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The Role of State Attorney in Prosecutor's Office of An Effort to Protect State Assets

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ARTICLE INFO	ABSTRACT
<p>Keywords : Keywords: JPN, State Asset Rescue, Task Implementation</p> <p>Submitted: 2023-09-17</p> <p>Last revised: 2023-11-06</p> <p>Accepted: 2023-12-08</p> <p>DOI : 10.25077/alj.v8i2.56</p>	<p><i>This article examines the role of the State Attorney in Indonesia within the civil law sector, focusing on the safeguarding and recovery of state assets. With state assets dispersed across various institutions, the risk of losses necessitates adequate asset protection. The research addresses the legal standing and position of the State Attorney in the civil law field, as well as their duties in saving state assets. This paper analyzes applicable legal regulations and compares them with practical applications. Findings reveal that while the State Attorney possesses authority in law enforcement, legal assistance, and other legal actions, challenges impede the complete optimization of this authority. Despite obstacles, the Attorney General, through the State Attorney, plays a crucial role in defending the state's civil rights and securing state assets through civil instruments. The article highlights the need for greater awareness of the Prosecutor's Office in the civil sector, emphasizing its significance in representing the government and protecting state assets.</i></p>

1. Introduction

The Prosecutor's Office of the Republic of Indonesia is a state institution with duties and functions related to judicial power. It exercises state power in the prosecution and other authorities according to law, including efforts to recover and save state assets. The definition of the Prosecutor's Office is explained in Article 1 number 1 of Law Number 11 of 2021 on Amendments to Law Number 16 of 2004 on the Attorney General of the Republic of Indonesia, "The Prosecutor's Office of the Republic of Indonesia, hereinafter referred to as the Prosecutor's Office, is a government institution whose functions are related to judicial power that exercises state power in the field of prosecution and other authorities based on law."

The Prosecutor's Office has the role of *Dominus Litis* in carrying out its duties, which means as a case controller, in another sense, it is a central institution for case control in criminal law enforcement that has the authority and responsibility to control and coordinate investigations, conducting prosecutions, and implementing judges' decisions that have permanent legal force and are responsible for all evidence seized for the benefit of law enforcement.¹ The Prosecutor's Office is the controller of the case process (*Dominus Litis*), which means it has a central position in law enforcement because only the prosecutorial institution can determine whether a case can be submitted to the court or not based on valid evidence according to the criminal procedure law.²

In addition to having authority in the field of prosecution, the prosecutor's office also has other authorities based on the law implemented through the prosecutor as a state apparatus that exercises the prosecutor's authority as stipulated in Article 1 point 2 of the Prosecutor's Law which reads "The prosecutor is a civil servant with a functional position who has a specialty and carries out his duties, functions, and authorities under the law." These duties and functions are as stipulated in Article 30 Letter C of Law Number 11 of 2021 on Amendments to Law Number 18 of 2004 on the Prosecutor's Office, including authority in the field of Civil law and State Administration law, where the prosecutor with special powers can act both inside and outside the court for and on behalf of the state. In terms of recovery of state assets, the prosecutor's office is also authorized to carry out trace, seizure, and control activities for assets obtained by criminal acts and other assets to the state, victims, or those who are entitled.

¹ Farida dkk Patinggi, *Kedudukan Kejaksaan Republik Indonesia Dalam Sistem Ketatanegaraan* (Yogyakarta: Penerbit litera, 2021).

² Marwan Effendy, *Kejaksaan RI Posisi Dan Fungsinya Dari Perspektif Hukum* (Jakarta: PT. Gramedia Pustaka Utama, 2005).

Based on this, the Prosecutor's Office can act as a state attorney who provides legal consideration to the president and other government institutions or agencies. The Prosecutor's Office also has the task of providing legal assistance and services, as well as law enforcement of state civil rights where the prosecutor's office carries out these duties and authorities through the State Attorney in the Civil Law and State Administration Law Sector.

