

A LEGAL ANALYSIS OF THE INDEPENDENCE OF THE PROSECUTORIAL SYSTEM: A COMPARATIVE STUDY BETWEEN THE UNITED STATES AND INDONESIA.

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Abstract

The independence of the prosecutor's office constitutes an essential element in a democratic rule of law because the institution exercises strategic authority in determining prosecution policy and implementing criminal law enforcement. Differences in constitutional structure, legal traditions, and political systems influence how prosecutorial independence is designed and practiced across countries. This article examines the independence of prosecutorial institutions in Indonesia and Amerika Serikat through a comparative constitutional law approach by analyzing institutional status, prosecutorial powers, legal principles, and mechanisms of accountability within each legal system. The research applies normative legal methods using statutory, conceptual, and comparative approaches, supported by primary, secondary, and tertiary legal materials analyzed qualitatively through deductive and comparative reasoning. The findings show that prosecutorial independence includes structural, functional, and personal dimensions. In Indonesia, functional independence is formally recognized, yet structural and personal independence remain limited due to the prosecutor's institutional placement within the executive branch and the



hierarchical nature of prosecutorial authority. In contrast, the United States demonstrates relatively stronger structural and functional independence through federal institutional design, decentralized prosecution, and constitutional checks and balances, although risks of politicization remain in certain contexts. Strengthening constitutional guarantees, accountability mechanisms, and merit-based professional systems is therefore necessary to reinforce prosecutorial independence in Indonesia as part of broader democratic legal reform.

Keywords:

Independence, Prosecutor's Office, United States, Indonesia

Introduction

The Unitary State of the Republic of Indonesia is a state based on the rule of law that guarantees an independent judiciary in the exercise of its judicial functions, as affirmed in Article 1, paragraph (3), and Article 24, paragraph (1), of the 1945 Constitution of the Republic of Indonesia. In accordance with the above provisions, a number of legal experts have also emphasized the importance of the independence of law enforcement agencies.¹ Jimly Asshiddiqie stated that in a modern state governed by the rule of law, law enforcement agencies must possess a certain degree of independence in order to effectively exercise oversight over the abuse of power and ensure legal certainty for the public.²

To ensure the status and role of the Attorney General's Office of the Republic of Indonesia in exercising state authority, particularly in the areas of prosecution and other powers as provided by law, and to ensure that this institution remains free from the influence of any party, it is deemed necessary to amend Law No. 16 of 2004 on the Attorney General's Office through Law No. 11 of 2021 so that adjustments to meet evolving legal needs can be made. The constitutional framework regarding law enforcement, as set forth in the preamble, affirms that the Attorney General's Office is a

¹ Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 1 ayat (3) dan Pasal 24 ayat (1).

² Jimly Asshiddiqie, *Konstitusi dan Konstitusionalisme Indonesia* (Jakarta: Sinar Grafika, 2010), 128.

government institution that exercises state authority in the field of prosecution, which must be carried out independently of the influence of any other authority. Under Indonesia's constitutional system, the Attorney General's Office of the Republic of Indonesia is designated as one of the institutions with functions related to the judicial branch, as stipulated in the 1945 Constitution of the Republic of Indonesia.

Therefore, to ensure the position and role of the Attorney General's Office in exercising state authority—particularly in the area of prosecution and other powers granted by law—the Attorney General's Office must be free from the influence or interference of any party. In addition, the provisions regarding the Attorney General's Office of the Republic of Indonesia, which were previously set forth in Law No. 16 of 2004, are considered to no longer fully align with evolving legal needs and societal dynamics. Based on these considerations, it is deemed necessary to enact a new law amending Law No. 16 of 2004 on the Attorney General's Office of the Republic of Indonesia. This underscores that the independence of the Attorney General's Office is an essential prerequisite for ensuring the enforcement of the law in a fair, objective, and impartial manner, free from political interference.³ Thus, the independence of the Attorney General's Office is not only related to institutional aspects but also to the protection of the rule of law within the constitutional system.

Historically, the existence of the prosecution service in Indonesia has its roots in the Dutch colonial legal system through the *Openbaar Ministerie*, which served as the public prosecutor's office within the structure of the Dutch East Indies government. Following the Proclamation of Independence in 1945, this structure was incorporated into the national legal system in accordance with the Transitional Provisions of the 1945 Constitution, which stipulate that existing regulations remain in force until

³ Undang-Undang Nomor 11 Tahun 2021 tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia, LN RI Tahun 2021 No. 252, TLN No. 6688.

they are replaced.⁴ As Indonesia's constitutional system evolved, the Attorney General's Office subsequently developed into a national institution responsible for enforcing the law on behalf of the state.

