THE ROLE AND FUNCTION OF THE INDONESIAN PROSECUTION SERVICE IN CRIMINAL JUSTICE

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I. INTRODUCTION

Since prosecution has been realized as a fundamental component of the criminal justice system in addition to investigation, judgment and the execution of the judge's disposition, the Prosecution Service of the Republic of Indonesia also has a pivotal role and function in the Indonesian law enforcement system. In other words, the Indonesian Prosecution Service is indispensable in the Indonesian criminal justice system.

This paper tries to describe concisely the role and function of Indonesian prosecutors in the criminal justice system.

II. ORGANIZATIONAL STRUCTURE AND ROLE OF THE INDONESIAN PROSECUTION SERVICE

A. Position within the National Organizational Structure and Its Independence and Neutrality

1. Position

The Prosecution Service of the Republic of Indonesia is a government institution, which is separated from the Ministry of Justice and other criminal agencies. This institution has the main duty to execute the state power in the field of prosecution and other duties based upon the regulations and laws and to have a share in exercising a part of the general duty of government and the development in the field of law.

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The Prosecution Service (Kejaksaan) is composed of one Attorney General's Office, 27 the High Prosecution Offices and 296 District Prosecution Offices. The Attorney General Office is located in the capital of the Republic of Indonesia, Jakarta, and its territorial jurisdiction covers the territory of the Republic of Indonesia. The High Prosecution Office covers the territory of the province and the District Prosecution Office covers the territory of the district or the respective municipality and or an administrative city. It is clear that the Attorney General's Office is the headquarters of the Indonesian prosecution service.

Furthermore, pursuant to Article 7, paragraph (1) of Act No. 5/1991, a branch of the District Prosecution Office can be formed by the decree of Attorney General after the State Minister of Administrative Reform has given his approval thereto. This means that a branch of the District Prosecution Office is the lowest level in the organizational structure of the Indonesian Prosecution Service.

The Indonesian Prosecution Service itself is led by the Attorney General who is appointed and dismissed by and responsible to the President of the Republic of Indonesia. The Attorney General is the supreme leader in and responsible for the Prosecution Service who controls over the execution of the duties and authority of the service. In conducting this daily job, he is assisted by one Vice Attorney General and six Deputy Attorney Generals.

The Attorney General and the Vice Attorney General constitute a unity of leadership components. All Deputy Attorney Generals are the components

which support the leadership. As stated in Article 4 of the Presidential Decree No. 55/1991, the structure of the Indonesian Prosecution Service consists of:

(1) Attorney General;
(2) Vice Attorney General
(3) Deputy Attorney General for Advancement;
(4) Deputy Attorney General for Intelligence Affairs;
(5) Deputy Attorney General for General Crimes;
(6) Deputy Attorney General for Special Crimes;
(7) Deputy Attorney General for Civil and Administrative Affairs;
(8) Deputy Attorney General for Supervision;
(9) Centres;
(10) Prosecution Offices at regional level which consists of:
    a. High Prosecution Offices, and
    b. District Prosecution Offices.

In addition, the Indonesian Attorney General has the level as same as a State Minister. Therefore, the Attorney General as well as the commander-in-chief of the Indonesian Armed Forces and the Minister of Justice is a member of the Cabinet which is led directly by the President.

In the Indonesian organizational structure of national government, the President and Vice President are elected by all members of the People's Consultative Assembly (MPR), which is the highest constitutional body. Under the 1945 Constitution, the MPR convenes at least once every five years to elect the President and Vice President and to adopt the broad outlines of state policy, which provide a framework for government policy directions. This body consists of all 500 members of the House of Representatives (Parliament) and 500 additional members appointed by the government. The DPR (Parliament) itself meets regularly and debates legislation submitted to it by the government.

2. Independence and Neutrality

In order for one to be appointed as a Public Prosecutor, according to Article 9 of Act No. 5/1991 on Prosecution Service of the Republic of Indonesia, *inter alia*, one must be a civil servant, hold a university degree in law, and pass the examination of the education and training for the skill profession of Public Prosecutor. Due to its status of being a civil servant, therefore undoubtedly, every Indonesian public prosecutor is fully controlled by his/her superiors. It can be seen in the actual practice of prosecution of offenders that a public prosecutor in charge, before submitting his/her requisite charges, should first ask the size of charges to the head of the District Prosecution Office for a case at the district level or the head of the High Prosecution Office for a provincial level case and the Attorney General for a national level case. In other words, every Indonesian public prosecutor is fully controled by his/her superiors, which is referred to in Article 8, paragraph (2) in the following words:

> In instituting prosecution the Public Prosecutor shall act for and on behalf of the state and be responsible to hierarchical channel.

As mentioned above, an Indonesian public prosecutor is a government official. In handling criminal cases, the execution of prosecution must be based upon the law and must always observe the sense of justice in existence with the society by paying attention to the government policy. The Indonesian public prosecutor shall act as the government and the state officials in the execution of prosecution. This means that there is no neutrality for public prosecutor because the government interest must be kept in the prosecution against the offenders. In addition, the Indonesian public prosecutor shall act as a State Attorney when there are civil and administrative actions against the state and government of the Republic of

Indonesia. It can be said that every Indonesian public prosecutor must stand by their government and their state.

