



Journal Homepage: - [www.journalijar.com](http://www.journalijar.com)

## INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR)

Article DOI: 10.21474/IJAR01/13039

DOI URL: <http://dx.doi.org/10.21474/IJAR01/13039>



### RESEARCH ARTICLE

#### OPTIMIZATION OF PROSECUTORS COMMISSION'S SUPERVISORY FUNCTION IN DEALING WITH COMPLAINT ABOUT PROSECUTORS' PERFORMANCE

Murni Yanti<sup>1</sup> and Wicipto Setiadi<sup>2</sup>

1. Magister's Law Student, UVPN Jakarta.
2. Supervisor, Lecturer in master of Law at UVPN Jakarta.

#### Manuscript Info

##### Manuscript History

Received: 20 April 2021

Final Accepted: 18 May 2021

Published: June 2021

##### Key words:-

Prosecutor's Commission, Optimization,  
Supervisory, Complaint

#### Abstract

After about 15 (fifteen) years of its formation, the Prosecutors Commission is deemed not optimal in its performance of duties, especially in dealing with public report or complaint, considering that the provisions of Article 4 item a and b Presidential Regulation on Prosecutors Commission that is the basis for the Prosecutors Commission to perform its duties as set forth in Article 3 Presidential Regulation concerning Prosecutors Commission causes multiple interpretations that, according to the provisions of Article 4 item a in performance of its duties of supervising, monitoring and assessing the performance and behaviors of prosecutors and/or employees of Prosecutor Office, the Prosecutors Commission has the authority to accept and follow up public reports or complaints, the extent of the Prosecutors Commission's authority to follow up public reports or complaints are not clearly regulated. However, according to the provisions of Article 4 item b, it is the Prosecutors Commission's authority to forward public reports or complaints to the Attorney General for follow-up. According to the provisions of Article 10 Presidential Regulation No. 18 of 2011 concerning Prosecutors Commission, the Prosecutors Commission has the right to participate in the hearing of a case which attracts public attention. Therefore, the Prosecutors Commission needs to make efforts to optimize its duties performance in dealing with public complaints, for example, by using the concept of the progressive law theory popularized by Satjipto Raharjo, that in progressive law application, law is not enforced according to the letter, but according to the very meaning of laws or regulations in a broad sense. Similarly, in performance of the Prosecutors Commission's authority in dealing with complaints, in which the authority is deemed to have weaknesses, the Prosecutors Commission cannot perform its functions optimally as an external supervisory agency. All this time, the Prosecutors Commission, in dealing with complaints, only focuses on reviewing the substance of complaint without performing functional supervisory activities such as monitoring, data collection, inspection and review. The reason is since the Prosecutors Commission has not applied the progressive law, while in dealing with public complaints related to cases which attract public

**Corresponding Author:- Murni Yanti**

Address:- Magister's Law Student, UVPN Jakarta.

attention, the Prosecutors Commission should have the psychology and morality to position itself as the avant-garde in dealing with cases which attract public attention, so as to give justice to the people in dealing with cases transparently and accountably. As a concrete measure of optimizing its duty performance, the Prosecutors Commission has internally amended the Prosecutors Commission regulations which are deemed not conforming to the progressive law, such as the amendment to the provisions of Article 1 point 14 of Prosecutors Commission Regulation number PER-05/KK/04/2012. In addition, the progressive law should be applied to Prosecutors Commission's preventive supervision by participating in the hearing of important cases dealt with by Prosecutors, either directly or by using technology, such as attending a hearing online, thus the presence of the Prosecutors Commission will be felt better, which means that the purpose of the Prosecutors Commission formation as an external supervisory agency for better transparency and accountability is achieved.

*Copy Right, IJAR, 2021.. All rights reserved.*

### Introduction:-

The Prosecutors Commission was established under the provisions of Article 38 Law number 16 of 2004 concerning the Prosecutor Office of Republic of Indonesia, stating that "To improve the quality of Prosecutor Office, the President may establish a commission of which structure and authority are set forth by the President".<sup>1</sup> The Prosecutors Commission was formed in 2005 under Presidential Regulation Number 18 of 2005 concerning Prosecutors Commission of the Republic of Indonesia. The purpose of Prosecutors Commission establishment, as stated in the law of Prosecutor Office, is to improve the quality of Prosecutor Office's performance. The prosecutor office's performance will improve with support from officers with high dedication to duty performance without disregarding their prosperity.<sup>2</sup>

Further, Presidential Regulation Number 18 of 2005 concerning Prosecutors Commission was amended by Presidential Regulation Number 18 of 2011 concerning Prosecutors Commission (hereinafter referred to as Presidential Regulation concerning Prosecutors Commission), but there is no significant change to the Prosecutors Commission's Duties between Presidential Regulation No. 18 of 2005 concerning Prosecutors Commission and the Presidential Regulation concerning Prosecutors Commission. The Presidential Regulation concerning Prosecutors Commission distinguishes supervision over performance, attitudes and behaviors in performing their duties and authorities as well as behaviors beyond their official duties, with addition that besides supervision and monitoring regarding prevailing laws and regulations, they are also based on the existing code of conduct.<sup>3</sup>

