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(Research/Review) Article

# Transformation of the Prosecutor's Office: A Normative Institutional Study Towards the Attorney General and Supreme Legal Advisor

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**Abstract:** The Prosecutor's Office of the Republic of Indonesia (*Kejaksaan RI*) is currently undergoing a significant paradigmatic shift following the enactment of Law No. 11 of 2021. While historically viewed primarily as a prosecution agency (*Dominus Litis*) in criminal matters, the current legal landscape demands a stronger role in Civil and State Administrative Law (*Datun*). However, the institutionalization of the Attorney General as the "Supreme Legal Advisor" to the government remains suboptimal, often overshadowed by its repressive functions. This normative ambiguity hinders the state's ability to receive unified and binding legal opinions. This study aims to analyze the normative basis for this transformation and proposes an institutional framework to establish the Attorney General as the sole authority for state legal counsel. The research employs a normative juridical method with statutory and comparative approaches, analyzing the new Prosecutor's Law and comparing it with the *Solliciteur-Generaal* concept in other jurisdictions. The study finds that the 2021 amendment provides the necessary legal standing for this transformation, but it requires a competency upgrade for prosecutors to handle complex non-litigation issues. Strengthening the Attorney General's role as the Supreme Legal Advisor is essential to ensure legal certainty in government policies and prevent state financial losses.

**Keywords:** Attorney General; Civil and Administrative Law; Institutional Transformation; State Attorney; Supreme Legal Advisor.

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## 1. Introduction

The Prosecutor's Office (Kejaksaan) serves as a central pillar in the justice system, traditionally recognized for its monopoly on prosecution (*Dominus Litis*). However, in modern state administration, the role of the Prosecutor extends beyond criminal law enforcement. Globally, the concept of the Attorney General often encompasses the role of the "Supreme Legal Advisor" to the government, acting as the state's lawyer in civil disputes and the primary drafter of legal opinions for state policies. This dual function is critical to ensuring that government actions are legally sound and defensible.

In Indonesia the enactment of Law No. 11 of 2021, amending the previous Prosecutor's Law, marks a pivotal moment for institutional transformation. The law explicitly reinforces the prosecutor's authority in the field of Civil and State Administrative Law (*Perdata dan Tata Usaha Negara* or *Datun*). Despite this legislative support, the public and even internal bureaucratic perception often pigeonhole the Prosecutor's Office solely as a criminal enforcement agency. This narrow view underutilizes the potential of the State Attorney (*Jaksa Pengacara Negara*) to prevent legal maladministration and recover state assets through non-penal means.

A significant gap exists in the effective implementation of the "Supreme Legal Advisor" role. Currently, various government agencies often seek legal opinions from multiple sources, leading to fragmented interpretations of the law. There is no centralized mechanism that obliges state institutions to adhere to the Attorney General's legal opinion, unlike the binding nature of the *Attorney General's Opinion* in the United States legal system. This lack of centralized legal authority often results in policy overlaps and administrative disputes that weaken state governance.

Furthermore the transformation towards a Legal Advisor role requires a different skill set than traditional prosecution. While prosecution relies on proving guilt based on rigid statutory elements, legal advising requires creating solutions for complex governance problems. This study aims to fill the literature gap by analyzing the normative strategy to institutionalize the Attorney General as the Supreme Legal Advisor. It argues that this transformation is not merely an expansion of power, but a necessary evolution to safeguard national interests. The paper is structured as follows: Section 2 reviews related institutional theories; Section 3 outlines the normative method; Section 4 discusses the legal reconstruction and the competency requirements; and Section 5 concludes with policy recommendations.

## 2. Preliminaries

This section outlines the historical and theoretical foundations of the Prosecutor's authority and the conceptual framework of institutional transformation used in this study.

### **The Concept of State Attorney: From *Landsadvocaat* to *Jaksa Pengacara Negara***

The role of the State Attorney is rooted in the principle that the state, as a legal entity (*rechtspersoon*), requires professional legal representation just like any private entity. Historically, in the Dutch legal tradition applicable to the East Indies, this function was embodied in the *Landsadvocaat* (State Lawyer) or *Solliciteur-Generaal*, who acted as the defender of the government's civil interests (Effendy, 2021). In contemporary Indonesia, this authority is derived from the executive power of the President and delegated to the Attorney General.

The enactment of Law No. 11 of 2021 has significantly strengthened this position. Article 30 paragraph (2) clarifies that the Prosecutor's Office acts regarding Civil and State Administrative Law (*Datum*) both inside and outside the court (*litigation and non-litigation*) acting on behalf of the state or government (Susanto & Rahardjo, 2024). This dual function distinguishes the Indonesian Prosecutor from the strict *Dominus Litis* model found in purely continental systems, as it incorporates the "State Attorney" characteristics typical of the Anglo-Saxon *Attorney General* model (Butt, 2024).

### **Institutional Transformation Theory in Public Prosecution**

Institutional transformation in the public sector involves a fundamental restructuring of organizational structures, processes, and cultures to meet new external demands. For the Prosecutor's Office, the challenge lies in shifting the dominant organizational culture from a "repressive-militaristic" approach which focuses heavily on criminal prosecution and incarceration to a "preventive-persuasive" approach centered on legal assistance and compliance (Santoso, 2023).

