



Responsibilities of Prosecutors in Resolving Civil Disputes through Non-Litigation Mechanisms

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ABSTRACT

Alternative Dispute Resolution (ADR), or dispute resolution outside of litigation, has increasingly developed as an efficient solution, avoiding time-consuming and costly court procedures. ADR, such as arbitration, offers a win-win solution that is more beneficial for the disputing parties. In the context of State-Owned Enterprises (BUMN), which play a crucial role in the national economy, dispute resolution often requires quick and precise intervention. The State Attorney (Jaksa Pengacara Negara, JPN) has authority in civil and administrative law matters, allowing them to handle disputes outside of court on behalf of the state, government, or BUMN. Despite its vital role, many are still unaware of the full use of JPN in non-litigation dispute resolution. This study examines the regulatory framework of the prosecutor's authority in resolving civil disputes through non-litigation channels and their roles and responsibilities. This research uses normative legal research methods with a statutory and conceptual approach. The study concludes that the authority of the Jaksa Pengacara Negara is attributed, which is inherent to the position and regulated by law, enabling the prosecutor to act on behalf of the state, government, or public interests in civil and administrative matters. This authority includes litigation and non-litigation actions, regulated across various regulations such as the Law on the Prosecutor's Office, Presidential Regulations, and Attorney General Regulations. The JPN executes tasks through cooperation with the government or BUMN/D, starting with providing legal advice and special power of attorney. They aim to enforce the law, protect state assets, and safeguard public interests. More specific regulation of the JPN's authority is necessary in separate regulations to ensure legal certainty. Additionally, the socialization of the role of the Jaksa Pengacara Negara needs to be enhanced, along with the development of prosecutors' capacity to perform their duties.

Keywords: Prosecutor, Responsibility, Non-litigation.

1. INTRODUCTION

Dispute resolution outside the litigation path is known as Alternative Dispute Resolution (ADR), regulated in Law Number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution. ADR is a dispute resolution mechanism carried out outside the court based on an agreement between the parties by setting aside litigation procedures in court (Syaifulloh, 2019). Dispute resolution through non-litigation channels produces a win-win solution based on agreement and deliberation between the parties. This channel is usually acceptable to both parties and guarantees confidentiality because it is not required to be carried out openly or published (Results of the Damayanti & Soeskandi decision, 2022).

State-owned enterprises (BUMN) continue to grow in the era of globalization. The implementation of BUMN business is regulated by Law Number 19 of 2003 concerning State-Owned Enterprises, where Article 1 number 2 explains that a limited liability company, or what is called a persero, is a BUMN in the form of a limited liability company with capital divided into shares, where the Republic of Indonesia owns at least 51% of its shares. The aim is to make a profit. However, BUMN is not always free from problems when running its business. Legal problems between business actors and BUMN can be solved by cooperating with the State Attorney (JPN) from the Attorney General's Office of the Republic of Indonesia, which has authority in the civil and state administrative fields. The State Attorney is a prosecutor with special powers to act in and out of court on behalf of the state or government in carrying out the duties and powers of the prosecutor's office in the civil and state administrative fields.

According to Article 30 paragraph (2) of Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, special powers in the civil and state

administrative fields are automatically equated with the function of a lawyer. With this power, JPN can receive a power of attorney from BUMN, a state entity, to resolve disputes. One of the main functions of a prosecutor is to act as a public prosecutor in implementing decisions that have permanent legal force and carrying out other authorities regulated by law. In addition, prosecutors also have another role, namely acting as State Attorney Prosecutors (JPN) (Jaya et al., 2021).

As a state attorney, the prosecutor can carry out legal interests through litigation and non-litigation channels, including filing lawsuits in high courts. In general, prosecutors are often associated with criminal cases because they function as prosecutors. However, through the division of fields in the Organization and Work Procedures of the Prosecutor's Office, especially in the Civil and State Administrative Fields, prosecutors can also act on behalf of the state, government, BUMN, BUMD, or even individuals in the scope of non-criminal law. Prosecutors who carry out this task are State Attorneys (Koto, 2021).

