

Constitutional Law on The Discretionary of Prosecutor's Power Against Abuse of Power Implications of Corruption Culture in The Prosecutor's Office Republic of Indonesia

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Abstract: Indonesia is a rule of law, which means that there is a guarantee for the functioning of an independent or independent prosecutor in carrying out the judiciary and other tasks and for upholding law and justice based on the state constitution and the prevailing laws and regulations. The Attorney General's Office (AGO) is a state institution in Indonesian constitutional law that can carry out or have authority on behalf of the state in prosecution and also has other powers based on applicable provisions. The problem of this research is that the discretionary power of prosecution is too loose a tendency to abuse power to commit a criminal act. terrorized corruption culture This research is qualitative and normative juridical. The discretion that is too free for prosecutors tends to abuse power to carry out a culture of corruption in the Prosecutor's Office (PO). Researchers suggest that discretionary power in state institutions is limited and supervised by external agencies on the performance of prosecutors so that checks and balances occur in state prosecutors' institutions.

Keywords: Constitutional law, the discretion of power, abuse of power, prosecutors, the culture of corruption.

1. INTRODUCTION

The Constitutional Law of Discretionary in the Constitution of the Republic of Indonesia of 1945, there are several powers, namely the legislative, executive, and judiciary. Indonesia is a rule of law where this means that there is a guarantee for the operation of an independent or independent judicial power in carrying out the judiciary and other duties and for the sake of upholding law and justice based on the State constitution and applicable regulations.

Article 24 of the 1945 Constitution of the Republic of Indonesia states that the other agency in question has a function related to judicial power as referred to in this article is regulated in law. The power of the judiciary is clear, closely related to the judiciary, and of course also to the Attorney General's Office (AGO), which has the authority to prosecute and is closely related to the judiciary. In terms of judicial independence that will be carried out by the AGO, it is better if this is also supported by a strong legitimacy to ensure the independence of the Prosecutor's Office (PO).

Judicial power is a separate power from the legislative and executive powers. As regulated in Article 24 paragraph (3) of the Constitution of 1945,

there are sentences from other bodies in the article indicating that there are other bodies that may be within the judicial authority¹. However, this article does not explain that the other bodies are under the authority of the judiciary or are included in the executive branch.²

However, in reality, the prosecutor can not only serve as a public prosecutor in court proceedings but can also act as a lawyer who is given special powers to resolve cases relating to law, be it cases of a civil nature or state administration. The AGO in the Law of the Republic of Indonesia of 1945 does not explicitly explain under which power, however, Law No. 16 of 2004 concerning the PO explains that the PO is under executive power³.

The AGO as a state institution uses its authority to prosecute on behalf of the state, which has full discretionary of power in prosecuting crimes against crimes, so it can be said that the public prosecutors and special prosecutors have superpower on behalf of the state.

In constitutional law, prosecutors as prosecutors in criminal cases have full power. In the history of human civilization, it is the holder of power, determinants of

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¹Constitution of the Republic of Indonesia of 1945.

²Constitution of the Republic of Indonesia of 1945.

³Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office.

situations and conditions, and morality of prosecutors as determinants of social control and public officials. The morality of prosecutors who hold power develops for the sake of personal and group interests in a system, so it will have an impact on a conflict of interest.⁴

A conflict of interest contains three important elements. First, there are economic Secondly financial interests of individuals and Third, interests of groups, this can occur in other types of interests, for example, guaranteeing benefits for family members. Basically, there is nothing wrong with pursuing personal interests. Problems arise when this personal interest conflicts with the prosecutor as a public duty/responsibility⁵.

A conflict of interest occurs when the prosecutor's responsibilities as a public official clash with private economic matters. In a narrow sense, conflict of interest refers to an environment in which a prosecutor uses his full power or position on behalf of the state, either publicly or secretly, for personal financial gain. The conflict of interest between public duties and private interests has been the cause of many scandals involving public officials with very serious consequences⁶.

Regarding legal implications of abuse of power to the administration of justice by public officials that harm state finances, the opinion of Philipus M Hadjon *administrative law is known as the term of authority, which is aligned with the term "bevoegdheid"*. The difference between authority and the term of *bevoegdheid* is that they are used both in the concept of public law and private law, whereas in Indonesia it is always used in the concept of public law that the use of authority is intended to control the behavior of legal subjects. Authority must have the legitimacy and conformity of the law, containing interpretation of authority standards, namely general standards and special standards⁷. Robert Klitgaard (1988) once

warned that corrupt behavior due to abuse of power develops when actors as perpetrators have superpowers.⁸

The Prosecutor's discretionary of power in The Law Against Law No. 16 of 2004 concerning the Prosecution explains that the PO is under executive power⁹. And also with Article 3 of Law Number 31 of 1999 concerning Eradication of Corruption as amended by Law Number 20 of 2001 concerning Eradication of Corruption in conjunction¹⁰ with Article 5 and Article 6 of Law Number 46 of 2009 concerning Criminal Justice. Corruption,¹¹ where one of the elements regulates criminal acts of corruption due to abuse of power. Absolute competence to examine problems is given to the Corruption Court.