The State Attorney can be found in Article 18, paragraph 2 of Law Number 11 of 2021 on Amendments to Law Number 16 of 2004 on the Attorney General of the Republic of Indonesia, which reads, "The Attorney General with special powers because of his position and position acts as a State Attorney, in the civil and administrative law fields of state and constitutional in all judicial environments, both in and out of court for and on behalf of the government or government, as well as in the public interest." The State Attorney is authorized to defend the civil rights of the state in terms of maintaining, recovering, and saving state property or assets. The Prosecutor's Office, through the State Attorney, is authorized to provide legal assistance or legal assistance to Regional Governments, State-Owned Enterprises, Regional-Owned Enterprises, and other state agencies through special power of attorney. In addition, the Attorney General in the civil sector, through the State Attorney, also has the authority to carry out law enforcement in the civil field as an effort to save state assets/finances through the State Attorney by conducting a civil lawsuit against corruption criminal cases that were stopped by investigation because there was insufficient evidence, but there has been a loss to state assets caused.³

The State Attorney is also authorized to bring a lawsuit against corruption cases that were stopped because the suspect died but actually caused state financial losses.⁴ Article 33 of Law Number 31 of 1999 on Corruption Eradication states, "In the right of the suspect to die during the investigation, while there has been a real loss of state finances, the investigator immediately submits the case file of the results of the investigation to the State Attorney or submitted to the aggrieved agency for a civil

³ Republik Indonesia, Article 32 Paragraph (1) of Law Number 31 of 1999 on Corruption Eradication, "In the event that the investigator finds and believes that one or more elements of the criminal act of corruption do not contain sufficient evidence, while there has been a real loss of state finances, then the investigator immediately submits the case file resulting from the investigation to the State Attorney for a civil lawsuit or submitted to the aggrieved agency to file a lawsuit" Pub. L. No. 31, 10 (1999), [https://peraturan.bpk.go.id/Download/33850/UU Nomor 31 Tahun 1999.pdf](https://peraturan.bpk.go.id/Download/33850/UU%20Nomor%2031%20Tahun%201999.pdf).

⁴ Republik Indonesia, Article 33 of Law Number 31 of 1999 on Corruption Eradication, "In the right of the suspect to die during the investigation, while there has been a real loss of state finances, the investigator immediately submits the case file of the results of the investigation to the State Attorney or submitted to the aggrieved agency for a civil lawsuit against his heirs," Pub. L. No. 31, 10 (1999), [https://peraturan.bpk.go.id/Download/33850/UU Nomor 31 Tahun 1999.pdf](https://peraturan.bpk.go.id/Download/33850/UU%20Nomor%2031%20Tahun%201999.pdf).

lawsuit against his heirs."⁵ In its implementation, the Prosecutor's Office very rarely conducts civil lawsuits against corruption cases that are stopped from being investigated/prosecuted for various reasons, even though they have actually harmed state finances/assets. Apart from that, there are still many people who do not know the function of the prosecutor's office in the civil law sector.

2. Method

The method of this research is a normative legal research method. Normative legal research method or qualitative legal research is usually known as a study of documents that use secondary data as its sources, such as court decisions, doctrines, regulations, legal theory, or official documents, books, reports, and journals.

3. Result

3.1. Position / legal standing of State Attorney

State Attorney as part of the R.I. Prosecutor's Office, which carries out duties and functions in the civil law and state administrative law fields. The State Attorney is subordinate to the Junior Attorney General for Civil and State Administration law as the head of the civil and state administration law sector at the central level who reports directly to the Attorney General of the Republic of Indonesia, while at the provincial level, namely the High Prosecutor's Office as an extension of the Attorney General's Office R.I. led by the assistant of civil and state administration law, and then in smaller units, namely at the district/city level led by the head of the civil and state administration law section. The legal standing of the State Attorney in positive law is currently explained in Article 18 paragraph (2) of Law Number 11 of 2021 on Amendments to Law Number 16 of 2004 on the Attorney General of the Republic of Indonesia, which reads, "The Attorney General with special powers or because of his position and position acts as a State Attorney, in the civil and administrative fields of state and state administration in all judicial environments, both in and out of court for and on behalf of the state or government, or in the public interest."

The role and duties of the State Attorney who is actually in the field of Civil and State Administration law are reaffirmed in Article 30 paragraph (2) of Law Number 16 of 2004 on the Attorney General of the Republic of Indonesia, which reads, "In the field of civil

⁵ Republik Indonesia, Article 34 of Law Number 31 of 1999 on Corruption Eradication, "In the event that the defendant dies during an examination in a court session, while there has been a real loss of state finances, the public prosecutor immediately submits a copy of the minutes of hearing to the state attorney or submitted to the aggrieved agency for a civil lawsuit against his heirs," Pub. L. No. 31, 10 (1999), [https://peraturan.bpk.go.id/Download/33850/UU Nomor 31 Tahun 1999.pdf](https://peraturan.bpk.go.id/Download/33850/UU%20Nomor%2031%20Tahun%201999.pdf).