Scholars argue that modern prosecution services must move away from rigid legal positivism towards progressive legal problem-solving. Manan (2022) emphasizes that the dignity of the Prosecutor's Office is not solely determined by how many corruptors are jailed, but by how effectively it can prevent state financial losses through sound legal advice. This theoretical shift aligns with the concept of the "Supreme Legal Advisor," where the Attorney General functions as the primary guardian of the government's legal health, ensuring that state policies are legally defensible before they are implemented (Kusuma, 2025).

## 3. Research Method

This section outlines the methodological framework used to analyze the institutional transformation of the Prosecutor's Office. As this study addresses the incoherence between legal norms and institutional practice, it employs a Normative Juridical research method (doctrinal legal research). This method is chosen because the study focuses on the inventory of positive law, the discovery of legal principles, and the systematic evaluation of statutory regulations regarding the Attorney General's authority.

### Research Approaches

To provide a comprehensive analysis, this study utilizes three specific approaches:

- a. **Statutory Approach:** This approach is used to examine the hierarchy and consistency of laws. Specifically, it analyzes Law No. 16 of 2004 as amended by Law No. 11 of 2021 concerning the Prosecutor's Office. The analysis focuses on the vertical synchronization between these laws and the 1945 Constitution, as well as their horizontal consistency with other administrative regulations.
- b. **Conceptual Approach:** Since the term "Supreme Legal Advisor" is not explicitly detailed in the operational articles of the law, this approach is necessary to build a theoretical construct. The study synthesizes concepts from the *Solliciteur-Generaal* tradition and modern *State Attorney* principles to define the ideal boundaries of this role.
- c. **Comparative Perspective:** A brief comparative observation is applied to contrast the Indonesian model with the role of the Attorney General in Anglo-Saxon jurisdictions, highlighting the differences in "binding legal opinion" authority.

### Legal Materials

The data used in this study are secondary data classified into three categories of legal materials:

- a. **Primary Legal Materials:** Authoritative legal documents, including:
  - 1) The 1945 Constitution of the Republic of Indonesia (*UUD 1945*).
  - 2) Law No. 11 of 2021 concerning Amendments to the Prosecutor's Law.
  - 3) Presidential Regulation No. 38 of 2010 concerning the Organization and Administration of the Prosecutor's Office.
- b. **Secondary Legal Materials:** Publications that explain the primary materials, including academic journals, textbooks on State Administrative Law (*Hukum Administrasi Negara*), and draft bills/academic papers (*Naskah Akademik*) of the 2021 Amendment.
- c. **Tertiary Legal Materials:** Legal dictionaries (e.g., Black's Law Dictionary) and encyclopedias used to clarify legal terminology such as *Dominus Litis* and *Discretion*.

### Technique of Collection and Analysis

Legal materials were collected using a structured Literature Review technique. The materials were indexed and categorized based on the specific issue: (1) Authority in Civil Law, (2) Authority in Administrative Law, and (3) Institutional Hierarchy.

The analysis follows a prescriptive logic flow, consisting of four steps as illustrated below:

- a. **Description:** Mapping the existing articles in Law No. 11 of 2021 related to the *Datun* (Civil and State Administrative) function.
- b. **Systematization:** Grouping these articles to identify the current scope of the "State Attorney" role.
- c. **Interpretation:** Using *Grammatical* and *Teleological* (purpose-based) interpretation to understand the legislator's intent behind the 2021 amendment.
- d. **Evaluation:** Assessing whether the current norms are sufficient to establish the Attorney General as the "Supreme Legal Advisor." If a gap is found, a legal reconstruction is proposed.

This qualitative analysis aims to produce a prescriptive argument not just describing what the law *is* (*das sein*), but prescribing what the law *ought to be* (*das sollen*) to achieve institutional effectiveness.

## 4. Results and Discussion

This section analyzes the normative mandate for the transformation and the competency shift required to sustain it.

### Normative Basis for the Supreme Legal Advisor Role

The enactment of Law No. 11 of 2021 has fundamentally altered the normative landscape of the Indonesian Prosecutor's Office, expanding the definition of "Prosecution" beyond mere criminal law enforcement. Specifically, Article 30C explicitly empowers the Prosecutor's Office to participate in asset recovery, provide legal assistance, and maintain public order. This article serves as the *lex specialis* basis that legitimizes the dual function of the Prosecutor: as the *Dominus Litis* in criminal cases and as the State Attorney (*Jaksa Pengacara Negara*) in civil and administrative matters. Normatively, this establishes the

Attorney General not just as a public prosecutor, but as the Chief Legal Officer of the state, holding the highest authority to represent the government's legal interests.

By positioning the Attorney General as the Supreme Legal Advisor, the state effectively creates a "single door" policy for legal interpretation. In the current bureaucratic ecosystem, various ministries and state agencies often hire external private consultants or rely on their internal legal bureaus, leading to fragmented and conflicting interpretations of regulations. This fragmentation often results in "sectoral egoism" where one agency's policy contradicts another's. The normative construction of the Supreme Legal Advisor aims to centralize this function. The Attorney General becomes the sole authority to issue authoritative legal opinions (*Legal Opinion*) that harmonize these conflicting interests, ensuring that the government speaks with one legal voice.