B. Appointment and Training of Public Prosecutors and the Guarantee of Their Status

1. Appointment

As mentioned before that is stipulated in Article 9 of the Act No. 5/1991, in order for one to be appointed a public prosecutor, he shall have to fulfill the following requirements:

(1) be an Indonesian Citizen;
(2) be pious to the One Almighty God;
(3) be loyal to Pancasila (state philosophy) and the 1945 Constitution;
(4) not be an ex-member of the banned Indonesia Communist Party, including the mass organizations thereof or not be a person directly involved in the "Counter-Revolutionary Movement of September 30th/Indonesia Communist Party" or other banned organizations;
(5) be a civil servant;
(6) hold a university degree in law;
(7) be at least 25 years of age;
(8) be authoritative, honest, just and not behave disgracefully; and
(9) pass the examination of the education and training for the skill profession of Public Prosecutor.

Those requirements above are verified in a selection process that is conducted by the Bureau of Personnel Affairs of the Attorney General's Office.

Prosecution service has recruited legal personnel within the prosecution service. They must be law school graduates and pass the prosecutor pre-service training organized by the training center in Jakarta. Every year, the training center produces about 200 new public prosecutors. Recently, there are about 5,000 public prosecutors, who serve prosecution. That number also includes civil and administrative law enforcement.

2. Training and the Guarantee of Public Prosecutors Status

The Centre for Education and Training has the duty to execute the education and training in the environment of the Indonesian Prosecution Service by virtue of law and regulation and the policy determined by the Attorney General. This centre is a component in support of the duty and function of the prosecution service, while is under and directly responsible to the Attorney General.

Education and training programs for personnel of the prosecution service that is organized by the centre consists of Pre-Service and In-Service programs that can be seen in Table 1.

In addition to the information of Table 1, in-service programs consist of training programs on general administrative, structural, functional and technical education, and training for public prosecution candidates is a kind of functional training program. This technical education and training program may consist of training of Intellectual Property Rights, law enforcement in criminal cases, and law enforcement in civil and administrative cases, intelligence activities, etc. This kind of training can be an appropriate solution to overcome the problems of insufficient qualified public prosecutors dealing with new crimes which seem more sophisticated and organized.

The goal of functional education and training programs is strengthening the skills and professional capacities of public prosecutors as required by government regulation. Furthermore, the technical programs will give a better opportunity for any qualified public prosecutor and administrative personnel to acquire the

Table 1

KINDS OF EDUCATION AND TRAINING PROGRAMS

Kind of Education and Training Program	Participant
Pre-service Training	Candidate for Civil Servant in Prosecution Service
General Administrative	– Official Echelons V & IV – Functional Official
Structural a. Administrative Staff & Leader First Level b. Middle Level c. High Level	 Official Echelon III Official Echelon II Official Echelon I
Functional Training (Non Strata)	Functional Official
Technical Training	Structural & Functional Officials

Source: Rasmin Saleh, "The Education and Training of Indonesia Public Prosecution Service", unpublished, p. 18.

knowledge and technical skills in order to improve the objectiveness and efficiency in carrying out their duties, especially for new problems faced by Prosecution Service of the Republic of Indonesia.

Participation for every program is based on assignment. A selection team considers what is expected of those participants after they finish their training, so that they can improve their ability to achieve a better career position and a brighter future. Therefore, the education and training programs are the strategic way to get the capable and skillful public prosecutors in handling cases. It can be noted the guarantee of having a bright future is attending the series arranged programs.

C. Professional Ethics of Indonesian Prosecutors

The ideal figure of an Indonesian public prosecutor is a person who holds or reflects the values of the Prosecution Service maxims called Satya, Adhy and Wicaksana (Integrity, Maturity and Wisdom). This maxim which is called Tri Krama Adhyaksa or Indonesian Prosecution Service doctrine, was stipulated by the Attorney General's Decree No. KEP-030/JA/3/1988 on March 23, 1988.

Pursuant to Article 8, paragraph (4) of Act No. 5/1991, in executing its duty and authority, the prosecution service shall always act by virtue of the law and with due observance of the norms of religion, good manners and morality, and shall also be obligated to delve into the living values of humanity, law and justice in the society. Moreover, public prosecutors shall institute a prosecution on the belief that their prosecution is based upon sufficient legal means of proof. According to Article 184, paragraph (1) of Act No. 8/1981, legal means of proof shall be the testimony of witnesses, testimony of the experts, documents, the indication, and the testimony of the accused.

As stated in Article 11, paragraph (1) of Act No. 5/1991, unless determined otherwise by virtue of the law, the Indonesian public prosecutor may not concurrently become a businessman or a legal adviser or do another job which can influence the dignity of his/her office. The violation of this statement, according to Article 13, paragraph (1), section c, shall

result in the public prosecutor being dishonourably dismissed from his/her office. The other regulations related to the professional ethics of Indonesian Prosecutors can be found in Code of Civil Servant Ethics and several acts concerning the duty, authority and function of public prosecutors in the Indonesian justice system.

III. INVESTIGATION

A. Investigative Authority and Methodology

Arcitle 6, paragraph (1) of Act No. 8/1981 on Criminal Procedure (KUHAP) states that an investigator shall be:

(1) an official of the state police of the Republic of Indonesia; and
(2) a certain official of the civil service who is granted special authority by law.