and state administration law, the prosecutor with special powers can act both inside and outside the court for and on behalf of the state or government." Based on this, it can be said that the State Attorney with a special power of attorney has the authority to represent the government in the civil and state administrative fields, including in terms of recovery of state assets as stipulated in Article 30 A of Law Number 11 of 2021 on Amendments to Law Number 16 of 2004 on the Attorney General of the Republic of Indonesia which reads, "In asset recovery, The Prosecutor's Office is authorized to carry out trace, seizure, and return of assets acquired by criminal acts and other assets to the state, victims, or those who are entitled." In fact, before the birth of the law described above, the phrase State Attorney had existed in Articles 32, 33, and 34 of Law Number 31 of 1999 on Criminal Acts of Corruption, which reads as follows:

Article 32

- (1) In the event that the investigator finds and believes that one or more elements of the criminal act of corruption do not contain sufficient evidence, while there has been a real loss of state finances, the investigator immediately submits the case file resulting from the investigation to the State Attorney for a civil lawsuit or submitted to the aggrieved agency to file a lawsuit.
- (2) Acquittal in corruption cases does not abolish the right to claim damages to state finances."

Article 33

In the right of the suspect to die during the investigation, while there has been a real loss of state finances, the investigator immediately submits the case file of the results of the investigation to the State Attorney or submitted to the aggrieved agency for a civil lawsuit against his heirs."

Article 34

In the event that the accused dies during an examination in a court session, while there has been a manifest loss of state finances, the public prosecutor shall immediately submit a copy of the minutes of the hearing to the State Attorney or submit it to the aggrieved agency for a civil lawsuit against his heirs." Based on this description, in addition to representing the state, the State Attorney also has the authority to rescue state assets, especially in civil law instruments, as well as conduct civil lawsuits against corruption criminal cases that are stopped from being investigated/prosecuted either because of insufficient evidence or the

suspect/defendant dies, as well as a lawsuit against acquittal in corruption criminal cases but has actually resulted in real state losses for the actions of the perpetrator.

4. Role of the duties of the State Attorney in the civil law sector at the West Sumatra High Prosecutor's Office in saving state assets

The Prosecutor's Office of the Republic of Indonesia in the Civil law and State Administration law Sector through the State Attorney, especially in the civil law sector, has the duty and authority to act on behalf of the state or government both inside and outside the court, including in representing state/regional owned enterprises, as well as other state institutions.⁶ This is as mandated by Article 30, paragraph (2) of the Prosecutor's Law, which reads, "In the civil and administrative law fields of the state, the prosecutor with special powers may act both inside and outside the court for and on behalf of the state or government." Furthermore, in the case of recovery of state assets, the prosecutor's office is authorized to trace, seize, and return assets, both assets acquired by criminal acts or other assets to the state, victims, or those entitled as stipulated in Article 30 A of the Prosecutor's Law.⁷ Referring to the Regulation of the Attorney General of the Republic of Indonesia Number 7 of 2020 on the Second Amendment to the Attorney General's Regulation Number Per-027 / A / JA / 2014 concerning Guidelines for Asset Recovery, the Attorney General of the Republic of Indonesia through the State Attorney who acts as a state attorney or state legal advisor has the responsibility to carry out asset recovery consisting of security, maintenance, tracing, and seizure activities as well as recovering assets to their original condition. The authority of the State Attorney in the civil law sector in an effort to save and recover state assets includes authority in law enforcement on civil rights of the general public and the state, providing legal consideration, legal assistance, and legal services in the civil law field to minimize state losses arising from unlawful acts or negligence which are expected to be recovered with the function of the State Attorney to its original position.

In carrying out the responsibilities of the Prosecutor's Office related to the rescue and recovery of state assets, the Prosecutor's Office performs its duties based on efficient, transparent, accountable, effective, professional, quality, and integrated principles.

⁶ Republik Indonesia, "Prosecutors' Office Regulation RI Number 7 of 2021 on Guidelines for the Implementation of Law Enforcement, Legal Aid, Legal Considerations, Other Legal Action, and Legal Services in the Civil and Administration Fields Chapter 1 General Definition "State," Pub. L. No. 7, 6 (2021), [https://peraturan.bpk.go.id/Download/220743/Peraturan Kejaksaan No. 7 Tahun 2021.pdf](https://peraturan.bpk.go.id/Download/220743/Peraturan%20Kejaksaan%20No.%207%20Tahun%202021.pdf).

⁷ Republik Indonesia, "Article 30 A of the Prosecutor's Law R.I 'In Asset Recovery, the Prosecutor's Office Is Authorized to Carry out Trace, Seizure, and Return of Assets Acquired by Criminal Acts and Other Assets to the State, Victims, or Those Who Are Entitled'" (n.d.).

