ISSN NO. 2320-5407

Journal homepage: http://www.journalijar.com

INTERNATIONAL JOURNAL OF ADVANCED RESEARCH

RESEARCH ARTICLE

EMPOWERING THE PROSECUTION SERVICE IN THE CONSTITUTIONAL SYSTEM OF THE REPUBLIK OF INDONESIA

JAN S MARINGKA*

***Faculty Of Law Hasanudin Makassar - Indonesia**

Manuscript Info

Manuscript History:

Received: 15 April 2015
Final Accepted: 22 May 2015
Published Online: June 2015

Key words:

Prosecutor, Prosecution, Dual Obligation

Corresponding Author

JAN S MARINGKA
jans_maringka@yahoo.com

Abstract

Uncertainty regarding the position of the Prosecutor Service in the constitutional system in Indonesia often lead to ambivalence in law enforcement, the position of the Prosecutor Service as government agencies that perform state power in the prosecution, meaning that from the institutional side, Prosecutor is an institution that is in the realm of executive power. Meanwhile, in performing their duty in prosecuting in the court of law, they became a part of the judiary power.

Dual Obligation (in one side the prosecutor need to be independent in performing their duty, and in the other side as institution, they belong to executive) is in turn often lead to doubts about the their objectivity in taking important decisions related to the handling of criminal cases especially it related to the interests of the Government.

Long debate about the independence of the Prosecutor and its position in the constitutional structure in Indonesia, is an impact due to uncertainty of their position in the Constitution. Unlike the Court and Police Authority that are clearly set out in the Constitution, the Prosecution Service only implicitly mentioned in Article 24 paragraph (3)of the Constitution.

INTRODUCTION

Elucidation of Article 2, paragraph 1 of Law No. 16 of 2004 states that the Prosecutor in carrying out the functions, duties, and authority free from the influence of government power and the influence of other powers. This provision aims to protect the prosecutors as outlined in the "Guidelines on the Role of Prosecutors" and "the International Association of Prosecutors". However, in practice, Act No. 16 of 2004 puts the Prosecutor in an ambiguous position. On the one hand, the Prosecutor demanded to carry out its function and authority independently, on the other hand, the puts Prosecution Service as an institution under the authority of the executive.

Such independence could be vulnerable if the government does not really have a commitment to uphold the rule of law in Indonesia.Dual Obligation (on one leg as an independent law enforcement agency and on the other side as part of the executive) in the end often raises doubts about the objectivity of the *Adhyaksa* in taking important decisions when it comes in handling cases which contained the interests of Government. Many people consider it is impossible from Prosecutor in carrying out its functions, duties, and authority purely apart from other power, because the position of the Prosecution Service which still under the authority of the executive.

It is inevitable, that the long debate about the independence of the Prosecutor and its position in the constitutional structure in Indonesiais due to the vagueness of the position of the Prosecutor in the Constitution of 1945 (hereafter called as *the Constitution*). In the provision of Article 24 paragraph (3) of the Constitution, the Prosecutor only mentioned implicitly as the "The bodies whose functions is related to the judicial authority, are regulated by law". The formulation of Article 24 UUD 1945 which departs from the hypothesis that the Prosecutor

is an integral part of the court, *so it has been quite implicitly guaranteed by including as entities related to the judicial authorities,* felt would not be able to answer the needs of the Prosecutor's guarantees of independence within the framework of the criminal justice system as its current position, namely a government agency under the executive power.

B. The Indonesian Constitutional System in Post Amendments of 1945 Constitution.

Theory of Constitutional Law began to receive attention and developed rapidly during the reform era which started at 1998. One of the main stream of the reform era is the wave of democratization. Democracy has given space to the demands of change, both the demands associated with the norms of state administration, state institutions, and the relationship between state and citizen. Democracy also allows for freedom and academic autonomy to examine the various theories that spawned choices of constitutional systems and structures to accommodate these demands.

The demands include many aspects. Framework of rules and institutions that exist under the current positive Constitutional Law was no longer in accordance with the development of aspirations and people's lives. On the other hand, various theoretical studies have emerged and provide alternative frameworks and new institutional rules. As a result, the Constitutionthat used to be so sacred, now is subject to changes. Things that initially can not be questioned was sued. We can not imagine that we can question the Constitution where made so unquestionableby the two Rezims before, namely the Old Order (1959-1967) and the New Order (1967-1998).