Although the role of the State Attorney is important, many parties still do not fully understand the use of state attorney services. As a result, when facing legal problems, the parties involved often consult with other parties, such as Legal Aid Institutions or private lawyers. Regarding providing legal assistance, the State Attorney acts based on special power of attorney to represent the state or government in civil and state administrative cases (Kurnia et al., 2021). As stipulated in the Regulation of the Attorney General Number 18 of 2014 concerning Standard Operating Procedures for the Deputy Attorney General for Civil and State Administrative Affairs, legal assistance includes representation of the JPN in civil or state administrative cases for state institutions, government agencies, BUMN, and BUMD based on a Special Power of Attorney. This assistance can be carried out through litigation or non-litigation channels. In carrying out their duties, the State Attorney can represent the government, BUMN, and BUMD, noting that cooperation is initiated through a Memorandum of Understanding (MoU) between the parties involved. This article identifies and analyzes the provisions of prosecutors' authority in resolving civil disputes through non-litigation channels and their duties and responsibilities.

2. RESEARCH METHODS

This research adopts a normative legal research methodology, utilizing a statute approach to analyze the interrelation between various legal frameworks. The study examines key regulations, including the Criminal Code, the Civil Code, Law No. 11 of 2021 on Job Creation, Law No. 31 of 1999 on the Eradication of Corruption, and Presidential Regulation No. 38 of 2010 on Public-Private Partnerships for Infrastructure Provision. The research aims to identify legal harmonization, overlaps, and gaps in the regulatory framework by focusing on these statutes. This approach provides a comprehensive understanding of the legal norms governing specific legal issues and their practical implementation in Indonesia.

3. RESULT AND DISCUSSION

3.1 Regulation of Prosecutors' Authority in Resolving Civil Disputes Through Non-Litigation Channels

Accountability and the basic concept of law is that a person's responsibility is balanced with the losses caused by his/her unlawful actions against another party. This concept is known as qualitative responsibility, where a person is responsible because he/she has certain characteristics. Kranenburg and Vegtig explain two main theories regarding official responsibility. The first is the theory of fautes personnelles: losses experienced by a third party are the responsibility of the official whose actions caused the loss. This responsibility is personal. Second, the theory of fautes de services: losses to third parties are borne by the relevant agency, with responsibility adjusted based on the level of error (serious or light) (Nugraha, 2020).

Hans Kelsen stated that a person is legally responsible if he commits an unlawful act. Kelsen also links responsibility with sanctions and distinguishes them into four categories: 1) Individual: Responsibility for personal violations. 2) Collective: Individual responsibility for violations committed together. 3) Fault-Based: Responsibility arises due to intent. 4) Absolute (Strict Liability): Responsibility without an element of intent (Putra, 2023).

In legal terminology, two terms are often used: Liability, which refers to legal responsibility for risks, losses, or legal obligations, And responsibility, which includes decisions, abilities, and political or legal responsibilities.

Position of Prosecutors as State Attorneys Based on Article 30 of Law No. 16 of 2004, prosecutors have a role in the civil and state administrative fields through: 1) Legal Aid: Representing the government in legal cases. 2) Legal

Consideration: Providing legal opinions to government agencies. 3) Legal Services: Providing legal explanations to the public. 4) Law Enforcement: Filing lawsuits or applications in the public interest. 5) Other Legal Actions: Acting as mediators in disputes between agencies (Sealtiel & Firmansyah, 2021). Prosecutors need a deep understanding of civil, state administrative, and procedural law to carry out this task. This competence is strengthened through special education and training. Regulations related to the implementation of this task are regulated in PERJA No. PER-018/A/J.A/07/2014, which is a guideline for prosecutors throughout Indonesia. Prosecutors acting as state attorneys must meet certain requirements, such as legal education, integrity, and passing special training. If necessary, further simplification or grouping of certain points for greater clarity can be done.

3.2 Duties and Responsibilities of Prosecutors in Resolving Civil Disputes Through Non-Litigation Channels

Out-of-court dispute resolution is a process of resolving conflicts using alternative methods outside of litigation, which aims to reach an agreement with the principle of a win-win solution. In this process, mediation is a mandatory stage that must be passed first. If the mediation process is ignored, the settlement violates the provisions of Article 130 HIR/514 RGB, so the resulting decision can be considered null and void (Sihombing et al., 2023).