Referring to the Prosecutor's Regulation of the Republic of Indonesia Number 7 of 2020 on Guidelines for Asset Recovery, there is a scope for state asset recovery, which is the authority of the State Attorney through the State Attorney in terms of civil law handling as an effort to save and recover, and return state assets or losses, where the scope of state asset recovery which is the authority of the Attorney General is as follows:

- a. Assets obtained either directly or indirectly from criminal acts, including assets that have been granted or converted into personal/individual, other person, or converted into company/corporate assets. These assets are either in the form of income, capital or in the form of other economic benefits obtained from this wealth.
- b. Assets used to commit criminal acts or related to criminal acts based on court decisions that have permanent legal force (*inkrahct van gewisjde*) are confiscated by the state.
- c. Assets belonging to the convicted person or other party as compensation for payment of state compensation or fines, or other forms of compensation as compensation to the state, victims, or those entitled to the asset.
- d. Found items.
- e. State assets or state institutions, as well as SOEs controlled by parties who are not legally entitled or state assets controlled by other parties unlawfully (*onrechtmatigdaad*).
- f. Assets based on state requests must be recovered in accordance with the provisions of laws and regulations, where the Attorney General R.I., at the request of the state through a power of attorney, can act to recover state assets in accordance with laws and regulations.
- g. Other assets, in accordance with statutory provisions, are essentially a form of compensation that can be given for losses suffered by the state due to negligence in management or unlawful acts.⁸

The State Attorney, in carrying out his duties on the recovery of assets of the State Attorney engaged in civil affairs, is guided by the Prosecutor's Regulation of the Republic of Indonesia Number 7 of 2021 on Guidelines for the Implementation of Law Enforcement, Legal Aid, Legal Considerations, Other Actions, and Legal Services in the Civil law Sector, where based on the prosecutor's regulation, the State Attorney based on a special power of attorney has the authority to carry out law enforcement, legal

⁸ Republik Indonesia, "Prosecutors' Regulation Number 7 of 2020 on Guidelines for Asset Recovery, CHAPTER I Concerning the Scope of Asset Recovery," Pub. L. No. 7, 8 (2020), [https://peraturan.bpk.go.id/Home/Download/163059/Peraturan Kejaksaan Nomor 7 Tahun 2020.pdf](https://peraturan.bpk.go.id/Home/Download/163059/Peraturan%20Kejaksaan%20Nomor%207%20Tahun%202020.pdf).

assistance, and providing legal consideration, legal services, and other legal actions in the civil and administrative law fields. The authority based on a special power of attorney is aimed at recovering and saving state finances or assets in the civil law field given to the government or state in order to protect state finances and assets from legal problems or potential claims, demands or suits from other parties. Duties and functions of the State Attorney in the civil law field have a scope of duties in the fields of law enforcement, legal assistance, legal considerations, other legal actions based on law, and legal services where these duties and functions are as follows:

4.1. Law Enforcement

The implementation of law enforcement as one of the duties of the State Attorney in the field of Civil and State Administration law is an activity carried out to implement laws and regulations. The definition of Law Enforcement in the Civil and Administrative law Fields of Attorney General R.I is the action of the State Attorney to file a lawsuit or application to the court in the civil law field or other actions as stipulated in laws and regulations in order to realize legal order, protect the interests of the state, the government and protect legal certainty and civil rights of the community. Law enforcement in the civil law sector, whose authority is owned by the Attorney General R.I through the State Attorney, is related to:

- a. Civil handling in representing the state in terms of recovering state losses related to criminal acts that harm state finances.
- b. Civil handling is related to civil liability for corporations or people as legal subjects as representatives of the state.
- c. In civil handling related to family and marriage law.
- d. In other civil law enforcement, such as:
 - 1) File a claim for cancellation of a registered brand.
 - 2) File a patent removal lawsuit against intellectual property.

One of the objectives of law enforcement by the Prosecutor's Office in the civil sector is in terms of security, rescue, and recovery of state wealth, especially in the era of globalization and the era of development of many government activities related to state finance and wealth.⁹

⁹ Rusdianto, "Fungsi Kejaksaan Sebagai Pengacara Negara Dalam Perspektif Hukum Di Indonesia," *Jurnal Cakrawala Hukum* 6 (2015): 103, <https://doi.org/https://doi.org/10.26905/idjch.v6i1.689>.

