



## ARTICLE

# Is the Separation of State Attorneys the Key to Legal Reform in State Administrative Courts?

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## Abstract

The role of state attorneys in administrative justice has long been a topic of debate, particularly in the context of Indonesia's State Administrative Court (PTUN). Currently, state attorneys serve as both legal representatives for the government and as the public prosecutor in administrative disputes. This dual function has raised concerns about potential conflicts of interest and inefficiencies in the judicial process. This research explores the concept of separating the roles of state attorneys in the PTUN as a potential bridge for legal reform, with the aim of improving impartiality, transparency, and efficiency in state administrative disputes. Using a normative juridical approach, the study examines the advantages and challenges of creating a clear distinction between the roles of government legal counsel and public prosecutors in administrative cases. The findings suggest that such a separation could reduce conflicts of interest, enhance fairness in the adjudication process, and promote a more balanced approach to administrative justice. However, the implementation of this reform faces practical challenges, such as institutional resistance and the need for legislative changes. The novelty of this research lies in its exploration of a structural reform within the Indonesian administrative justice system, offering a fresh perspective on improving the independence and credibility of state administrative courts. The urgency of this reform is emphasized by the growing need for a more transparent and efficient judicial system that can meet the demands of modern governance. This study contributes to the ongoing discourse on



legal reform in Indonesia and provides recommendations for policymakers aiming to strengthen the administrative justice system.

## Keywords

*State Attorneys, Legal Reform, State Administrative Court, Conflict of Interest, Judicial Independence*

## Introduction

In the trial process at the State Court, the State Attorney (JPN) acts as a representative of the government. The main task of the NRD is to provide legal assistance to government agencies in dealing with disputes filed in court. They act on behalf of the state and have the authority to file lawsuits or applications with the courts, as well as represent the interests of the government in state administrative matters. The NRD has the responsibility to ensure that the government's actions are in accordance with applicable laws. They not only play a role in litigation, but also in providing legal considerations and other legal services to government agencies.<sup>1</sup>

The prosecutor who convenes in the State Administrative Court (PTUN) is the prosecutor under the auspices of the Prosecutor's Office of the Republic of Indonesia (*Kejaksaan RI*). Usually, prosecutors are better known for criminal and civil matters rather than disputes over the arbitrariness of the government in office. The Prosecutor's Office of the Republic of Indonesia (*Kejaksaan RI*) is a law enforcement agency that has an important role in the legal system in Indonesia. This institution is led by the Attorney General who is directly responsible to the President. The Prosecutor's Office consists of three levels, namely the Attorney General's Office, the High Prosecutor's Office, and the District Attorney's Office, all of which operate in a complete unit in accordance with Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. The Indonesian Prosecutor's Office focuses on the criminal field and has strategic responsibilities in the law enforcement process.

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<sup>1</sup> Pratama Herry Herlambang, Yos Johan Utama, and Aju Putrijanti, 'Efforts To Improve And Implement The Use Of E-Court In The Semarang State Administrative Court', *Journal of Progressive Law*, 11.2 (2023), 94–107.

In the investigation and examination stage in court, the existence of the prosecutor's office is very crucial. In addition, the Prosecutor's Office also has duties in the field of Civil and State Administration (DATUN), where the Prosecutor plays the role of state attorney. In this context, the State Attorney (JPN) is tasked with protecting the interests of the state both inside and outside the court.<sup>2</sup>

Based on Law No. 16 of 2004, the duties and authorities of the Prosecutor's Office include various important aspects. In the criminal field, the prosecutor's office prosecutes violations of the law, implements court decisions that have permanent legal force, and supervises the implementation of conditional criminal judgments.<sup>3</sup> In addition, they also conduct investigations into certain criminal acts and complete case files before being handed over to the court. Meanwhile, in the field of Civil and State Administration, the Prosecutor acts on behalf of the state in civil cases and plays an active role in securing state finances through litigation and non-litigation. In addition, the prosecutor's office also has the responsibility to increase public legal awareness of their rights.<sup>4</sup>

In this study, the author focuses on the development of a new field in the Indonesian prosecutor's system, namely the State Administrative Prosecutor, which is a branch of the State Attorney (JPN). The State Attorney has an important role in handling civil and state administrative cases, which is an integral part of the functions of the Prosecutor's Office of the Republic of Indonesia. Although the term State Attorney (JPN) is not explicitly mentioned in Law No. 16 of 2004 concerning the Prosecutor's Office, its roles and responsibilities have been regulated in various relevant regulations and laws.