Normatively, the status and authority of the Attorney General's Office are governed by Law No. 11 of 2021. Article 2(1) states that the Attorney General's Office is a government agency that exercises state authority in the field of prosecution and other powers as prescribed by law. Furthermore, Article 2, paragraph (2), stipulates that such authority is exercised independently, meaning free from the influence of the government or any other party.⁵ In addition, the authority of the Public Prosecutor's Office within the criminal justice system is affirmed in Article 30, which establishes prosecutorial authority as the primary responsibility of prosecutors in the prosecution of cases, as well as in Article 8(2), which states that prosecutors, in carrying out their duties and exercising their authority, act for and on behalf of the state and are accountable through the chain of command.⁶ The law also stipulates that in carrying out its duties and exercising its authority, the Attorney General's Office must act independently, professionally, responsibly, and accountably.

The reality is that the practice of prosecutorial independence in Indonesia still indicates that the structural position of the Prosecutor's Office—which falls under the executive branch—has the potential to lead to political interference in the law enforcement process. Research by Indonesia Corruption Watch (ICW) highlights notable cases, including the PT Taspen fictitious investment corruption case (Rp1 trillion), palm oil corruption, and the alleged involvement of regional heads.⁷ Trends indicate high levels of political corruption, with state losses reaching hundreds of trillions of

⁴ R. C. van Caenegem, *Judicial Institutions in the Netherlands Indies: Historical Development of the Public Prosecution Service*, Leiden: Brill, 1985, hlm. 45–47.

⁵ Undang-Undang Republik Indonesia Nomor 11 Tahun 2021 tentang Kejaksaan Republik Indonesia, Pasal 2 ayat (2).

⁶ Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia. Pasal 8 ayat (2), Pasal 30. Jakarta: Sekretariat Negara RI.

⁷ Laurensius Arliman, "Pembagian Dan Pemisahan Kekuasaan Ketatanegaraan Di Indonesia," *Ensiklopedia Of Journal* 6, no. 3 (2024): 305–111.

rupiah by 2024. In its reports, ICW has also frequently highlighted the weakening of anti-corruption enforcement by law enforcement agencies, particularly within the Indonesian Attorney General's Office. This situation indicates that the independence of the Attorney General's Office is not solely determined by legal norms but is also influenced by institutional dynamics, bureaucratic culture, and the accountability systems in place within the practice of law enforcement.⁸

Once the concept of prosecutorial independence has been understood more comprehensively, a comparative legal analysis is necessary; prosecution systems in other countries exhibit variations in institutional design and mechanisms of independence. The United States, for example, places the prosecutorial function within the executive branch through the United States Department of Justice, which is led by the Attorney General. Although part of the executive branch, the system incorporates checks and balances through the Senate's involvement in the confirmation process for the Attorney General and through active legislative oversight. These mechanisms are designed to ensure political accountability while safeguarding the independence of the law enforcement process.⁹

A comparison between the prosecutorial system in Indonesia and the prosecution system in the United States is worth examining because both countries place the prosecutorial function within the executive branch, yet have different institutional designs and oversight mechanisms. These differences can provide insight into various institutional models for safeguarding the independence of prosecutorial agencies within democratic legal systems. Based on the above discussion, this study aims to analyze the degree of independence of the prosecutorial system in Indonesia and

⁸ Indonesia Corruption Watch (ICW), *Tren Penindakan Kasus Korupsi 2024*, laporan ICW (Jakarta: ICW, 30 September 2025)

⁹ Lihat pengaturan mengenai pengangkatan *Attorney General* dalam Konstitusi Amerika Serikat serta praktik kelembagaan United States Department of Justice; lihat juga Erwin Chemerinsky, *Constitutional Law: Principles and Policies*, New York: Wolters Kluwer, 2015, hlm. 350.

compare it with the prosecutorial system in the United States using a comparative constitutional approach.¹⁰

Based on the above discussion, this study is descriptive-comparative in nature, aiming to describe, compare, and systematically analyze the normative foundations, institutional designs, and practices of prosecutorial independence in both countries. Through this approach, this study is expected to make an academic contribution to the development of constitutional law studies, particularly regarding the strengthening of the rule of law and the independence of prosecutorial institutions. Based on this background, the research questions in this study are as follows; (i) what is the state of the independence of the public prosecutor's office in Indonesia; (ii) what is the state of the independence of the public prosecutor's office in the United States; and (iii) what are the comparative constitutional studies on the independence of the public prosecutor's office systems in Indonesia and the United States.