Refering to this statement, in practice, the police official is an investigator for general crimes such as murder, theft and robbery.

The public prosecutor is also authorized to be the investigator for special crimes such as the corruption cases (Act No. 3/ 1971 on Eradication of Corruption Offences). It is sanctioned by Article 284, paragraph (2) of Act on Criminal Procedure, which states:

> ... all cases shall be subject to the provision of this Act, with temporary exception for special provisions on criminal procedure as refered to in certain acts, until they are amended and or are declared to no longer be in effect.

Another regulation which sanctions that statement above, is Article 17 of Government Regulation No. 27/1983, which mentions that public prosecutors and certain officials have authority as investigators of special crimes. It means there are several special investigators besides public prosecutors in the Indonesian investigation system, *inter alia*, naval officers for Fishery and Exclusive Economic Zone offences; and civil servants of Customs and Excise, Tax Division, Forestry Officer, etc.

An investigator as regulated in Article 7, paragraph (1) of Act No. 8/1981 shall be competent, *inter alia*, to carry out arrest, detention, search and seizure of documents; to summon a person to be heard or examined as a suspect or a witness; to take other responsible acts in accordance with law. In this regard, the investigator shall prepare minutes of the execution of acts and then shall deliver the dossier of case to the public prosecutor. The delivery of the dossier shall be accomplished as follows [Article 8, paragraph (3) of Act No. 8/1981]:

(1) At the first stage, the investigator shall deliver only the dossier of case.
(2) Where the investigation is deemed to have been completed, the investigator shall cede responsibility for the suspect and the physical evidence to the public prosecutor.

However, there is not a strict sanction against the investigator who delivers the dossier of a case late and never completes the returned case. In practice, a public prosecutor in charge will ask that investigator's superior to order the completion of the case as soon as possible.

B. Instruction and Supervision of the Police, and the Cooperation between the Public Prosecutor and the Police

As we know, the role of the public prosecutor can be seen clearly from the acceptance of the case dossier from the police officer. Then, the public prosecutor will compose the results of the criminal investigation to be the criminal prosecution against the defendant. In the Indonesian criminal justice system, a public prosecutor within seven days shall be obligated to

inform the investigator in charge whether the results are complete or incomplete. Where the results are evidently incomplete, the public prosecutor shall send the dossier back to the investigator accompanied by an instruction on what must be done to make it complete. Then, within 14 days after receiving the dossier, the investigator shall be obligated to return the dossier to the public prosecutor.

As mentioned before, there is no a strict sanction against the investigators who neglect their obligation to complete the case within the mentioned period. In that case, a good informal or personal relationship between the public prosecutor and the investigator (the State Police Officer) can be seen on the results of investigation. Conversely, the public prosecutor in charge will ask his/her superior or the head of the District Prosecution Office to contact the investigator's superior to fulfill his obligation soon. Alternately, the public prosecutor will never give or approve the extension of further detention in the investigation period. It can be deemed as an effective way for public prosecutors to supervise what the investigators have done till the end of the detention period.

Although the public prosecutor is able to return the incomplete dossier to the investigator accompanied by the instruction, however, it can not be said that the public prosecutor has supervised the state police officer in conducting the investigation vertically. Accordingly, both the public prosecutor and the police officer together have prepared a successful investigation. It must be noted a successful investigation shall determine the next stage of law enforcement results.

C. Role of Public Prosecutors in Arresting and Detaining the Suspect

Pursuant to Article 109, paragraph (1) of the Act on Criminal Procedure, where an investigator has begun the investigation of an event, which constitutes an offence, the investigator shall inform the public prosecutor of this fact. That information includes the arrest and detention of the suspect, which have been conducted by the investigator.

The investigator on a person who is strongly presumed to have committed an offense based on sufficient preliminary evidence shall issue an arrest warrant. That arrest can be made for at most one day, and a person suspected of having committed a misdemeanor shall not be arrested except when without valid reasons he has failed two consecutive times to comply with valid summons (Articles 17 to 19 of Act No. 8/1981).

Furthermore, for the purposes of investigation as well as prosecution and trial proceedings, the investigator instead of the public prosecutor and the judge at trial, has the authority to a detain a suspect who is strongly presumed to have committed an offence based on sufficient evidence. It is applied on cases where there are circumstances which give rise to concern that the suspect will escape, damage or destroy physical evidence and/or repeat the offence. According to Article 24, paragraph (1) of the Act on Criminal Procedure, a warrant of detention issued by an investigator shall only be valid for at most 20 days. It may be extended by a competent public prosecutor for at most 40 days, if an investigation has not been completed yet. After the said 60-day period, the investigator must release that suspect from detention for the sake of law.

The role of the public prosecutor in arresting and detaining a suspect which are conducted by the police or an investigator, is merely to supervise the validity of the investigator's activities concerning investigation. In fact, the investigators shall be responsible themselves for whatever they have done. In addition, a suspect shall have the right to demand compensation for the harm of

having been arrested, detained or other acts, without reason founded on law or due to a mistake with regard to his identity or to the applicable law (see Article 95, paragraph (1) of Act No. 8/1981).

