecution Office), https://www.jawapos.com/nasional/politik/21/06/2017/lompatan-karir-anak-jaksa-agung-kini-dipromosikan-jadi-kajari, accessed on 3 December 2017.

Jehle, Jörg-Martin, and Marianne Wade, eds. 2006. *Coping with Overloaded Criminal Justice Systems*. Berlin-Heidelberg: Springer. https://doi.org/10.1007/978-3-540-33963-2.

Joeniarto. 1968. *Negara Hukum*. Jogjakarta: Gadjah Mada.

Johnson, David T, and Mari Hirayama. 2019. "Japan's Reformed Prosecution Review Commission: Changes, Challenges, and Lessons." *Asian Journal of Criminology* 14 (2): 77-102. https://doi.org/10.1007/s11417-018-9280-2.

Johnson, David T. 2002. *The Japanese Way of Justice : Prosecuting Crime in Japan*. Studies on Law and Social Control. Oxford [England]: Oxford University Press. https://login.ezproxy.leidenuniv.nl:2443/login?URL=http://search.ebscohost.com/login.aspx?direct=true&db=nlebk&AN=129680&site=ehost-live.

___. 2012. "Japan's Prosecution System." *Crime & Justice* 41 (1).

Jubi, *Confiscated Timber about to Decay* https://eng.jubi.co.id/confisted-timber-about-to-decay/, accessed on 5 May 2019.

Jusuf, Muhammad. 2014. *Hukum Kejaksaan: Eksistensi Kejaksaan Sebagai Pengacara Negara Dalam Perkara Perdata Dan Tata Usaha Negara*. Surabaya: Penerbit Laksbang Justitia.

Kadafi, Binziad. 2019. "Finality and Fallibility in the Indonesian Revision System." Tilburg.

Kaligis, O.C, Rusdi Nurima, Denny Kailimang, and Rudhy A. Lontoh. 2000. *Praktik Praperadilan Dari Waktu Ke Waktu*. Jakarta: Otto Cornelis Kaligis & Associates.

Karimun District Prosecution Office, *Pejabat Struktural* (Managers), http://www.kejari-tbkarimun.go.id/pejabat-struktural/, accessed on 20 December 2018.

Karniasari, Arin. 2012. "Tinjauan Teoritis, Historis, Yuridis Dan Praktis Terhadap Wewenang Jaksa Agung Dalam Mengesampingkan Perkara Demi Kepentingan Umum." Indonesia. http://lib.ui.ac.id/file?file=digital/20315934-T31500-Tinjauan teoritis.pdf.

Kaufman, Fred. 1960. "THE ROLE OF THE PRIVATE PROSECUTOR: A Critical Analysis of the Complainant's Position in Criminal Cases." *McGill Law Journal* 7. http://www.lawjournal.mcgill.ca/userfiles/other/2716511-kaufman.pdf.

Kbr.id, *Pemerintah Diminta Jangan Perlakukan Kejaksaan Seperti BUMN* (The Government is requested not to treat the Prosecution Service like a state-owned company), https://kbr.id/nasional/03-2016/pemerintah_diminta_jangan_perlakukan_kejaksaan_seperti_bumn/79324.html, accessed on 12 September 2019

Kejaksaan Republik Indonesia, *Peranan Intelijen Yustisial Kejaksaan Dalam Penyelesaian Perkara*, (The role of intelligence from prosecutors in investigating cases): https://www.kejaksaan.go.id/unit_kejaksaan.php?idu=28&idsu=34&idke=0&hal=2&id=1539&bc=, accessed on 4 December 2017.

___. 2012. Laporan Tahunan 2011 Kejaksaan RI. Jakarta: Kejaksaan Agung

___. 2013. Laporan Tahunan 2012 Kejaksaan RI. Jakarta: Kejaksaan Agung

___. 2014. Laporan Tahunan 2013 Kejaksaan RI. Jakarta: Kejaksaan Agung

___. 2015. Laporan Tahunan 2014 Kejaksaan RI. Jakarta: Kejaksaan Agung

___. 2016. Laporan Tahunan 2015 Kejaksaan RI. Jakarta: Kejaksaan Agung

___. 2017. Laporan Tahunan 2016 Kejaksaan RI. Jakarta: Kejaksaan Agung.

___. *Kunjungan Presiden RI Joko Widodo ke Kejari Sawahlunto* (The President visits Sawahlunto District Prosecution Office), https://www.kejaksaan.go.id/berita.php?idu=22&id=12135, accessed on 5 December 2018.

___. *Seminar Hari Bhakti Adhyaksa 2012, Eksistensi Lembaga Penegak Hukum Ad Hoc ditinjau dari Sistem Peradilan Pidana the 2012 Adhyaksa* (Day Seminar, The Existence of Ad Hoc Law Enforcement Agencies and the Criminal Justice System), https://kejaksaan.go.id/unit_kejaksaan.php?idu=28&idsu=39&id=3403, accessed on 3 February 2017.

___. *Penerapan Sistem TI Penanganan Perkara* (The application of electronic systems to handling cases), https://www.kejaksaan.go.id/reformasi_birokrasi.php?section=3&id=39, accessed on 12 December 2017.

___. *Pengumuman Asesmen Kompetensi Bagi Pejabat Fungsional Jaksa* (Announcement of the Competency Assessment for Prosecutors), https://www.kejaksaan.go.id/uplimg/File/2013/asesmen%20jaksa0001.PDF, accessed on 3 December 2017.

___, *Pengumuman Pelaksanaan Seleksi Calon Pegawai Negeri Sipil Kejaksaan RI Tahun Anggaran 2017* (Announcement of Selected Civil Servant Candidates in the IPS, 2017), https://www.kejaksaan.go.id/uplimg/SCN_0001.pdf, accessed on 6 June 2018.

Kejaksaan Negeri Jakarta Barat (the official website of the West Jakarta Prosecution Office), http://www.kejari-jakbar.go.id/, accessed on 12 May 2018.

___. *Reposisi Penyidik Pegawai Negeri Sipil dan Jaksa Penuntut Umum Dalam Tahap Penyidikan*, (Re-positioning of civil service investigators and public prosecutors in the investigation process), http://www.kejari-jakbar.go.id/index.php/component/k2/item/255-reposisi-penyidik-pegawai-negeri-sipil-dan-jaksa-penuntut-umum-dalam-tahap-penyidikan, accessed on 18 March 2019.

___. *Perusahaan Penunggak Iuran BPJS Ketenagakerjaan Dipanggil Kejaksaan Negeri Jakarta Barat* (Companies that tried to avoid paying BPJS insurance were summoned by the West Jakarta District Prosecution Office): http://www.kejari-jakbar.go.id/index.php/arsip/berita/item/611-perusahaan-penunggak-iuran-bpjs-ketenagakerjaan-dipanggil-kejaksaan-negeri-jakarta-barat, accessed on 20 September 2018.

Kejaksaan Negeri Jakarta Selatan, *Kejari Jaksel Menerbitkan SKPP Perkara Bibit dan Chandra* (South Jakarta District Prosecution Office Issues an SKPP for Bibit and Chandra's Case), http://www.kejari-jaksel.go.id/read/news/2009/12/01/46/kejaksaan-negeri-jakarta-selatan-menerbitkan-skpp-perkara-bibit-dan-chandra-46, accessed 17 November 2018.

___. *Press Release Kejari jaksel setor denda Tilang Rp. 10 Milyar lebih ke kas Negara pada tahun 2017* (Press Release: South Jakarta District Prosecution Office deposited a ticket fine of more than ten billion rupiahs in the state treasury in 2017), http://www.kejari-jaksel.go.id/read/event/2017/12/04/266/kejari-jaksel-setor-denda-tilang-rp-10-milyar-lebih-ke-kas-negara-pada-tahun-2017, accessed on 4 April 2018.

Kejaksaan Negeri Tomohon, *Perintah Harian Jaksa Agung 22 Juli 2017*, http://kejari-tomohon.go.id/perintah-harian-jaksa-agung-22-juli-2017/, accessed on 6 June 2018.

Kementerian Hukum dan HAM RI, Sejarah Kementerian Hukum dan HAM https://www.kemenkumham.go.id/profil/sejarah, accessed on 3 April 2019.

Kementerian Keuangan Republik Indonesia. 2011. Nota Keuangan Dan Anggaran Pendapatan Dan Belanja Negara Tahun Anggaran 2011. Jakarta: Kementerian Keuangan.

___. 2012. Nota Keuangan Dan Anggaran Pendapatan Dan Belanja Negara Tahun Anggaran 2012. Jakarta: Kementerian Keuangan.

___. 2013. Nota Keuangan Dan Anggaran Pendapatan Dan Belanja Negara Tahun Anggaran 2013. Jakarta: Kementerian Keuangan.

___. 2014. Nota Keuangan Dan Anggaran Pendapatan Dan Belanja Negara Tahun Anggaran 2014. Jakarta: Kementerian Keuangan.

___. 2015. Nota Keuangan Dan Anggaran Pendapatan Dan Belanja Negara Tahun Anggaran 2015. Jakarta: Kementerian Keuangan.

___. 2016. Nota Keuangan Dan Anggaran Pendapatan Dan Belanja Negara Tahun Anggaran 2016. Jakarta: Kementerian Keuangan.

Kenichi, Goto. 1996. "Modern Japan and Indonesia: The Dynamics and Legacy of Wartime Rule." *Bijdragen Tot de Taal-, Land- En Volkenkunde,* 152 (4). http://booksandjournals.brillonline.com/docserver/22134379/152/4/22134379_152_04_s02_text.pdf?expires=1520699598&id=id&accname=guest&checksum=CD316EBBAB419B24225197B51B2356A2.

Kepaniteraan Mahkamah Agung, *Objek PK adalah Putusan Kasasi* (Review objection is the cassation decision), https://kepaniteraan.mahkamahagung.go.id/index.php/kegiatan/1272-78-objek-pk-adalah-putusan-kasasi, accessed 3 March 2019.

___. *Prosedur Penanganan Perkara Peninjauan Kembali Putusan Pengadilan Yang Telah Memperoleh Kekuatan Hukum Tetap,* (The review procedure for any binding court decision*)*, https://kepaniteraan.mahkamahagung.go.id/index.php/prosedur-berperkara/prosedur-peninjauan-kembali, accessed 3 March 2019

King, Michael. 1981. *The Framework of Criminal Justice*. London: Croom Helm Ltd.

Kodam Diponegoro, *Organisasi* (the organisation) https://www.kodam4.mil.id/organisasi/ , accessed on 25 January 2019.

Komisi Hukum Nasional. 2005a. "Pembaruan Organisasi Dan Tata Kerja Kejaksaan RI." Jakarta.

___. 2005b. *Pembaruan Rekrutmen Calon Jaksa*. Jakarta: Kejaksaan Agung Republik Indonesia, Komisi Hukum Nasional, Masyarakat Pemantau Peradilan Indonesia Fakultas Hukum Universitas Indonesia, The Asia Foundation.

___. 2005c. "Pembaruan Sistem Pembinaan Karir Jaksa." Jakarta.

___. 2005d. "Pembaruan Sistem Pengawasan Jaksa." Jakarta.

Komisi Kejaksaan, *Denda Tilang sebagai PNBP Kejaksaan* (Fine ticket is revenue for the IPS PNBP), https://komisi-kejaksaan.go.id/denda-tilang-sebagai-pnbp-kejaksaan-2/, accessed on 4 April 2018.

___, 2019 *Laporan Tahunan* (Annual Report),https://komisi-kejaksaan.go.id/laporan-tahunan-2/ , accessed 6 November 2020

Komite Masyarakat Sipil untuk Pembaharuan KUHAP (The Civil Society Committee for reform of the KUHAP), *Perjalanan Rancangan KUHAP* (The Pathway of the Draft KUHAP) http://blog.pantaukuhap.id/perjalanan-rancangan-kuhap/, accessed 15 June 2020.

Kompas.com, *Anggaran Dipangkas, Kejagung Terpaksa Berhemat untuk Biaya Perkara* (Budgets have been cut, and the IPS might save court fees for its budget), https://nasional.kompas.com/read/2016/06/10/16341911/anggaran.dipangkas.kejagung.terpaksa.berhemat.untuk.biaya.perkara, accessed on 3 December 2018.

___. *Bibit Chandra Ditahan, Polri Dikecam* (Bibit Chandra Arrested – National Police Criticised) https://nasional.kompas.com/read/2009/10/29/20260077/bibit.dan.chandra.ditahan.polri.dikecam, accessed 17 November 2018.