One characteristic of the Rule of law, which in Dutch and German also called as *rechtstaat*, is the limitation of power in the state administration. Efforts to limitthe power of state is done by holding the patterns of restriction in the internal management of state itself, namely by holding the distinction and separation of power into a few different functions.

Figure that can be considered as the most influential thought in the seperation of power theory is Montesquieu, with his *trias politica* theory, namely the legislative branch, the executive branch and the branch of judicative power. Montesquieu concept is basically to follow the way of thinking of John Locke, which divides state power into three branches, namely 1) the legislative power as legislators 2) executive power to implement and 3) the power fo federative. The difference between the two, is when John Locke is basing his ideas in terms of the relationship into and out of other countries *(federative function)*, while Montesquieu prefers the protection of human rights of every citizen (thus known function of the judicial authorities or the judiciary).

In general, the doctrine of separation of powers as stated by Montesquieu, is considered by some experts as unrealistic view and far from reality, so in reality no country in the world who truly reflects the picture of Montesquieu on the separation of powers. As the macth on the concept of separation of powers, the experts used to use the term *sharing of powers*, *division of powers* or *the distribution of powers*.

The term *seperation of powers*, *division of powers* and*distribution of powers* in fact have the same meanings, depending on context of the definition adopted. However, the term *division of power* is usually used in the context of the relationship between the federal and the state, while the term *seperation of power* used in the context of power-sharing at the federal government level, ie between legislative, executive and judicial.

Horizontal versus vertical perspective can also be used to distinguish between the concept of power sharing *(division of power)* which applied in Indonesia before the contituional changes, namely that the sovereignty or supreme power vested in the people and manifested in the People's Assembly as the highest state institution. The system adopted by the Constitution before the change can be regarded as a power-sharing *(division of power)* in the context of a vertical sense. As for now, after the fourth change of the Constition, the system adopted by the Constitution is a system of *separation of powers* based on the principle of checks and balances. Some evidence of this include:

1. The shift in power of legislativematters of the President to the Parliament.
2. The adopt of the constitutional review system to the law as a product legislative by the Constitutional Court.
3. The institution admitted that the perpetrators of the people's sovereignty is not only the People's Assembly (*Majelis Permusyawaratan Rakyat* or MPR), but all state institutions either directly or indirectly, is the embodiment of popular sovereignty. President, members of Parliament and the Council both elected directly by the people and therefore equally a direct implementing the principle of popular sovereignty.
4. MPR no longer existed as the highest state institution, but an (high) state institution that equal to the other high state institutions, such as the President, DPR, DPD, the Constitutional Court and the Supreme Court.
5. Relationships between (high) state institutions governed by mutually control to one another in accordance with the principle of checks and balances.

Of the five characteristics mentioned above, it can be seen that the Constitution can no longer be said to adhere to the principle of the verticalpower sharing, but also adopts Montesquieu'strias politica that separates the branches of power absolutely to legislative, executive and judicial, without being accompanied by relationship that allows each controlling one another. In other words, the new system adopted by the post fourth change on the Constitution is the system of separation of powers based on the principle of Checks and Balances.

C. The "constitutional importance" of the Prosecution Service.

According to William G. Andrews, a consensus that guarantees the establishment of constitutionalism in modern times generally understood rests on three elements of the agreement *(consensus)*, namely:

1. Consensus on the common purpose or goal (the general goals of society or the general acceptance of the same philosophy of goverment);
2. Consensus on "the rule of law" as the basis of government or state administration;
3. Consensus on the form of institutions and procedures of the state administration;

It is inevitable, that the long debate about the independence of the Prosecutor and its position in the constitutional structure in Indonesia, is due to the vagueness of the position of the Prosecutor in the Constitution of NRI 1945. In the provisions of Article 24 paragraph (3) of the 1945 Constitution, the Prosecutor only mentioned implicitly as the "another bodies whose function related to the judicial authority are regulated by law":