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<sup>2</sup> Iska Tirta Adiyaksa and others, 'The Role and Obstacles to the Functionalization of State Attorneys in the Civil and State Administration Sector: A Study on the Sidoarjo District Attorney's Office', *Journal of Police and Law Enforcement*, 1.1 (2023), 2.

<sup>3</sup> Denny Saputra, Andi Surya Perdana, and Hendrik Murbawan, 'The Role of Prosecutors in the Justice System in Indonesia', *Halu Oleo Law Review*, 6.2 (2022), 2 <<https://holrev.uho.ac.id>>.

<sup>4</sup> Muhammad Yusuf and others, 'The Position of the Prosecutor as a State Lawyer in the Scope of Civil and State Administration', *Jurnal Yustika: Media of Law and Justice*, 21.02 (2019), 2 <<https://doi.org/10.24123/yustika.v21i02.1500>>.

<sup>5</sup>The existence of the State Administrative Prosecutor is very important in the context of law enforcement and the protection of the public interest. With this field, it is hoped that synergy can be created between the government and the community in solving complex legal problems.

The State Administrative Prosecutor is tasked with representing the state in all legal aspects related to public administration. This task includes handling civil cases, where prosecutors can file lawsuits in court to protect the interests of the state and society. In addition, they also provide legal considerations to the government and related agencies regarding legal actions that must be taken. In carrying out their duties, the State Administrative Prosecutor has the responsibility to supervise the implementation of court decisions related to civil cases and provide legal assistance for government agencies in dealing with legal disputes.

The importance of the State Administrative Prosecutor lies in his ability to resolve disputes between citizens and the government regarding permits or public policies in a fair and efficient manner. In this context, the existence of prosecutors as mediators and protectors of the public interest is very strategic. Presidential Regulation of the Republic of Indonesia No. 38 of 2010 regulates the organization and work procedures of the Prosecutor's Office, including the role of the Deputy Attorney General for Civil and State Administration. In the regulation, it is explained that prosecutors have special powers to act on behalf of the state both inside and outside the court. This shows that the function of the State Attorney (JPN), including the State Administrative Prosecutor, is very important in maintaining the authority of the government and protecting state assets.

Thus, the development of the field of State Administrative Prosecutors is a step forward in the law enforcement system in Indonesia. The separation of the State Attorney (JPN) into a separate institution in the structure of the Prosecutor's Office of the Republic of Indonesia is a very important and urgent

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<sup>5</sup> Andi Fahrudin, 'Duties and Authorities of the Prosecutor's Office in the Civil and State Administration Sector', 2017, 5 <<https://media.neliti.com/media/publications/209892-tugas-dan-wewenang-kejaksaan-di-bidang-p.pdf>>. See also Permana, Tri Cahya Indra, and Amiludin Amiludin. "A New Era in the Implementation of Rehabilitation and Compensation Rulings in State Administrative Courts." *Journal of Law and Legal Reform* 5.3 (2024).

step in the context of legal reform in Indonesia. The Indonesian Prosecutor's Office, as a law enforcement agency directly responsible to the President, has a very strategic role in law enforcement, both in the criminal field and in the civil and state administration fields. However, in practice, the existence of the State Attorney (JPN) in the structure of the Prosecutor's Office often faces significant challenges, especially related to the conflict of interest between the public prosecution function and the state attorney function. This can result in unclarity in the implementation of the duties and responsibilities of the Prosecutor, and has the potential to harm the public interest.

Since the birth of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, the State Attorney (JPN) has functioned as a state lawyer who protects the interests of the state in civil and state administrative cases. However, with the increasing complexity of legal problems faced by the community and the government, as well as the increasing demands for accountability and transparency in administrative decision-making, the separation of the State Attorney (JPN) into a separate institution can be a solution to clarify the roles and responsibilities of the Prosecutor. With this separation, the State Attorney (JPN) can focus more on his duties as a state attorney without being affected by the often confrontational public prosecution duties.

Furthermore, this separation is also in line with the development of international law that prioritizes the principles of independence of law enforcement agencies. In this context, Lawrence M. Friedman's theory of the interaction between the law, society, and legal institutions can be used as a basis for understanding the urgency of the separation of the State Attorney (JPN).<sup>6</sup> Friedman emphasized that the effectiveness of the legal system depends not only on the existing rules, but also on how the legal institution operates in its social context. Thus, the separation of the State Attorney (JPN) into a separate institution will allow for an increase in efficiency and effectiveness in law enforcement in the field of state administration.

The urgency of separating the State Attorney (JPN) from the DATUN field can be seen from two sides. First, this separation will clarify the role and responsibility of the Prosecutor in handling civil and state administrative cases, so as to increase the efficiency and effectiveness of law enforcement in this field.