___. *Dana Anggaran Kecil Untuk Penanganan Perkara, Kejaksaan Disamakan Seperti Badan Usaha* (With its small budget for case handling, the Prosecution Service is treated like a business entity), https://nasional.kompas.com/read/2016/03/13/17400751/Dana.Anggaran.Kecil.untuk.Penanganan.Perkara.Kejaksaan.Disamakan.seperti.Badan.Usaha, accessed on 12 April 2018.

___. Kejagung Klaim Menangkan Kasus Perdata Soeharto (Supreme Prosecution Office claimed that they won the Soeharto civil law cases) https://nasional.kompas.com/read/2008/03/28/11573325/kejagung.klaim.menangkan.kasus.perdata.soeharto, accessed on 8 March 2019

___. *KPK Tetapkan Bupati Malang Tersangka dua Kasus Korupsi*, (The KPK has determined the Malang Regent to be a suspect in two corruption cases), https://nasional.kompas.com/read/2018/10/11/18032261/kpk-tetapkan-bupati-malang-tersangka-dua-kasus-korupsi, accessed on 19 January 2019.

___. *Kuatno and Topan Terbukti Lemah Mental*, (Kuatno and Topan were proven to be mentally disabled), https://megapolitan.kompas.com/read/2012/01/06/13051651/kuatno.dan.topan.terbukti.lemah.mental, accessed 1 April 2019.

___. *Reformasi Birokrasi di Kejaksaan Dianggap Sulit karena Tak Ada Wakil Jaksa Agung* (Bureaucratic reform of the IPS is believed to be difficult because there is no Vice Chief Prosecutor), https://nasional.kompas.com/read/2016/07/24/19011601/reformasi.birokrasi.di.kejaksaan.dianggap.sulit.karena.tak.ada.wakil.jaksa.agung, accessed on 13 February 2017

___. *Saat Jaksa Agung disidang Komisi III DPR* (The Chief Prosecutor was tried by Commission III of the DPR), http://print.kompas.com/baca/2016/01/31/Saat-Jaksa-Agung-Disidang-Komisi-III-DPR, accessed on 16 February 2016.

___. *Sejumlah Warga TTU Tuntut Jaksa Kembalikan Mobil Bantuan Pemda* (Some TTU Residents Demand that Prosecutors Return District Government Cars) https://regional.kompas.com/read/2015/06/18/14580391/Sejumlah.Warga.TTU.Tuntut.Jaksa.Kembalikan.Mobil.Bantuan.Pemda, accessed on 19 January 2019.

___. *Jaksa Agung Perintahkan Kajati Kerahkan Intelijen Awasi Konflik di Pilkada Serentak*" (The Chief Prosecutor asked the Office of the High Prosecutor to employ intelligence when dealing with conflicts connected with local leader elections) https://nasional.kompas.com/read/2015/06/17/13545421/Jaksa.Agung.Perintahkan.Kajati.Kerahkan.Intelijen.Awasi.Konflik.di.Pilkada.Serentak, accessed on 5 December 2018.

___. *Terbitkan SPDP Wajib Ada Tersangka* (Issuing an SPDP – There Must be Suspect), https://nasional.kompas.com/read/2011/10/11/10275976/Terbitkan.SPDP.Wajib.Ada.Tersangka, accessed 1 February 2019.

___. *Jaksa Agung Ancam Pecat Jaksa yang Tak Patuhi Instruksi Jokowi* (The Chief Prosecutor warns public prosecutors who do not obey the Jokowi's instructions), 20 July 2016 https://nasional.kompas.com/read/2016/07/20/13210581/jaksa.agung.ancam.pecat.jaksa.yang.tak.patuhi.instruksi.jokowi, accessed 12 June 2018.

___. *Jaksa Agung: Deponering itu Hak Prerogatif saya*, (Chief Prosecutor: "*Deponering* is my Prerogative"), https://nasional.kompas.com/read/2016/02/11/21371781/Jaksa.Agung.Deponering.Itu.Hak.Prerogatif.Saya, accessed 4 March 2018.

___. *Kapolres digugat karena penetapan tersangka kasus korupsi di Dinas Tenaga Kerja Surabaya,* (Chief of District Police was sued (in the Pre-trial Hearing) for determining a (wrongful) suspect of corruption in the Surabaya Manpower Division) https://regional.kompas.com/read/2016/12/09/14125041/polisi.kalah.praperadilan.kapolres.tanjung.perak.diperiksa.propam, accessed 29 March 2019.

Kontan.co.id, *RAPBN-P 2016, Anggaran Rp 50,6 triliun dipangkas* (IDR 50,6 trillion has been cut from the 2016 state budget plan), https://nasional.kontan.co.id/news/rapbn-p-2016-anggaran-rp-506-triliun-dipangkas, accessed on 3 December 2018.

Kouwagam, Santy, and Adriaan Bedner. 2019. "Lawyers in Indonesia: Professionals, Brokers and Fixers." In *Lawyers in 21st Century Societies*, edited by R Abel and O Hammerslev. Hart Publishing.

Kouwagam, Santy. 2020. "How Lawyers Win Lands Conflicts." Leiden.

Kristanto, Tri Agung, and Irwan Suhanda, eds. 2009. *JANGAN BUNUH KPK Perlawanan Terhadap Usaha Pemberantasan Korupsi*. Jakarta: PT Kompas Media Nusantara.

Kristiana, Yudi. 2006. *Independensi Kejaksaan Dalam Penyidikan Korupsi*. 2006: Citra Aditya Bakti.

___. 2009. *Menuju Kejaksaan Progresif, Studi Tentang Penyidikan Dan Penuntutan Tindak Pidana Korupsi*. Jakarta: Masyarakat Transparansi Indonesia in Cooperation with National legal Reform Program (NLRP).

___. 2010. *Toward a Progression Public Prosecutor's Office (a Study on Investigation, Prosecution, and Adjudication of Criminal Acts of Corruption*. Jakarta: Masyarakat Transparansi Indonesia in Cooperation with National legal Reform Program (NLRP).

Kroef, Justus M . van der. 1985. "" Petrus ": Patterns of Prophylactic Murder in Indonesia." *Asian Survey* 25 (7): 745-59.

Kumparan, *Beredar Viral, Turnamen Golf Yang Diselenggarakn Jaksa*, (Going Viral! Golf Tournaments were organised by the prosecutor), https://kumparan.com/@kumparannews/beredar-viral-turnamen-golf-yang-diselenggarakan-jaksa, accessed on 7 November 2018.

Kurasawa, Aiko Inomata. 1988. "Mobilization and Control: A Study of Social Change in Rural Java, 1942-1945. (Volumes I and Ii) (Japan, Indonesia)." *ProQuest Dissertations and Theses*, 796-796 p. http://search.proquest.com/docview/303694436?accountid=13771.

Kusuma, RM AB. 2010. *Lahirnya Undang-Undang Dasar 1945 : Memuat Salinan Dokumen Otentik Badan Oentoek Menyelidiki Oesaha2 Persiapan Kemerdekaan*. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia.

L.Worrall, John, and M. Elaine Nugent-Borakove, eds. 2008. *The Changing Role of the American Prosecutor*. New York: State Univeristy of New York Press. https://doi.org/10.5860/choice.46-5882.

Langer, Máximo, and David Alan Sklansky. 2017a. "Prosecutors and Democracy — Themes and Counterthemes (Epilogue) (December 5, 2016)." In *Prosecutors and Democracy: A Cross-National Study*, edited by Maximo Langer and David Alan Sklansky. Cambridge: Cambridge University Press. https://ssrn.com/abstract=2880538.

___. , eds. 2017b. *Prosecutors and Democracy A Cross National Study*. Cambridge: Cambridge University Press.

LBH Jakarta, *Hentikan pembahasan rancangan KUHAP pada DPR periode ini* (Stop the Draft KUHAP Deliberations in the House of Representatives Immediately!) https://www.bantuanhukum.or.id/web/hentikan-pembahasan-rancangan-kuhap-pada-dpr-periode-ini/.

Lee, Sun-Woo. 2014a. "A Civil-Law Prosecution System, Presidentialism and the Politicisation of Criminal Justice in New Democracies: South Korea and Russia in Comparative Perspective."

___. 2014b. "The Discordant Combination of Civil-Law Prosecution System and Presidentialism: A Theoretical Framework." *Journal of Politics and Law* 7 (2). https://doi.org/10.5539/jpl.v7n2p81.

___. 2016. "The Politics of Prosecution Service Reform in New Presidential Democracies: The South Korea and Russia Cases in Comparative Perspective." *Journal of Eurasian Studies* 7 (2): 141-50. https://doi.org/10.1016/j.euras.2015.09.001.

LeIP, *Korupsi Lewat Celah Administrasi Penanganan Perkara: Urgensi Reformasi Manajemen Perkara Pada MARI*, (Corruption via an administration gap in the of handling cases: urgent reform of case management in the Supreme Court), http://leip.or.id/korupsi-lewat-celah-administrasi-penanganan-perkara-urgensi-reformasi-manajemen-perkara-pada-ma-ri/, accessed 2 March 2019.

___. 2018. *Achievements, Challenges and Recommendations for Judicial Reform.* Jakarta: Indonesian Judicial Reform Forum. http://leip.or.id/wp-content/uploads/2018/10/IJRF-Proceeding-English.pdf

___, 2011 *Sistem Kesatuan Hukum Dan Beberapa Topik Tentang Hukum & Peradilan Di Negeri Belanda.* Jakarta.

Lev, Daniel S. 1965. "The Politics of Judicial Development in Indonesia." *Comparative Studies in Society and History* 7: 173. https://doi.org/10.1017/S0010417500003583.

___. 1973. "Judicial Unification in Post-Colonial Indonesia." *Indonesia* 16 (October 1973): 1-37. https://doi.org/10.2307/3350645.

___. 1978. "Judicial Authority and the Struggle for an Indonesian Rehctsstaat." *Law and Society Review* 13: 37-71.

___. 1999. "The Criminal Regime: Criminal Process in Indonesia." In *Figures of Criminality in Indonesia, the Philippines, and Colonial Vietnam*, edited by Vicente L. Rafael. Itacha: Cornel University Press.

___. 2000. *Legal Evolution and Political Auhority in Indonesia*. The Hague: Kluwer Law International.

___. 2005. "Foreword." In *The Indonesian Supreme Court: A Study of Institutional Collapse*, 3-5. Ithaca, New York: Cornell Southeast Asia Program Publications.

___. 2007. "Judicial Institutions and Legal Culture in Indonesia." In *Culture and Politics in Indonesia*, edited by Claire Holt, 246-318. Equinox Publishing.

___. 2009. *The Transition to Guided Democracy: Indonesian Politics, 1957-59*. Singapore: Equinox Publishing.

___. 2011. *No Concessions The Life of Yap Thiam Hien, Indonesian Human Rights Lawyer*. Seattle & London: University of Washington Press.

Lewis, Chris. 2012. "The Evolving Role of the English Crown Prosecution Service." In *The Prosecutor in Transnational Perspective*, edited by Erik Luna and Marianne Wade. Oxford University Press.

Li, Ling. 2010. "Legality, Discretion and Informal Practices in China's Courts, A Socio-Legal Investigation of Private Transactions in the Course of Litigation." *Law School*. Leiden.

Lindsey, Tim, and Simon Butt. 2009. "Judicial Mafia The Courts and State Illegality in Indonesia." In *The State and Illegality in Indonesia*, edited by E Aspinall and G van Klinken, 189-213. Leiden: KITLV.

Lindsey, Tim, ed. 2007. *Law Reform in Developing and Transitional States*. London and New York: Routledge.

Lipsky, Michael. 2010. *Street-Level Bureaucracy: Dilemmas of The Individual in Public Services*. New York: Russel Sage Foundation.

Lolo, Ferdinand Tandi Andi. 2008. "The Prosecutorial Corruption During The New Order Regime Case Study : The Prosecution Service of the Republic Indonesia." Auckland.

Luna, Erik, and Marianne Wade. 2012. *The Prosecutor in Transnational Perspective*. Oxford University Press.

Macdonald, Stuart. 2008. "Constructing a Framework for Criminal Justice Research: Learning from Packer's Mistakes." *New Criminal Law Review* 11 (2): 257-311. https://doi.org/10.1525/nclr.2008.11.2.257.

Mahfud MD, Mohammad. 2015. "Penguatan Lembaga Kejaksaan Selaku Aparatur Penegak Hukum Dalam Sistem Ketatanegaraan Republik Indonesia."

Mahkamah Agung Republik Indonesia. 2018. Laporan Tahunan 2017 Mahkamah Agung RI. Jakarta: Mahkamah Agung.