Non-litigation dispute resolution methods include arbitration, consultation, negotiation, mediation, and expert assessment (Sutin, 2021). This process is often called alternative dispute resolution, which aims to find a solution that benefits both parties. The legal basis for out-of-court dispute resolution is in Article 3 of Law No. 14 of 1970 concerning the Main Provisions of Judicial Power, which states that cases can be resolved outside the court through peace or arbitration. In addition, Article 1 number 10 of Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution explains that alternative dispute resolution is a process of resolving conflicts or differences of opinion agreed upon by the parties through channels outside the court, such as negotiation, mediation, consultation, or expert assessment.

Various dispute resolution methods outside the court include arbitration, negotiation, mediation, and consultation. Arbitration, as defined in Article 1 number (1) of the Arbitration and Alternative Dispute Resolution Law, is a method of resolving conflicts outside the general court system based on a written arbitration agreement between the disputing parties. This method applies only to disputes in the field of trade and related to rights fully controlled by the disputing parties according to law. Furthermore, Article 66 letter (b) of the same law specifies that the scope of trade law includes activities in commerce, banking, investment, industry, and intellectual property rights. Conversely, negotiation involves direct deliberation between the disputing parties to reach a mutual agreement. This process excludes third-party involvement, such as consultants or experts, and requires the resulting agreement to be documented in writing and approved by all parties.

Mediation and consultation are additional methods of non-litigation dispute resolution. Mediation involves the participation of a neutral third party, known as a mediator, who assists the disputing parties in reaching an agreement. While similar to negotiation, mediation differs due to the mediator's impartial role in facilitating discussions. Consultation, however, involves seeking advice or views from a consultant regarding the legal problem. The consultant provides input based on the situation, but the final decision remains entirely with the disputing parties. This process is typically personal and tailored to the specific needs of the involved parties.

In civil and state administration, the Prosecutor's Office has the authority to act as a plaintiff or defendant on behalf of the state or government. In carrying out its duties, the Prosecutor's Office not only provides considerations or defends the interests of the state or government but also protects and defends the interests of the people. The Civil and State Administration Section is tasked with controlling law enforcement activities, providing legal assistance, providing legal considerations, and providing legal services to the state, government, and the community in civil and state administration trials.

The flow of handling civil and state administrative cases by prosecutors as state attorneys follows the applicable civil dispute resolution procedures. Civil cases can be resolved through litigation or non-litigation, with mediation being the most commonly used model. In this case, the prosecutor acts on behalf of the state through a special power of attorney granted to him. The results are stated in a peace deed if an agreement is reached. However, if there is no agreement, the dispute can be continued to the litigation path. As in non-litigation dispute resolution, the prosecutor acts as the state's attorney in court, following the entire series of trials until the verdict is read. Handling civil cases also includes the prosecutor's special power in collecting arrears, such as in the case of arrears in electricity bills

between customers and PT. PLN (Persero), where the prosecutor acts to protect state finances and maintain the institution's authority.

Implementing the Prosecutor's Office functions in civil and state administration is intended to ensure the rule of law, protect state assets, maintain government authority, and safeguard community interests. Article 30, paragraph (2) of the Prosecutor's Law emphasizes that the Prosecutor's Office can act with a special power of attorney, highlighting that its operations depend on the authority granted. Regarding saving national wealth, the Prosecutor's Office plays a critical role, particularly in corruption cases, where it can file claims for compensation without requiring special power of attorney, as stipulated in Article 123 paragraph (2) HIR. The Prosecutor's Office also maintains government authority by representing the state in civil and administrative disputes with special powers, as Article 30 paragraph (2) of the Prosecutor's Law outlines. Furthermore, the Prosecutor's Office protects community interests, often involving class action mechanisms to represent the broader public in civil or administrative disputes (Tarigan et al., 2025). To carry out these functions, the State Attorney follows various stages, such as negotiation, signing agreements, and implementing the agreed-upon terms.

According to Soerjono Soekanto's theory on factors influencing law enforcement, several key elements affect the function of prosecutors as state attorneys. Legal factors, particularly legislation, serve as the primary foundation for law enforcement. Law enforcement factors, such as the integrity of prosecutors, significantly impact their effectiveness in fulfilling their legal responsibilities. Adequate facilities and resources are also crucial, encompassing proper education for prosecutors, robust organizational structures, and sufficient financial support to ensure that their duties are executed efficiently. Community factors, including public opinion, play a vital role in shaping the Prosecutor's Office's performance. Lastly, cultural factors, which reflect the legal system's values, influence how prosecutors exercise their functions, authority, and habits in carrying out their duties. These factors underscore the complex and multifaceted nature of the Prosecutor's Office's role in upholding justice and protecting the state's and its citizens' interests.