IV. INDICTMENT

A. Authorized Agency to Indict and the Methodology

As mentioned before, the Prosecution Service of the Republic of Indonesia is a sole agency which shall execute the state powers in the field of prosecution. It means, there is no private prosecution in the Indonesian criminal justice system. In addition, the Prosecution Service shall have the authority to carry out the prosecution of anyone who is accused of committing an offence within a public prosecutor's jurisdiction by bringing the case before a competent court to adjudicate accompanied by a bill of indictment.

After the public prosecutor has received or accepted the returned and complete dossier case from the investigator, he shall promptly determine whether or not the dossier meets the requirements to be brought before a competent court. Where he has the opinion that a prosecution may be conducted from the results of investigation, he shall prepare as soon as possible a bill of indictment. Pursuant to Article 141 of the Act on Criminal Procedure, a public prosecutor may effect the joinder of cases and cover them in one bill of indictment, if at the same time or almost simultaneously he receives several dossiers of cases on:

(1) several offences committed by the same person and the interest of the examination does not pose an obstacle to joinder;
(2) several joinders which are interrelated one with the other; or
(3) several offences which are not interrelated but which do have some connection one another, such that the joinder is necessary for purposes of examination.

On other hand, where a public prosecutor receives a case dossier containing several offences committed by several suspects, he may conduct a prosecution against each of the defendant separately. Therefore, a public prosecutor has the authority to decide freely whether a case will be separated or not.

B. Degree of Certainty Regarding Guilt Required to Indict a Suspect

In Indonesian criminal procedure, there are three kinds of examination procedures, i.e.:

(1) Ordinary,
(2) Summary, and
(3) Express, which consists of procedures for examination of minor offences and procedures for traffic violation cases.

The ordinary examination procedures are regulated in Articles 152 to 202 of Act No. 8/1981 on criminal procedure, Articles 203 to 204 for summary procedure, Articles 205 to 210 for minor offences, and Articles 211 to 216 for the examination procedures of traffic violation cases.

Ordinary procedure is the main legal procedure that is implemented in every competent court. In this procedure, after receiving the case dossier, which must be accompanied by a Bill of Indictment from the public prosecutor, the presiding judge at the court shall determine the trial date. Moreover, the presiding judge shall also order the public prosecutor to summon the accused and witnesses to attend the trial.

There is a specialty among those examination procedures above where a public prosecutor shall never be involved directly in the examination, i.e., the express procedures. In this procedure, as

mentioned in Article 205, paragraph (2) of Act No. 8/1981, the investigator on behalf of public prosecutor shall within three days after completion of the date minutes of the examination, present the accused together with the physical evidence, witnesses, experts and/or interpreters before the court. It is a little bit different to the summary procedure in that the authorized official whose obligation is to present the accused together with the required witnesses, experts, experts, interpreters and physical evidence, is a public prosecutor. It is similar to the ordinary procedure in that the public prosecutor is more responsible for presenting the accused required witnesses, experts and interpreters before a competent court.

The criteria to decide whether a criminal case shall be examined in summary procedure, is that a case does not fall under the provisions of Minor Offences and for which the evidence and application of law, and according to the public prosecutor in charge, is simple and straightforward. Cases with a penalty of at most three months' imprisonment or confinement and a fine of not more than 7500 rupiahs (about 300 yen) shall be examined in express procedures.

In preparing a bill of indictment, which shall be dated and signed by the public prosecutor in charge, it shall contain (Article 143 of Act No. 8/1981):

(1) the full name, place of birth, age or date of birth, gender, nationality, address, religion and occupation of the suspect; and
(2) an accurate, clear and complete explanation of the offence of which accusation is made, stating the time and place where the offence was committed.

A bill of indictment which does not satisfy the provision above shall be void for the sake of law.

C. Exercise of Discretion in Prosecution

A public prosecutor may not prosecute an accused when he has found three technical circumstances and one factor of political reason (Cf. Andi Hamzah and RM. Surachman, "The Role a Public Prosecutor", paper for Indonesian-Japan joint seminar held in Jakarta on January 2-24, 1992, pp. 30-33), i.e.:

(1) the fact has insufficient evidence;
(2) the fact does not constitute an offence;
(3) it is for the interest of law; and
(4) political reason.

Whenever the public prosecutor decides to cease or to suspend the prosecution because of insufficient evidence or it has become clear that said event did not constitute an offence or the case has been closed in the interest of law, the public prosecutor shall set this forth in a written decision. According to Article 140, paragraph (2) subparagraph b of Act No. 8/1981, the content of said written decision shall be made known to the suspect and if he is detained, that suspect should be released immediately. Moreover, the copies of the written decision must be sent to the suspect or his family or legal counsel, official of the state house of detention, the investigator and the judge. If thereafter new circumstances should provide sufficient evidence, the public prosecutor may conduct a prosecution against the suspect.

In addition, pursuant to Article 183 of the Criminal Procedure Code, a judge shall not impose a penalty upon a person except when there are at least two legal means of proof enabling him to come to the conviction that an offence has truly occurred and that the accused is guilty of committing it. Therefore, if there are two among five legal means of proofs, normally, the public prosecutor shall prosecute the accused before a competent court. Furthermore, the interest of law as

mentioned above, including lapse of time, double jeopardy or nebis in idem, and the death of the accused, shall be considered when determining whether or not to prosecute the accused.