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<sup>6</sup> I Gusti Ngurah Dharma Laksana and others, *Sociology of Law, Expression Library*, 2017.

Within the framework of legal system theory, this separation is expected to create a system that is more responsive to the needs of the community and reduce the ambivalence of the position of the prosecutor who is often trapped between the prosecution and advocacy functions. With the existence of a separate State Attorney (JPN) institution, it is hoped that the Prosecutor can focus more on his duties as a state attorney without being affected by the criminal prosecution agenda.

Second, this separation also has the potential to support the implementation of good governance principles in a separate State Attorney (JPN) organization. With a clear and independent structure, the State Attorney (JPN) can be more effective in providing legal services to the community and the government. This will improve the quality of legal services and public trust in the state administrative judicial institution. The implementation of good governance principles in the State Attorney (JPN) organization can include transparency, accountability, and public participation in the decision-making process. Thus, the urgency of separating the State Attorney from the Civil and State Administration (DATUN) in supporting legal reform in the state administrative court in Indonesia is very important to pay attention to according to the theoretical framework of the legal system. In addition, the implementation of the principles of good governance in a separate State Attorney organization can also improve the quality of legal services and public trust in the state administrative judicial institutions. By answering these two aspects, it is hoped that this study can provide a comprehensive overview of the importance of the separation of State Attorneys as a strategic step to strengthen the legal system in Indonesia and increase public trust in the state administrative justice process.

This research was carried out by applying qualitative research methods. The qualitative method itself is a research approach that tends to focus on the use of words, narratives, and descriptions in the process of data collection and analysis, compared to a number-based or quantification approach. The data generated in this study is descriptive, which means that the results of the study will be presented using data citations or direct statements obtained from respondents or research objects<sup>7</sup>. The citation serves to clarify and provide more

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<sup>7</sup> Adhi Kusumastuti and Ahmad Mustamil Khoiron, *Qualitative Research Methods* (Sukarno Pressindo Education Institute (LPSP), 2019).



specific details so that it is able to support the findings and explain the results of the research in detail and comprehensively.

This research focuses on the analysis of literature materials consisting of primary and secondary legal sources, with the main topic being the proposal to establish a special field for prosecutors, namely state administrative prosecutors.<sup>8</sup> The approaches used in this study include a legislative approach, a conceptual approach, and an analytical approach. The legislative approach is used to conduct normative studies by analyzing various laws and regulations related to the state administrative judiciary. Furthermore, a conceptual approach is utilized to understand relevant theoretical views and legal doctrines through literature study and secondary data analysis. Meanwhile, an analytical approach was used to analyze the primary and secondary legal materials obtained during the study.

## Implications for the Separation of State Attorneys from Civil Law and State Administration (*Datun*)

The State Attorney is an integral part of the Prosecutor's Office of the Republic of Indonesia which has a strategic function in representing the state in the field of civil law and state administration (*Perdata dan Ttaa Usaha Negara*, hereinafter as *Datun*). However, the development of the community's legal needs, the complexity of the cases faced, and the demands of legal reform put forward the urgency of separating The State Attorney function from the *Datun* field to increase effectiveness and professionalism. In this context, Lawrence M. Friedman's theory of the legal system which includes legal structure, legal substance, and legal culture is a relevant analytical framework to understand and support this idea.

A legal system is a unit consisting of various elements, such as regulations and determinations, that interact with each other and are influenced by cultural, social, economic, historical, and other factors. On the other hand, the legal system also has an impact on aspects outside of itself. These legal rules can be interpreted in different ways, so there is always room for development and

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<sup>8</sup> S H I Kristiawanto, *Understanding Normative Legal Research* (Prenada Media, 2022).

change in the legal system.<sup>9</sup> Lawrence M. Friedman's legal system theory emphasizes that the success of the legal system is determined by three main elements: legal structure, legal substance, and legal culture. These three elements can be used to analyze the urgency of separating The State Attorney from Datun's field.<sup>10</sup>

The legal structure includes institutions, institutions, and mechanisms that support the implementation of the law. In the context of the JPN, the current legal structure shows limitations in supporting the optimal performance of the JPN. Datun fields that integrate various functions, including NRD, create a heavy workload and often hinder quick and informed decision-making.

The separation of the NRD from the Datun field will allow for the formation of a more focused institutional structure. The NRD can function as an independent unit with clear authority and adequate resources. This will increase efficiency in the settlement of civil and state administrative cases and strengthen the role of The State Attorney as the country's representative in the judicial system.