The problems of this research are First, how is the discretionary power of prosecution in the AGO in handling corruption cases in Indonesia with the discretion of the power of the Corruption Eradication Commission. this perpetrates abuse of power to do corruption. in the Indonesian constitutional legal system.

2. RESEARCH METHODS

This research is normative legal research. Normative legal research is intended as research conducted by examining library materials or mere secondary data. The use of qualitative normative juridical methods in this study is based on the following reasons: First, qualitative analysis is based on the paradigm of dynamic relationships between theories, concepts, and data which constitute feedback or constant modification of theories and concepts based on those collected. Second, the data to be analyzed is varied, has different basic properties from one another, and is not easy to quantify. Third, the basic nature of the data to be analyzed in this study is comprehensive and constitutes one unit. Meanwhile this research is also descriptive in nature using a statute approach and an analytical approach.

⁴Bambang Slamet Riyadi (2020). Culture of Abuse of Power in Indonesia from the Perspective of Criminology and Law. *International Journal of Criminology and Sociology*, Volume 9. Page: 276.

⁵Bambang Slamet Riyadi (2020). Culture of Abuse of Power in Indonesia from the Perspective of Criminology and Law. *ibid*.

⁶Bambang Slamet Riyadi (2020). Culture of Abuse of Power in Indonesia from the Perspective of Criminology and Law. *ibid*.

⁷Bambang Slamet Riyadi (2020). Culture of Abuse of Power in Indonesia from the Perspective of Criminology and Law. *International Journal of Criminology and Sociology*, Volume 9. Page: 276.

⁸Bambang Slamet Riyadi (2020). Culture of Abuse of Power Due to Conflict of Interest to Corruption for Too Long on The Management form Resources of Oil and Gas in Indonesia, *International Journal of Criminology and Sociology* Vol 9 Page: 248.

⁹Bambang Slamet Riyadi (2020). Culture of Abuse of Power Due to Conflict of Interest to Corruption for Too Long on The Management form Resources of Oil and Gas in Indonesia, *ibid* Page: 251.

¹⁰Law of the Republic of Indonesia Number 16 of 2004 concerning the Prosecutor's Office.

¹¹Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Corruption Crime.

¹²Law of the Republic of Indonesia Number 46 of 2009 concerning Criminal Justice. Corruption.

3. DISCUSSION

3.1. Review of Constitutional Law Norms Against the Power of the Prosecutor's Office and the Power of the Corruption Eradication Commission in Abuse of Power to Commit Corruption

The PO as a constitutional law system in Indonesia. Article 2 paragraph (1) of Law Number 16 of 2004 concerning the AGO of the Republic of Indonesia clearly states that the AGO is a government institution that exercises state power in the field of prosecution and other powers based on law. Besides, Article 30 paragraph (1) letter (j) gives the Attorney the task and authority to carry out prosecutions in the criminal field, including of course the authority to prosecute criminal acts of corruption.

Likewise in constitutional law, the Corruption Eradication Commission, including the Indonesian constitutional legal system, is a constitutional state institution. The explanation above means that the Corruption Eradication Commission is in charge of handling and eradicating corruption problems.

The Corruption Eradication Commission in carrying out its duties has clarity, namely that the prosecutor is a functional prosecutor from the AGO judges are appointed by the Supreme Court, even the cassation is up to the Supreme Court.

Criminal acts of abuse of authority and authority in corruption are regulated in Article 3 of Law Number 31 of 1999 in conjunction with Law Number 20 of 2001 concerning Eradication of Corruption Crimes. The formulation of the criminal act of corruption must be interpreted as a state administrator or public official which of course fulfills the following elements, namely: being appointed by an authorized official, concurrently holding a position, and carrying out part of the duties or state apparatus. state government equipment. So that the meaning of "abusing power and authority" must be interpreted in the context of public officials, not private positions even though the private sector also has positioned. Based on the formulation in the law, problems arise in the dualism of power and authority for criminal prosecution between the Attorney General's Office and the Corruption Eradication Commission in handling corruption cases.

The authority of the AGO and the Corruption Eradication Commission to prosecute criminal acts of corruption is given based on statutory orders as regulated in the Criminal Procedure Code, Law

Number 16 of 2004 concerning the AGO of the Republic of Indonesia and Law Number 31 of 1999 concerning Eradication Corruption Crime as amended into Law Number 20 of 2001 concerning Eradication of Corruption Crimes.