The Presidential Regulation concerning Prosecutors Commission also regulates Prosecutors Commission's rights related to the performance of duty and authority of supervising Prosecutors' performance and behaviors as referred in the following Article 10:

"In performing its duties and authorities as referred to in Articles 3 and 4, the Prosecutors Commission:

- a. has the right to participate in the hearing of cases which attract public attention led by Attorney General
- b. has the right to participate in the hearing of cases and/or suits reported by the public to the Prosecutors Commission"

<sup>1</sup>Dr. Moh. Hatta SH., M.Kn, KPK dan Sistem Peradilan Pidana [KPK and Criminal Justice System], Liberty Yogyakarta, First Print of 2014, p. 196

<sup>2</sup>Ibid.

<sup>3</sup>Ludy Himawan, Tesis Pasca Sarjana [Postgraduate Thesis], Analisis Yuridis Tentang Tugas Dan Fungsi Komisi Kejaksaan Dalam Mewujudkan Lembaga Kejaksaan Republik Indonesia Yang Proporsional [A Juridical Analysis on the Duties and Functions of the Prosecutors Commission in Realizing Proportional Prosecutors Institution of republic of Indonesia]. retrieved from <http://repository.usu.ac.id/handle/123456789/1254>, on 27 April 2020 at 13.50 WIB p. 132

In practice, the Prosecutors Commission may be deemed not optimal in performing its supervisory authority as referred to in Article 4 items a and b, that the Prosecutors Commission has the right to accept and follow up public reports or complaints on the performance and behaviors of Prosecutors and/or employees of Prosecutor Office, in which Article 4 item a states “The Prosecutors Commission has the right to accept and follow up public reports or complaints on the performance and behaviors of Prosecutors and/or employees of Prosecutor Office in performing their duties and authorities” and Article 4 item b state that the Prosecutors Commission has the right to forward public reports or complaints to Attorney General for follow-up by Prosecutor Office’s internal supervisory officers.

This implicitly raises the assumption that the Prosecutors Commission has 2 (two) options of authority in dealing with reports and complaints: following the report or complaint up directly or forwarding it to Attorney General for follow-up by Internal Supervisor. Such assumption arises since textually the Presidential Regulation concerning Prosecutors Commission does not further regulate the provisions on which the Prosecutors Commission deals with public reports or complaints on the performance and behaviors of Prosecutors and/or employees of Prosecutor Office in performing their duties and authorities. However, the assumption may be deemed one without a strong legal basis and contradictory to the spirit of the Prosecutors Commission formation.

Furthermore, for an understanding of the implementation of the Prosecutors Commission’s duties related to dealing with public reports or complaints, Memorandum of Understanding was entered into between Attorney General RI and Head of Prosecutors Commission of Republic of Indonesia number Kep-009/A/JA/05/2011 and number NK-001/KK/05/2011 dated 19 May 2011 concerning the Working Mechanism between Prosecutor Office and Prosecutors Commission in Supervising, Monitoring and Assessing the Performance and Behaviors of Prosecutors and Employees of Prosecutor Office (hereinafter referred to as the Memorandum of Understanding). However, the phrase “follow-up” report or complaint in the Memorandum of Understanding, especially Article 2 item a and item b bears implicit interpretation of the meaning of dealing with report and complaint only limited to archive investigation. The Prosecutors Commission then translated its authority into Prosecutors Commission Regulation number PER-05/KK/04/2012 concerning How to Deal with Public Reports and Complaints.

With regard to the Prosecutors Commission’s right to participate in the hearing of cases which attract public attention, the Prosecutors Commission on psychological and moral bases need to position itself as the avant-garde in dealing with cases which attract public attention. However, if the legal application of the Presidential Regulation concerning Prosecutors Commission is still on legal-positivismtradition, the legal purpose of realizing justice for the people is still far from what is expected. Below are examples of cases that attract public attention:

1. The case of abuse on Novel Baswedan;
2. Alleged violation of code of ethics by prosecutor individual related to his/her meeting with a fugitive in the case of Bank Bali charge corruption, Djoko Soegiarto Tjandra; and
3. The case of Law of Information and Electronic Transactions in the name of the suspect/accused Baiq Nuril.
4. The case of latex theft in the name of the accused Samirin

Therefore, the Prosecutors Commission in effort to optimize its function absolutely needs to apply other legal concept which allows it to achieve its intended legal objective. The progressive legal concept which defines the law for humans and society instead of for self-interest, is an alternative for use to apply Article 4 items a and b Presidential Regulation concerning Prosecutors Commission, which allow realizing such legal objective.

### **Discussion:-**

In this regard, the main problem is how to optimize the function of the Prosecutors Commission in dealing with complaints about cases which attract public attention? This scientific paper aims at obtaining the definition of the application of progressive law in implementing the Prosecutors Commission’s duties and authorities in dealing with public reports or complaints.