Mangoenprawiro, Djokomoeljo. 1992. *Catatan Harian Seorang Jaksa Mengungkap Kasus-Kasus Subversi, Korupsi Dan Manipulasi*. Semarang: Dahara Prize.

___. 1999. *Kiat Andi Muhammad Ghalib Memeriksa KKN Soeharto*. Jakarta: Raga Mukti.

MaPPI FH UI, *Perbaikan Anggaran Perkara Kejaksaan untuk Perbaikan Penegakan Hukum* (Revisions to the Budget for IPS Cases to Improve Legal Enforcement), http://mappifhui.org/2016/03/14/perbaikan-anggaran-perkara-kejaksaan-untuk-perbaikan-penegakan-hukum/, accessed on 19 April 2016.

___. *Permasalahan Nasional dan Tahunan Anggaran Perkara Kejaksaan* (National and Annual Problems for IPS Budgets), http://mappifhui.org/2016/05/10/permasalahan-nasional-dan-tahunan-anggaran-perkara-kejaksaan/, accessed on 3 December 2017.

___. Laporan Penelitian Penyederhanaan Format Putusan http://mappifhui.org/wp-content/uploads/2016/01/Laporan-simplifikasi_COMPLETED.pdf.

___. 2012. "Catatan Dan Masukan Atas Ruu Kejaksaan Yang Dikeluarkan Dewan Perwakilan Rakyat Republik Indonesia." http://mappifhui.org/wp-content/uploads/2015/10/CATATAN-DAN-MASUKAN-ATAS-RUU-KEJAKSAAN-YANG-DIKELUARKAN.pdf.

Maradona. 2018. "Corporate Criminal Liability in Indonesia : Regulation , Implementation and Comparison with The Netherlands." Erasmus School of Law.

Marguery, Tony Paul. 2008. "Unity and Diversity of the Public Prosecution Services in Europe A Study of the Czech , Dutch , French and Polish Sytems." Groningen.

Maringka, Jan Samuel. 2015. "Penguatan Kejaksaan Secara Kelembagaan Dalam Sistem Ketatanegaraan." Biro Hukum dan Hubungan Luar Negeri Kejaksaan Agung Republik Indonesia.

Massier, Ab. 2008. *The Voice of the Law in Transition Indonesian Jurists and Their Languages 1915-2000*. Leiden: KITLV Press. http://scholar.google.co.jp/scholar?q=Massier+voice+of+law&ie=UTF-8#0.

May, Christopher, and Adam Winchester. 2018. *Handbook on the Rule of Law*. Edward Elgar Publishing. https://doi.org/10.4337/9781786432445.

Maya, Genoveva Allicia K S, and Erasmus A. T. Napitupulu. 2019. "Anak Dalam Ancaman Penjara: Potret Pelaksanaan UU SPPA 2018 (Riset Putusan Peradilan Anak Se-DKI Jakarta." Jakarta: ICJR.

McBride, Keally. 2007. *Punishment and Political Order*. The University of Michigan Press.

Medium, *Mengenal Paralegal* (Knowing Paralegal), https://medium.com/@imagili/mengenal-paralegal-e03029093984, accessed on 18 January 2019.

Meliala, Adrianus. 2015. "Peran Dan Pengalaman Kompolnas Selaku Lembaga Pengawas Kepolisian."

Merdeka, *Ketahuan Selingkuh dengan Polisi, Jaksa VP disanksi Tak Naik Gaji* (Having an affair with a police officer, or prosecutor VP, will be punished), https://www.merdeka.com/peristiwa/ketahuan-selingkuh-dengan-polisi-jaksa-vp-disanksi-tak-naik-gaji.html, accessed on 22 December 2017.

Merry, Sally Engle. 2002. "Ethnography in the Archives." In *Practicing Ethnography in Law – New Dialogues, Enduring Methods*, edited by June Starr and Mark Goodale. Palgrave Macmillan.

Mertokusumo, Sudikno. 1970. "Sedjarah Peradilan Dan Perundang-Undangannja Di Indonesia Sedjak 1942." Gadjah Mada.

Michel, Verónica. 2018. *Prosecutorial Accountability and Victims' Rights in Latin America*. Cambridge: Cambridge University Press. https://doi.org/10.1017/9781108380034.

___. 2019. "Public Prosecutor's Offices In Latin America." In *Routledge Handbook of Law and Society in Latin America*, edited by Rachel Sieder, Karina Ansolabehere, and Tatiana Alfonso. New York: Routledge.

Misbahul Munir, *Mengembalikan Kepercayaan Publik Terhadap Prosecution Service* (Restoring Public Trust in the Prosecution Service), 1 December 2015, http://news.metrotvnews.com/read/2013/11/22/196472/kesadaran-keamanan-informasi-minim-permudah-penyadapan. Accessed 6 March 2016.

Mitchell, Richard H. 1992. *Janus-Faced Justice: Political Criminals in Imperial Japan*. University of Hawai Press.

Mochtar, Zainal Arifin. 2016. *Lembaga Negara Independen : Dinamika Perkembangan Dan Urgensi Penataannya Kembali Pasca-Amandemen Konstitusi*. Jakarta: Rajawali Press.

Montana, Riccardo, and David Nelken. 2011. "The Ambivalent Role of Italian Prosecutors and Their Resistance to 'Moral Panics' about Crime." In *Routledge Handbook of International Criminology*, edited by C. J. Smith, S. X. Zhang, and R. Barberet. https://doi.org/10.4324/9780203864708.ch27.

Montana, Riccardo. 2009a. "Between Crime-Fighter and Judge: A Study of the Legal and Cultural Influences on the Pre-Trial Role of the Italian Prosecutor with Particular Reference to the Definition of the Crime Problem." PQDT – Global.

___. 2009b. "Prosecutors and the Definition of the Crime Problem in Italy: Balancing the Impact of Moral Panics." *Criminal Law Forum* 20: 471-94. https://doi.org/10.1007/s10609-009-9108-y.

___. 2012. "Adversarialism in Italy: Using the Concept of Legal Culture to Understand Resistance to Legal Modifications and Its Consequences." *European Journal of Crime, Criminal Law and Criminal Justice* 20 (1): 99-120. https://doi.org/10.1163/157181712X615258.

Mudzakkir. 2008. "Perencanaan Pembangunan Hukum Nasional Bidang Hukum Pidana Dan Sistem Pemidanaan (Politik Hukum Dan Pemidanaan)." Jakarta.

Muhtadi, Burhanuddin. 2015. "Jokowi's First Year: A Weak President Caught between Reform and Oligarchic Politics." *Bulletin of Indonesian Economic Studies*. https://doi.org/10.1080/00074918.2015.1110684.

Muladi. 1995. *Kapita Selekta Sistem Peradilan Pidana*. Semarang: Badan Penerbit Universitas Diponegoro.

Mulyadi, Lilik. 2012. *Hukum Acara Pidana: Suatu Tinjauan Khusus Terhadap Surat Dakwaan, Eksepsi, Dan Putusan Peradilan*. Bandung: Citra Aditya Bakti.

Muradi, ed. 2013. *Penataan Kebijakan Keamanan Nasional*. Bandung: Dian Cipta.

___. 2014. *Politics and Governance in Indonesia: The Police in the Era Reformasi*. New York: Routledge.

Nababan, Panda. 2009. *Menembus Fakta: Otobiografi 30 Tahun Seorang Wartawan : Jurnalisme Investigatif Panda Nababan*. Jakarta: Q COmmunication.

Namakule, Afdal. *Oknum Jaksa Diduga Peras Proyek Pemerintah di Bali, MAKI harap TP4D dibubarkan* (Prosecutor attempted to extort officials in Bali, and MAKI asked the IPS to dissolve TP4) https://fin.co.id/2018/09/13/oknum-jaksa-diduga-peras-proyek-pemerintah-di-bali-maki-harap-tp4-dan-tp4d-dibubarkan/, accessed 7 March 2019.

Nandan Iskandar, Amelya Gustina, Dyah Kusumastuti, Fitri Agustina Siregar, Aghia Khumaessi Suud, and Irfan Fachrurrozi. 2017. "Penguatan Peran Intelijen Kejaksaan Dalam Pengawasan Aliran Kepercayaan Dan Aliran Keagamaan Dalam Masyarakat (Pakem) Demi Ketertiban Dan Ketenteraman Umum." https://www.kejaksaan.go.id/uplimg/userfiles/files/pusat_litbang/PENGUATAN PERAN INTELIJEN KEJAKSAAN DALAM PENGAWASAN ALIRAN KEPERCAYAAN DAN ALIRAN KEAGAMAAN DALAM MASYARAKAT (PAKEM) DEMI KETERTIBAN DAN KETENTERAMAN UMU.

Naskah Komprehensif Perubahan UUD Buku VI Kekuasaan Kehakiman. 2010. Vol. 53. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi.

Nasution, Adnan Buyung. 1995. *Aspirasi Pemerintahan Konstitusional Di Indonesia: Studi Sosio-Legal Atas Konstituante, 1956-1959*. Jakarta: Pustaka Utama Grafiti.

___. 2004. *Pergulatan Tanpa Henti / Adnan Buyung Nasution ; Dirumahkan Soekarno, Dipecat Soeharto*. Edited by Ramadhan KH and Nina Pane. Jakarta: Aksara Karunia.

___. 2010. *Demokrasi Konstitusional : Pikiran & Gagasan Adnan Buyung Nasution*. Edited by Tri Agung. Kristanto. Jakarta: Penerbit Buku Kompas.

Nayazri, Ghulam Muhammad. *Polisi dapat Bagian dari Denda Tilang*, (The police may receive income from ticket fines), https://sains.kompas.com/read/2016/01/18/064059630/Polisi.Dapat.Bagian.dari.Denda.Tilang, accessed on 4 April 2018.

NewsDetik, *Ingat Mulai Esok Pelanggar di Jakbar tak Perlu Ikut Sidang Tilang* (Remember! Starting from tomorrow, violators of traffic laws in West Jakarta may not attend a traffic hearing), https://news.detik.com/berita/3388513/ingat-mulai-esok-pelanggar-di-jakbar-tak-perlu-ikut-sidang-tilang, accessed on 22 April 2018.

___. *KDRT Jaksa Puji Kembali Disidang, Nazwita hadap dakwaan diganti* (Prosecutor Puji is on the trial again for domestic violence; Nazwita hopes the charge is changed), https://news.detik.com/berita/d-1153137/kdrt-jaksa-puji-kembali-disidang-nazwita-harap-dakwaan-diganti, accessed on 16 April 2017.

NewsDetik, *Skandal Poligami Jaksa KDRT, Jaksa Puji dipecat*, (Polygamy scandal involving a prosecutor who committed domestic violence; Prosecutor Puji is fired), https://news.detik.com/berita/d-1166495/jaksa-puji-rahardjo-dipecat, accessed on 16 April 2017.

___. *La Nyalla Bebas, Kajati Jatim: Lawannya ini yang punya pengadilan* (La Nyalla is acquitted, the Head of East Java High Prosecution Office says: "Our enemy is the person who owned the court") https://news.detik.com/berita/d-3381454/la-nyalla-bebas-kajati-jatim-lawannya-ini-yang-punya-pengadilan,

Niniek Suparni, Sri Humana, Imas Sholihah, and Suryadi Agoes. 2017. "Optimalisasi Peran Pusat Pemulihan Aset (PPA) Kejaksaan Agung Dalam Mendorong Satker Wilayah, Untuk Menyelesaikan Benda Sitaan Dan Barang Rampasan." Jakarta. https://www.kejaksaan.go.id/uplimg/userfiles/files/pusat_litbang/Optimalisasi Peran Pusat Pemulihan Aset (PPA) Kejaksaan Agung Dalam Mendorong Satker Wilayah, Untuk Menyelesaikan Benda Sitaan dan Barang Rampasan.pdf.

Nonet, Philippe, and Philip Selznick. 2009. *Law and Society in Transition Toward Responsive Law*. New Brunswick London: Transaction Publisher.

Nota Keuangan Dan Anggaran Pendapatan Dan Belanja Negara Tahun Anggaran (Financial Notes and State Budget) from 2011 to 2015, and *Nota Keuangan beserta Rancangan Anggaran Pendapatan Dan Belanja Negara Tahun Anggaran* (Financial Notes and State Budget) from 2016.

O'Brien, Melanie. 2012. "Prosecutorial Discretion as an Obstacle to Prosecution of United Nations Peacekeepers by the International Criminal Court: The Big Fish/Small Fish Debate and the Gravity Threshold." *Journal of International Criminal Justice* 10 (3): 525-45. https://doi.org/10.1093/jicj/mqs040.