Prior to 1961, every public prosecutor in Indonesia was allowed by the law to drop the case even though there was sufficient evidence to warrant a conviction. Then, this power was abolished in 1961. However, since that time only the Attorney General has been allowed to drop a case for political reasons or for the interest of law. Hence, a public prosecutor who wishes to utilize this power has to request the Attorney General to determine it, which is, unfortunately, rarely exercised.

Although the authority to exercise the discretionary power is not stipulated explicitly in articles of the Act Number 8/ 1981 (KUHAP), the elucidation of Article 77 KUHAP infers this power which is called the opportunity principle. Fortunately, this principle has been endorsed by Article 32, paragraph (4) of Act No. 5/1991 on Prosecution Service of the Republic of Indonesia.

D. Plea Bargaining

In the Indonesian criminal justice system, plea bargaining has never been known clearly. To decide whether an accused is guilty or not, is the authority of the judges at trial. However the judges at trial shall impose a proper punishment based on sufficient legal means of proof, namely at least two legal means of proof, which convincingly establish that the accused has truly committed an offence.

A public prosecutor in instituting the prosecution, of course, will first be concerned about the sufficiency of the evidence to establish a prima facie case or that the evidence that would warrant conviction. There are severals factors usually taken into consideration before deciding to prosecute such as the gravity and circumstances of the offence, and the personal factors related to the alleged offender, *inter alia*, the character, the age, any mental illness or stress affecting the offender and the relationship of the victim to the offender. After a public prosecutor has gathered the prima facie evidence, he decides whether to prosecute or not.

V. TRIAL PROCEEDINGS

A. Proof of Criminal Facts

As stated previously, there are five legal means of proof in Indonesian criminal procedure, i.e., the testimony of witnesses, the testimony of experts, documents, indication, and the testimony of the accused [Article 184, paragraph (1) of Act No. 8/1981]. The testimony of a witness is what the witness has stated at trial, which is similar to the testimony of the expert and the accused, i.e., what the expert and the accused have stated at trial. A document as a legal means of proof should be made under an oath of office or strengthened by an oath. An indication is an act, event or circumstance which because of its consistency whether between one and the other or with the offence itself, signifies that the offence has occurred and who the perpetuator is (see Articles 184 to 189 of Act No. 8/1981).

In addition, the indication as a legal means of proof shall only be obtained from the testimony of the witnesses, the document and the testimony of the accused. The evidentiary strength of the indication is evaluated by the judges at trial wisely and prudently after those judges have accurately and carefully conducted an examination on the basis of their conscience. In practice, every public prosecutor always tries to have the indication in proving the accused guilty. In other words, every public prosecutor always tries to obtain three or more legal means of proof in proving the guilt of the accused.

However, if the court is of the opinion that from the results of examination at trial, the guilty of the accused has not been legally and convincingly proven, the accused shall be declared acquitted. Moreover, if the court is of the opinion that the act of the accused has been proven but such act does not constitute an offence, all charges against the accused shall be dismissed. In these cases, if the public prosecutor is not satisfied with the opinion of the court (i.e., dismissal or acquittal), he may appeal to the competent High Court. Furthermore, he may request for a cassation to the Supreme Court, if he is not satisfied with the High Court decision affirming the District Court decision.

According the explanation above, the competent District Court may make three kinds of decision upon the accused, i.e.:

(1) Punishment;
(2) Acquittal;
(3) Dismissal of all charges against the accused.

B. Cooperation for Speedy Trial

In pursuit of Article 4, paragraph (2) of the Act on the Basic of Judicial Power, the judicial administration shall be conducted simply, speedily and economically. These principles must fulfill the expectation of all seekers of justice. As we realized, they do not need a complicated examination procedure that may take a long time and, sometimes, it should be continued by an heir.

Cooperation among the investigator, public prosecutor and the judges at trial and also each superior, in practice, has sped up the examination process. Moreover, the role of the accused in showing the required evidence to the competent official of the law enforcement agencies, is also deemed another way for a speedy trial.

C. Securing Appropriate Sentence

In practice, there are quite many sentences passed by judges which have been considered not in accordance with the sense of justice in Indonesian society. The ordinary people consider those sentences so lenient that they might lead to an increase in crime, even though such argument has not been proven. Moreover, people do not want to understand why it has occurred in the Indonesian law enforcement system.

Securing an appropriate sentence is not only conducted by the judges at trial but also by the public prosecutor, investigator and other officials of criminal agencies. An appropriate sentence should be made on an appropriate request of charges against the defendant, and it is based on effective investigationary results. In other words, an inappropriate sentence is merely caused by human errors which are made by those law enforcement officials. Therefore, providing the proper training for those officials is necessary to reduce human errors in sentencing.

D. Supervision over the Fair Application of Law

Similar to the above-described, people often ask judges why they do not perform the same justice in sentencing offenders committing the same crime under similar circumstances. According to Justice Soerjono (see paper in Indonesia-Japan Joint Seminar, Jakarta, January 20-24, 1992, pp. 6-8), there are several factors which might influence the decision of judges in passing sentences, i.e.:

(1) Nature of Crime;
(2) Defendant's Character;
(3) Community response toward crime; and
(4) Chance.

Considering that judges, public prosecutors, investigators and other law enforcement officials are government

officials who should obey governmental disciplinary regulations, the role of their respective superiors in supervising over the fair application of law is really important. Public supervision that is carried out by the Indonesian people through the mass media is deemed another instrument to control the fair application of the law. Moreover, the request for appeal and cassation is a pivotal instrument to supervise fairness, which is the right of the public prosecutor and/or the defendant.

