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

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# 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.<sup>1</sup> 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

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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](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,<sup>2</sup> 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 (Abdurasyid 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.<sup>3</sup> 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.<sup>4</sup> Chief Prosecutor Soegih Arto invented

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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 Majapahit Sanskrit: *Satya* means loyalty, *Adhi* implies professionalism, and *Wicaksana* means to use power wisely.<sup>5</sup> The *Satya Adhi Wicaksana* is commonly referred to as the *Tri Krama* or *Trapsila Adhyaksa*. Ali Said also created *Panji Adhyaksa*<sup>6</sup> (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<sup>7</sup> 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'<sup>8</sup> 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

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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.<sup>9</sup> 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)<sup>10</sup>

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."*<sup>11</sup>

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-

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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.<sup>12</sup> 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.<sup>13</sup>

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,<sup>14</sup> 31 High Prosecution Offices with provincial jurisdiction, 393 District Prosecution Offices with district, municipal or city-wide jurisdiction,<sup>15</sup> and 86 Sub-District Prosecution Offices.<sup>16</sup> Prosecution Service staff include 9,903 public prosecutors<sup>17</sup> and 12,875 administrative staff<sup>18</sup> (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,<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> This principle reinforces the hierarchical structure of the prosecution service's bureaucracy, wherein the Prosecution Service is ultimately managed by the Supreme

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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 kilometres, 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<sup>22</sup> (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,<sup>23</sup> as illustrated in the following figure:

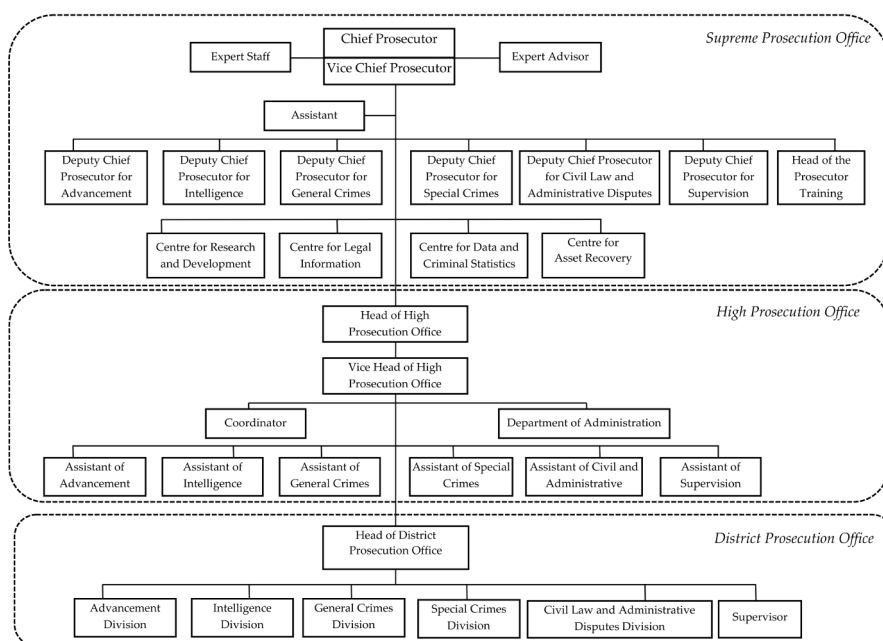


Figure 2: The existing organisational structure of the Prosecution Service<sup>24</sup>

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](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."*<sup>25</sup>

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.<sup>26</sup> 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.<sup>27</sup> Some Vice Chief Prosecutors even apply for early resignation before their term ends.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup>

The IPS cannot change its organisational structure without approval from the President and Minister for Administrative and Bureaucratic Reform.<sup>32</sup> The Chief Prosecutor also needs to obtain presidential authorisation to appoint and dismiss a Vice Chief Prosecutor and deputies of the Chief Prosecutor.<sup>33</sup> 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 (Abdurasyid, 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.<sup>34</sup> 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.<sup>35</sup> 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,<sup>36</sup> 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:<sup>37</sup>

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

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.<sup>39</sup>

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.<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup>

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 Widyopramono, 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, Widyopramono 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 Widyopramono 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.<sup>44</sup> 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.<sup>45</sup> 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,<sup>46</sup> some High Prosecution Offices manage the prosecution process for two regions.<sup>47</sup> 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

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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.<sup>48</sup> For example, Riau Provincial Government allocated 94 billion rupiahs to the construction of a new building for the Riau High Prosecution Office.<sup>49</sup> Another example is Surabaya District Government, which funded an official residence for the Head of the East Java High Prosecution Office.<sup>50</sup>

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.<sup>51</sup> 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<sup>52</sup> 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.<sup>53</sup>

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.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup>

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.<sup>57</sup> Because of this, hierarchical control over the prosecution process becomes more complicated.<sup>58</sup> 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.<sup>59</sup>

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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<sup>60</sup>, but also concerning managerial issues.<sup>61</sup> 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.<sup>62</sup> Although the High Prosecution Office's power to control prosecutors is not strong enough to decide on a prosecutor's promotion or transfer,<sup>63</sup> 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.<sup>64</sup> N says that the official budget does not cover the welcome party tradition within the IPS.<sup>65</sup>

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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.<sup>66</sup>

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.<sup>67</sup>

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."*<sup>68</sup>

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.<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup>

### 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,<sup>72</sup> 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<sup>73</sup> with their own money.