Packer, Herbert L. 1964. "Two Models Of The Criminal Process." *University of Pennsylvania Law Review*.

Pakpahan, Muchtar, and Emmy Tambunan. 2010. *PK Jaksa versus Negara Hukum (Bagian Kedua Analisis Hukum Kasus Dr. Muchtar Pakpahan, SH., MA)*. Jakarta: Bumi Intitama Sejahtera.

Pandupraja, Adnan, Topo Santoso, and Brian Amy Prasetyo. 2010. *Revisi KUHAP Mengenai Upaya Paksa (2)*. Jakarta: Komisi Kepolisian Nasional.

Pangaribuan, Luhut M.P. 2016. *Hukum Acara Pidana Dan Hakim Ad Hoc*. Jakarta: Program Pascasarjana Fakultas Hukum Universitas Indonesia, Penerbit Papas Sinar Sinanti.

Panitia Penyusunan dan Penyempurnaan Sejarah Kejaksaan RI. 1985. *Lima Windu Sejarah Kejaksaan 1945-1985*. Jakarta: Kejaksaan Republik Indonesia.

Panjaitan, Jasman. 2015. "Manajemen Pengawasan Sebagai Sarana Peningkatan Disiplin, Integritas Dan Profesionalisme Di Kejaksaan Republik Indonesia." In *Bunga Rampai Kejaksaan Republik Indonesia*. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia.

Pantau KUHAP, Rancangan KUHAP http://pantaukuhap.id/?cat=27, accessed on 18 January 2019.

Pengurus Besar Persadja. 1961. *Suara Persadja*. Jakarta : Pengurus Besar Persadja

Pereira, Anthony W. 2008. "Of Judges and Generals: Security Courts under Authoritarian Regimes in Argentina, Brazil, and Chile." In *Rule By Law: The Politics of Courts in Authoritarian Regimes*, edited by Tom Ginsburg and Tamir Moustafa. Cambridge University Press.

Persada UB, Persada UB ingin perbaiki manajemen barang bukti di Kejaksaan. (PERSADA UB wants to participate in reforming IPS evidence management) http://persada.ub.ac.id/persada-ub-ingin-perbaiki-manajemen-barang-bukti-di-kejaksaan/, accessed 18 December 2019.

Persatuan Djaksa-djaksa. 1955. Anggaran Dasar PERSAJA /*Indonesischtalige statuten van de Persatuan Djaksa*.

Pitu News, *Kabandiklat Kejaksaan Utus 40 Jaksa Belajar Intelijen Bersama TNI*, (the Head of the Prosecutor's Training Centre sent forty prosecutors to learn intelligence from the Indonesian Army): http://pitunews.com/kabandiklat-kejaksaan-utus-40-jaksa-belajar-intelijen-bersama-tni/, accessed on 8 October 2017.

Poernomo, Bambang. 1988. *Orientasi Hukum Acara Pidana Indonesia*. Yogyakarta: Amarta Buku.

Poeze, Harry A. 2009. *Tan Malaka, Gerakan Kiri, Dan Revolusi Indonesia: Jilid 2: Maret 1946- Maret 1947*. Jakarta: Yayasan Obor Indonesia; KILTV Jakarta.

___. 2010. *Tan Malaka, Gerakan Kiri, Dan Revolusi Indonesia: Jilid 3: Maret 1947-Agustus 1948*. Jakarta: Yayasan Obor Indonesia; KILTV Jakarta.

Pojok Satu, *Kasus Cirangsad mulai digarap serius*, (Cirangsad case is to be investigated seriously) https://jabar.pojoksatu.id/bogor/2015/08/05/kasus-cirangsad-mulai-digarap-serius/, accessed 23 March 2018.

Polri & KKN. 2004. Jakarta: Kemitraan-Partnership for Governance Reform in Indonesia.

Polzer, Katherine, Johnny Nhan, and John Polzer. 2014. "Prosecuting the Prosecutor: The Makings of the Michael Morton Act." *Social Science Journal* 51 (4): 652-58. https://doi.org/10.1016/j.soscij.2014.05.007.

Pom Kodam Mulawarman, Arti dan Lambang: http://pom.kodam-mulawarman.mil.id/profil-pomdam-mulawarman/arti-dan-lambang, accessed 4 April 2016.

Pompe, Sebastiaan. 2005. *The Indonesian Supreme Court A Study of Institutional Collapse*. Ithaca, New York: Southeast Asia Program Publications.

Portal Berita Pemerintah Provinsi Jawa Tengah, *MOU PEMKAB Dengan Kejaksaan Batang* (MOU between the Batang District Government and District Prosecution Office): https://jatengprov.go.id/beritadaerah/mou-pemkab-dengan-kejaksaan-batang/, accessed on 30 October 2018.

Power, Thomas P. 2018. "Jokowi's Authoritarian Turn and Indonesia's Democratic Decline." *Bulletin of Indonesian Economic Studies* 54. https://doi.org/10.1080/00074918.2018.1549918.

Pradja, R. Achmad S. Soema di. 1985. *Surat Dakwaan : Suatu Usaha Memahami Isi Serta Peranannya Berdasarkan KUHAP Disertai Berberapa Putusan Mahkamah Agung*. Bandung: Penerbit Sinar Baru.

Prakoso, Djoko. 1986. *Tugas Dan Peranan Jaksa Dalam Pembangunan*. Jakarta Timur: Ghalia Indonesia.

___. 1988. *Surat Dakwaan, Tuntutan Pidana Dan Eksaminasi Perkara DI Dalam Proses Pidana*. Jakarta: Liberty.

Price Water House Coopers, and British Institute Of International and Comparative Law. 2001. "Focus on People The Report Of The Governance Audit of The Public Prosecution Service of The Republic Of Indonesia."

Pringgodigdo, R.M. Girindro. 1994. "Kebijaksanaan, Hierarkhi Perundang-Undangan Dan Kebijakan Dalam Konteks Pengembangan Hukum Administrasi Negara Di Indonesia." Jakarta: Pidato Pengukuhan Guru Besar Ilmu Hukum Fakultas Hukum Universitas Indonesia.

Purba, Kornelisus, End police power to punish everything under the sun, https://www.thejakartapost.com/academia/2019/10/15/end-police-power-to-punish-everything-under-the sun.html?utm_campaign=newsletter&utm_source=mailchimp&utm_medium=mailchimp-oct&utm_term=police-state-commentary, accessed on 16 October 2019.

Purwowidagdo, Soekarno, Franky Yulianto, Marni Utamining, and Eko Suwarni. 2012. *Bambang Waluyo Di Mata Masyarakat, Teman Sahabat Dan Rekan Kerja Tidak Pernah Merasa Bisa Tapi Selalu Bisa Merasa*. Semarang: Penerbit Buku Majalah Prosekutor.

Qurniasari, Iyut, and IG Krisnadi. 2014. "Konspirasi Politik Dalam Kematian Marsinah Di Porong Sidoarjo Tahun 1993-1995." *Publika Budaya* 3 (November): 18-25.

Rachman, Taufik. 2016. "Can the Indonesian Criminal Justice System Be Enhanced by Replacing the Mandatory Prosecution System with a Discretionary One, like That Used in Australia?" Victoria. http://vuir.vu.edu.au/31832/1/RACHMAN Taufik – Thesis.pdf.

Radar Kepri, *Pisah Sambut Kajati Kepri digelar di Hotel CK Tanjung Pinang* (A welcoming ceremony for the Head of the High Riau Islands Prosecution Office is held in CK Tanjung Pinang Hotel), https://radarkepri.com/pisah-sambut-kajati-kepri-digelar-di-hotel-ck-tanjungpinang/, accessed on 7 November 2018.

Rahadian, Lalu. *Kasus Pemufakatan Jahat Setya Novanto Dihentikan Sementara* (The case of Setya Novanto's conspiracy is temporary terminated by the IPS), https://www.cnnindonesia.com/nasional/20160415151743-12-124221/kasus-pemufakatan-jahat-setya-novanto-dihentikan-sementara, accessed on 16 February 2016

Rajab, Untung S. 2003. *Kedudukan Dan Fungsi Polisi Republik Indonesia Dalam Sistem Ketatanegaraan (Berdasarkan UUD 1945)*. Cet. 1. Bandung: Utomo.

Ranoemihardja, R. Atang. 1980. *Hukum Acara Pidana*. Bandung: Tarsito.

Ravensbergen, Sanne. 2018. "Courtrooms of Conflict; Criminal Law, Local Elites and Legal Pluralities in Colonial Java." Leiden University. www.proefschriftmaken.nl.

Reksodiputro, Mardjono. 2002. "CORRUPTION IN THE INDONESIAN LEGAL SYSTEM." In *STEALING ROM THE PEOPLE 16 Studies on Corruption in Indonesia and State Enterprises : Counting the Cost*, edited by Richard Holloway. Jakarta: The Aksara Foundation.

Remmelink, Jan. 2003. *HUKUM PIDANA*. Jakarta: Gramedia Pustaka Utama.

Republika. *La Nyalla kerabat dekat ketua MA, Ini tanggapan Jaksa Agung*, (La Nyala is a Supreme Court President's relative: this is the Chief Prosecutor's response) https://www.republika.co.id/berita/nasional/hukum/16/06/03/o86bb9377-la-nyalla-kerabat-dekat-ketua-ma-ini-tanggapan-jaksa-agung, accessed 23 March 2019.

___. *Jaksa Agung Siap Dipanggil KPK* (The Chief Prosecutor is ready to be summoned by the KPK), http://www.republika.co.id/berita/nasional/hukum/15/10/16/nwax0x365-jaksa-agung-siap-dipanggil-kpk, accessed on 17 February 2017.

Requisitoire Magazine, *Perlu ada Jaksa Agung Muda Militer di Kejaksaan Agung* (It is necessary to have the Deputy Chief Prosecutor for the Military in the Supreme Prosecution Office) http://requisitoire-magazine.com/2014/07/14/perlu-ada-jaksa-agung-muda-militer-di-kejaksaan-agung/, accessed 2 September 2018.

RiauGreen.com, *Sekdaprov: Pembangunan Gedung Kejati Riau Wujud Partisipasi Pemerintah Daerah* (Local government constructs the Riau High Prosecution Office), http://riaugreen.com/view/Pekanbaru/33658/Sekdaprov--Pembangunan-Gedung-Kejati-Riau-Wujud-Partisipasi-Pemerintah-Daerah.html#.XEg5N89KjOQ, accessed on 25 January 2019.

Risalah Pembahasan Undang-Undang Kejaksaan 2002-2004 (Legislative Minutes for the Prosecution Service Law).

Ritonga, Rajab, Nanang Pujalaksana, Solemanto Solemanto, and Selamat Ginting. 2003. *Singgih Memoar Seorang Jaksa Agung*. Jakarta: PT. Quaulquita Communication.

RMOL, *Kejagung RI Batalkan Launching Aplikasi Case Management Kejaksaan*, (Supreme Prosecution Office Cancels the Launch of an Online Case Management Application), http://www.rmoljabar.com/read/2015/05/12/9082/Kejagung-RI-Batalkan-Launching-Aplikasi-Case-Management-Kejaksaan-, accessed on 22 April 2018.

___. *Peradi Minta Menkumham Cabut Aturan Tentang Paralegal* (Peradi Asks the Ministry of Law and Human Rights to Repeal the Regulations on Paralegals), https://hukum.rmol.id/read/2018/03/20/331603/, accessed on 1 April 2017.

Roach, Kent. 1999. "Four Models of the Criminal Process." *Journal of Criminal Law and Criminology* 89 (2): 671. https://doi.org/10.2307/1144140.

Robison, Richard, and Vedi R. Hadiz. 2004. *Reorganising Power in Indonesia: The Politics of Oligarchy in an Age of Markets*. London and New York: Routledge Curzon. https://doi.org/10.4324/9780203401453.

Rooij, Benjamin van, and Adam Fine. 2018. "Toxic Corporate Culture: Assessing Organizational Processes of Deviancy." *Administrative Sciences* 8 (3): 23. https://doi.org/10.3390/admsci8030023.

Roosa, John. 2008. *DALIH PEMBUNUHAN MASSAL GERAKAN 30 SEPTEMBER DAN KUDETA SUHARTO*.

Rosari, Aloysius Soni BL de, ed. 2010. *Elegi Penegakan Hukum: Kisah Sum Kuning, Prita, Hingga Janda Pahlawan*. Jakarta: PT Kompas Media Nusantara.