### **Literature Review:-**

With regard to the novelty of this writing, as a comparison, the author presents some articles themed the Prosecutors Commission, such as the article written by Samuel Hamonangan Simanjuntak entitled “Tinjauan Yuridis Terhadap Kewenangan Komisi Kejaksaan Republik Indonesia Berdasarkan Peraturan Presiden Nomor 18 Tahun 2011 Tentang Komisi Kejaksaan Republik Indonesia [A Juridical Review of the Prosecutors Commission of Republic of Indonesia’s Authority under Presidential Regulation Number 18 of 2011 concerning the Prosecutors Commission of

Republic of Indonesia]<sup>4</sup> focusing on discussion on the weaknesses of the Prosecutors Commission's authority under Presidential Regulation concerning Prosecutors Commission, namely contradictory articles and also discusses on the arrangement of time-consuming reporting procedures and expresses ideal ideas of the need for reinterpretation of setting the Prosecutors Commission's authority by following the example of the Judicial Commission's authority. Meanwhile, in this research for final project, the author focuses more on optimization of the authority to deal with complaints through the application of progressive law in the frame of justice theory by prioritizing fulfillment of the people's rights for dealing with cases transparently, cleanly and free from corruption.

The next article is written by Heru Suyanto and Andriyanto Adhi Nugroho entitled "Realizing Indonesia Prosecutors Commission Professional and Trustworthy",<sup>5</sup> in the International Journal of Multicultural and Multireligious Understanding (Journal/Article). The journal also uses a literature research and discusses the Prosecutors Commission as an external supervisory agency of prosecutors office under the Presidential Regulation concerning Prosecutors Commission and discusses the constraints faced by the Prosecutors Commission in performing its duties and authorities, while this research focuses on optimizing handling of complaints by the Prosecutors Commission with the application of progressive law. The article of Muhammad Ibnu Mazjah entitled "Dimensi Pengawasan pada Tindak Lanjut Laporan Pengaduan Masyarakat kepada Komisi Kejaksaan dalam Tinjauan Hukum Progresif [The Supervisory Dimension of Follow-up of Public Complaint to the Prosecutors Commission in Progressive Legal Review]"<sup>6</sup>, in which the articles focuses more on the Prosecutors Commission's repressive supervisory function, while this research, besides discussing the repressive supervisory function, also attempts to explain the importance of preventive function with the application of progressive law.

### Research Methodology:-

The methodology used in this research cannot be separated from the law science's prescriptive and applied characteristics. Therefore, the research method used was a normative research, which is prescriptive or describing what should exist. The other approach used was statute approach and conceptual approach.

The conceptual approach in legal research gives a perspective in analyzing problem settlement, both from the legal aspect on which it is based and the values contained in the norm of a regulation, with regard to the concepts used. This type of approach was mostly used to understand the concepts related to the norms in legislation, whether they conformed to the spirit contained in the legal concepts on which they are based. This approach started from the views and doctrines developing in law science. This approach is important since the understanding of the views/doctrines developing in the legal science may serve as the foothold to build legal argumentation in settling legal issues faced. A view/doctrine will explain the ideas by giving legal definitions, legal concepts, and legal principles relevant to the problem. In this research, the said conceptual approach was the approach starting from the views, concepts, and theories developing in the legal science covering the aspects of constitutional state principle and democratic state principle underlying the formation of the Prosecutors Commission as the external supervisory agency of Prosecutors Office. Furthermore, to explain the ideal concept of supervision made by the Prosecutors Commission, the author also tries to use a progressive law perspective.

A deductive writing was used, in which the major premise proposed was an explanation of constitutional state principle and democratic state principle and the concept of check and balance in governance associated to the

<sup>4</sup> Samuel Hamonangan Simanjuntak, Samuel Hamonangan Simanjuntak, Tinjauan Yuridis Terhadap Kewenangan Komisi Kejaksaan Republik Indonesia Berdasarkan Peraturan Presiden Nomor 18 Tahun 2011 Tentang Komisi Kejaksaan Republik Indonesia [A Juridical Review of the Prosecutors Commission of Republic of Indonesia's Authority under Presidential Regulation Number 18 of 2011 concerning the Prosecutors Commission of Republic of Indonesia], [https://www.google.co.id/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjS1Lq9psnwAhX38XMBHbMXA1QQFjAAegQIAxAD&url=https%3A%2F%2Fjom.unri.ac.id%2Findex.php%2FJOMFHUKUM%2Farticle%2Fdownload%2F26006%2F25184&usg=AOvVaw3RuIiGBcO-8CpRq6T\\_K91J](https://www.google.co.id/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjS1Lq9psnwAhX38XMBHbMXA1QQFjAAegQIAxAD&url=https%3A%2F%2Fjom.unri.ac.id%2Findex.php%2FJOMFHUKUM%2Farticle%2Fdownload%2F26006%2F25184&usg=AOvVaw3RuIiGBcO-8CpRq6T_K91J), retrieved on 18 January 2021 at 13.55

<sup>5</sup> Heru Suyanto and Andriyanto Adhi Nugroho, Realizing Indonesia Prosecutors Commission Professional and Trustworthy, <https://ijmmu.com/index.php/ijmmu/article/view/1597>, retrieved on 4 March 2021 at 15.15 WIB

<sup>6</sup> R. Muhammad Ibnu Mazjah, Dimensi Pengawasan pada Tindak Lanjut Laporan Pengaduan Masyarakat kepada Komisi Kejaksaan dalam Tinjauan Hukum Progresif [The Supervisory Dimension on Follow-up of Public Reports and Complaints to the Prosecutors Commission in Progressive Law Review], Negara Hukum [Constitutional State] Vo. 11 No.2, November 2020, pp. 225 -226

Prosecutors Commission formation. The minor premise was expected to describe whether the implementation of Prosecutors Commission's supervision corresponds to the principles and concepts explained previously in the major premise.