The fact that the Prosecution Service is not included in the 35 subject explicitly mentioned in Constitution such as President; Vice President; Presidential Advisory Council; Ministry of State; Minister of Foreign Affairs; Minister of Home Affairs; Secretary of Defense; Ambassadors; Consul; Provincial Government; Governor/Head of the Provincial Government; Provincial Parliament; District Government; Regent/Head of the District Government;District Parliament; Regional Government; Mayor / Head of Local Government; City Council; People's Consultative Assembly (MPR); House of Representatives (DPR); Regional Representatives Council (DPD); General Election Commission; The Central Bank; Supreme Audit Agency (BPK); The Supreme Court (MA); The Constitutional Court (MK); Judicial Commission (KY); Indonesian National Army (TNI) and the Indonesian National Police (INP); Army (AD); Navy (AL); Air Force (AU); Local Government Unit; Indigenous People unity, indeed pose a separate question regarding the extent to which the state considers it important to ensure the position of the Prosecution Service Institution in performing the function of law enforcement in Indonesia, or whether the prosecution function is carried out by the Attorney General deemed less important than the two other sub criminal justice system which expressly was set in Constitution, namely the Police and Supreme Court (court).

According to Indriyanto Seno Adjie, the existence of the Rule of Law as noted in the change III Article 1 Paragraph 3 of the 1945 Constitution, it is not enough merely grammatical meaning without any explanation or additional implementation of the meaning, but must be followed by an affirmation of the law enforcement system and institutions including accentuation of the need for the existence of the prosecutor through the constitution as a form of confirmation of the position of the Attorney General which is a sub-system of the Criminal Justice System.

Similarly, the third change of Article 24 UUD 1945 which states, judicial power is an independent power to organize judicial administration to uphold law and justice, translated in terms of law enforcement for the implementation of the Criminal Justice System, particularly the prosecutor's existence as an independent state institution in the area of prosecution.

In line with this view, according to Prof. Asshiddiqie, it is not appropriate to deemed that the police is more important than the Prosecutor just because the provisions concerning the Prosecutor did not explicitly listed in the Constitution. In line with the principles of the Constitutional State defined by Article 1 (3) of the Constitution, the Prosecution Service Institution still have a very important position in constitutional law, so it has a "constitutional importance" as other institutions whose existence has been referred to explicitly in the Constitution.

Furthermore, according to Prof. Yusril Mahendra, the position of the Attorney General as the state body *(staatsorgan)* in Constitution basically continue what already exists regulated in *Indische Staatsregeling*, which is a kind of constitution of the colony, the Dutch East Indies, which put side by side with the Attorney General of the Supreme Court. While administratively, both the prosecutor and the court is under the Ministry of Justice. That is why, in a meeting PPKI (The Preparation Committe of Indonesian Independence) dated August 19, Professor Supomo reported that the scope of duties of the Ministry of Justice to be formed is to handle matters of court administration, prosecutors, prison, marriage, divorce and reconciliation as well as endowments and

handling *zakat*problems. While the legal basis for the Prosecutor to carry out its duties and authorities, is entirely based on *Herzeine Indonesich Reglement* (HIR) expanded by Regering Reglement Stb 1922 No. 522. HIR later changed to RIB (Revised Indonesia Regulation).

Furthermore, Prof. Yusril said that, if listened to the mind of the drafters of the 1945 Constitution in the days of the Japanese occupation, the formulation of the judicial power is seen dominated by thoughts of Mr. Muhammad Yamin, a Rechts Hooge School'sgraduate, which was heavily influenced by the judicial system in the Netherlands. The focus of attention is the independence of judicial bodies, in the context of the court, not the whole system involved in the implementation of the judicial process, as it is known in the theory of Criminal Justice System, which came later.

In the minds of Yamin, prosecution institution is what is known at that time, well practiced in the Netherlands and in the Dutch East Indies. Therefore, in the whole process of discussion of the 1945 Constitution there is no room to discuss the position of the prosecutor. Even the policeare not mentioned in the 1945 Constitution before the amendment, eventhough its part of the duties and authorities also related to the judiciary.