Rosita, Dian. n.d. "Kinerja Lembaga Ekstra Struktural (LES) Pasca Reformasi 1998."

Rositawati, Dian. 2019. "JUDICIAL GOVERNANCE Judicial Independence under the One Roof System." Tilburg.

Rosjadi, Imron, and Zain Badjeber, eds. 1979. *Proses Pembahasan DPR RI Tentang RUU HUKUM ACARA PIDANA*. Jakarta: Bumi Restu Jakarta, Yayasan Majelis Ilmiyah Muslimin.

Ross, Jacqueline E, and Stephen C Thaman, eds. 2018. *Comparative Criminal Procedure*. Edward Elgar Publishing.

Saepudin, Epung. *Kejaksaan Minta Rp 10,2 triliun Dikasih Rp 2,53 triliun* (The IPS asked for Rp. 102 trillion, and the government granted 2,53 trillion), http://www.anggaran.depkeu.go.id/dja/edef-konten-view.asp?id=736, accessed on 4 April 2018.

Sahardjo. 1963. *Pohon Beringin Pengajoman Hukum Pantjasila*. Jakarta: Fakultas Hukum Universitas Indonesia.

Saleh, Ismail. 2001. *Proses Peradilan Soeharto, Presiden R.I. Ke-2 : Penegakan Hukum Atau Komoditi Politik?* Jakarta: Yayasan Dharmais.

Samuels, Alec. 1986. "Crown Prosecution Service." *Journal of Criminal Law* 50 (4).

Sanders, A., and R. Young. 1994. "The Rule of Law, Due Process and Pre-Trial Criminal Justice." *Current Legal Problems* 47 (Part 2): 125-56. https://doi.org/10.1093/clp/47.part_2.125.

Santoso, Topo. 2000. *POLISI DAN JAKSA: KETERPADUAN ATAU PERGULATAN?* Depok: Pusat Studi Peradilan Pidana Indonesia.

Saptaningrum, Indriaswati Dyah. 2019. "The Fisheries Court Government-Led Judicial Development?" In *The Politics of Court Reform Judicial Change and Legal Culture in Indonesia*, edited by Melissa Crouch. Cambridge University Press.

Sasamoto-Collins, Hiromi. 2015. "Facilitating Fascism? The Japanese Peace Preservation Act and the Role of the Judiciary." In *Fascism and Criminal Law History, Theory Continuity*, edited by Stephen Skinner. Hart Publishing.

Satu Harapan, *Kapolri: Jumlah Polisi meningkat menjadi 429.711 personnel* (Dedy Istanto, National Police Chairman: the number of police increases to 429,711 personnel), http://www.satuharapan.com/read-detail/read/kapolri-jumlah-polisi-meningkat-menjadi-429711-personel, accessed on 4 April 2018.

Saunders, Benjamin, Jenny Kitzinger, and Celia Kitzinger. 2015. "Anonymising Interview Data: Challenges and Compromise in Practice." *Qualitative Research* 15 (5): 616-32. https://doi.org/10.1177/1468794114550439.

Savelsberg, Joachim J, and Suzy Mcelrath. 2014. "Crime , Law , and Regime Change." *The Annual Review of Law and Social Science*. https://doi.org/10.1146/annurev-lawsocsci-110413-030555.

Semendawai, Abdul Haris, Sriyana, Syahrial, Supriyadi Widodo Eddyono, Wahyudi, and Wahyu Wagiman. 2011. "Briefing Paper 1/2011 Pemetaan Awal Situasi Penahanan Dan Pra Peradilan Di Indonesia." Jakarta.

Serambinews.com *Rentut Belum Turun dari Kejagung, Tuntutan Kasus Sabu 50 Kg Ditunda Hingga 28 Januari*, (The *Rentut* has not been issued by the Supreme Prosecution Office, and an indictment for possessing 50 kg heroine is postponed until 28 January), https://aceh.tribunnews.com/2019/01/14/rentut-belum-turun-dari-kejagung-tuntutan-kasus-sabu-50-kg-ditunda-hingga-28-januari, accessed 3 April 2019.

Setiadi, Edi, and Kristian. 2017. *Sistem Peradilan Pidana Terpadu Dan Sistem Penegakan Hukum Di Indonesia*. Jakarta: Kencana.

Setiawan, Ken Marijtje Prahari. 2013. "Promoting Human Rights : National Human Rights Commissions in Indonesia and Malaysia." Leiden University. https://openaccess.leidenuniv.nl/bitstream/handle/1887/22838/Setiawan – Promoting Human Rights.pdf?sequence=16.

Shapiro, Martin. 1981. *Courts A Comparative and Political Analysis*. Chicago: The University of Chicago Press.

Silaban, M.H. 1997. *Kasasi Upaya Hukum Acara Pidana*. Jakarta: Sumber Ilmu Jaya.

Simanjuntak, Hotli and Ompusunggu, Moses. Buddhists caned for violating sharia in Aceh, https://www.thejakartapost.com/news/2017/03/13/buddhists-caned-for-violating-sharia-in-aceh.html, accessed on 17 December 2018.

Simanjuntak, Marsilam. 1994. *Pandangan Negara Integralistik*. Jakarta: Pustaka Utama Grafiti.

Simanjuntak, Nikolas. 2009. *Acara Pidana Indonesia Dalam Sirkus Hukum*. Bogor: Ghalia Indonesia.

Sindo News, *Menang Gugatan, Mangasi Ingin Jaksa Agung Cabut Surat Mutasi*, (Winning Lawsuit, Mangasi asks the Chief Prosecutor to Re-evaluate his Transfer Procedure), https://nasional.sindonews.com/read/1086354/13/menang-gugatan-mangasi-ingin-jaksa-agung-cabut-surat-mutasi-1455788845, accessed on 12 December 2017.

___. *Sudah diputus bebas MA, 2 rekening La Nyalla masih diblokir* (Supreme Court acquitted La Nyalla, but La Nyalla's bank account is still blocked), https://daerah.sindonews.com/read/1323065/23/sudah-diputus-bebas-ma-2-rekening-la-nyalla-masih-diblokir-1531966637, accessed 23 March 2019.

Siong, Han Bing. 1998. "The Japanese Occupation of Indonesia and the Administration of Justice Today: Myths and Realities." *Bijdragen Tot de Taal-, Land-En Volkenkunde* 154: 416-56. http://www.jstor.org/stable/10.2307/27865441.

Siregar, Bismar. 1983. *Hukum Acara Pidana*. Jakarta: Bina Cipta.

Skinner, Stephen, ed. 2015. *Fascism and Criminal Law. History, Theory, Continuity*. Oxford and Portland, Oregon: Hart Publishing.

Slater, Dan. 2010. "Altering Authoritarianism Institutional Complexity and Autocratic Agency in Indonesia." In *Explaining Institutional Change Ambiguity, Agency and Power*, edited by James Mahoney and Kathleen Thelen, 132-67. New York: Cambridge University Press.

Soegiharto. 1989. *Sanul Daca : Pengalaman Pribadi Letjen (Pur) Soegih Arto*. Jakarta: Merdeka Sarana Usaha.

Soekarno. 1960. *Mentjapai Moralitet Tinggi*. Surabaya: Departemen Penerangan RI.

Soepomo. 1953. *Sistem Hukum Di Indonesia Sebelum Perang Dunia II*. Jakarta: Noordhoff-Kolff n.v., Djakarta. http://lib.ui.ac.id/file?file=digital/20379702-Sistim hukum indonesia (sebelum pernag dunia II), 1953.pdf.

___. 1997. *Sistem Hukum Di Indonesia Sebelum Perang Dunia II*. 15th ed. Jakarta: PT Pradnya Paramita.

Sofyan, Andi, and Abd Asis. 2017. *Hukum Acara Pidana Suatu Pengantar*. Jakarta: Kencana.

Strang, Robert R. 2008. "More Adversarial, But Not Completely Adversarial: Reformasi Of The Indonesian Criminal Procedure Code." *Fordham Int'l L.J.* 32 (188): 44.

Suarasurabaya, *Mobil Dinas Ketua PN Surabaya Diminta Kembali oleh Pemkot Surabaya* (The Surabaya District Government demands that the district court president returns his official car), http://kelanakota.suarasurabaya.net/news/2017/186265-Alasan-Mendesak,–Mobil-Dinas-Ketua-PN-Surabaya-Ditarik-Pemkot-Surabaya, accessed on 28 September 2019.

Sulselsatu, *Ramah Tamah di Selayar, Ketua Pengadilan Tinggi Sulsel Pamit* (Farewell party in Selayar – the President of the High Court says goodbye), https://www.sulselsatu.com/2019/08/07/sulsel/selatan/ramah-tamah-di-selayar-ketua-pengadilan-tinggi-sulsel-pamitan.html, accessed on 16 June 2019.

Sumarkidjo, A. 2006. *Jenderal M. Jusuf, Panglima Para Prajurit*. Jakarta: Kata Hasta Pustaka.

Sundhaussen, Ulf. 1986. *Politik Militer Indonesia 1945-1967 Menuju Dwi Fungsi ABRI*. Jakarta: Lembaga Penelitian, Pendidikan dan Penerangan Ekonomi dan Sosial LP3ES.

Sung, Hung En. 2006. "Democracy and Criminal Justice in Cross-National Perspective: From Crime Control to Due Process." *Annals of the American Academy of Political and Social Science* 605 (1): 311-37. https://doi.org/10.1177/0002716206287546.

Supramono, Gatot. 1991. *Surat Dakwaan Dan Putusan Hakim Yang Batal Demi Hukum*. Jakarta: Djambatan.

Surachman, RM, and Andi Hamzah. 2015. *PRETRIAL JUSTICE Dan Discretionary Justice Dalam KUHAP Berbagai Negara*. Edited by Tarmizi. Jakarta: Sinar Grafika.

Suryakusuma, Julia I. 2011. *State Ibuism : The Social Construction of Womanhood in New Order Indonesia*. Depok: Komunitas Bambu.

Sutriadi Pinim, and Erasmus Napitupulu. 2013. "Studi Atas Praktik-Praktik Peradilan Anak Di Jakarta." Jakarta. http://icjr.or.id.

Tak, Peter J P. 2003. *The Dutch Criminal Justice System: Organization and Operation*.

___. 2004. *Tasks and Powers of the Prosecution Services in the EU Member States [Vol. I],*. Nijmegen: Wolf Legal Publishers.

___. 2005. *Tasks and Powers of the Prosecution Services in the EU Member States. Vol. II*. Nijmegen: Wolf Legal Publishers.

___. 2008. "Methods Of Diversion Used By The Prosecution Services In The Netherlands And Other Western European Countries." http://www.unafei.or.jp.

Tanjung, Johannes. *Dana Operasional Belum Cair, Jaksa Kejari Pangkalan Kerinci Dikabarkan Mogok Sidang* (Operational funds have not been received, and a prosecutor from Pangkalan Kerinci District Prosecution office is reported not to have attended the trial), http://pekanbaru.tribunnews.com/2016/05/11/dana-operasional-belum-cair-jaksa-kejari-pangkalan-kerinci-dikabarkan-mogok-sidang, accessed on 3 December 2017.

Tate, C. Neal, and Stacia L. Haynie. 1993. "Authoritarianism and the Functions of Courts: A Time Series Analysis of the Philippine Supreme Court, 1961-1987." *Law & Society Review* 27 (4): 707. https://doi.org/10.2307/3053951.

Tempo Magazine, *Babak Akhir Kasus Marsinah,* (The Final Round of the Marsinah Case) https://majalah.tempo.co/read/hukum/1122/babak-akhir-kasus-marsinah, accessed on 15 January 2020.

Tempo.co, *12 Poin RUU KUHAP yang bikin KPK lemah* (12 Points in the Draft KUHAP which weaken the KPK). https://nasional.tempo.co/read/551038/12-poin-ruu-kuhap-yang-bikin-kpk-lemah?page_num=2, accessed 15 June 2020.

___. *Barang Bukti di RUPBASAN Nyaris Jadi Rongsokan* (Evidence in RUPBASAN almost turned out to be junk), https://fokus.tempo.co/read/1039275/barang-bukti-di-rupbasan-nyaris-jadi-rongsokan, accessed on 5 May 2019.

___. *Barang Bukti di Rupbasan Nyaris Jadi Rongsokan* (Evidence obtained from seizures is almost worn-out), https://fokus.tempo.co/read/1039275/barang-bukti-di-rupbasan-nyaris-jadi-rongsokan, accessed 22 April 2019.