Methods

This study is a normative comparative constitutional law study employing a comparative legal approach and utilizing the comparative theory (comparative approach) of Bruce A. Green and Fred C. Zacharias. Its objective is to analyze and compare the status and institutional independence of the public prosecutor's office in Indonesia and the United States based on constitutional norms, legislation, and prevailing legal doctrines.¹¹ The legal materials used consist of primary legal sources, including the 1945 Constitution of the Republic of Indonesia, Law No. 11 of 2021 Amending Law No. 16 of 2004 on the Attorney General's Office of the

¹⁰ Gabriella Nia and Setiabudhi, "Kedudukan Dan Fungsi Kejaksaan Dalam Sistem Ketenaga Kerjaan Diindonesia," *Lex Privatum* 11, no. 1 (2013): 1–10, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/45762>.

¹¹ Muhammad Adhe Agassi, Rikki Hendrawan, and Arkan Aziz Mubarak, "Analisis Politik Hukum Undang-Undang Nomor 3 Tahun 2020 Tentang Perubahan Atas Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral Dan Batubara," *Jurnal Ilmiah Multidisiplin* 1, no. 11 (2023): 397–412.

Republic of Indonesia, the U.S. Constitution, and U.S. federal statutes; secondary legal materials, such as books, scientific journals, academic articles, and international documents; and tertiary legal materials, such as legal dictionaries and encyclopedias.¹² Data collection was conducted through library research, while data analysis was performed qualitatively using a normative comparison method by examining the similarities, differences, and institutional implications regarding the guarantee of prosecutorial independence in both countries.

Result and Discussion

To support and strengthen the theoretical foundation of this paper, the author cites five previous studies that demonstrate that the issue of prosecutorial independence has been extensively examined, both from the perspective of national prosecution systems and through comparative law across nations. B. F. M. T. Simbolon's study highlights a comparison of the prosecution systems in Indonesia and the United States within the framework of restorative justice.¹³ Meanwhile, F. Ardiansyah's research emphasizes the importance of the independence of the prosecutor's office within the national criminal justice system.¹⁴ Other studies on the Prosecutorial Commission and Decision No. 6/PUU-XXII/2024 of the Constitutional Court of the Republic of Indonesia indicate that efforts to strengthen the independence of the prosecution service remain at the normative level and focus on ethical oversight.¹⁵ However, previous research has not specifically compared the institutional designs of the public prosecutor's offices in Indonesia and the United States from the perspective

¹² Indah Putri et al., "Analisis Hukum Pidana Terhadap Perbuatan Ujaran Kebencian," *Une Law Review* 5, no. 4 (2023): 3172–81.

¹³ B. F. M. T. Simbolon, *Juridical Review of Comparative Prosecution Systems in Indonesia and the United States* (Paris: Atlantis Press, 2022).

¹⁴ F. Ardiansyah and S. A. Romli, "Independensi Kewenangan Kejaksaan Republik Indonesia," *ELQONUN*, 2023.

¹⁵ Misslein and Evi Retno Wulan, "Asas Keadilan *Ratio Decidendi* Hakim dalam Putusan Nomor 813K/Pid2-23," *Jurnal Hukum Sehasen* 10, no. 1 (2024), <https://jurnal.unived.ac.id/index.php/jhs/article/view/9435>

of comparative constitutional law. This is where the novelty of this study lies: in analyzing the constitutional status, institutional independence, and oversight mechanisms of the prosecution in both legal systems.¹⁶

Based on these five secondary sources, it can be concluded that, from a normative perspective, the independence of the prosecution is a crucial aspect, particularly within the criminal justice system, as it is directly linked to the exercise of prosecutorial functions free from interference by other branches of government, thereby ensuring the enforcement of the law in an objective and professional manner, with a focus on legal certainty and justice.

Thus, this study is substantially different because it not only discusses the public prosecutor's office in Indonesia but also examines a legal analysis of the independence of the public prosecutor's office system in Indonesia and the United States. This study offers an original perspective by presenting a legal analysis comparing the prosecutorial systems of Indonesia and the United States, systematically examining their constitutional status, prosecutorial authority, and oversight mechanisms. The discussion in this study aims to comprehensively examine the independence of the prosecutorial system through a comparative constitutional analysis of Indonesia and the United States.