However, the problem would be different, after the date of July 22, 1960, when President Sukarno issued Presidential Decree No. 204 of 1960, which strictly separates the Attorney General from the Ministry of Justice and the Supreme Court, and change it to a stand-alone institution and part directly from the cabinet. This is the first legal basis that puts the Attorney entirely as part of the domain of the executive power.In its development, the policy followed by the enactment of Law No. 15 of 1961 on Principles Rule of Prosecution Service of the Republic of Indonesia, which although in consideration said that the Prosecutor is not a "tool of the government", but the "state apparatus", but then implicitly illustrate that the Prosecutor is not part of the organ of judicial power, as the President has appointed a Secretary / Attorney General as a member of the cabinet.

Perception that puts the Attorney General as part of the executive power was still maintained at the time the Act No. 15 of 1961 is replaced by Act No. 5 of 1991, even Law 5 of 1991 on the Prosecutor Service of the Republic of Indonesia in its consederation no longer call the prosecutor service as a "state body" but called it a "government agency implementing state power in the field of prosecution ". So there has been a significant shift in looking at the position of the prosecution service institution, from the "state apparatus" to "government agency". This view was followed by Act No. 16 of 2004 that the provision of Article 2, paragraph 1 remains consistently stated that the Prosecutor Service is the government agency implementing state power in the prosecution and other authorities under the legislation.

From the description above, it is clear that the formulation of Article 24 UUD 1945 which departs from the hypothesis that the Prosecutor is an integral part of the court, so it has been quite implicitly guaranteed by specifying it as entities related to the judicial authorities, could not answer the perceived needs of the independency of the Attorney within the framework of the criminal justice system as the current position, namely as a government agency under the executive power.

D. Prosecution Service in Constitution in Various Countries

To set the basis of juridical arguments about the importance of the position of the prosecution service institution in the constitution, the effort to raise awareness to strengthening the Prosecutor Service needs to be supported by an academic study in the form of comparative law with various countries that have explicitly set the functions of the Prosecutor in their constitution.

From our reseach at the end of 2014at the library of the National University of Singapore (NUS), we managed to find at least 113 (one hundred and thirteen) constitutions of various countries, including the autonomous regions, in firmly set on the positions of Prosecution Service or Attorney General's Office in their constitution.It should be admitted that the arrangements regarding the office of the Attorney General or prosecution agencies in various countries are quite diverse. On the one hand, there are countries which grant enormousauthority to Prosecution Service, not only in the field of prosecution, but in leading the investigation, led eradication of corruption, as well as to supervise the legal compliance of government officials as well as other powers. However, on the other hand, there are also who puts prosecution service position as an integral part of the court, but enjoy full guarantees of independency as provided to the court and the judges (such as remuneration system, career and dismissal).

Meanwhile, regarding the status and functions of the Attorney General, we also found that the setting is quite varied. On the one hand, there are countries that attach prosecutorial functions and prosecution servise institution under the leadership of Attorney General (either directly as a function of the Attorney General or the Attorney General's capacity as the head of the Ministry of Public), while on the other hand, there are also states that the

Attorney General position as a government adviser on legal issues and separate prosecution service under Procurator General or Director of Public Prosecution.

However, regardless of the name of the Attorney General in these countries (Attorney General, Procurator General, Advocate General), nor with however the way of appointment (appointed by the President, proposed by the President with the approval of Parliament, or proposed by a Board or Committee) or the function and position of the Prosecutor in their system (one unified hierarchical, autonomous bodies or even in the shape of board/council), there is a definite similarity that the position and functions of the Attorney General/Prosecution Service is deemed to be important and strengthened in the constitution to ensure the implementation of an independent and professional prosecution as an integral part of efforts to achieve effective law enforcement.