In conducting trial proceedings, the public prosecutor in charge shall be obligated to present the defendant, witnesses, experts and all evidence concerning the defendant who is accused of having committed a crime. If in fact the accused or the witnesses were legally summoned but failed to be present at trial, the examination of the case can not be continued and the head judge shall order said person to be summoned once again for the next trial session. Usually, delay in the trial proceedings may be caused by:

(1) The required witnesses not having received the summons.
(2) A witness' intent to arrive at the trial on the second summons. Usually, it is carried out if the defendant is still in the detention and the witness is the victim of the defendant.

VI. EXECUTION OF PUNISHMENT

Pursuant to Article 270 of the Act on Criminal Procedure, which is also signified by Act No. 5/1991 on Prosecution Service of the Republic of Indonesia, the execution of punishment which has become final and binding shall be carried out by the public prosecutor. For this purpose, a copy of the execution of punishment shall be sent to the public prosecutor by the clerk. Then, the public prosecutor shall send, a copy of the minutes on the execution of the punishment signed by himself, by the head of the correction agency and by the convicted person, to the court which decided the case in the first instance and the clerk shall record it in the register of supervision and observation.

For the purpose of supervision and observation, in every court there must be a judge who is given the special duty of assisting the head in carrying out the supervision and observation with regard to the punishment of depriving liberty. Therefore, it is clear that the executor of punishment is the public prosecutor which is different in civil law enforcement. The executor of civil law is the clerk of the court.

VII. PUBLIC PROSECUTORS' INVOLVEMENT IN NATIONAL CRIMINAL JUSTICE POLICY

Public prosecutors are also involved in the activities of, *inter alia*, in the promotion of legal public awareness, precaution as a measure in securing law enforcement policy, precaution as a measure of security of the printed matter circulation, the supervision of mysticism which can endanger the society and the state, the prevention of misuse and/or blasphemy of religion and the research and development of law and administrative matters. Additionally, public prosecutors represent the state or government inside as well as outside the courts in regards to national justice policy.

Coping with the public prosecutor's involvement in national justice policy, the Prosecution Service has five missions, i.e.:

(1) To secure and defend Pancasila as the Indonesian philosophy against any attempts which can shake the coexistence of the society, nation and state.
(2) Must be capable of giving shape to the legal security, rule of law, justice and truth based upon the law and of observing the norms of religion, good manners and morality; and also be obligated to delve into the living values of humanity, law and justice in the society;

(3) Must be capable of being fully involved in the development process, *inter alia*, having a share in the creation of conditions and infrastructure which support and secure the implementation of development in order to give shape to the just and prosperous society based upon Pancasila;
(4) Safeguarding and enforcing the authority of the government and state of the Republic of Indonesia; and
(5) To protect the interest of the people through law enforcement.

Implementation of those missions are conducted by the Attorney General, who is assisted by one Vice-Attorney General and six Deputy Attorneys General. It is clear that Indonesian public prosecutors are involved not only in law enforcement but also in the implementation of the national development programs. The involvement of the Attorney General, heads of the High Prosecution Offices and heads of the District Prosecution Offices related to each level, as the chiefs of the Committee of Supervision for General Elections, is a good example of this matter.

APPENDIX A

**TOTAL NUMBER OF PERSONNEL
IN THE INDONESIAN PROSECUTION SERVICE
(August 18, 1997)**

Region	Prosecutor	Other Staff	Total
The Attorney General Office (Headquarters)	423	1,709	2,132
Aceh Special Region	124	312	436
North Sumatera	336	619	755
West Sumatera	131	366	497
Riau	132	282	414
Jambi	94	185	279
South Sumatera	187	380	567
Bengkulu	62	123	185
Lampung	141	246	387
Jakarta District Capital	212	532	744
West Java	551	1,245	1,796
Central Java	428	1,334	1,762
Yogyakarta Special Region	99	461	560
East Java	589	1,077	1,666
Wesk Kalimantan	104	203	307
Central Kalimantan	88	159	247
South Kalimantan	136	199	335
East Kalimantan	122	118	240
North Sulawesi	101	203	304
Central Sulawesi	107	167	274
South East Sulawesi	56	141	197
South Sulawesi	289	568	857
Bali	128	308	436
West Nusa Tenggara	82	208	290
East Nusa Tenggara	107	257	364
Maluku	131	234	365
Irian Jaya	87	179	266
East Timor	73	174	247
Secondment	8	0	8
Grand Total	**5,128**	**11,989**	**17,117**

Source: Bureau of Personnel Affairs, Office of the Attorney General.