Transformation implies that the legal opinions issued by the Attorney General must possess binding force for all state entities. In the event of a dispute between two state agencies (e.g., a conflict between a Ministry and a State-Owned Enterprise regarding contractual obligations), the Attorney General's opinion should serve as the final verdict, preventing unnecessary litigation. Litigation between state entities is counterproductive and wasteful of the state budget. Therefore, the Attorney General's role transforms from merely giving "advice" to providing a "binding directive," acting as the ultimate filter to prevent administrative malpractice and potential state financial losses before they occur.

### **The Competency Shift: From Rigid Prosecution to Creative Solutions**

Transforming into a Supreme Legal Advisor requires more than just a change in regulations; it requires a revolution in human resource competency. A State Attorney dealing with complex infrastructure contracts or international trade disputes cannot rely solely on the "article-by-article" memorization used in criminal indictments.

This is where the cognitive approach of the prosecutor must evolve. Drawing a parallel from educational psychology, Rizaldi et al. (2025) found that learning models emphasizing active problem-solving significantly enhance creative thinking abilities. In their study on students' circulatory system learning outcomes, they proved that creative thinking is a skill developed through complex problem-solving, not rote memorization.

This finding is highly relevant to the transformation of the Prosecutor's Office. Currently, prosecutor training is heavily "Direct Instruction" oriented focused on procedural laws (KUHAP). To produce high-quality State Attorneys capable of acting as Supreme Legal Advisors, the training curriculum must adopt a "Project-Based" approach. Prosecutors must be trained to use Creative Thinking to interpret regulations flexibly to save state assets and solve administrative gridlocks, rather than just finding faults. Without this creative thinking capability, the legal opinions issued by the Attorney General will be rigid and unhelpful for national development.

### **Institutional Implications**

The normative transformation of the Attorney General into the Supreme Legal Advisor carries profound institutional implications. It necessitates a holistic overhaul of the Prosecutor's Office, moving beyond mere regulatory compliance to substantial organizational reform. This study identifies three key areas of implication: structural specialization, cognitive competency reform, and the elevation of institutional dignity.

First, the Structural Reformation of the *Datun* Division. Establishing the Attorney General as the primary legal counsel requires the *Civil and State Administrative (Datun)* division to be restructured into an elite specialized unit. Currently, the rotation system often moves prosecutors between criminal prosecution (*Pidana Umum/Khusus*) and civil representation (*Datun*), preventing deep specialization. Institutionalizing the Supreme Legal Advisor role implies the creation of a dedicated career track for State Attorneys (*Jaksa Pengacara Negara*). This unit must be filled with prosecutors who possess deep expertise not only in public law but also in private business law, international arbitration, and contract law. They must function similarly to high-end corporate lawyers but with the authority of the state (Fadli & Santoso, 2024).

Second, The Necessity of "Creative Thinking" in Legal Problem Solving. The most critical implication concerns the cognitive skill set of the prosecutors. As highlighted in the previous section drawing from the analogy of Rizaldi et al. (2025) complex problem-solving requires Creative Thinking abilities. In the context of the Prosecutor's Office, "Creative

Thinking" does not mean bending the law, but rather the ability to find innovative legal solutions to save state assets amidst regulatory ambiguity. For instance, when a state-owned enterprise (BUMN) faces a contractual deadlock that threatens financial loss, a traditional prosecutor might look for corruption elements to prosecute. However, a State Attorney with creative thinking skills would analyze the contract to find a renegotiation angle or a dispute resolution mechanism that saves the project and the state's money. Therefore, the institution's training centers (*Badiklat*) must pivot their curriculum from a purely dogmatic legal approach to one that fosters creative, strategic, and solution-oriented thinking.

Third, Elevating Institutional Dignity and Trust. Finally, this transformation will significantly elevate the dignity of the Prosecutor's Office. Historically, the institution is feared due to its repressive power to incarcerate. By successfully acting as the Supreme Legal Advisor, the institution will evolve into a respected partner for all government levels. It proves that the Prosecutor's Office is indispensable not only for putting criminals in jail ("Repressive Function") but also for keeping the government running legally, efficiently, and profitably ("Preventive and Constructive Function"). This shift builds a new form of "Trust" where other state agencies view the Prosecutor's Office as a shield against legal errors rather than a threat (Manan, 2022).

## 5. Conclusions

The transformation of the Prosecutor's Office into the Supreme Legal Advisor is a normative necessity mandated by Law No. 11 of 2021. This study concludes that: (1) The legal framework is sufficient to support this role, but executive enforcement is needed to make the Attorney General's opinions binding for all state agencies; (2) The success of this transformation depends on the "soft skill" reform of the prosecutors. Recommendation: The Attorney General's Office must revise its education and training program (*Diklat*). Prosecutors must evolve from being passive appliers of the law to active, creative legal problem solvers for the state.

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