The list of countries and autonomous regions which regulate the position of Prosecution Service and the Attorney General in their constitution is as follows:

- EUROPE: Sweden, Spain, Moldova, Italy, Greece, Lithuania, Malta, Belgium, Belarus, Bulgaria, Hungary, Finland, Croatia, Slovakia, Armenia, Georgia, France, Ireland, Macedonia, Portugal, Romania, Russia, Ukraine, Slovenia;
- LATIN AMERICA: Brazil, Panama, Paraguay, Peru, Argentina, Cuba, Bolivia, Guatemala, Honduras, Mexico, Venezuela, Elsavador, Ecuador, Chile, Colombia.
- ASIA: North Korea, Saudi Arabia, Mongolia, India, Kazakhstan, Bahrain, People's Republic of Tiongkok, Yemen, Uzbekistan, Pakistan, Oman, Montenegro, Serbia, Turkey, Sri Lanka, Kuwait.
- ASEAN: Laos, Malaysia, Cambodia, Brunei Darussalam, Myanmar, Singapore, Vietnam, the Philippines and East Timor.
- AFRICA: Namibia, Guyana, Mauritius, Guina Bissau, Ghana, Vanuatu, Malawi, Egypt, Mozambique, Kenya, Morocco, Nigeria, South Africa, Sierra Lione, Zimbabwe, Zambia, Rwanda, Tanzania.
- OTHERS: Equator Guini, Papua New Guinea, Saint Christopher andNevis, Saint Lucia, Saint Vincent and the Grenada, Samoa, Tuvalu, the Maldives, the Solomon Islands, Marshall Islands.
- AUTONOMOUS REGION: Gibraltar (United Kingdom), British Virgin Islands (United Kingdom), Bermuda (United Kingdom), Scotland (United Kingdom), Canton Of Geneva (Switzerland), Catalonia (Spain), Chechen Republic (Russia), Yucatan (Mexico), Palestine, Baja California (Mexico), Sicily (Italy), Macao (People's Rep.Tiongkok), Hong Kong (People's Rep.Tiongkok) Jammu And Kashmir (India), New South Wales (Australia), Queensland (Autralia), Tazmania (Autralia), Victoria (Australia), British Columbia (Canada), Chechnya

E. The Concept of Prosecution Service in the Constutional System of Indonesia

In Article 24 paragraph (1) of the Constitution before its amendments, the judicial power is done by the Supreme Court and other judicial bodies according to the law. Furthermore, the judicial power is independent from the influence of government power.

From the formulation as shown above, the Constitution did not initially provide definitions of what is meant by the judicial authority. Article 24 of the Constitution only confirms the agency which entrusted with the task to perform or carry out the judicial power. Similarly, the explanation of Article 24 does not impose the limits of definition of the judicial authorities, but only confirms the nature, position, the existence of judicial power, which is as independent and self-sufficient power.

The definition on the judicial authority is only then given by Act No. 14 of 1970 on the Basic Principles of the Judiciary Power as amended by Act No. 35 of 1999, and the lastly was replaced by Act No. 4 of 2004.In Article 1 of Law No. 14/1970 jo Law No. 35/1999 stated that: The judicial power is an independent state power to organize judicial administration to uphold law and justice based on Pancasila, for the implementation of the Rule of Law of the Republic of Indonesia.Later in the article 2 affirmed, that the judicial power as state in Article 1 carry out by the bodies of courts that are set by law, with the main task to receive, investigate, adjudicate, and to settle every case that bring to him.

The formulation is then entered back into the amendment of Article 24 UUD 1945 amendment 3 (9 November 2001) which asserts as follows:

1. The judicial power is an independent power to organize judicial administration to uphold law and justice;
2. Judicial power is done by a Supreme Court and judicial bodies underneath within the scope of general courts, religious courts, the scope of the military courts, the scope of the administrative courts, and by a Constitutional Court.;

Noting the editorial formulation as mention above, it can be concluded that Law No.14/1970 Juncto Law No. 35/1999 and Law No. 4/2004 and the amendedConstitution further emphasize and accentuate the sense of judicial power in the strict sense. This is proved from the above editorial that emphasizes the notion of judicial power as an independent state power to conduct judiciary. So the judicial authority is identified with the court authority or power to rule a court decision. Thus the judicial power and the Constitution only limit kekusaan judiciary in the narrow sense, namely the power to enforce the law and justice in the bodies of courts.