APPENDIX B

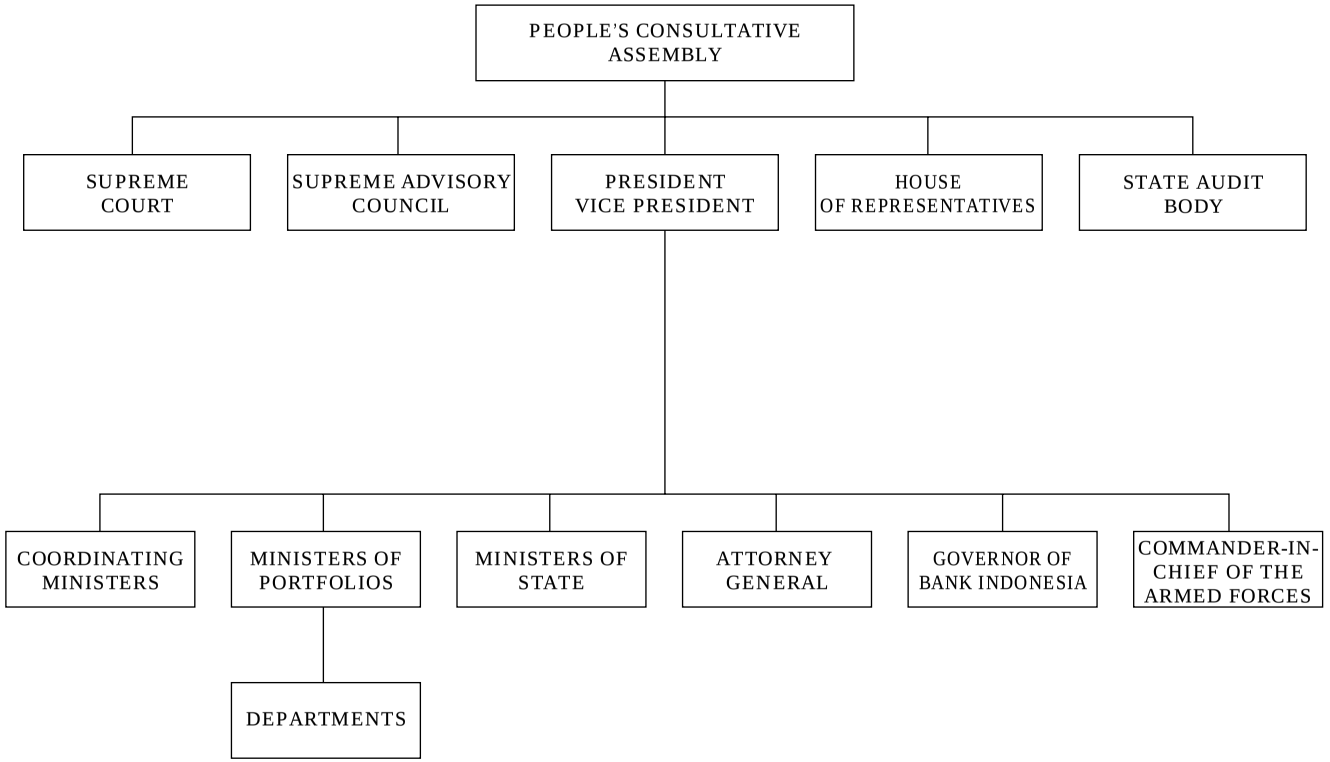
NUMBER OF GENERAL CRIME CASES ACCEPTED BY THE ATTORNEY GENERAL'S OFFICE (April 1996 – March 1997)

High Prosecuting Office	Backlog of 1996	Receipt in 1997	Total in 1997	Disposal			Stopping Investigation	
				Stopped Investigation	Become Cases	Pending in 1997	Appropriate	Inappropriate
Aceh Special Region	545	281	1,826	81	1,264	481	76	5
North Sumatera	2,074	5,550	7,624	130	4,832	2,662	122	8
West Sumatera	560	1,310	1,870	12	1,179	679	9	3
Riau	285	1,539	1,824	13	1,497	314	9	4
Jambi	295	850	1,145	13	832	300	13	–
South Sumatera	1,340	3,632	4,972	8	3,594	1,370	6	2
Bengkulu	499	724	1,223	4	659	560	–	4
Lampung	697	1,815	2,512	2	1,723	787	2	–
West Kalimantan	537	1,406	1,943	5	1,300	638	4	1
Central Kalimantan	148	815	963	3	831	129	1	2
East Kalimantan	313	2,154	2,467	13	2,198	256	3	10
South Kalimantan	1,376	1,884	3,260	44	1,829	1,387	44	–
West Java	4,061	9,621	13,682	25	9,560	4,097	19	6
Jakarta District Capital	9,056	5,633	14,689	3	5,356	9,330	–	3
Central Java	1,307	6,162	7,469	32	6,166	1,271	29	3
Yogyakarta Special Region	125	940	1,065	1	925	139	–	1
East Java	2,109	1,635	3,744	15	1,548	2,181	3	12
North Sulawesi	2,800	1,220	4,020	10	1,050	2,960	2	8
Central Sulawesi	531	845	1,376	20	798	558	17	3
South East Sulawesi	524	871	1,395	–	1,027	368	–	–
South Sulawesi	1,492	3,506	4,998	36	3,223	1,739	1	35
Bali	336	1,559	1,895	30	1,444	421	30	–
West Nusa Tenggara	918	923	1,841	55	889	897	11	44
East Nusa Tenggara	777	1,130	1,907	14	1,032	861	2	12
Maluku	1,047	1,194	2,241	54	1,010	1,177	14	40
Irian Jaya	170	1,001	1,171	23	974	174	17	6
East Timor	123	371	494	9	293	192	5	4
Total	**34,045**	**59,571**	**93,616**	**655**	**57,033**	**35,928**	**439**	**216**

Source: Office of the Deputy Attorney General for General Crime.