1. The Independence of the Prosecutor's in Indonesia

The Office of the Attorney General of the Republic of Indonesia occupies a highly strategic position within the national law enforcement system, as it is the institution directly responsible for exercising state authority in the area of prosecution. According to Immanuel Kant's theory of the rule of law, the true purpose of the state is to ensure the realization of its citizens' rights and freedoms. In addition, the state also aims to achieve

¹⁶ Hafizh Idri Purbajati and Zainol Hasan, "Pemikiran Eksistensialisme Jean-Paul Sartre Dalam Perspektif Kehidupan Masyarakat Kontemporer," *Jurnal Kolaboratif Sains* 7, no. 11 (2024): 4143–50, <https://doi.org/10.56338/jks.v7i11.6489>.

freedom and social order. These objectives of the state can be realized through the separation of powers. The separation of powers referred to by Immanuel Kant is the division between the legislative, executive, and judicial branches.¹⁷

The comparative law approach provides an important analytical framework for understanding the position and independence of a law enforcement agency within a constitutional system.¹⁸ In this regard, the independence of the Attorney General's Office in Indonesia can be analyzed by comparing it with legal practices in other countries with different legal traditions. This is consistent with the theory put forward by Bruce A. Green and Fred C. Zacharias, which states that the independence of prosecutors is determined not only by institutional structures or legal norms, but also by integrity, professional ethics, and moral responsibility in the prosecution process. They emphasize that prosecutors serve a dual role as both prosecutors and guardians of justice, and thus the success of law enforcement agencies depends heavily on the professionalism and ethics of the individuals who carry out their duties.¹⁹

Institutionally, the theory of the rule of law in Indonesia is based on the separation of powers, a concept popularized by the political philosopher Immanuel Kant.²⁰ According to Immanuel Kant, the separation of powers consists of three branches of government; the judicial branch aims to adjudicate or enforce laws so that they are obeyed and properly implemented. The fundamental principle articulated by Montesquieu lies in

¹⁷ Dewi Aulia Asvina, R Juli Moertiono, and Agusta Ridha Minin, "Optimalisasi Peran Jaksa Dalam Penegakan Hukum Terhadap Tindak Pidana Perikanan Pada Pelaksanaan Penuntutan," *IURIS STUDIA: Jurnal Kajian Hukum* 6, no. 1 (2025): 151–56.

¹⁸ Gerald Pakasi, "Independensi Kedudukan Kejaksaan dalam Melaksanakan Tugas Kejaksaan di Negara Republik Indonesia," *Lex Privatum* 12, no. 3 (2023).

¹⁹ Fred C. Zacharias, "The Professional Discipline of Prosecutors," *Journal of Legal Ethics* 6, no. 2 (1993): 123–45.

²⁰ Immanuel Kant, *The Metaphysics of Morals*, trans. Mary Gregor (Cambridge: Cambridge University Press, 1996), 95–100.

the separation of powers.²¹ The separation in question refers to the separation of these three branches of government, both functionally and institutionally. The goal is to prevent the abuse of power and to ensure that each branch has a balanced level of authority. The balance among these three branches gives rise to a system of checks and balances.

Constitutionally, therefore, the position of the Attorney General's Office is not explicitly designated as a principal organ in the Constitution, unlike the Supreme Court of the Republic of Indonesia or the Constitutional Court of the Republic of Indonesia. However, Article 24(3) of the 1945 Constitution provides a constitutional basis through the provision that other bodies whose functions relate to judicial power shall be regulated by law. This provision serves as the constitutional basis for the existence of the Attorney General's Office as an institution closely linked to the criminal justice system, particularly during the prosecution phase. This status indicates that the Attorney General's Office occupies a unique position, as it is structurally a government agency but functionally performs duties directly related to the judicial process.²²

Further provisions regarding the status of the Attorney General's Office are set forth in Law No. 11 of 2021 on the Attorney General's Office of the Republic of Indonesia, which amends Law No. 16 of 2004. These provisions state that the Attorney General's Office is a government agency that independently exercises state authority in the field of prosecution.²³ The phrase "independently" is significant because it signifies a normative guarantee that prosecutorial authority must be exercised free from interference by any party, whether political power, economic interests, or social pressure. However, at the same time, the fact that the President

²¹ Montesquieu, *The Spirit of the Laws*, trans. Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone (Cambridge: Cambridge University Press, 1989), 157–166.

²² Pasal 24 ayat (3) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.