The difference in the power and authority of the Corruption Eradication Commission to prosecute criminal acts of corruption is regulated again in Law Number 30 of 2002 concerning the Corruption Eradication Commission. When viewed in the formulation of the Criminal Procedure Code, the prosecutor who has the authority to carry out prosecution is the prosecutor who acts as a public prosecutor. And the Attorney General's Office and the Corruption Eradication Commission are both acting as prosecution for corruption crimes

The overlapping authority in terms of who is authorized to prosecute criminal acts of corruption emerged after the issuance of Law Number 31 of 1999 concerning the Eradication of Corruption. Article 26 of this law states that investigations, prosecutions, and examinations in court proceedings against criminal acts of corruption are carried out based on the applicable criminal procedural law unless provided otherwise by this law. This is also the same as the formulation of Article 39 of Law Number 30 of 2002 concerning the Corruption Eradication Commission which states that investigations, investigations, and prosecutions for criminal acts of corruption are carried out based on the applicable criminal procedural law and based on Law Number 31 of 1999 which has been amended into Law Number 20 of 2001 concerning Eradication of Corruption Crimes.

The prosecutor as regulated in Article 1 number 1 Law Number 16 of 2004 concerning the Indonesian Prosecutor's Office states that prosecutors are functional officials who are authorized by law to act as public prosecutors and implementers of court decisions who have obtained permanent legal force and other powers based on law. Furthermore, it is explained that the functional position of the prosecutor in point 4 is a position that is technical expertise in the organization of the PO which because of its function enables the smooth implementation of the Prosecutor's duties.

Based on the provisions of the Supreme Court Regulation No. 4 of 2015 concerning Guidelines for Procedures in Assessment of Abuse Of Power Elements Article 2 states 1) The court has the authority to accept, examine, and decide on appraisal requests

whether there is no abuse of authority in Decisions and/or Actions of Government Officials before criminal proceedings; and 2) The new court has the authority to accept, examine, and decide upon the application as referred to in Data (1) after the results of the supervision of the government internal control apparatus so that to test the abuse of power or an assessment of the element of abuse of authority must be carried out at the State Administrative Court, as mentioned in Article 1 number 18 of Law No. 30 of 2014 concerning Government Administration Jo. Article 1 point 8 of the Supreme Court Regulation No. 4 of 2015, so that it is clear and clear that the dominance to test the abuse of power is in the State Administrative Court and tests of abuse of authority or assessment of elements of abuse of authority are carried out before the existence of a criminal process.

Constitutional law on the principle of testing the abuse of power or assessing the element of abuse of power can be stated as follows: a) Actions and/or actions of the prosecutor as a public official do not contain elements of abuse of power and authority and b) The actions and/or actions of the prosecutor as a public official have no elements of abuse of power or authority.

If a criminal act is committed by the prosecutor as a government official when or when using his / her authority that two things become accountable, namely occupational responsibility and criminal responsibility, for that in this case it is necessary to prove first in an occupational manner (liability), whether the person has abused power and authority and commit criminal acts by using power and authority.

So in this case the State Administrative Court examines within 21 days of the application being filed. In administrative terms, Law No. 30 of 2014 concerning Government Administration and Supreme Court Regulation No. 4 of 2015 concerning Guidelines for Conducting Assessment of the elements of abuse of power and authority.

Testing the abuse of power through the State Administrative Court is an absolute thing to determine whether or not there is an abuse of power carried out by state administrative bodies or officials, in exercising the authority they have, the connection in the criminal act of corruption is a power of evidence for investigators to suspect. the existence of a criminal act of corruption if it is proven that there has been an abuse of power and it is inversely proportional to the

absence of such abuse of power, then it becomes a defense for state administrative officials who are suspected of committing the criminal act of corruption in exercising their authority even though the state losses are real, it could be caused by technical matters or insufficient studies in the context of the procurement of goods and services¹².

According to white-collar crime involves the abuse of power by persons who are situated in high places where they have the opportunity for such abuse. White-collar crime refers not to the social positions of offenders but rather to the context in which white-collar crimes are carried out or to the methods used in their commission proposed that white-collar violations are those violations of law to which penalties are attached that involve the use of a violator's position of significant power, influence, or trust in the legitimate economic or political-institutional order for illegal gain, or to commit an illegal act for personal or organizational gain¹³

Corruption culture perspective white-collar crime is also synonymous with the full range of frauds committed by business and government professionals. These crimes are characterized by deceit, concealment, or violation of trust and are not dependent on the application of the threat of physical force or violence. The motivation behind these crimes is financial to obtain or avoid losing money, property, or services or to secure a personal or business advantage¹⁴

The element of abusing power is a species delict, from the element against the law as a genus delict will always be related to the prosecutor as a public official, not about and understanding of the position in the realm of the civil administration legal structure of the state.