4.2. Legal Aid

In addition to law enforcement, the Attorney General R.I. through the State Attorney, based on a special power of attorney, is authorized to provide legal assistance or civil legal remedies to the state/state institutions, SOEs, and other state organs as state attorneys through a special power of attorney. State attorneys have the authority to provide legal assistance to the state or government as legal representatives based on special powers, whereas, in the civil law field, State Attorneys with special powers of attorney can act as legal representatives as:

- a. The applicant or respondent in arbitration, as a proxy in non-litigation dispute resolution
- b. Parties representing the government or state in civil negotiations.
- c. As a plaintiff, intervention plaintiff, contrarian, dissident, or applicant in litigation proceedings.
- d. Also, the defendant, co-respondent, and co-defendant were refuted in the litigation process.

4.3. Legal Considerations

The Attorney General, through the State Attorney in the civil law sector, also has the authority to provide legal considerations to the state or government in order to realize good governance and prevent corruption, as well as to defend the civil interests of the state or government, including in terms of saving state assets either on application or without application. Basically, every application requested by the state/government agencies and SOEs can be accepted and provided legal assistance by the Attorney General R.I. The State Attorney has the authority and scope to provide legal considerations as follows:

- a. Provide legal opinions on legal issues in the civil law field that are being faced by the state or will be faced by the state, in this case, including mitigation of legal risks, saving state finances or wealth, and governance related to the implementation of government.
- b. Conducting legal assistance/legal assistance, the State Attorney providing legal assistance is one of the scopes of the State Attorney in providing legal considerations, where the State Attorney provides legal assistance or legal assistance to plans or activities that will be or are being carried out by the government/state in the civil scope that has the potential for legal problems, In

order to mitigate legal risks that will be faced, and regarding compliance with management, as well as the rescue and recovery of state finances or wealth.

- c. Legal Audit: one of the scopes in providing legal consideration to the state/government is that the State Attorney conducts a legal audit in the scope of civil law on activities that have been carried out by the government/state in order to minimize legal problems that will be faced through analysis and assessment of compliance from aspects of civil law.
- d. Providing legal consideration not on the application, the Attorney General, through the State Attorney, can provide legal consideration without a request in the form of an opinion to the government/state in the form of a legal consideration letter containing analysis and study of aspects of civil law.

4.4. Other Legal Actions

In addition to conducting law enforcement, legal assistance, and legal considerations in the civil field, the state attorney is authorized to carry out other legal actions in civil terms in terms of acting as a facilitator, mediator, or conciliator in a dispute or dispute over civil rights between states or governments, or between states and other parties or third parties whose positions are outside the state, or government.¹⁰ Another legal action is the authority of the Prosecutor's Office in the field of Civil and State Administration law to save state wealth with the aim and purpose of protecting the interests of the public and the authority of the government.

4.5. Legal Services

In the civil law sector, the State Attorney also has the authority and duty to carry out legal services, where the state attorney is authorized to provide legal services to build public legal awareness, receive legal complaints from the public, and assist the public with access to the law in order to realize a just law. This legal service is carried out in the form of consultation and education, as well as providing information in the civil law field to the public, which is given orally or in writing. State Attorney as regulated by the Prosecutor's Regulation of the Republic of Indonesia Number 7 of 2020 on Guidelines for Asset Recovery whose implementation in the civil law sector is carried out by the implementation of law enforcement, legal assistance, legal considerations, other legal actions, and legal services in the Civil and State Administrative law Fields, where one of the scopes of authority of the Attorney General R.I in asset recovery is the state or state

¹⁰ Juristoffel Simanjuntak, "Kajian Yuridis Pemberian Bantuan Hukum Jaksa Pengacara Negara Dalam Perkara Perdata Dan Tata Usaha Negara (TUN), " *Lex Administratum* VI, No. 1 (2018), file:///C:/Users/hp/Downloads/hsm_administratum,+19.+Juristoffel+Simanjuntak_HAN.pdf.

institutions, and SOEs/D controlled by parties who are not legally entitled or by other parties unlawfully (*onrechtmatigdaad*), as well as assets based on state requests that must be recovered in accordance with laws and regulations, where the Attorney General R.I at the request of the state through a power of attorney can act in recovering state assets in accordance with laws and regulations, the State Attorney also has the power to carry out law enforcement, and provide legal considerations, as well as other legal actions in the civil law field as an effort to save state assets in accordance with the corridors of laws and regulations.

5. Conclusion

Based on the description above, State Attorneys have an important role in the field of civil law and state administration law, especially in matters of civil preservation of state assets. However, in its implementation, the function of the State Attorney is not widely known by the public and has not been fully optimized by stakeholders, including government, state-owned enterprises, and other state agencies. It is estimated that as time goes by, stakeholders and the public will be able to utilize the functions of State Attorneys in legal assistance, legal considerations, and other legal actions, as well as legal services to defend the government's civil rights and public interests.

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