Legal substance refers to the rules, norms, and principles on which the legal system is based. In the context of the JPN, the current legal substance does not fully support the independence and professionalism of the JPN. The regulations governing the NRD are still within the framework of the Datun field, so the functions and responsibilities of the NRD tend to be subordinate.

Reform of legal substance is needed to explicitly regulate the position, functions, and responsibilities of the NRD as a separate entity. This can be done through the revision of related laws and regulations, which provides a solid legal foundation for the NRD to operate independently. Thus, the NRD will have stronger authority in carrying out its duties without being affected by other interests in the field of Datun.

In addition, it is important to note that this separation does not contradict Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (Prosecutor's Law) or the current Attorney General's regulations. However, this separation requires legal adjustments, such as revisions to the articles that regulate the

<sup>9</sup> Akhmad Nikhrawi Hamdi, *Textbook of the Indonesian Legal System*, 2022.

<sup>10</sup> Lawrence M Friedman, *The Legal System: A Social Science Perspective* (Nusamedia, 2019).



functions and structure of the Datun field. The revision can be done through a legal legislation process, so that it does not violate applicable legal principles.

Legal culture reflects the attitudes, perceptions, and values embraced by the community and law enforcement officials towards the law. In the case of the JPN, the current legal culture often does not support the independence and professionalism of the JPN. There is still a view that the NRD is only part of the bureaucracy that is subject to the hierarchical structure of the Datun field, thus hindering the development of a work culture oriented towards public services and justice.

The separation of The State Attorney from Datun can be a strategic step to build a more progressive legal culture. With an independent structure, The State Attorney can develop a work culture that is professional, accountable, and oriented to the interests of the state and society. In addition, this separation can also increase public confidence in the legal system, as it shows the government's commitment to realizing real legal reforms.

## Separation of State Attorneys to Improve Good Governance in Legal Services

The principle of Good Governance originated from a windmill country. In 1946, the Dutch government established the De Monchy Commission led by De Monchy to seek alternatives in improving legal protection against deviant government actions. The establishment of this commission is a response to the need for protection for citizens in the context of a more modern legal state. In this effort, the De Monchy Commission examines various aspects of legal protection and formulates principles that are expected to prevent unfair administrative actions. The work of this commission then became the basis for the development of the general principles of good governance (AUPB), which aim to ensure that administrative officials carry out their duties fairly and in accordance with ethical values, as well as provide legal guarantees for the community.<sup>11</sup>

In his book, Pratama Herry Herlambang explained that the General Principles of Good Governance (AAUPB) is a legal principle derived from

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<sup>11</sup> Muhamad Sadi Is and others, *State Administrative Law* (Prenada Media, 2021).

moral values, which is rooted in morality. This morality includes aspects of ethics, decency, and propriety that are recognized in the norms that apply in society. Thus, the AAUPB not only serves as a normative guideline, but it also has binding powers that administrative officials must adhere to. This shows that AAUPB plays an important role in maintaining integrity and justice in the administration of government. As a legal principle, AAUPB requires officials to act in accordance with the norms that have been set, so that their actions can be accounted for and do not violate the rights of citizens. Therefore, AAUPB is an important foundation in ensuring that every policy and administrative decision is carried out with full ethical and moral considerations, in order to achieve good and fair public services.

The implementation of good governance principles in the separation of the State Attorney (JPN) from the Civil and State Administration (DATUN) is a strategic step to create a more transparent, accountable, and effective organization in carrying out its duties. This separation not only supports efficiency, but also allows for law enforcement that is more oriented towards public services. In this context, the discussion of the implementation of good governance through the separation is very relevant to be understood more deeply.

The principles of good governance include transparency, accountability, participation, efficiency, effectiveness, fairness, and the rule of law.<sup>12</sup> Within the framework of the separation of NRD from DATUN, each of these principles can be implemented in various ways. In addition, the implementation of this separation can also be associated with the general principles of good governance (AAUPB) such as the principle of legal certainty, the principle of order in state administration, the principle of public interest, the principle of openness, the principle of proportionality, and the principle of accountability.

First, transparency can be realized through the separation of clear and independent organizational structures. With a separate structure, the functions and responsibilities of the NRD become more specific and can be better supervised. In addition, the management of information related to the duties and authorities of the NRD can be carried out openly, so that the public and

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<sup>12</sup> Muhammad Tanzil and Aziz Rahimallah, 'General Principles of Good Governance (AAUPB) and Good Governance', November, 2022, 5 <<https://doi.org/10.31219/osf.io/pw9fh>>.

related parties can easily access the information. This transparency also supports the principle of openness that encourages the administration of a transparent and accessible state to the wider community.