### **Discussion:-**

The explanatory note to the 1945 Constitution clearly states that Indonesia as a constitutional state (*rechstaat*) is not based on power (*machtstaat*). Therefore, the ideal of a constitutional state (rule of law) contained in the 1945 Constitution is not only a state which is based on any random law, but a desired law, instead of law that is stipulated merely based on power which may lead to or reflect an absolute and authoritarian power.

The concept of *trias politica* after the reform ran quickly along with the bicameral system, namely DPR RI and DPD RI, aiming at accelerating achieving good government and good governance and achieving check and balances between state agencies, especially the legislative agency, which is one of the most important elements in State administration.

The checks and balances system serves to mutually control the power of one agency with the other, in avoidance of hegemonic, tyrannical acts and centralized power. This system prevents overlapping power between the executive, legislative and judicative agencies. In anticipation of possible misuse of great power in state administration, the course of power needs to be supervised, including over law enforcers.

Furthermore, government's openness in its governance bears an important meaning since through which, the people will be more aware of how the planned policies are implemented. Therefore, the government makes it possible to ask for legal protection to the government, either before and after a decision is made.

According to Philipus M Hadjon<sup>7</sup>, the openness principle requires the government to actively inform the people of a request or government's planned act and requires it to explain to the people of what is requested. Besides, the openness principle also requires the government to announce each of the government's decision.

In line with the reform spirit aiming at rearranging the life of the nation and of the state, the government has made basic changes to the state's governance system; such as by establishing new state agencies and government agencies, one of which is Ombudsman RI, established under Law No. 37 of 2008. According to the Law, Ombudsman RI is a state agency authorized to supervise the state and governance administration, including those by State-Owned Enterprises, Local-Owned Enterprises, and State-Owned Legal Entity as well as private entity or natural person assigned to administer certain public services whose fund is wholly or partially from state budget and/or local budget.

Meanwhile, in the scope of law enforcers, such as court, there are control systems, over the performance of both judicial agencies and judges' behaviors. Other law enforcement agency, that is police, as set forth by Law No. 2 of 2002 is supervised by the National Police Commission (KOMPOLNAS), and with regard to prosecutor agency there is external supervisory agency, that is the Prosecutors Commission, which supervises the prosecutors' performance that is not in accordance with prevailing laws and regulations.

After 15 (fifteen) years of its establishment, the Prosecutors Commission's performance is deemed not optimal, especially in dealing with public reports or complaints, considering that the provisions of Article 4 items a and b Presidential Regulation concerning Prosecutors Commission which are the basis for the Prosecutors Commission to perform its duties as set forth in Article 3 Presidential Regulation concerning Prosecutors Commission leads to multiple interpretations, in which according to the provisions of Article 4 item a in implementing the duties of supervising, monitoring and assessing the performance and behaviors of prosecutors and/or employees of Prosecutor Office, the Prosecutors Commission has the right to accept and follow up public reports or complaints, but the extent the Prosecutors Commission's authority follow up public reports or complaints is not clearly set forth. However, to the provisions of Article 4 item b states that it is the Prosecutors Commission's authority to forward public reports or complaints to Attorney General for follow-up.

---

<sup>7</sup>Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia* [Introduction to Indonesian Administrative Law]. Yogyakarta, 2011, Gadjah Mada University, p. 282

In practice so far, the Prosecutors Commission may be deemed as having implemented its duties and authorities pursuant to the legal positivism principle, that in following up public reports or complaints the Prosecutors Commission reviews and then discusses the substance of report or complaint in a plenary meeting for a conclusion of whether the public report or complaint will be forwarded to Attorney General to be followed up or clarified, returned to reporter if the report or complaint documents received are deemed incomplete, monitored or archived if the report or complaint delivered to the Prosecutors Commission is not related to Prosecutor's performance and behaviors.<sup>8</sup> Therefore, the Prosecutors Commission only encourages internal supervisory officers to perform their main duties and functions, and if necessary the Prosecutors Commission has the right to give some recommendation to Attorney General. However, the recommendation given by the Prosecutors Commission does not impose any sanction to Attorney General if it does not perform the Prosecutors Commission's recommendation. Therefore, the Prosecutors Commission needs to make some efforts to optimize its duty and authority implementation, especially in dealing with public reports or complaints related to cases that attract public attention, in order to give justice to the people.