3.2. Constitutional Law on The Discretionary of Prosecutor's Power Against Abuse of Power Implications of Corruption in The Prosecutor's Office Republic of Indonesia

Prosecutors have an important role as law enforcement officials in investigating and prosecuting a

¹²Eddy O.S. Hiariej. (2012). *Theory and Law of Evidence*. Erlangga. Jakarta.

¹³Bambang Slamet Riyadi and Muhammad Mustofa (2020) *Corruption Culture on Managing Natural Resources: The Case Political Crime "Papa asking Stock of PT. Freeport Indonesia"* *International Journal of Criminology and Sociology*. Vol 9 page 28.

¹⁴Bambang Slamet Riyadi and Muhammad Mustofa (2020) *Corruption Culture on Managing Natural Resources: The Case Political Crime "Papa asking Stock of PT. Freeport Indonesia"* *Ibid*.

criminal case of corruption, but what happens if the prosecutor who has this task uses this superpower to commit an abuse of power so that he is involved in an organized corruption scandal. The following is a list of several cases of criminal corruption committed by prosecutors as follows:

1) *Case of abuse of power of the prosecutor "Pinangki Sirna Malasari" at the Attorney General's Office of the Republic of Indonesia*

Attorney Pinangki Sirna Malasari, this is an Intermediate Attorney with class IV / a who serves as the head of Sub-Division of Monitoring and Evaluation II at the Planning Bureau of the Junior Attorney General for Development. The AGO has named the Prosecutor as a suspect. He has also been detained for the first 20 days, starting from August 12, 2020. Pinangki is said to have received a bribe of the US \$ 500 thousand or around Rp. 7.4 billion from the fugitive convict convicted by Bank Bali corruption, Djoko Tjandra, in connection with a fatwa¹⁵

Furthermore, a legal observer emerged who said that the Rp. 7 billion in bribe money from fugitive convicted corruption suspect Djoko Tjandra was 'impossible' to be given only to a Pinangki prosecutor. According to a criminal law expert from Parahyangan University, Agustinus Pohan, he assessed that the amount of alleged bribery reached Rp. 7 billion or the US \$ 500 thousand which was given to a Pinangki prosecutor suspected of handling a legal case involving another party. Such value does not make sense if it is given only to Pinangki. But I believe that the money is suspected of being a cost to take care of something and is suspected of being in the interest of involving other people, "said Agustinus"¹⁶.

2) *Case of abuse of power of prosecutors at the Special Capital Region of Jakarta High Court. "Yanuar Reza Muhammad and Fristo Yan Prasanto"*¹⁷

The case of the Prosecutor Head of the Investigation Section at the Assistant Special Crime at

the High Court of the High Court. Jakarta Yanuar Reza Muhammad and the prosecutor head of the Sub-Section Head of Corruption and Money Laundering Fristo Yan Prasanto, both face trial at the Central Jakarta Corruption Court. Both are suspected of being involved in extortion of a witness in a suspected corruption case. The AGO of the Republic of Indonesia has been handled by Special Crimes for Special Capital Region of Jakarta, as well as the Attorney General's Office of the Republic of Indonesia, who was suspected of being the intermediary for the delivery of the money from extortion

Furthermore, according to Yanuar Reza Muhammad served as the head of the Investigation Section at the Special Criminal Assistant while Fristo Yan Prasanto served as the head of the Sub-Section Head of Corruption and Money Laundering, both of which served in the Special Crime Assistant at the AGO High Special Capital Region of Jakarta. Meanwhile, the capacity of the victim of extortion with the initials MY is as a witness who is being questioned in the alleged corruption case that is being handled by the Special Crimes of the Special Capital Region of Jakarta High Court. MY as the reporter admitted that he had handed over Rp. 1 billion to the YRM and FYP prosecutors, through CH's intermediary. The reporter explained that he was again asked for a sum of money and a certificate by CH to be submitted on December 2, 2019.

3) *Cases of Abuse of Power of Prosecutors at the Special Region District Attorney of Yogyakarta "Eka Safitra" and the Attorney at the Surakarta District Attorney, Province of Central Java "Satriawan Sulaksono"*¹⁸

In early 2020, two prosecutors, namely the former prosecutor at the Special Region District Attorney of Yogyakarta Eka Safitra and the Surakarta Public Prosecutor Satriawan Sulaksono were charged with accepting an Rp. 200 million bribes from a water pipeline project in Yogyakarta. Both of them received money from a contractor entrepreneur PT Widoro Kandang named Gabriella Yuan Anna Kusuma.