Accountability is one of the important pillars in the implementation of good governance. The separation of the NRD from DATUN allows for a clearer division of responsibilities. An independent NRD can develop a specific performance evaluation mechanism, so that each individual in the organization has measurable responsibility for the results of their work. This accountability is strengthened by the principle of accountability in AAUPB, where every government organizer is obliged to account for the implementation of his duties to the community in accordance with laws and regulations. The implementation of periodic audits, transparent performance reports, and a fair reward and punishment system can be a supporting mechanism in the implementation of this principle.

The principle of participation in good governance can be implemented by involving various parties in the decision-making process in a separate NRD. For example, the NRD can open a dialogue space with the public, non-governmental organizations, and academics to get input on policies and strategies to be taken. By involving various stakeholders, the NRD can ensure that the decisions taken reflect the needs and aspirations of the community. This is also in accordance with the principle of public interest, where the decisions taken must provide maximum benefits for the wider community.

Efficiency and effectiveness are two interrelated principles and can be improved through this separation. In an independent structure, the NRD can focus on its specific tasks without being distracted by other fields of work under the DATUN. This allows the allocation of resources, both human and budget, to be carried out more optimally. Efficiency can also be achieved through the development of an integrated work system, such as digitizing administrative processes and resolving legal cases. Thus, the time and cost required to complete NRD tasks can be minimized. This efficiency supports the principle of orderly state administration that prioritizes orderly, systematic, and uncomplicated government management.

In the context of justice, the separation of the NRD from DATUN provides an opportunity for this organization to focus more on fair and impartial legal services. As an independent institution, the NRD can avoid

potential conflicts of interest that may arise in the previous organizational structure. This independence allows the NRD to carry out its duties more objectively and professionally, so that justice for the community can be better realized. This principle is also relevant to the principle of proportionality, which prioritizes the balance between rights and obligations in every act of government.

The rule of law as the last principle in good governance can also be realized through this separation. The NRD, which is separate from DATUN, can focus more on law enforcement in accordance with laws and regulations. With an independent structure, the NRD can act as a firm and consistent legal guardian without intervention from disinterested parties. This is important to ensure that the law remains the main foundation in every decision and action taken by the NRD. The principle of legal certainty is also very relevant here, ensuring that every action of the NRD has a clear legal basis and provides protection to the public.

The separation of The State Attorney from DATUN also opens up opportunities for strengthening institutional capacity. In an independent structure, The State Attorney can develop training and human resource development programs that are more focused on the specific needs of the organization. This training can cover various aspects, such as litigation, mediation, and negotiation skills, which are urgently needed in legal services to the community and the government. In addition, the NRD can also collaborate with international institutions to improve the quality of its legal services.

However, the implementation of good governance principles in the separation of The State Attorney from DATUN is not without challenges. One of the main challenges is resistance to change, both from within the organization and from external parties. To overcome this, an effective communication strategy is needed to explain the benefits of this separation to all parties involved. In addition, there needs to be strong political and policy support to ensure that this separation process can run smoothly. Another challenge is the need for adequate resources to support JPN's independent operations. This separation requires sufficient budget allocation to build infrastructure, work systems, and human resource development. Therefore,

careful planning and support from the government are urgently needed to ensure the success of this separation.

In the long term, the separation of The State Attorney from DATUN is expected to have a significant positive impact. By applying the principles of good governance and the principles of AAUPB, The State Attorney can become a more transparent, accountable, and responsive institution to the needs of the community. This separation can also strengthen public trust in the legal system in Indonesia, which will ultimately support the creation of a fairer and more prosperous society. Overall, the implementation of good governance principles in the separation of The State Attorney from DATUN is a strategic and visionary step. By adopting this approach, The State Attorney can become a more professional and public service-oriented organization.

## Conclusion

The separation of the State Attorney (JPN) from the Civil and State Administration (DATUN) is a strategic step needed to strengthen the legal system in Indonesia. This study shows that the separation will not only increase the effectiveness of legal services, but will also strengthen transparency and accountability in administrative decision-making. With a clear organizational structure, the NRD can be more responsive to the needs of the community and reduce the potential for conflicts of interest that often arise in law enforcement practices. The application of good governance principles in a separate The State Attorney organization is expected to create a more professional and public service-oriented institution.

Therefore, it is recommended that the government and relevant stakeholders immediately formulate regulations that support this separation, as well as conduct socialization to increase public understanding of the roles and responsibilities of JPN. With these steps, it is hoped that public trust in the legal system and state administrative judicial institutions can increase, creating a fairer and more prosperous society.

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