The prosecution authority is actually public prosecutor's absolute monopoly, commonly known as the 'Dominus litis' principle. 'Dominus litis' is derived from Latin. Dominus means Owner and litis means case or lawsuit. Black's Law Dictionary defines dominis litis as follows: "The party who makes the decisions in a lawsuit, usually as distinguished from the attorney". In free translation, it means the party who makes the decisions in a lawsuit, usually as distinguished from the attorney. The dominus litis principle affirms that there is no other entity with absolute and monopolistic Prosecution authority than Public Prosecutor, since Public Prosecutor is the only agency with control and monopoly of prosecution and settlement of criminal case. Judge cannot ask for a criminal case to be filed to him/her, since Judge is passive in settlement of a case and waits for lawsuit from public prosecutor.

In practice, in implementing their role as controller of prosecution, Public Prosecutors are deemed to give less justice to the people, both regarding lawsuits deemed by the people as high ones and low ones, raising the people's conscience to seek for justice by delivering reports or complaints to the Prosecutors Commission. For example, in dealing with the case of theft of 1.9 kg latex in North Sumatera, case of ITE in the name of the accused Baiq Nuril, case of physical abuse to Novel Baswedan, and case of Prosecutor Pinangki.

The minimum preferences in a law and regulation are likely to encourage law enforcers to innovate to seek for justice through the concept of progressive law with 2 (two) aspects, system and human. Progressive law starts from the basic assumption that law is for humans, not otherwise<sup>9</sup>. From this basic assumption, the presence of law is not for the law itself, but for something broader and bigger, that is why in case of an issue in law, it is the law that is to be reviewed and corrected, not the humans that are to be put into the legal scheme<sup>10</sup>.

Presidential Regulation concerning Prosecutors Commission number 18 of 2011 explicitly regulates 2 (two) types of supervision, namely preventive supervision and repressive supervision. Preventive supervision may be observed in the provisions of Article 10 that "In implementation of its duties and authorities as referred to in Article 3 and 4, the Prosecutors Commission:

- c. has the right to participate in the hearing of cases that attracts public attention led by Attorney General
- d. has the right to participate in the hearing of cases and/or lawsuits reported by the public to the Prosecutors Commission"

Meanwhile, the repressive supervision can be observed from the provisions of Article 4 items d and e, that the Prosecutors Commission has the right to conduct re-examinations, additional examinations, and take-over examinations.

So far, the Prosecutors Commission has prioritized positioning itself to encourage the prosecutor office's internal supervisory officers by performing supervision based on the provisions of Article 4 items a and b only by using legal positivism interpretation. Meanwhile, the people expect the Prosecutors Commission to perform supervision in the

---

<sup>8</sup>Ibid.

<sup>9</sup>Satjipto Rahardjo, Hukum Progresif: Hukum yang Membebaskan [Progressive Law: A Liberating Law], Jurnal Hukum Progresif [Journal of Progressive Law], Vol. 1/No. 1/ April 2005, PDIH Ilmu Hukum UNDIP [PDIH of Law Science of UNDIP], p. 5.

<sup>10</sup>Ibid.

true sense of ensuring that the prosecutor office as an element of law enforcement has performed its assessment and correction works if necessary intending that prosecution authority implementation conforms to prevailing legal corridor.

Given that there is no written provision which clearly regulates how the Prosecutors Commission performs its supervisory function, both preventive and repressive, the Prosecutors Commission makes concrete efforts to optimize its duties and authorities by prioritizing progressiveness, innovativeness and solution.

In the implementation of preventive supervisory function, the Prosecutors Commission may optimize its right of participating in the hearing of cases that attract public attention, directly or virtually/online, further set forth in the planned renewal of Memorandum of Understanding between Prosecutors Commission and Attorney General. This is important for the Prosecutors Commission to be acknowledged as an external supervisory agency of the Prosecutor Office and may encourage the Prosecutor Office to continuously improve its performance and reacquire public trust, that a case is dealt with by the Prosecutor Office transparently and accountably.

Meanwhile, in the preventive supervisory function implementation as referred to in Article 4 items d and e Presidential Regulation on Prosecutors Commission in connection with the provisions of Article 1 point 14 Prosecutors Commission Regulation number 05/KK/04/2012 in connection with Article 2 item a and Article 2 item b Memorandum of Understanding, the Prosecutors Commission interprets that it is authorized only to re-examinations, additional examinations and take-over examinations, which is not in conformance to the progressive idea as explained above.

According to Muhammad Ibnu Mazjah<sup>11</sup>, the Prosecutors Commission actually also has examination authority as referred to in the definition of functional supervision as the realization of progressive law application by the Prosecutors Commission in dealing with public reports or complaints. This is based on 2 (two) important reasons of law exploration through reasoning on the provisions of law, in this case on Presidential Regulation (PP) number 20 of 2008 which leads to logical thinking that supervisory duties should cover functional supervision, although the PP does not regulate functional supervision but relies on law exploration, the supervisory duty in the PP may become the reference since it is related to the same field of object, namely supervision. The second reason is the Prosecutors Commission's recommendation in the form of sanction imposition on Prosecutor and Administrative Employee with violation as referred to in PP number 53 of 2010, if the recommendation is made without functional instrument, an effective recommendation will not be produced, especially the Prosecutors Commission's recommendation for Attorney General in dealing with cases that attract public attention.