Whereas the defendant Eka Safitra together with Satriawan Sulaksono (separate files) knew or should suspect that the awarding of gifts in the form of money

¹⁵Andita Rahma (2020), Attorney General's Office will Provide Legal Assistance for the Pinangki Attorney, TEMPO.CO, Jakarta Monday, 17 August 2020 16:27 WIB. <https://nasional.tempo.co/read/1376741/kejaksaan-agung-akan-beripendektronik-hukum-untuk-jaksa-pinangki/full&view=ok>.

¹⁶BBC INDONESIA-NEWS (2020), Prosecutor Pinangki: Why is it that the Djoko Tjandra bribery case involved a number of top AGO officials? 13 August 2020. <https://www.bbc.com/indonesia/indonesia-53734170>.

¹⁷Yulida Medistiara (2020) Rows of Prosecutors Who Are Tried Over Corruption Cases, *Ibid*.

¹⁸Yulida Medistiara (2020) Rows of Prosecutors Who Are Tried Over Corruption Cases, *Ibid*.

totaling Rp 221,740,000 (two hundred twenty-one million seven hundred seventy thousand rupiahs) was received by The defendant and Satriawan Sulaksono from Gabriella Yuan Anna Kusuma, said the public prosecutor from the Corruption Eradication Commission Luki Dwi Nugroho in his indictment at the Corruption and Industrial Relations Court at The Special Region of Yogyakarta.

Prosecutors Eka and Satriawan are suspected of accepting bribes from Gabriella Ana in connection with the rainwater rehabilitation project on Jalan Supomo, Yogyakarta, and its surroundings. The bribe from Gabriella was alleged to smoothen the auction process for the project.

4) *Case of Abuse of Power of Former Assistant for Special Crimes at the High Court at Province of Central Java "Kusnin"*¹⁹

Kusnin, a former Special Criminal Assistant for the Central Java High Prosecutor's Office, was charged with accepting a bribe of 294 thousand Singapore dollars from Alfin Suherman in handling customs cases. Alfin Suherman is the legal advisor to the boss of PT Surya Semarang. The success of Jayatama, "Soerya Soedarma," who became the defendant in a customs case in 2018. The Directorate General of Customs and Excise for the Central Java and Yogyakarta Region delegated the case to the Central Java Prosecutor's Office. The Public Prosecutor from the AGO, Nur Azizah, in his indictment said that Alfin Suherman met Kusnin after being introduced by the staff of the Central Java Attorney General's Special Crimes Division Benny Krisnawan and the Head of the Prosecution Section Rustam Effendi. Alfin Suherman asks Kusnin to become a city prisoner.

The defendant then sent a letter to the Head of the Semarang District Prosecutor's Office regarding the application for city detention for Surya Sudharma. When the case was transferred to the Semarang District Prosecutor's Office, the request was granted. In the indictment, the prosecutor said that the money was then given to several people, namely Kusnin, Rustam, the General Prosecutor, and the name of the Head of the Semarang Public Prosecutor's Office, Dwi Samuji. The defendant received a share of 10 thousand Singapore dollars. The prosecutor said that the

defendant Kusnin also received bribes in connection with the preparation of the charges at Soerya's trial. Then Soerya was sentenced to 1 year in prison with a probation period of 2 years, and a fine of Rp. 5 billion. Before the charges, Soerya paid the customs duty which should have been paid amounting to Rp 2.5 billion.

For this charge, Alfin Suherman again gave the defendant a sum of 224 thousand Singapore dollars in the Tawang Station parking lot on May 21, 2019. The defendant then asked Dwi Samudji to meet him in the workroom on May 22, 2019. They then discussed the distribution which this time contained the name Sadiman, who is former Kajati Central Java. The defendant received 30 thousand Singapore dollars and 11 thousand Singapore dollars in exchange for use. This case has reached the final stage, Kusnin was sentenced by a judge at the Semarang District Court for 2.5 years in prison, a fine of Rp. 100 million and a subsidiary of 2 months in prison. Also, the defendant was also required to pay compensation for state losses of 247 thousand Singapore dollars and 20 thousand United States dollar, If not paid, then they will be replaced with torture of 1.5 years.

5) *Case of Abuse of Power of Former DKI Jakarta Criminal Assistant "Agus Winoto"*²⁰

Former the Special Capital Region of Jakarta Assistant General Crime, Agus Winoto was sentenced to 5 years in prison, a fine of Rp 200 million, a subsidiary of 3 months in prison. It was proven that Agus Winoto was wrong to receive money from entrepreneurs. Agus received a bribe of Rp 200 million. Bribes are received from businessmen who ask that the case proceed smoothly according to the entrepreneur's plan. Agus was guilty of violating Article 12 letter a or Article 11 of the Corruption Eradication Law in conjunction with Article 55 paragraph 1 to 1 of the Criminal Code.