The restricted understanding of judicial power in the narrow sense according to Barda Nawawi Arief should be re-examined because in fact the judicial power is the power of the state in enforcing the law. So synonymous with the judicial authorities, is the power to enforce the rule of law or law enforcement. Thus understanding the real essence is revealed also the last sentence of Article 1 of Law No. 14/1970 Juncto Law No. 35/1999 on Judicial Power that reads: In order to enforce the law and justice based on Pancasila, for the implementation of the Rule of Law of the Republic of Indonesia. Only unfortunately the sentence was not formulated as understanding the nature of judicial power, but instead formulated as an objective of convening courts.

With a broad understanding of judicial authorities as proposed above, the judicial power can be interpreted not only the power of the courts, but can be interpreted as the power to enforce the law in a law enforcement process. In the perspective of an integrated criminal justice system,the judicial authorities in the field of criminal law covering all the authorities in enforcing criminal law, namely the power of investigation, prosecution powers, the power to judge and the corrections authorities.

The prosecution service of the Republic of Indonesia is an institution exercising state power in the field of criminal prosecutions. From the above explanation it can be concluded in fact the prosecutor is an integral part of the judicial power. The prosecutor, as described in the previous chapter plays an important role in the enforcement of criminal law. The prosecutor plays a role in every stage of the criminal justice system.As a part of the judicial power, the prosecutor must also enjoy the independency which embodied in the role of criminal prosecution. Judicial independence then should be extended not only to the court. An independency of the court will not mean anything if it stand alone with the absence of the independency of the powers to prosecute.

In the Indonesian prespective, the history of prosecution service in the constitutional system can not be set apart from the history of Indonesian law enforcement itself that often heavily influenced by intervention of the ruling parties. Realizing on the strategic role of prosecutors in criminal law enforcementsystem, the ruling parties often tried to strived the role of the prosecutor at the dispossal of certain political interests. The past history of Prosecution Service as an executive agency proved to bring the law enforcement in Indonesia filled by the interests of the ruler parties.

Andi Hamzah suggested that the law concerning the prosecution service as an instrument of government must be replaced by new legislation. The prosecutor must be part of the Supreme Court as an independent judicial authority, so it can not be interfered by the executive power. This means that Andi Hamzah found the prosecutor's office must be within the scope of the judicial authority dan not within the power of government. The perspective also shared by some of Jurist, such as Romli Atmasasmita, which states that the Prosecutor should be listed in the Constitution as part of the judicial power and the logical consequence of such inclusion, the Law on the Prosecution Service must assert the position of the Attorney General in the same level of high state leaders so in this way, it can carry out the functions of judicial power in the field of prosecution independently and accountably either to the inside or outside, especially to ensure the attainment of the objectives of legal certainty and justice without any influence from any power.

The support to strengthen the prosecution service position in the Constitution also came from Adnan Buyung Nasution. According to him, the Constitutionneed to be clearly and expressly stated the prosecution authority that included both in the scope of the judiciary (prosecution, execution of the verdict) and outside the scope of the judiciary (eg extradition, surveillance, etc).While Harkristuti Harkrisnowo said that the prosecutor should be independent, Harkristuti did not mention on the same independencyof the Attorney General. In her opinion, the Prosecutor as a means of law enforcement should be reformulated to expressly stated in the Constitutio and the organic law for the sake of independence of the judiciary.

The views expressed above in line with the view of Milan Hanzel, stating that positioning prosecution agency in the rule of law is very important. The setting position of the institution is not only enough regulated in the ordinary legal rules (laws) but must be arranged in the material constitution. This means that agencies implementing the powers of prosecution is a constitutional institution (constitutional body).

Based on the above, the provisions of Article 24 paragraph (3) of the Constitution implicitly only set prosecution service as an institution whose functions related to the judicial power can not be maintained. To realize a free and independent prosecution without any interference whatsoever, then the prosecution should be stated

explicitly as an integral part of judicial authorities under the leadership of Attorney General as the supreme public prosecutor appointed by the President as Head of State with the approval of Parliament.

Furthermore, to ensure the independency of the Attorney Generalas the supreme public prosecutor who led the implementation of the tasks entrusted to the prosecution service from of executive interferences, then the Attorney General's tenure was not to be the same as the term of office and the president of the House of Representatives. To avoid that the appointment of Attorney General can be potentially used as a political commodity or otherwise as compensation for political consents that occurred during the election, and otherwise ensure the continuity of law enforcement policy, the office of Attorney General should be limited during the 4 (four) years term.