From the interpretation of Article 1 point 14 Prosecutors Commission Regulation number 05/KK/04/2012 in connection with Article 2 item a and Article 2 item b Memorandum of Understanding, in which the Prosecutors Commission only has the right to re-examinations, additional examinations and take-over examinations, the Prosecutors Commission revises Article 1 point 14 Prosecutors Commission Regulation number 05/KK/04/2012 in the Prosecutors Commission's 32<sup>th</sup> plenary meeting dated 20 July 2020, that it reads "Examination is a series of activities to reveal whether or not there is violation related to performance, code of conduct of Prosecutor, personnel disciplinary regulations and/or other laws and regulations". This actually brings significant change to the existence of the Prosecutors Commission in the society as the balancer of state power in prosecution by the Prosecutors of Republic of Indonesia.

This writing presents 2 (two) sample cases that attract public attention dealt with by the Prosecutors Commission after progressive law is applied related to the Prosecutors Commission's authority in dealing with public reports or complaints. For example, in dealing with the case of physical abuse on Novel Baswedan and the case of Prosecutor Pinangki, in which Prosecutors Commission performs a series of examination and investigation activities, such as summoning the said prosecutor. The series of activities to explore whether or not there is alleged violation related to the code of ethics and laws and regulations directly committed by the Prosecutors Commission since there is a concern if it is dealt with by internal supervisory officer and to accommodate public complaint desiring the case to be dealt with transparently, although according to Muhammad Ibnu Mazjah there is "non-compliance" in its implementation.<sup>12</sup>

<sup>11</sup> R. Muhammad Ibnu Mazjah, *Opcit.*

<sup>12</sup> *Ibid.*

Meanwhile, in the other cases that attract public attention, namely Law of ITE in the name of the suspect/accused Baiq Nuril and the Case of latex theft in the name of the accused Samirin in which the Prosecutors Commission does not perform a series of examination and investigation, but gives recommendation to the Prosecutors and asks for the progress of the recommendation by visiting the relevant High Prosecutors and District Prosecutors.

### **Conclusion:-**

The Prosecutors Commission has one of the important authorities as set forth in Presidential Regulation on Prosecutors Commission, namely accepting and following up public reports or complaints in implementing the supervisory duties over prosecutors' performance. Therefore, the supervisory function performed by the Prosecutors Commission on the Prosecutors institution is basically the explanation of the democratic state principle and constitutional state principle by strengthening the check and balance mechanism system. The authority implementation under the progressive law is part of the Prosecutors Commission's supervisory duties through a series of real acts after report or complaint is received, administrative review and substance of public reports or complaints, collection of materials and data of information needed, inspection of case covering inquiry for explanation and examination of reporter aiming at revealing any violation of code of ethics and other laws and regulations. Therefore, the Prosecutors Commission has the right to deal with report or complaint directly although the Presidential Regulation on Prosecutors Commission sets that contextually the Prosecutors Commission only has the right to re-examinations, additional examinations and take-over examinations.

Furthermore, in the implementation of preventive supervisory function, the Prosecutors Commission can also participate more actively in the hearing of cases that attract public attention other than in Jakarta by using or utilizing some technology, although it is not yet set forth in the Presidential Regulation on Prosecutors Commission.

### **Suggestion:-**

With the "non-compliance" found in the Prosecutors Commission's duty implementation after the progressive law application in dealing with public reports or complaints, it is necessary to synchronize perception between the Prosecutors as the institution under supervision and the Prosecutors Commission as the external supervisory agency. This can be conducted by accelerating the implementation of amendment to the Memorandum of Understanding between Attorney General RI and the Head of Prosecutors Commission that is actually the initial priority of the Prosecutors Commission of period 2019-2023, and the importance of issue regarding improving preventive supervision of which regulation is emphasized more in the amendment to the Memorandum of Understanding.

### **References:-**

#### **LAWS**

Undang-Undang Dasar Negara Republik Indonesia Tahun 1945 Republik Indonesia, Undang-Undang tentang Kejaksaan Republik Indonesia, UU Nomor 16 Tahun 2004, LN.No. 67 Tahun 2004, TLN. Nomor 4401 [The 1945 Constitution of Republic of Indonesia, Law of Prosecutors of Republic of Indonesia, Law Number 16 of 2004, LN. No. 67 of 2004, TLN. Number 4401]

Peraturan Presiden Nomor 18 Tahun 2011 tentang Komisi Kejaksaan Republik Indonesia [Presidential Regulation Number 18 of 2011 concerning Prosecutors Commission of Republic of Indonesia]

#### **Articles**

Harkrisnowo, Harkristuti, Merancang Ulang Korps Adhyaksa [Redesigning Korps Adhyaksa], Newsletter Komisi Hukum Nasional [Newsletter of the national Law Commission], June 2003 Edition