The businessman who bribed Agus was Sendy Pericho and his attorney Alfin Suherman. The two of them gave bribes so that Agus could ease the planned charges in the cases of Hary Suwanda and Raymond Rawung. Hary and Raymond are private parties who have a problem with Sendy.

¹⁹Yulida Medistiara (2020) Rows of Prosecutors Who Are Tried Over Corruption Cases, *Ibid*.

²⁰Yulida Medistiara (2020) Rows of Prosecutors Who Are Tried Over Corruption Cases, *Ibid*.

6) *Case of Abuse of Power. Former prosecutor at the High Court at The Province of Central Java "Fahri Nurmallo"*²¹

Fahri Nurmallo, head of the team of prosecutors who handled the corruption case of abuse of the Social Security Administration for Subang Regency, West Java, allegedly accepted a bribe of Rp. 528 million from Ojang (Regent of Subang) so that his name was not mentioned in the case that ensnared Jajang at the West Java AGO. Gahti and Ojang were arrested by the Corruption Eradication Commission on April 11, 2016. On November 2, 2016, the panel of judges at the Bandung Corruption Court finally sentenced the prosecutor Fahri to 7 years in prison and a fine of Rp. 300 million, a subsidiary of four months imprisonment.

7) *Case of Abuse of Power A Former Prosecutor at the West Sumatra High Court*²²

The Corruption Eradication Commission detained a former prosecutor at the Padang District PO Prosecutor Farizal allegedly accepted an Rp. 365 million bribes from the President Director of CV Semesta Berjaya, Xaveriandy Sutanto. The money given by Xaveriandy was to organize cases that were being heard at the District Court in Padang. In this case, Farizal acted as Xaveriandy's legal adviser by making exceptions and arranging favorable witnesses. This case also dragged the chairman of the Regional Representative Council Irman Gusman. On May 5, 2017, the panel of judges at the Padang Corruption Court sentenced "Farizal Prosecutor" to 5 years in prison and a fine of Rp. 250 million, subsidiary to 4 months in prison and obliged to pay compensation of Rp. 335.6 million.

8) *Case of Abuse of Power of Former Head of Section III of Intel Prosecutors at the Bengkulu High Prosecutor's Office "Parlin Purba"*²³

The State Corruption Eradication Commission conducted a hand-arrest operation against the Head of Section III Intel of the Bengkulu High Prosecutor's Office, Parlin Purba. The evidence that was secured was Rp. 10 million. It is suspected that previously Parlin had received Rp. 150 million. The arrests took place on June 9, 2017. In addition to Parlin, the

Corruption Eradication Commission also arrested officials making commitments at the Bengkulu Province VII Sumatra River Basin, Amin Anwari, and Director of PT Mukomuko Putra Selatan Manjudo Murni Suhardi.

The bribe given to Parlin Purba was allegedly related to the collection of data and materials indicating corruption indications related to the irrigation development project under the Sumatra VII River Basin, Bengkulu Province. Long story short, Parlin was sentenced by the Bengkulu Corruption Court to five years in prison with a fine of Rp 200 million, a subsidiary of 3 months in prison.

9) *Case of Abuse of Power of Former Chief of the Pamekasan District Attorney, Madura, East Java "Rudi Indraprasetya"*²⁴

The former head of the Pamekasan District PO Madura, East Java, Rudi Indraprasetya was charged with receiving Rp. 250 million from Sutjipto Utomo as the Head of the Inspectorate for Regional Government of Pamekasan Regency. The bribe was given so that "Rudi" would stop collecting data and information related to the alleged misappropriation of village funds in Dasok Village, Pamekasan, Madura.

This case started when Desa Dasok received village funds amounting to Rp. 645,155,378 and an allocation of village funds amounting to Rp. 499,332,000 for the 2016 fiscal year. At that time, the Inspectorate team of the Pamekasan Regency Regional Government found several irregularities related to the funds. There are allegations of fraud committed by the Village Head of Dasok Agus Mulyadi. The case began to enter the investigation process. However, "Rudi" actually met "Achmad" and said that his staff was investigating the case. In the end, Chief Prosecutor Rudi was sentenced to 4 years imprisonment and a fine of Rp 200 million, a subsidiary of 2 months in prison. In a separate file, former Pamekasan Regent Achmad Syafii was sentenced to 2 years and 8 months in prison.

Apart from a sentence of 2 years and 8 months imprisonment, the panel of judges also asked the defendant Achmad Syafii to pay a fine of Rp 50 million, a subsidiary of 1-month imprisonment. The judge also revoked the defendant's political rights.