___. *Brebes Beli Mobil untuk Kepala Pengadilan Negeri* (The Brebes District Government buys cars for its district court president), https://nasional.tempo.co/read/518502/brebes-beli-mobil-untuk-kepala-pengadilan-negeri, accessed on 14 September 2019

___. *Dua Kali Jaksa Minta Sidang Pembunuhan Dufi Ditunda, Kenapa?* (The prosecutor asks for the Dufi murder trial to be postponed: Why?), https://metro.tempo.co/read/1189674/dua-kali-jaksa-minta-sidang-pembunuhan-dufi-ditunda-kenapa/full&view=ok, accessed 3 April 2019.

___. *Jaksa Muda di Kejari Ketapang Edarkan Proporsal HUT Adhyaksa* (A junior prosecutor in the Ketapang District Prosecution Office circulates the proposal for IPS anniversary funding) https://nasional.tempo.co/read/783734/jaksa-muda-di-kejari-ketapang-edarkan-proposal-hut-adhyaksa, accessed 7 November 2018.

___. *Kisah Kompolnas Dilaporkan Polisi Karena Ujaran Kebencian*, (Kompolnas' story – reported to the police for giving a hate speech) https://nasional.tempo.co/read/715928/kisah-kompolnas-dilaporkan-polisi-karena-ujaran-kebencian/full&view=ok, accessed on 17 November 2019.

___. *WALHI gugat pra-peradilan Polda Jabar* (WALHI submits a pre-trial hearing application against the West Java Provincial Police), https://nasional.tempo.co/read/650514/walhi-gugat-praperadilan-polda-jabar, accessed 12 March 2018. WALHI asked me to be one of its expert witnesses for the pre-trial hearing.

___. *Wawancara Mayjen Pol. (Purn) Koesparmono Irsan: Berani Nggak Polisi Menghadapi Menteri Tenaga Kerja?* (An Interview with Police Major General Koesparmono Irsan: Are the Police Brave to go Against the Labour Minister?), http://tempo.co.id/ang/min/02/42/nas1.htm, accessed 14 April 2016. See also, JPNN, *Ditanya Pembubuhan Nyo Bengseng, Andi Nirwanto Langsung Kabur* (Andi Nirwanto refused to answer the Nyo Bengseng murder case), https://www.jpnn.com/news/ditanya-pembunuhan-nyo-bengseng-andhi-nirwanto-langsung-kabur?page=1, accessed 14 April 2016.

___. *Ini Isi Detail Dakwaan Suap Rio Capella* (The indictment details of the Rio Capella bribery case), https://nasional.tempo.co/read/717176/ini-isi-detail-dakwaan-suap-rio-capella, accessed on 17 February 2017.

___. *Sudah 6 Bulan Posisi Jaksa Agung Muda Pengawasan Kosong*, (The position of Deputy Chief Prosecutor for Supervision has been vacant for 6 months), https://nasional.tempo.co/read/664689/sudah-6-bulan-posisi-jaksa-agung-muda-pengawasan-kosong, accessed 4 February 2017.

The Jakarta Post, House to question attorney general on 'light' sentence sought for suspects in Novel case https://www.thejakartapost.com/news/2020/06/15/house-to-question-attorney-general-on-light-sentence-sought-for-suspects-in-novel-case.html, accessed 22 June 2020.

___. KPK urged to take on Novel's acid attack case after prosecutors demand light sentence, https://www.thejakartapost.com/news/2020/06/20/kpk-urged-to-take-on-novels-acid-attack-case-after-prosecutors-demand-light-sentence.html, accessed 22 June 2020

___, Prosecutors seek two years for Buni Yani https://www.thejakartapost.com/news/2017/10/03/prosecutors-seek-two-years-for-buni-yani.html, accessed 10 November 2020

The United Nations Human Rights Office of The High Commissioner, *Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, Havana, Cuba, 27 August to 7 September 1990, https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx, accessed on 6 September 2017.

Thelen, Kathleen. 1999. "Historical Institutionalism in Comparative Politics." *Annual Review of Political Science*, 369-404. http://www.annualreviews.org/doi/abs/10.1146/annurev.polisci.2.1.369.

Tim MaPPI FH UI. 2015. *Bunga Rampai Kejaksaan Republik Indonesia*. Edited by Siti Aminah Tardi. Jakarta: Badan Penerbit Fakultas Hukum Universitas Indonesia.

Tim Peneliti Komisi Kejaksaan. 2013a. "Laporan Penelitian Biaya Penanganan Perkara Tindak Pidana Umum Kejaksaan." Jakarta.

___. 2013b. "Laporan Penelitian Pengelolaan Sumber Daya Manusia Kejaksaan." Jakarta.

Tim Penelitian dan Dokumentasi LBH Jakarta. 2015. "HUKUM UNTUK MANUSIA ATAU MANUSIA UNTUK HUKUM ? Catatan Akhir Tahun Refleksi Hukum Dan HAM Indonesia 2015." Jakarta.

Tim Sosialisasi dan Penyusunan Profil Kejaksaan RI 2025 Program Reformasi Birokrasi Kejaksaan. 2009. "Profil Kejaksaan Republik Indonesia 2025." Jakarta.

Tim Taktis, *Catatan Kriminalisasi Pada Kasus Novel Baswedan*, 2015, Jakarta

Tirto.id. *Bintang Berjatuhan dari Trunojoyo* (Stars have fallen from Trunojoyo) https://tirto.id/bintang-berjatuh-dari-trunojoyo-9eU, accessed on 7 November 2018.

___. *Ketika Jaksa Jadi Centeng Proyek Infrastruktur* (When the prosecutor became the government's hitman for infrastructure projects), https://tirto.id/ketika-jaksa-jadi-centeng-proyek-infrastruktur-bZ5z, accessed 12 June 2018.

___. *Polisi: Kami Akui Ada Kasus Salah Tangkap* (Police: "We confess that there have been cases of false arrest"), https://tirto.id/polisi-kami-akui-ada-kasus-salah-tangkap-cKi8, accessed on 17 November 2019.

___. *Yang Perlu Diketahui dari Persidangan Kasus BLBI dan Peran Boediono* (What must be known from the trial of BLBI and Boediono's role in the case), https://tirto.id/yang-perlu-diketahui-dari-persidangan-kasus-blbi-dan-peran-boediono-cPq6, accessed 11 March 2019.

___. *ICW: KPK harus Kejar Jaksa Terlibat Korupsi*, (ICW: KPK must chase prosecutor who was involved in corruption), https://tirto.id/icw-kpk-harus-kejar-jaksa-terlibat-korupsi-bXdG, accessed on 15 December 2018. Republika, *Disebut dalam Kasus Gatot, Jaksa Maruli Malah Dapat Promosi* (As Stated in the Gatot Corruption Case, Prosecutor Maruli Got a Promotion), https://www.republika.co.id/berita/nasional/hukum/15/11/17/nxy7k3334-terlibat-kasus-gatot-jaksa-maruli-malah-dapat-promosi, accessed on 15 December 2018.

___. *Pembunuhan Buruh Marsinah dan Riwayat Kekejian Aparat Orde Baru* (The Murder of Marsinah and the Atrocities of the New Order Apparatus), https://tirto.id/pembunuhan-buruh-marsinah-dan-riwayat-kekejian-aparat-orde-baru-cJSB, accessed on 15 January 2020.

Tonry, Michael. 2012. "Prosecutors and Politics in Comparative Perspective." *Crime and Justice* 41 (1): 1-33. https://doi.org/10.1086/666975.

Tresna, R. 1955. *Komentar HIR*. 13th ed. Jakarta: PT Pradnya Paramita.

___. 1957. *Peradilan Di Indonesia Dari Abad Ke Abad*. Amsterdam – Jakarta: W. Verluys NV.

Tribun Jatim, *Nyaleg Lewat Nasdem, Maruli Hutagalung Bakal Sumbangkan Setengah Gajinya Jika Terpilih*, (Maruli Hutagalung will donate half of his salary if he is elected as a parliamentary member of the Nasdem Party), http://jatim.tribunnews.com/2018/11/18/nyaleg-lewat-nasdem-maruli-hutagalung-bakal-sumbangkan-setengah-gajinya-jika-terpilih, accessed on 15 December 2018.

___. *Relakan aset Jadi Rumah Dinas Kepala Kejaksaan Tinggi, pemkot Surabaya balas budi?* (By using a city asset as the official home of the Head of High Prosecution Office, is the mayor of Surabaya returning a favour?), http://jatim.tribunnews.com/2018/04/03/relakan-aset-jadi-rumah-dinas-kepala-kejaksaan-tinggi-pemkot-surabaya-balas-budi, accessed on 25 January 2019.

Tribunnews, *Kajari Singkawang Dicopot* (The Head Of the Singkawang District Prosecution Office has been dismissed), http://makassar.tribunnews.com/2012/01/18/kajari-singkawang-dicopot, accessed on 22 December 2017.

___. *Sediakan Pengambilan Tilang Online, Kejari Surabaya Tak Lagi Dipenuhi Antrean Pelanggar Lalu Lintas* (Providing online payment for ticket fines – no more queues at the Surabaya District Prosecution Office), http://jatim.tribunnews.com/2018/09/07/sediakan-pengambilan-tilang-online-kejari-surabaya-tak-lagi-dipenuhi-antrean-pelanggar-lalu-lintas

Trivadi, Sonu. 2015. *Transition from Authoritarianism to Democracy: A Comparative Study of Indonesia and Myanmar*. New Delhi: Atlantic Publishers.

Turan, Achmad, IG Putu Gunawan, Susilo Triharjoko, and Dadi Rochaedi. 2000. *Jenderal Polisi RS Soekanto Bapak Kepolisian Negara Republik Indonesia*. Edited by Awaloedin Djamin and Achmad Turan. Jakarta: Karya Jaya, YBB Polri Pusat.

Utari, Siti. 1986. "Koordinasi Penegak Hukum Dan Mekanisme Kontrol Penahanan Sehubungan Dengan Berlakunya KUHAP." In *Bunga Rampai Hukum Pidana Dan Acara Pidana*, edited by Andi Hamzah, 99-129. Jakarta Timur: Ghalia Indonesia.

Utrecht, E. 1986. *Pengantar Hukum Administrasi Negara Indonesia*. Surabaya: Penerbit Pustaka Tinta Mas.

UNAFEI. 1998. *Annual Report For 1997 Resource Material Series No . 53*. Tokyo, Japan. http://www.unafei.or.jp/english/pdf/RS_No53/No53_00All.pdf.

Vivanews, *Jaksa Agung pertimbangkan Deponeering kasus novel* (The Chief Prosecutor considers issuing a 'Seponering' for Novel's case), http://nasional.news.viva.co.id/berita/nasional/755234-jaksa-agung-pertimbangkan-deponering-kasus-novel, accessed 8 June 2019.