Pultoni, Urgensi Penguatan Komisi Kejaksaan [The Urgency of Strengthening the Prosecutors Commission], retrieved from <https://komisi-kejaksaan.go.id/urgensi-penguatan-komisi-kejaksaan/>

Soemarno, 2018, 'Struktur Komisi Kejaksaan Republik Indonesia dan Mekanisme Kerja dalam Meningkatkan Kinerja Kejaksaan Republik Indonesia [The Structure of the Prosecutors Commission of Republic of Indonesia and the Working Mechanism in Improving the performance of Prosecutors of Republic of Indonesia]': Seminar Dewan Perwakilan Rakyat [Seminar of House of Representatives] dated 8 November 2018 in Jakarta

#### **BOOKS**

Hatta Moh., KPK dan Sistem Peradilan Pidana [KPK and Criminal Justice System], Liberty Yogyakarta, first print of 2014

Muchsan, Sistem Pengawasan Terhadap Perbuatan Aparat Pemerintah [Supervisory System of Government Agencies' Acts] and Reksodiputro, Mardjono, 1999, Hak Asasi Manusia dan Sistem Peradilan Pidana [Human



Rights and Criminal Justice System], Jakarta: Pusat Pelayanan Keadilan dan Pengabdian Hukum [Center for Justice Service and Legal Service] (previously Lembaga Kriminologi [Criminology Agency]) and UI Press.

Muladi, Kapita Selekt Sistem Peradilan Pidana [Capita Selecta of Criminal justice System], Semarang: Undip, 1995

Reksodiputro, Mardjono, Hak Asasi Manusia Dalam Sistem Peradilan Pidana [Human Rights in the Criminal Justice System], Kumpulan Karangan Buku ke Tiga [A Collection of the Third Book Composition], Jakarta: Lembaga Kriminologi-UI, 1999

Reksodiputro, Mardjono, Kriminologi dan Sistem Peradilan Pidana [Criminology and Criminal Justice System], Kumpulan Karangan Buku ke Dua [A Collection of the Second Book Composition], Jakarta: Lembaga Kriminologi-UI

Waluyo Bambang, Penelitian Hukum dalam Praktek [Legal Research in Practice], (Jakarta, Sinar Grafika, 2002)

Amiruddin, Pengantar Metode Peneltian Hukum [Introduction to Legal Research Methods], (Jakarta PT Grafindo Persada : 2006)

Makmur, Efektivitas Kebijakan Kelembagaan Pengawasan [Effectiveness of Supervisory Agency Policy], Second Print, 2015, PT Refika Aditama, Bandung.

Sujanto, Aspek-aspek pengawasan di Indonesia [Supervisory Aspects in Indonesia], Fourth Print, Sinar Grafika, Jakarta, 1996.

Nasution, Bahder Johar, Metode Penelitian Ilmu Hukum [Research Methods for Law Science], (Bandung: Mandar Maju, 2008).

#### **Dissertation**

Widjaja, Ketut Gede, Fungsi Kejaksaan Dalam Sistem Peradilan Pidana [Prosecutors' Function in Criminal Justice System], Laporan Hasil Penelitian Disertasi [Report on the Result of Dissertation Research], 2003

#### **Literatures In Websites**

Ludy Himawan, Tesis Pasca Sarjana [A Postgraduate Thesis], Analisis Yuridis Tentang Tugas Dan Fungsi Komisi Kejaksaan Dalam Mewujudkan Lembaga Kejaksaan Republik Indonesia Yang Proporsional [A Juridical Analysis on the Duties and Functions of the Prosecutors Commission in Realizing Proportional Prosecutors Institution of republic of Indonesia]. Retrieved from <http://repositori.usu.ac.id/handle/123456789/1254>, on 27 April 2020 at 13.50 WIB p. 132

Masyarakat Pemantau Peradilan FHUI [FHUI Justice Monitoring Community], <http://mappifhui.org/2015/10/21/memperkuat-kejaksaan-kita/>, Memperkuat Kejaksaan Kita [Strengthening Our Prosecutors], retrieved on 28 February 2021 at 03.20 WIB

Kepaniteraan Mahkamah Agung RI [Clerical Office of Supreme Court of Republic of Indonesia], Jangka Waktu Penanganan Perkara di Mahkamah Agung [Period of Dealing with Cases in Supreme Court], **Error! Hyperlink reference not valid.**, retrieved on 26 March 2021 at 10.15 WIB

Heru Suyanto and Andriyanto Adhi Nugroho, Realizing Indonesia Prosecutors Commission Professional and Trustworthy, <https://ijmmu.com/index.php/ijmmu/article/view/1597>, retrieved on 4 March 2021 at 15.15 WIB

Liky Faizal, Problematika Hukum Progresif di Indonesia [Problematics of Progressive Law in Indonesia], <https://media.neliti.com/media/publications/69527-ID-problematika-hukum-progresif-di-indonesi.pdf>, retrieved on 29 March 2020, at 11.44 WIB

Muhammad Ibnu Mazjah R, Dimensi Pengawasan pada Tindak Lanjut Laporan Pengaduan Masyarakat kepada Komisi Kejaksaan dalam Tinjauan Hukum Progresif [The Supervisory Dimension on Follow-up of Public Reports and Complaints to the Prosecutors Commission in Progressive Law Review], Negara Hukum [Constitutional State] Vo. 11 No.2, November 2020.