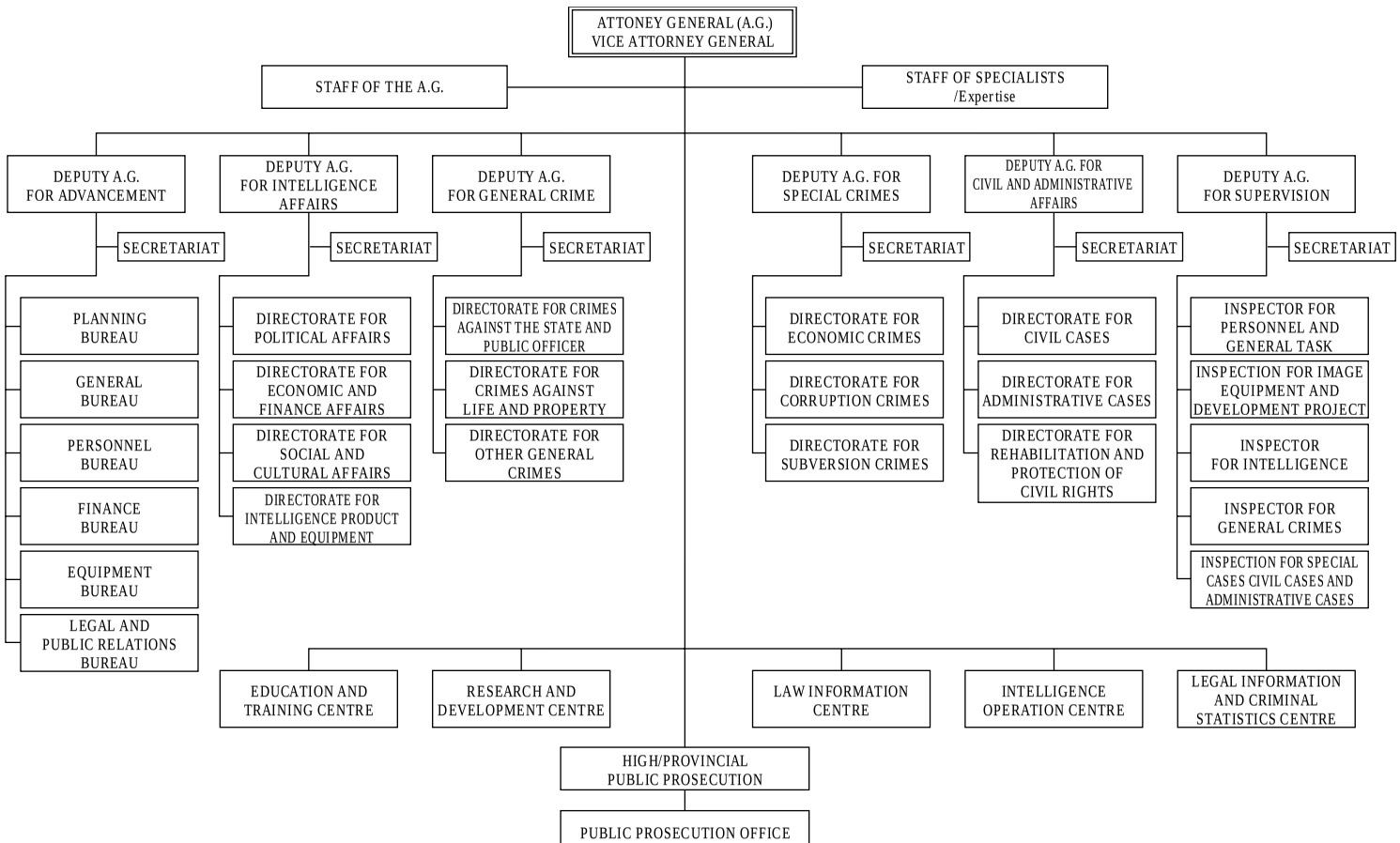
APPENDIX C

ORGANIZATIONAL STRUCTURE OF THE NATIONAL GOVERNMENT



APPENDIX D

ORGANIZATIONAL STRUCTURE OF THE PUBLIC PROSECUTION SERVICE



APPENDIX E

DETENTION PERIOD ACCORDING TO ACT NO. 8/1981 ON CRIMINAL PROCEDURE

Detention Warrant Issued by	Valid Maximum (days)	Extension		Total (days)	Exceptional Extension (art. 29)		Total
		By	Maximum (days)		By	Maximum (days)	
First Instance							
Investigator (art. 24)	20	Public Prosecutor	40	60	Head of Competent District Court	30 + 30	120
Public Prosecutor (art. 25)	20	Head of Competent District Court	30	50	Head of Competent District Court	30 + 30	110
Presiding Judge at District Court (art. 26)	30	Head of Competent District Court	60	90	Head of Competent High Court	30 + 30	150
Appeal							
Presiding Judge at High Court (art. 27)	30	Head of Competent High Court	60	90	Justice of the Supreme Court	30 + 30	150
Cassation (Second Appeal)							
Justice of the Supreme Court (art. 28)	50	Chief Justice of the Supreme Court	60	110	Chief Justice of the Supreme Court	30 + 30	170
Total maximum length of detention period				**410**	**Extreme Exceptional Extension**		**700**