___. *KPK: Revisi KUHAP Hilangkan Penyelidikan dan Pembuktian Terbalik* (KPK revision of the KUHAP repealed a provision on preliminary investigation and the shifting burden of proof) https://www.viva.co.id/arsip/454866-kpk-revisi-kuhap-hilangkan-penyelidikan-dan-pembuktian-terbalik, accessed 3 March 2018.
Vollenhoven, C Van. 1934. *Staatsrecht Overzee*. Leiden-Amsterdam: EL E. STENFERT KROESE's UITGEVERS-MAATSCHAPPIJ N.V.
Wahl, Rachel. 2014. "Justice, Context, and Violence: Law Enforcement Officers on Why They Torture." *Law and Society Review* 48 (4): 807-36. https://doi.org/10.1111/lasr.12108.
Waluyo, Bambang. 2015. "Penguatan Lembaga Kejaksaan Selaku Aparatur Penegak Hukum Dalam Sistem Ketatanegaraan Republik Indonesia." In .
Watch Indonesia, *Sebaiknya Kajati Baca Lagi UU Kejaksaan* (The Head of the High Prosecution Office should read the IPS Law): http://www.watchindonesia.org/1563/uu-kejaksaan-negara-pemerintah?lang=ID, accessed on 3 May 2018.
Weerd, K. A. de. 1946. "The Japanese Occupation of the Netherlands Indies."
West Jakarta District Prosecution Office, *Perintah Harian Jaksa Agung RI* (Chief Prosecutor's Daily Order): http://www.kejari-jakbar.go.id/index.php/profil/perintah-harian-jaksa-agung-ri, accessed 22 August 2018.
West Sulawesi High Prosecution Office, https://www.kejati-sulsel.go.id/, accessed on 23 January 2019.
Wignjosoebroto, Soetandyo. 2014. *DARI HUKUM KOLONIAL KE HUKUM NASIONAL*. Jakarta: HUMA.
Wikipedia, Gadjah Mada University: https://en.wikipedia.org/wiki/Gadjah_Mada_University, accessed 4 April 2016.
Wilson, James Q. 1989. *Bureaucracy: What Government Agencies Do and Why They Do It*. Basic Books.
Wiratraman, Herlambang Perdana. 2014. "Press Freedom, Law and Politics in Indonesia." Leiden University.
Woude, Maartje van der. 2017. *Chain Reactions in Criminal Justice Discretion and the Necessity of Interdisciplinary Research*. The Hague: Eleven International Publishing.
Wright, Ronald F, and Marc L Miller. 2010. "The Worldwide Accountability Deficit for Prosecutors." *Washington and Lee Law Review Forthcoming* 67: 1587-1620. https://doi.org/10.2139/ssrn.1699266.
Wulandari, Widati, and Tristam P. Moeliono. 2018. "Problematika Pengertian Aanslag-Aanslag Tot En Feit: Perbandingan Makar Dalam KUHP, WvSNI Dan Sr." *Padjajaran Jurnal Ilmu Hukum (Journal of Law)* 4 (3): 473-92. https://doi.org/10.22304/pjih.v4n3.a3.
Yahya, Iip D. 2004. *MENGADILI MENTERI MEMERIKSA PERWIRA Jaksa Agung Soeprapto Dan Penegakan Hukum Di Indonesia Periode 1950-1959*. Jakarta: PT. Gramedia Pustaka Utama.
Yamin, Muhammad. 1948. *Gadjah Mada Pahlawan Persatoean Noesantara*. Jakarta: Balai Poestaka.
___. 1959. *Naskah Persiapan Undang-Undang Dasar 1945*. Jakarta: Jajasan Prapantja.
Young, Crawford. 1976. *The Politics of Cultural Pluralism*. Madison: University of Wisconsin Press.
Yuntho, Emerson in Kompas, *Korupsi Hakim* (Corrupt Judge), https://kompas.id/baca/opini/2018/12/11/korupsi-hakim/, accessed on 16 June 2019.
Yuwono, Soesilo. 1982. *Penyelesaian Perkaea Pidana Berdasarkan KUHAP (Sistem Dan Prosedur)*. Bandung: Alumni.

Zakiyah, Wasingatu, Danang Widoyoko, Iva Kusuma, and Ragil Yoga Edi. 2002. *Menyingkap Tabir Mafia Peradilan*. Jakarta: Indonesia Corruption Watch.

Zen, A Patra M, and Hendrik Dikson Sirait, eds. 2006. *Balik Arah Ke Era Kegelapan? : Nota Atas 3 RUU Disektor Keamanan (RUU Peradilan Militer, RUU Rahasia Negara, Dan RUU KUHP*. Jakarta: YLBHI dan Kemitraan.

Zikry, Ichsan, Adery Ardhan, and Ayu Eza Tiara. 2016. *Prapenuntutan Sekarang, Ratusan Ribu Perkara Disimpan, Puluhan Ribu Perkara Hilang*. Vol. 1. https://doi.org/10.1017/CBO9781107415324.004.

Lists of Legislations, Regulations and Court Decisions

Legislations and Regulations

Regeringsreglement (RR).
Indische Staatsregeling (IS)
The Reglement op bet beleid van de Regeering in Nederlandsch-Indie or called as
The Reglement op De Rechterlijke Organisatie en *Het Beleid der Justitie*, Stb, 1847-23 jo 1848-58 (RO)
The *Reglement op de Strafvordering* (SV)
The *Inlandsch Reglement* (IR)
The *Herziene Inlandsch Reglement* (HIR)

Osamu Seirei No. 3, 26 September 1942
Osamu Seirei No 2, 14 January 1944,
Osamu Seirei No. 14, 8 April 1944
Osamu Seirei No. 49, 8 November 1944

1945 Constitution of the Republic of Indonesia.
1949 Federal Constitution
1950 Constitution of the Republic of Indonesia
Amendment of 1945 Constitution of the Republic of Indonesia.

Provisional People's Consultative Assembly (MPRS) resolution Tap MPRS No XLIV/ MPRS/1968
People's Consultative Assembly (MPR) resolution TAP MPR No.VI/MPR/ 2000
People's Consultative Assembly (MPR) resolution TAP MPR NO.VII/MPR/2000

Law 1/1946 on the Criminal Code
Law 8/1946 on the Criminal Procedure for the Military Court
Law 7/1947 on the Structure of the Supreme Court and the Supreme Prosecution Office
Law 19/1948 on the Organisation and Power of the Judiciary.
Law 5/1950 on the Structure of the Court/the Prosecution Office in Military Justice System
Emergency Law 1/1951 on Temporary Measures for structuring the power and procedures of the civilian court
Emergency Law 7/1955 on The Investigation, Prosecution and Trial for Economic Crimes
Law 13/1961 on the Police
Law 15/1961 on the Indonesian Prosecution Service
Law 16/1961 on the High Prosecution Office
Law 11/PNPS/1963 on Combating Subversion Act
Law 19/1964 on the Basic Principles of the Judiciary Law

Law 13/1965 on the organisation Of the Civil Judiciary and Supreme Court
Law 1/1974 on Marriage
Law 8/1981 on the Indonesian Code of Criminal Procedure (KUHAP)
Law 5/1983 on the Indonesian Exclusive Economic Zones
Law 5/1991 on the Indonesian Prosecution Service
Law 6/1996 on Indonesian Waters
Law 3/1997 on the Juvenile Court,
Law 20/1997 on Non-Tax State Revenues
Law 31/1997 on the Military Court
Law 27/1999 on the amendment of the Criminal Code about Crimes involving State Security
Law 35/1999 on the Amendment of Law No. 14/1970 on the Judicial Power
Law 39/1999 on Human Rights.
Law 26/2000 on the Human Rights Court.
Law 18/2001 on Aceh Special Autonomy
Law 20/2001 on Corruption Eradication
Law 2/2002 on the Police.
Law 30/2002 on Corruption Eradication Commission
Law 2/2004 on Industrial Relations Dispute Settlement
Law 4/2004 on the Judiciary
Law 5/2004 on the Amendment of Law No. 14/1985 on the Supreme Court.
Law 8/2004 on the Amendment of Law No. 2/1986 on the General Court.
Law 23/2004 on the Elimination of Domestic Violence
Law 16/2004 on the Indonesian Prosecution Service
Law 34/2004 on the Army
Law 37/2004 on Bankruptcy
Law 17/2008 on Shipping.
Law 11/2008 on Electronic Information and Transactions admits digital evidence
Law 39/2008 on the Ministry
Law 22/2009 on Traffic
Law 35/2009 on Narcotics
Law 48/2009 on Judicial Power
Law 8/2010 on Prevention and Eradication of Money Laundering
Law 11/2012 on Juvenile Justice System
Law 5/2014 on State Civil Apparatus
Law 23/2014 on Regional Administration
Law 30/2014 on State Administration
Law 19/2019 on the amendment of Law 30/2002 on the Corruption Eradication Commission
Government Regulation in Lieu of Law/Perppu 16/1960 on amendments to the Criminal Code.

Government Regulations

Government Regulation S.4/1948 on Military Titular Rank
Government Regulation 9/1975 on Implementation of the Marriage Law
Government Regulation 27/1983 on Implementation of the KUHAP
Government Regulation 29/1997 on Civil Servant Officers with Two Duplicate Positions
Government Regulation 47/2005 on Civil Servant Officers with Two Duplicate Positions

Government Regulation 80/2007 on Taxation
Government Regulation 39/2010 on The Administration of the Indonesian Army
Government Regulation 58/2010 on Implementation of the KUHAP
Government Regulation 43/2012 on Special Police Coordination, Supervision, and Technical Advancement
Government Regulation 11/2017 on Civil Servant Management.
Government Statement (*Maklumat Pemerintah*) on 1 October 1945
Decree of the Ampera Cabinet Presidium No.26/U/Kep/l966, 6 September 1966, (*Amanat Penderitaan Rakyat* – The Message of the People's Suffering).
Presidential Regulation 18/2005 on the Prosecution Commission
Presidential Regulation 38/2010 on the Organisation of the Prosecution Service
Presidential Regulation 18/2011 on the Prosecution Commission
Presidential Regulation 44/2015 on the Ministry of Law and Human Rights.
Presidential Regulation 29/2016 on the Organisation of the Prosecution Service
Presidential Decision 86/1982 on the Organisation of the Prosecution Service
Presidential Decree 204/1960 on 15 August 1960
Presidential Decree 163 of 1966, 25 July 1966
Presidential Decree Number 187/2004
Presidium Decision on Ampera Cabinet No. 24/U/Kep/9/66 on 6 September 1966
Qanun Aceh 6/2014 on Islamic Criminal Law.
Batu Major's Decision 188.45/85/KEP/422.012/2015 on FORKOPIMDA's establishment

Prosecution Service Regulations

Chief Prosecutor Regulation 064/A/JA/07/2007 on the Recruitment of Civil Service Candidates and Prosecutors.
Chief Prosecutor Regulation 065/A/JA/07/2007 on Developing the Careers of Staff in the Prosecution Service
Chief Prosecutor Regulation 066/A/JA/07/2007 on the Minimum Professional Standards for Prosecutors.
Chief Prosecutor Regulation 068/A/JA/07/2007 on the Implementation of Education and Training for Staff in the Prosecution Service
Chief Prosecutor Regulation 069/A/JA/2007 on Provisions for Conducting Supervision within the Indonesian Prosecution Service
Chief Prosecutor Regulation 037/A/JA/12/2009 on the organisation of education and training for IPS staff.
Chief Prosecutor Regulation 039/A/JA/10/2010 on the Standard Operating Procedure for Handling Special Crimes
Chief Prosecutor Regulation 009/A/JA/01/2011 on the Organization
Chief Prosecutor Regulation 022/A/JA/03/2011 on the Supervision
Chief Prosecutor Regulation 036/A/JA/09/2011 on the Standard Operating Procedure for General Crimes
Chief Prosecutor Regulation 037/A/JA/09/2011 on the Standard Operating Procedure for Intelligence
Chief Prosecutor Regulation 048/A/JA/12/2011 on the Recruitment of the Civil Service
Chief Prosecutor Regulation 049/A/JA/12/2011 on Staff Careers in the Prosecution Service
Chief Prosecutor Regulation 016/A/JA/07/2013 on the Prosecution Service's Internal Affairs

Chief Prosecutor Regulation 006/A/JA/3/2014 on Amendment of Chief Prosecutor Regulation 009/A/JA/01/2011 on the Organisation
Chief Prosecutor Regulation 013/A/JA/06/2014 on Asset Recovery
Chief Prosecutor Regulation 027/A/JA/2014 on Asset Recovery Guidelines.
Chief Prosecutor Regulation 04/A/JA/11/2016 on the Team for Guarding and Securing the Government and its Development Projects.
Chief Prosecutor Regulation 006/A/JA/07/2017 on the Organisation
Chief Prosecutor Regulation 067/A/JA/2017 on the Prosecutors' Behavioural Code
Chief Prosecutor Regulation 002/A/JA/04/2018 on the Official Uniform of the Prosecution Service staff
Chief Prosecutor Decision Org/A.51/1, 2 January 1960 on Determining 22 July as the day of the Indonesian Prosecution Service
Chief Prosecutor Decision KEP-026/1978 on The Administration of The Indonesian Prosecution Service
Chief Prosecutor Decision 074/J.A./7/1978 on the *Panji Adhyaksa*
Chief Prosecutor Decision 052/J.A./8/1979 on The *Adhyaksa* Doctrine *"Tri Krama Adhyaksa"*
Chief Prosecutor Decision Kep-62/JA/7/1982 on The *Adhyaksa* Day
Chief Prosecutor Decision KEP-161/1982 The Administration of The Indonesian Prosecution Service
Chief Prosecutor Decision KEP-116/JA/6/1983 on the Organisation
Chief Prosecutor Decision KEPJA 064/JA/7/1987 on Procedure for handling the *Panji Adhyaksa.*
Chief Prosecutor Decision 030/J.A./1988 on The *Adhyaksa* Doctrine *"Tri Krama Adhyaksa"*
Chief Prosecutor Decision 503/A/JA/12/2000 on the Supervision
Chief Prosecutor Decision 124/A/JA/11/2007 on the legalisation of *Adhyaksa Dharma Karini* in the IPS
Chief Prosecutor Decision KEP-017/5/66, 25 May 1966
Chief Prosecutor Decision KEP-008/DA/2/1968 8 February 1968
Chief Prosecutor Circular Letter SEJA 013/JA/8/1981, 20 August 1981
Chief Prosecutor Circular Letter B-036/A/6/1985 on Guideline for Appeal and Cassation in Special Criminal Case.
Chief Prosecutor Circular Letter SE-004/JA/11/1993 on Drafting the Indictment
Chief Prosecutor Circular Letter SE-001/JA/4/1995 on The Guideline of General Crimes and Special Crimes Prosecution
Chief Prosecutor Circular Letter 001/A/JA/01/2010 on Controlling the investigation and the Prosecution of corruption.
Chief Prosecutor Circular Letter SE-013/A/JA/12/2011 on The Guideline of General Crimes Prosecution
Chief Prosecutor Circular Letter SE-010/A/JA/08/2015 on the prosecutor's obligation to auction either the fragile confiscated goods, or those which need to be stored at high cost
Chief Prosecutor Circular Letter SE- 011/A/JA/08/2015 on Confiscated Goods that can be Used by the IPS
Chief Prosecutor Circular Letter SE-017/A/ JA/08/2015 on Preliminary Investigation of Corruption
Chief Prosecutor Circular Letter No. B-079/A/U.1/05/2016 on the Administration of Settlements for Confiscated Goods which are deposited in the *RUPBASAN*.