Philip Nonet and Philip Selznick, Law and Society in Transition : Toward Tanggapanive Law, Harper dan Row Publisher, London, 1974, in Bernard L, Tanya, et al., Teori Hukum : Strategi Tertib Manusia Lintas Ruang dan Generasi [Legal Theory: Strategy of Order for Cross-Space and Generation Humans], (Yogyakarta: Genta Publishing, 2010)

H. Deni Nuryadi, SH., MH, Teori Hukum Progresif dan Penerapannya di Indonesia [Theory of Progressive Law and Its Application in Indonesia], <https://www.google.co.id/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjnl6ju3dTvAhWRfd4KHVaPBrEQFjACegQIAxAD&url=https%3A%2F%2Fjournal.unsika.ac.id%2Findex.php%2Fjurnalilmiah hukumdejur e%2Farticle%2Fdownload%2F515%2F460&usg=AOvVaw38Mqk7mTgw3oghVd1PkZpA>, retrieved on 29 March 2021, at 12.20 WIB

Wikipedia, Kinerja [Performance], <https://id.wikipedia.org/wiki/Kinerja>, retrieved on 30 March 2021 at 14.20 WIB

Muzaqqi, Mochammad Khisbul, Perlindungan hukum terhadap penumpang bus yang tidak laik jalan ditinjau UU No. 22 Tahun 2009 dan Hukum Islam [Legal protection for passengers of non-operation-worthy bus reviewed with

law No. 22 of 2009 and Islamic Law], <http://etheses.uin-malang.ac.id/281/7/11220001%20Bab%203.pdf>, retrieved on 2 March 2021 at 01.00 WIB

#### **JOURNALS**

Suyanto, Heru and Andriyanto Adhi Nugroho Faculty of Law, Realizing Indonesia Prosecutors Commission Professional and Trustworthy, Universitas Pembangunan Nasional Veteran Jakarta, Indonesia <http://dx.doi.org/10.18415/ijmmu.v7i5.1597>

Simanjuntak, Samuel Hamonangan, Tinjauan Yuridis terhadap Kewenangan Komisi Kejaksaan RI Berdasarkan Peraturan Presiden Nomor 18 Tahun 2011 tentang Komisi Kejaksaan RI [A Juridical Review on the Authority of the Prosecutors Commission of Republic of Indonesia based on Presidential Regulation Number 18 of 2011 concerning the Prosecutors Commission of Republic of Indonesia], JOM of Faculty of Law of Riau University Volume VI Edition 2 July – December 2019

#### **PAPERS**

Harkrisnowo, Harkristuti, Sistem Peradilan Terpadu dan Peran Akademis [Integrated Justice System and Academic Role], makalah pada Forum Dengar Pendapat Publik : Pembaharuan Kejaksaan [a paper in the Forum of Public Hearing: Renewal of Prosecutors], organized by KHN, Attorney General, and Partnership for Governance Reform in Indonesia, Jakarta, 24-25 Juny 2003

Harkrisnowo, Harkristuti, Komisi Pengawas Eksternal pada POLRI [External Supervisory Commission of POLRI], Batasan Kewenangan ataukah Pendorong Profesionalisme? [Authority Limitation or Professionalism Driver?] Disampaikan pada Seminar Eaksistensi Komisi Pengawas POLRI dalam Rangka Penegakan Hukum dan Pelayanan Masyarakat [Delivered in Seminar of the Existence of Supervisory Commission of POLRI in Law Enforcement and Public Service], organized by FISIP of Riau University, Pekanbaru, 15-16 November 1999.

#### **THESIS**

Himawan Ludy, Analisis Yuridis Tentang Tugas Dan Fungsi Komisi Kejaksaan Dalam Mewujudkan Lembaga Kejaksaan Republik Indonesia Yang Proporsional [A Juridical Analysis on the Duties and Functions of the Prosecutors Commission in Realizing Proportional Prosecutors Institution of Republic of Indonesia].

#### **MEMORANDUM OF UNDERSTANDING**

Nota Kesepahaman antara Jaksa Agung RI dengan Ketua Komisi Kejaksaan RI Nomor Kep-009/A/JA/05/2011 dan Nomor NK-001/KK/05/2011 tanggal 19 Mei 2011 tentang Mekanisme Kerja antara Kejaksaan dengan Komisi Kejaksaan dalam Melaksanakan Pengawasan, Pemantauan dan Penilaian atas Kinerja dan Perilaku Jaksa dan pegawai Kejaksaan [Memorandum of Understanding between Attorney General of Republic of Indonesia and Head of Prosecutors Commission of Republic of Indonesia Number Kep-009/A/JA/05/2011 and Number NK-001/KK/05/2011 dated 19 May 2011 concerning the Working Mechanism between the Prosecutors and the Prosecutors Commissions in Supervising, Monitoring and Assessing the Performance and Behaviors of Prosecutors and employee of Prosecutors Office].