²¹Yulida Medistiara (2020) Rows of Prosecutors Who Are Tried Over Corruption Cases, *Ibid.*

²²Yulida Medistiara (2020) Rows of Prosecutors Who Are Tried Over Corruption Cases, *Ibid.*

²³Yulida Medistiara (2020) Rows of Prosecutors Who Are Tried Over Corruption Cases, *Ibid.*

²⁴Yulida Medistiara (2020) Rows of Prosecutors Who Are Tried Over Corruption Cases, *Ibid.*

Based on the 9 cases above, the researcher provides an opinion that has been proven in the constitutional law on the discretionary of the prosecutor's power against abuse of power implications of corruption in the PO of the Republic of Indonesia.

Then the term corruption was complemented into corruption, collusion, and nepotism. The recording Law Number 28 of 1999 concerning State Administration that is Clean and Free of Corruption, Collusion, and Nepotism amended by Law Number 20 of 2001 concerning State Administration that is Clean and Free of Corruption, Collusion, and Nepotism, defines corruption, collusion, and nepotism. Article 1 (3) of Law no. 28/1999 defines "collusion" is: "Corruption is agreement or cooperation in a manner against the law between State Administrators or between State Administrators and other parties that harm other people, society and or the state"²⁵.

A broader definition of corruption and covering aspects of human behavior that is corrupt or corrupt is contained in the Black's Law Dictionary. According to the Black's Law Dictionary, the meaning of corruption is more emphasized on immorality or despicable acts. The types of misconduct include²⁶:

- 1) Depravity, perversion, or taint: impairment of integrity, virtue, or a moral principle; esp., the impairment of a public official's duties by Bribery.
- 2) The act of doing something with an intention to give some inconsistent advantages with official duties and the rights of others; a fiduciary's or official's use of a station or office to procure some benefits either personally or for someone else, contrary to the rights of others.

Some definitions above show that white-collar crime is a crime committed by respectable people with high social status associated with the job or position held. The perpetrators usually do not use threats or violence aimed at obtaining unauthorized personal benefits by way of abusing the power, office, influence and trust given. White collar crime can occur either within a company or country. The crime are built in the white collar crime term not far different

with the term of political corruption. It can be described as the abuse of the public roles or public official and resources for private benefit (Johnston, 2005) It means that all form of transgression acts committed by a people in using public resources based on his public official role for personal interest can be categorized as political corruption.²⁷

Article 1 (4) of Law no. 28/1999 defines "collusion" as follows: Collusion is agreement or cooperation against the law between State Administrators or between State Administrators and other parties that harm other people, the community and the state. " While Article 1 (5) of Law no. 28/1999 defines nepotism as an act of the conduct of a State Operator in an unlawful manner that benefits the interests of his family and / or cronies over the interests of the community, nation and state ". Politicians in government, parliament and political parties are people who are given authority, give authority, and make authority. They abuse the authority hidden in their power mandate, so it is often referred to as culture corruption political behavior. One of the modes is through regulatory corruption, in the form of legislation products and derivative policies, to their implementation. Due to the behavior of these politicians, Indonesia is almost categorized as a *kleptocracy* state, a country ruled by thieves (klepto).²⁸

Said and Suhendra's opinion was supported by Magnis Suseno who stated about the pretense culture of the community towards the deviant behavior of other residents related to property ownership. That is, citizens in the culture of omission have a tendency to allow a variety of dishonest practices in obtaining property, because it avoids social disharmony and is free from the assumption of order destruction. In such a technical system, a person's desire to open up the practice of deviant economic behavior has fatal consequences for his social life. That why is whistle blowers corrupt behavior makes them prisoners and convicts. As if in such a cultural structure, a person who is supposed to be a hero in the fight against corruption ends up becoming a loser.²⁹

²⁵Bambang Slamet Riyadi, et al. (2020) Culture of Corruption Politicians' Behavior in Parliament and State Official During Reform Government Indonesia (Genealogical Study) *International Journal of Criminology and Sociology*. Vol 9 page 53

²⁶Bambang Slamet Riyadi, et al. (2020) Culture of Corruption Politicians' Behavior in Parliament and State Official During Reform Government Indonesia (Genealogical Study) *Ibid* page 55

²⁷Bambang Slamet Riyadi and Muhammad Mustofa (2020) Corruption Culture on Managing Natural Resources: The Case Political Crime "Papa asking Stock of PT. Freeport Indonesia" *op.cit*

²⁸Bambang Slamet Riyadi, et al. (2020) Culture of Corruption Politicians' Behavior in Parliament and State Official During Reform Government Indonesia (Genealogical Study) *op.cit*.

²⁹Bambang Slamet Riyadi, et al. (2020) Culture of Corruption Politicians' Behavior in Parliament and State Official During Reform Government Indonesia (Genealogical Study) *ibid*.