Chief Prosecutor Circular Letter SEJA 029/A/EJP/03/2019 on summary examination for narcotics prosecution.
Chief Prosecutor Instruction No 7/Inst/HK1962, on 7 June 1962

Deputy Chief Prosecutor for General Crimes Circular Letter B-572/E/10/1994
Deputy Chief Prosecutor for General Crimes Circular Letter B-410/E/Ejp/8/2003.
Deputy Chief Prosecutor for Special Crimes Circular Letter B-711/F/Fu.1/1212004
Deputy Chief Prosecutor for General Crimes Circular Letter B-3358/E/Ejp/11/2013

Decree on Dismissal of a Prosecution for Technical Reasons SKPP Tap-01/0.1.14/Ft.1/12/2009 for Chandra Hamzah
Decree on Dismissal of a Prosecution for Technical Reasons SKPP Tap-02/0.1.14/Ft.1/12/2009 for Bibit Samad Rianto.
Decree on Dismissal of a Prosecution for Technical Reasons SKPP TAP-009/A/JA/09/2014 for Agung Bagus Santoso and Rusman
Decree on Dismissal of a Prosecution for Technical Reasons SKPP: B-03/N.7.10/Ep.l/02/2016 for Novel Baswedan
Decree on Dismissal of a Prosecution for Public Interest Reasons TAP-001/A/JA/01/2011, for Chandra M Hamzah,
Decree on Dismissal of a Prosecution for Public Interest Reasons TAP-002/A/JA/01/2011 for Bibit Samad Rianto.
Decree on Dismissal of a Prosecution for Public Interest Reasons TAP-012/A/JA/03/2016, for Abraham Samad
Decree on Dismissal of a Prosecution for Public Interest Reasons TAP-013/A/JA/03/2016, for Bambang Widjojanto.

National Police Regulations

National Police Chairman Regulation PERKAP 8/2009 on the Human Rights Principles on the Police Function
National Police Chairman Regulation PERKAP 6/2010 on the PPNS' investigation management.
National Police Chairman Regulation PERKAP 21/2010 on the Organisation and Management of the National Police Headquarter
National Police Chairman Regulation PERKAP 14/2012 on Managing the Investigation of Crimes
National Police Chairman Regulation PERKAP 18/2014 on the Police Certificate of Good Conduct (*Surat Keterangan Catatan Kepolisian/SKCK*).
National Police Chairman Decision KEP/53/X/2002 on the Police Organisation
National Police Chairman Decision KEP/97/XII/2003 on Amendment of National Police Chairman Decision KEP/53/X/2002 on the Police Organisation
National Police Chairman Circular Letter 7/VII/2018 on Stopping a Preliminary Investigation,

Ministry of Justice Regulations

Ministry of Justice Regulation M.04-UM.01.06 of 1983 on Detention Procedures
Ministry of Justice Decision M.01.PW.07.03/1982 on Guidelines for Implementing the KUHAP
Ministry of Justice Decision No. M.14-PW.07.03/1983 on Additional Guidelines for the KUHAP

Others

Army Commander Regulations 18/III/2011.
Corruption Eradication Commission Regulation 01/2015 on the Organisation
Instruction No. 03 /Kopkamtib/XI/1978
Joint Instruction Chief Prosecutor and National Police Chairman 6 October 1981 Inster 006/JA/10/1981 jo. No. pol: Ins/17/K/1981
Joint Instruction of the Chief Prosecutor and Police Chairman INSTR-006/JA/10/1981 No. Pol INS/17/X/1981 on IPS and police cooperation when handling summons for suspects and witnesses, escorting detainees, guarding defendants during trials, and controlling suspects/defendants during criminal proceedings.
Memory of Understanding between the Supreme Court, Ministy of Law and Human Rights. The Prosecution Service and the Police 131/KMA/SKB/X/2012, M.HH-07.HM.03.02 Tahun 2012, KEP-06/E/EJP/10/2012 dan 39/X/2012, October 2012.
Memory of Understanding No. Kep-099/A/JA/05/2011 jo No NK-001/KK/05/2011 on the IPS and KOMJAK job's mechanism on supervision, monitor and evaluation of the IPS staff performance.

Court Regulations

Supreme Court Circular Letter SEMA 1/1989
Supreme Court Decision 1846K/Pid/2000
Supreme Court Ruling (*Fatwa MA*) KMA1102/I1I/2005
Supreme Court Decree No. 142/KMA/SK/IX/2011
Supreme Court Circular Letter 07/2012.
Supreme Court Decree 213/KMA/SK/XII/2014 on the Supreme Court chamber system guidelines.

Court Decisions

Constitutional Court Decision 006/PUU-II/2004
Constitutional Court Decision 005/PUU-IV/2006
Constitutional Court Decision 28/PUU-V/2007
Constitutional Court Decision 49/PUU-VIII/2010
Constitutional Court Decision 6-13-20/PUU-VIII/2010
Constitutional Court Decision 65/PUU-VIII/2010
Constitutional Court Decision 2/PUU-X/2012
Constitutional Court Decision 16/PUU-X/2012.
Constitutional Court Decision 98/PUU-X/2012.
Constitutional Court Decision 114/PUU-X/2012
Constitutional Court Decision 3/PUU-XI/2013
Constitutional Court Decision 42/PUU-XI/2013
Constitutional Court Decision 21/PUU-XII/2014
Constitutional Court Decision 89/PUU-XIII/2015
Constitutional Court Decision 109/PUU-XIII/2015
Constitutional Court Decision 123/PUU-XIII/2015
Constitutional Court Decision 102/PUU-XIII/2015
Constitutional Court Decision 130/PUU-XIII/2015
Constitutional Court Decision 29/PUU-XIV/2016

Constitutional Court Decision 33/PUU-XIV/2016
Constitutional Court Decision 40/PUU-XIV/2016
Constitutional Court Decision 43/PUU-XIV/2016
Constitutional Court Decision 108/ PUU- XIV/ 2016
Constitutional Court Decision 1/ PUU- XV/ 2017
Constitutional Court Decision 23/ PUU- XV/ 2017

Supreme Court Decision 15/Kr/1969
Supreme Court Decision 275/K/Pid/1983
Supreme Court Decision 395 K Pid/1995
Supreme Court Decision 1846K/Pid/2000
Supreme Court Decision 1148 K/Pid/2003
Supreme Court Decision 1205 K/Pid/2003
Supreme Court Decision 152 PK/Pid/2010
Supreme Court Decision 489K/PTUN/2016
Supreme Court Decision 22 P/HUM/2018

Bandung District Court Injunction (*Penetapan*) No. 132/Pid/B/1997/PN.Bdg
Jakarta High Court Decision 130/Pid/Prap/2010/PT.DKI
Jakarta Administrative Court Decision 237/G/2015/PTUN.JKT
South Jakarta District Court Pretrial Hearing Decision 37/Pid.Prap/2015/PN.Jkt.Sel.
Surabaya District Court Pre-trial hearing decision 11/PRAPER/ 2016/ PN.SBY
Surabaya District Court Pre-trial hearing decision 19/PRA.PER/2016/PN.SBY.

Curriculum Vitae

Fachrizal Afandi was born in Malang, Indonesia, on 9 April 1981. He completed his secondary education at an Islamic School, *Madrasah Al Ma'arif* (1999), during which time he also studied at *Pesantren Ilmu Al Quran* (an Islamic Boarding School for Qur'anic education). In 2004, he concluded a five-year bachelor degree in psychology at the Psychology Faculty of the Malang Islamic University. In the same year, he obtained a Bachelor of Law at the Law Faculty of the Universitas Brawijaya. After graduating Fachrizal worked as a lawyer intern, as part of the Indonesian Bar Associations (PERADI) programme. In 2007, he completed a Master of Law at the Universitas Brawijaya.

Since 2008, Fachrizal has been appointed as a lecturer at the Department of Criminal Law, Faculty of Law, Universitas Brawijaya. He teaches several courses, including Criminal Law, Criminal Procedure, Anthropology of Law, Criminal Justice Systems, and Socio-legal Research. In addition to teaching, Fachrizal served as secretary of the Universitas Brawijaya Legal Aid Office (2009-2013), initiating the Centre for Socio-legal Studies (2011) at the same faculty. From 2012 to 2014, he received research grants from the Indonesian Ministry of Education, allowing him to work on multi-year research on corruption, the criminal justice system, and regional government politics.

In 2013, Fachrizal received a grant from the Indonesian DIKTI-Leiden Scholarship Program, allowing him to carry out his PhD research on "the Indonesian post-authoritarian public prosecutor" at the Van Vollenhoven Institute for Law, Governance and Society (VVI) and the Institute of Criminal Law and Criminology at Leiden Law School, under supervision of Prof. Dr. Adriaan W. Bedner and Prof. Dr. Jan H. Crijns. For this project, he did one-and-half years fieldwork in a number of prosecution offices in several districts in Indonesia. During his fieldwork, he established the Centre for Criminal Justice Research at the Universitas Brawijaya (or PERSADA UB), to promote multi-disciplinary research on criminal justice issues. He is also a board member of the Indonesian Criminal Law and Criminology Society (MAHUPIKI) and founder of the Association for Indonesian Criminal Law Lecturer (DIHPA Indonesia).

Fachrizal moved to the Netherlands with his wife, Ruly Wiliandri, and their two children in 2016, as Ruly was also conducting her own PhD research at the Leiden University. Among his other activities, Fachrizal established a special branch of *Nahdlatul Ulama* in the Netherlands (PCI-NU Belanda), for which he was appointed the first Chairman of *Tanfidziyah* (2014-2017), and through which he has organised several international conferences in the Netherlands on moderate Islam.

Fachrizal has published various articles and co-authored books in the fields of socio-legal research, criminal law, criminal procedure, and criminal justice reform in Indonesia. This book emerged from his PhD research at the Leiden Law School, the Netherlands.

In the range of books published by the Meijers Research Institute and Graduate School of Leiden Law School, Leiden University, the following titles were published in 2019 and 2020:

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E.M. MEIJERS INSTITUUT
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This book gives a comprehensive account of the public prosecutor's role in post-authoritarian Indonesia, both in promoting the rule of law and in maintaining the political status quo. It traces the development of the Indonesian prosecution service, historically and politically, exploring what and who influences its performance, as well as how public prosecutors work in practice.

The case of Indonesia constitutes an example of the way in which prosecution services evolve in countries marked by authoritarian tendencies. It shows how various regimes position public prosecutors as 'justice postmen', who deliver cases based on the government's interests, as well as on the interests of other powerful actors, such as political parties, companies, or the police force. Such situations are commonly seen in authoritarian countries, where the executive dominates political power, and public prosecutors have become tools of the government in maintaining political order.

Maintaining Order: Public Prosecutors in Post-Authoritarian Countries, the Case of Indonesia is a socio-legal study of the criminal justice system. It contributes to a number of broader debates about post-authoritarian public prosecutors and their role in promoting the rule of law. By combining criminal law, criminology, political science and anthropological theory, it provides an important framework for the analysis and critique of conditions for, impacts of, and possibilities for prosecution services in post-authoritarian countries.

This is a volume in the series of the Meijers Research Institute and Graduate School of the Leiden Law School of Leiden University. This study is part of the Law School's research programme 'Effective Protection of Fundamental Rights in a pluralist world' and 'Criminal Justice: Legitimacy, Accountability and Effectivity'.