70 Tirto.id, *ICW: KPK harus Kejara 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.<sup>74</sup> Prosecutors in the Aceh Province must hold public whippings of those found guilty of gambling, which violates sharia law.<sup>75</sup> 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.<sup>76</sup> 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.<sup>77</sup> 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

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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.<sup>78</sup> The regent was only prosecuted for corruption after certain NGOs reported the case to the KPK.<sup>79</sup>

The Head of the District Prosecution Office's position as a member of FORKOPIMDA (or the Regional Coordination Council)<sup>80</sup> has also been known to influence prosecutors' performance when they are investigating corruption cases committed by local governments.<sup>81</sup> 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.<sup>82</sup>

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.<sup>83</sup> 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).<sup>84</sup>

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*<sup>85</sup> 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.<sup>86</sup> 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 6<sup>th</sup> 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.<sup>87</sup>

Since the Soeharto regime ended<sup>88</sup> 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<sup>89</sup> (*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.<sup>90</sup> 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.<sup>91</sup>

The scoring composition is also adjusted – computer-assisted test scores are 60% and interviews are 40%.<sup>92</sup> 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.<sup>93</sup> Only after officially being appointed as a civil servant may a candidate apply for PPPJ, which is organised by BADIKLAT.<sup>94</sup> 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

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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](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 *esprit de corps* among prosecutors.<sup>95</sup>

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;<sup>96</sup> 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.<sup>97</sup> 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.<sup>98</sup> 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)."*<sup>99</sup>

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 *esprit 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<sup>100</sup> could pass the examination.<sup>101</sup>

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).<sup>102</sup> 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".<sup>103</sup> 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

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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.<sup>104</sup> If the Chief Prosecutor wants to promote his own staff,<sup>105</sup> 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.<sup>106</sup> 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.<sup>107</sup> Since operators are perceived as

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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/lt5723338a0eaf/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.<sup>108</sup> 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.<sup>109</sup> One notable example of this is that almost all the Assistant for Advancement positions in the High Prosecution Office are occupied by a prosecutor.<sup>110</sup>

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.<sup>111</sup> 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).<sup>112</sup> 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

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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-ahukum/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.<sup>113</sup> On 18 February 2016, Situmeang won his court case at Jakarta

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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,<sup>114</sup> 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.<sup>115</sup>

### 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.<sup>116</sup> The Prosecution Service may impose a sanction on<sup>117</sup> or demote a prosecutor from their managerial

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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, *Ketahuhan 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/ketahuhan-selingkuh-dengan-polisi-jaksa-vp-disanksi-tak-naik-gaji.html>, accessed on 22 December 2017.

position for having an affair,<sup>118</sup> or for practising polygamy.<sup>119</sup> Prosecutors may also be fired if they commit domestic violence.<sup>120</sup> In addition, the Prosecution Service uses the article to impose implementation of the *één en ondeelbaar* (one and indivisible) doctrine,<sup>121</sup> 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.<sup>122</sup> 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.<sup>123</sup> 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 Kejaksaan*, (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-kejakung>, 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.<sup>124</sup> 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.<sup>125</sup> 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).<sup>126</sup> The KOMJAK has duties to supervise, monitor and evaluate the performance and behaviour of prosecutors and other IPS staff.<sup>127</sup> 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.<sup>128</sup> 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.<sup>129</sup> 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.<sup>130</sup> Besides, the police department has more personnel,<sup>131</sup> and other various duties – not only criminal investigation, but also maintaining state security, and managing traffic issues.<sup>132</sup> 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.<sup>133</sup> 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.<sup>134</sup>

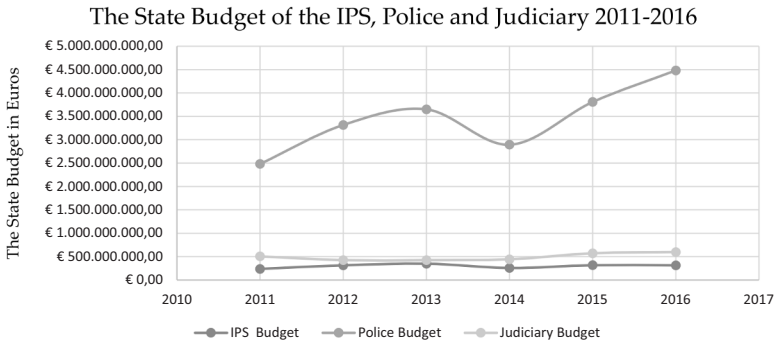


Figure 3: State budgets for the IPS, police and judiciary – adapted from the Indonesian Ministry of Finance Report 2011-2016<sup>135</sup>