F. CLOSING

Based on the above, it can be concluded that the uncertainty regarding the position of the Prosecutor in the constitutional system in Indonesia raises its own ambivalence in the world of law enforcement in Indonesia due to the vagueness position of prosecution service and the Attorney General in the Constitution of 1945. Therefore, in the discourse of The fifth amendments of the Constitution, the Prosecution Service should be expressly / explicitly in the constitution and to ensure its independence, the Prosecution Service ideal position should be free from executive influence that it could be in the realm of judicial authority in accordance to the theory of separations of powers.

BIBLIOGRAPHY

Adji, Indriyanto Seno. Kejaksaan Agung dan Eksistensi Konstitusional.*http://www.kompas.co.id/kompas-cetak/0406/22/opini/1097980.htm*

Andrews, William G. *Constitutional and Constitutionalism*, Third Edition. 1968, New Jersey, Van Nostrand Company. In Ellydar Chaidir, *Hukum dan Teori Konstitusi*, 1st Ed. Yogyakarta: Kreasi Total Media, 2007

Arief, Barda Nawawi. *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan*. Jakarta: Kencana, 2007.

Asshiddiqie, Jimly. "Lembaga-Lembaga Negara, Organ Konstitusional Menurut UUD 1945">. *www.jimly.com/.../ORGAN-ORGAN_KONSTITUSI*..

Atmasasmita, Romli. *Reformasi dan Reposisi Kejaksaan dalam Sistem Peradilan Pidana Dihubungkan dengan Perubahan UUD 1945*, Paper delivered on National with theme "Posisi Ideal Kejaksaan dalam Sistem Ketatanegaraan Indonesia Berdasarkan UUD 1945" at Hotel Bidakara Jakarta, 22 June 2014.

Hanzel, Milan. *General Prosecutor of Slovak Republic*, Paper delivered on Seminar "The Prosecutor's Office in a Democratic and Constitutional state", organized by The General Prosecutor's Office and the Slovak National Supporting Committee of Europe 2000, 25 April-27 April 2000.

Hamzah, Andi. *Posisi Kejaksaan dalam Sistem Ketatanegaraan Republik Indonesia*, Paper delivered on seminar Hari Bakti Adhiyaksa (Anniversary of Prosecution Service), Jakarta, 20 July 2000.

Harkrisnowo, Harkristuti. *Kejaksaan Agung dalam Tatanan Kelembagaan: Beberapa catatan Awal*, Paper delivered on Law Seminar in the Context of Second Amandment of the Constitution, organized by People's Assembly dan Law Faculty of University of Indonesia, Jakarta, 24-26 March 2000.

Mahendra, Yusril Ihza. "Kedudukan Kejaksaan dan Posisi Jaksa Agung dalam Sistem Presidensial Di Bawah UUD 1945">, *http: //yusril.ihzamahendra.com/2010/08/20/kedudukan-kejaksaan-dan-posisi-jaksa-agung-dalam-sistem-presidensial-di-bawah-uud-1945-oleh-prof-dr-yusril-ihza-mahendra-pendahuluan-hampir-seluruh-negara-modern-di-du/*.

Mahfud MD, Moh. Perlukah Amandemen Kelima UUD 1945?, Paper delivered on the National Law Convention "Konvensi Hukum Nasional UUD 1945 Sebagai Landasan Konstitusional Grand Design Sistem dan Politik Hukum Nasional", organized by national Law Development Board – Ministry of Law and Human Right at Jakarta, 15-16 April 2008.

Nasution, Adnan Buyung. *Reposisi Kejaksaan Dalam Sistem Ketatanegaraan Indonesia*, Paper delivered on National Seminar on "Posisi Ideal Kejaksaan dalam Sistem Ketatanegaraan Indonesia Berdasarkan UUD 1945" at Bidakara Hotel,Jakarta, 22 June 2014.

Surachman, RM dand Jan Maringka, " Eksistensi Kejaksaan dalam konstitusi di berbagai negara" Bina Grafika, Jakarta, 2015