The culture of corruption, according to Robert Klitgaard, is not in the sense that everyone commits corrupt acts, but that almost everyone is reluctant to report the corruptors. This was stated in his book "Eradicating Corruption" in the discussion of corruption eradication strategies, especially in the organizational environment written, "Dismantle the culture of corruption in your organization. Because even in the most striking cases, corruption is rarely done openly, because by nature it relies on secrecy, collusion and a little belief that illicit transactions will not leak out. Proverbial, people can talk about a "culture" of corruption, not that everyone is corrupt but that almost everyone is reluctant to report the corruptors"³⁰

The term *kleptocracy* is often heard, but many people do not understand the meaning and use of this word. Based on his study, Mustofa (professor of criminology at the University of Indonesia) concluded that a *kleptocracy* is a form of white collar-crime in Indonesia, namely the act of gaining profits through corruption as a corporate organization goal that can be carried out due to a vicious agreement between corporations and corrupt bureaucrats, as stated by Max Weber. This conclusion is based on data showing that white-collar crime in Indonesia is mainly committed by corporations and bureaucrats, and seen from the main disadvantaged parties is the state.³¹

One way to justify the existence of corruption is to use the argument "cultural relativism". In developed countries, it is often said that in many developing countries, corruption is part of culture, because it is closely related to human mentality. Mentality is a cultural spirit that is adopted. In this context, there are some mentalities which are very detrimental to the state, one of which is a pervasive mentality. This mentality always sees goals as shortcuts without regard to the process towards achieving them. When this becomes a mentality, it means that what needs to be addressed is a system that works as a control for "the running of culture". To fix this system, it must be done through revamping the government system that covers other systems³²

Personalistic values and feudalism are firmly embedded in the culture of a particular society so that the consequences of the culture of corruption that exist in that society will be firmly planted and difficult to eradicate. Kinship and kinship values are very thick values in the culture of Indonesian society. A high sense of kinship will result in corrupt cultural behavior³³.

The abuse of power that creates a culture of corruption in the study of Constitutional Law through the State Administrative Court is a matter that is analyzed by interpretation of administrative law and criminal law, whether there is or is not there an abuse of power and authority carried out by prosecutors in state institutions, the AGO.

4. CONCLUSION

Indonesia is a rule of law where this means that there is a guarantee for the functioning of an independent or independent prosecutor's power in carrying out the judiciary and other duties and for the sake of upholding law and justice based on the State constitution and applicable regulations. The PO is a state institution in Indonesian constitutional law that can exercise or have the power to exercise authority over the name of the state in matters of prosecution and also have other powers based on applicable regulations, this is as regulated in Article 2 paragraph (1) of Law Number 16 of 2004 about the AGO. Based on paragraph (2) of the same article and law, it can be seen together that the State power contained in paragraph (1) is exercised independently, or in other words, is independent.

However, the prosecutors can not only serve as general criminal prosecutors in court proceedings but can also act as lawyers who are given special powers to resolve criminal cases relating to law, both civil and state administrative cases. The position and role of the prosecutors in terms of law enforcement are regulated in the Law on the PO, so it can be seen that there is the ambivalence between the positions of state institutions, namely the prosecutor's office as a part of executive power in other words as an element of government bureaucrats in other words as a presidential assistant, but has a function in the power of prosecution, this is included in the judicial power.

³⁰Bambang Slamet Riyadi, *et al.* (2020) Culture of Corruption Politicians' Behavior in Parliament and State Official During Reform Government Indonesia (Genealogical Study) *ibid* page 56.

³¹Bambang Slamet Riyadi, *et al.* (2020) Culture of Corruption Politicians' Behavior in Parliament and State Official During Reform Government Indonesia (Genealogical Study) *ibid* page 56.

³²During Reform Government Indonesia (Genealogical Study) *ibid* page 56.

³³Bambang Slamet Riyadi, *et al.* (2020) Culture of Corruption Politicians' Behavior in Parliament and State Official During Reform Government Indonesia (Genealogical Study) *ibid* page 56.

³³Bambang Slamet Riyadi, *et al.* (2020) Culture of Corruption Politicians' Behavior in Parliament and State Official During Reform Government Indonesia (Genealogical Study) *ibid* page 56.

The discretion that is too free for prosecutors tends to abuse power to carry out a culture of corruption in the PO. Researchers suggest that discretionary power in state institutions is limited and supervised by external agencies on the performance behavior of prosecutors so that checks and balances occur between state institutions in the AGO. The concept of state administrative law regarding the abuse of power has led to many misinterpretations due to the absence of a single perception among state institutions, namely the AGO of the Republic of Indonesia and the Corruption Eradication Commission so that this legal interpretation creates criminal excess. So that the opinion of researchers, for public policymakers must synchronize the abuse of power in state administrative law with the criminal law of corruption.

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