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<sup>136</sup> (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=](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.<sup>137</sup> 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.<sup>138</sup> As I mentioned earlier, the police can obtain an increased budget from the government most of the time<sup>139</sup>, 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.<sup>140</sup> 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<sup>141</sup>, which exceeded the 2009 Prosecution Service's PNBP target of Rp. 30.96 billion.<sup>142</sup>

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.Usha>, 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 from the 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.<sup>143</sup> This creates tension between the District Prosecution Offices and the police, as the police also receive PNPB 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.<sup>144</sup> 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 PNPB, based on Law 22/2009 on Traffic.<sup>145</sup> Since the IPS and police both claim funds as their PNPB revenue, in 2013 (for instance) around 400 billion rupiahs received from traffic tickets may not have been being saved in the State Treasury.<sup>146</sup>

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.<sup>147</sup> Besides the Prosecution Service's low spending, as mentioned above, this political decision resulted in IPS budget cuts of Rp 162 billion<sup>148</sup>, or 4% of the total budget of Rp 4.5 trillion<sup>149</sup> in 2016.<sup>150</sup> 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

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143 *Kejaksanaan 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 PNPB Kejaksaan* (Fine ticket is revenue for the IPS PNPB), <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, Kejaksaan 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.<sup>151</sup> In some places, public prosecutors organised a strike to protest against insufficient budgets.<sup>152</sup>

The government only allocates Rp. 3,500,000<sup>153</sup> to each general crime case.<sup>154</sup> 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<sup>155</sup> per case. The biggest budget is Rp. 3,100,000<sup>156</sup>, 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.

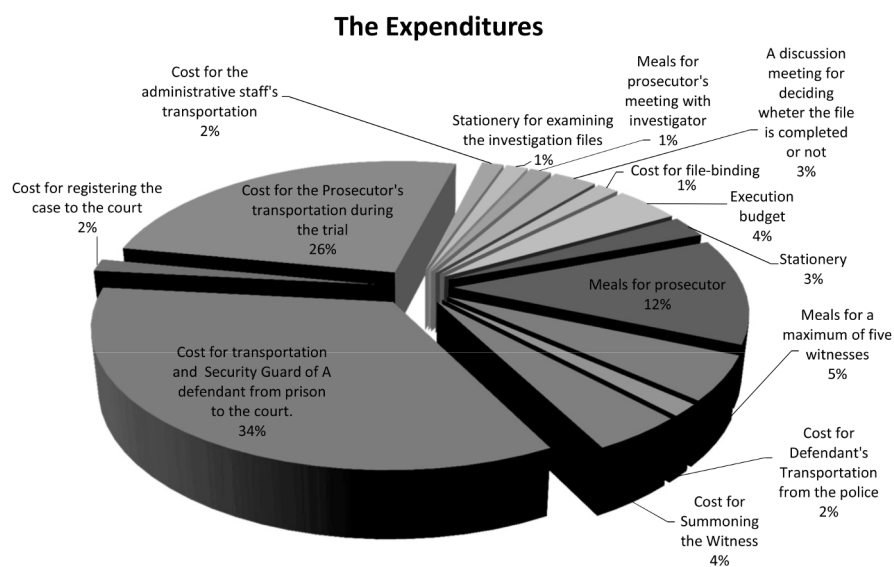


Figure 4: Cost breakdown – the prosecution process for general crimes<sup>157</sup>

151 Admin MaPPI, *Permasalahan Nasional dan Tahunan Anggaran Perkara Kejaksaan* (National and Annual Problems for IPS Budgets), <http://mappihui.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://mappihui.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.<sup>158</sup> 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.<sup>159</sup>

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).<sup>160</sup>

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.<sup>161</sup> Managers also allow

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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*.<sup>162</sup> Some prosecutors admit that they buy stationery when they draft an indictment, without asking for a reimbursement<sup>163</sup> (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.<sup>164</sup> 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).

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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*,<sup>165</sup> 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.<sup>166</sup> In 2011, the World Bank assisted the IPS in initiating SIMKARI as a pilot project in some District and High Prosecution Offices.<sup>167</sup> The Kepanjen District Prosecution Office was selected to receive an updated computer system, to support the SIMKARI application.<sup>168</sup> 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.<sup>169</sup>

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](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.<sup>170</sup> 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.<sup>171</sup> 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.<sup>172</sup> These initiatives led to some heads of District Prosecution offices being promoted to a higher level and more strategic position.<sup>173</sup> 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.<sup>174</sup> 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

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- 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.<sup>175</sup> 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.<sup>176</sup>

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.<sup>177</sup> 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<sup>178</sup>, and also the promotion and transfer of prosecutors who have close connections with such political actors.<sup>179</sup>

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.

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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 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,<sup>180</sup> the IPS only distinguishes

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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.<sup>181</sup> 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.

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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.