Based on the explanation above, implementing the duties and functions of the Prosecutor's Office as state attorney in practice is carried out through cooperation agreements in civil law and state administration between the Government or regional governments, including BUMN/D. This collaboration begins with providing legal considerations regarding the legal problems being faced, which can then be continued by granting special powers to the Prosecutor's Office to resolve legal problems for the relevant agencies. Thus, as a state attorney, the prosecutor carries out his duties and obligations by the authority granted through a special power of attorney. The function of the Prosecutor's Office as a state attorney is to carry out its duties and authority by collaborating with other law enforcement agencies and legal agencies or legal entities. The prosecutor provides legal considerations to government agencies and can represent the state in court cases.

The position of the Prosecutor as State Attorney in the civil and state administration sphere is regulated in Article 30 paragraph (2) of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. Although the term "State Attorney" is not explicitly mentioned in the law, the meaning of "special power" in civil and state administration is naturally identical to the role of "lawyer". Apart from that, the position of the Prosecutor as State Attorney is also regulated in Presidential Regulation Number 38 of 2010, as well as other regulations that regulate the operational procedures of the Deputy Attorney General in the civil and state administration fields.

The authority of the Prosecutor's Office as an institution that represents the state, both inside and outside the court, is attributive. Prosecutors who act as state attorneys must understand civil law, state administrative law, and both substantive and formal law. Implementing the Prosecutor's function as a state attorney in civil and state administration follows general dispute resolution procedures through litigation and non-litigation.

To optimize the implementation of the Prosecutor's function as State Attorney, the Prosecutor must be provided with education and training in civil law and state administration. The institution of a State Attorney is necessary so that in the event of a lawsuit involving state interests, there will be no difficulties in appointing and determining a Prosecutor who will act as state attorney. The implementation of the Prosecutor's function in civil and state administration must be carried out within the framework of the rule of law to strengthen the role of the Prosecutor's Office in upholding the supremacy of law in Indonesia, which in turn will increase the stability and resilience of the nation. Therefore, it is important to instill and implement the independence of the Prosecutor's Office properly as part of upholding the rule of law.

4. CONCLUSIONS

The authority of the State Attorney is obtained through attribution, which means that this authority is attached to a particular position and comes directly from the law, allowing the Prosecutor to carry out material actions. This authority is attached to the position of Prosecutor. The regulations are not explained in detail but are spread across the Attorney General's Law, Presidential Regulations, and Attorney General Regulations. A State Attorney is a prosecutor given special powers where the Attorney General acts in civil, state administrative, and state administration cases on behalf of the state, government, or public interest. The authority of the Prosecutor as state attorney includes non-litigation and litigation efforts to carry out state interests. Based on the Organizational structure and Work Procedures of the Prosecutor's Office through the Civil and State Administration Sector, the Prosecutor can act both inside and outside the court on behalf of the state, government, BUMN, BUMD, or even individuals, apart from in the realm of criminal law.

Implementing the duties and functions of the Prosecutor's Office as state attorney is carried out through cooperation agreements in civil law and state administration between the government or regional governments, including BUMN/D. This collaboration begins with providing legal considerations regarding legal issues, which, if necessary, is followed by granting special powers to the Prosecutor's Office to resolve legal problems for the relevant agencies. Thus, as a state attorney, the prosecutor carries out his duties and obligations by the authority granted through a special power of attorney.

Implementing the Prosecutor's function as a state attorney in civil and state administration follows generally accepted dispute resolution procedures through litigation and non-litigation. The function of the Prosecutor's Office in the civil and state administration sector aims to ensure the enforcement of the law, save state assets, maintain the authority of the government, and protect the interests of the community. To provide legal certainty in regulating the authority of State Attorneys, more specific regulations are needed regarding the meaning, duties, and authority of State Attorneys in separate statutory regulations. This is necessary so that it is not like today, where the regulations are spread across various regulations, including the Attorney General's Law, Presidential Regulations, and Attorney General Regulations. Considering the important role of State Attorneys in law enforcement and defending state interests, outreach regarding the role of State Attorneys must be increased. Apart from that, the capacity of prosecutors in their role as State Attorneys needs to continue to be developed to have adequate competence.

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