²³ Rosel Denis and Runtunuwu, "Perlindungan Hukum Terhadap Korban Tindak Pidana Pencurian Data Pribadi," *Khatulistiwa: Jurnal Pendidikan Dan Sosial Humaniora* 5, no. 4 (2025): 206–30, <https://doi.org/10.55606/khatulistiwa.v5i4.7487>.

appoints and removes the Attorney General of the Republic of Indonesia indicates that, structurally, the Attorney General's Office remains within the executive branch. This situation gives rise to a dualistic nature of the Attorney General's Office: executive in structure, but judicial in function.²⁴

In line with the above context, the independence of the Attorney General's Office in Indonesia can be understood through two main dimensions: structural independence and functional independence. Structural independence relates to the institutional position and organizational relationships of the Attorney General's Office with other branches of government, while functional independence relates to the prosecutor's freedom to make legal decisions based on evidence, legal norms, and professional conscience. In law enforcement practice, the dimension of functional independence is of paramount importance because it is directly linked to the authority of *dominus litis*—that is, the authority to determine whether a case should be brought to court, dismissed, or resolved through other legal mechanisms in accordance with the law.²⁵

The regulatory changes from Law No. 16 of 2004 to Law No. 11 of 2021 did not alter the structural position of the Attorney General's Office, but expanded the scope of its authority. When broken down normatively, there are fourteen authorities within the six fields contained in Article 30 of Law No. 11 of 2021 that form the basis for the Attorney General's Office's operations, ranging from prosecution in court, investigation of specific criminal offenses, to the recovery of state assets and intelligence gathering. This provision indicates that the Attorney General's Office serves not only as the public prosecutor but also as an institution responsible for upholding legal certainty, public order, and the protection of state assets.²⁶

²⁴ Undang-Undang Nomor 11 Tahun 2021 tentang Kejaksaan Republik Indonesia, Pasal 2 ayat (1).

²⁵ Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia sebagaimana telah diubah dengan Undang-Undang Nomor 11 Tahun 2021; Andi Hamzah, *Hukum Acara Pidana Indonesia* (Jakarta: Sinar Grafika, 2014).

²⁶ Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia. Pasal 8 ayat (2), Pasal 30. Jakarta: Sekretariat Negara RI.

The fourteen authorities stipulated in Article 30 of Law No. 11 of 2021 cover various fields. *First*, in the criminal justice field, the Attorney General's Office has the authority to prosecute in accordance with Article 30(1)(a) of the Attorney General's Office Law. In addition, the Attorney General's Office enforces court rulings and judgments that have become final and binding (Article 30(1)(b)) and oversees the implementation of suspended sentences, probation, and parole (Article 30(1)(c)).²⁷ *Second*, in the area of special criminal cases, the Attorney General's Office has the authority to conduct investigations into certain criminal offenses in accordance with the provisions of applicable laws and regulations (Article 30(1)(d)).²⁸ *Third*, in civil and administrative law matters, the Attorney General's Office acts for and on behalf of the state or the government as the State Attorney, as provided for in Article 30, paragraph (2).²⁹

Fourth, in the area of public order, the Attorney General's Office plays a role in raising public legal awareness (Article 30, paragraph (3), letter a), ensuring the implementation of law enforcement policies (Article 30, paragraph (3), letter b), monitoring religious movements that may endanger society and the state (Article 30, paragraph (3), letter c), preventing the abuse and/or desecration of religion (Article 30, paragraph (3), letter d), and conducting legal research and development, including criminal statistics (Article 30, paragraph (3), letter e).³⁰ *Fifth*, in the area of asset recovery, the Attorney General's Office has the authority to trace, seize, and return assets derived from criminal offenses, as provided for in Article 30A.³¹ *Sixth*, in the field of intelligence, the Attorney General's Office is

²⁷ Pasal 30 ayat (1) huruf a Undang-Undang Nomor 11 Tahun 2021 tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia.

²⁸ Pasal 30 ayat (3) huruf d Undang-Undang Nomor 11 Tahun 2021 tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia.

²⁹ Pasal 30 ayat (2) Undang-Undang Nomor 11 Tahun 2021 tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia.

³⁰ Pasal 30 ayat (3) huruf c Undang-Undang Nomor 11 Tahun 2021 tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia.

³¹ Pasal 30A Undang-Undang Nomor 11 Tahun 2021 tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia.

authorized to conduct investigations for the purposes of law enforcement (Article 30B(1)), to carry out security operations in support of law enforcement, and to gather intelligence for the purposes of law enforcement.³²

The expansion of these powers indicates that the Attorney General's Office is no longer viewed merely as a repressive body in criminal cases, but also as an institution with preventive, protective, and strategic functions in safeguarding the state's legal interests. In addition to continuing to carry out its criminal prosecution functions, the Attorney General's Office has also been strengthened in the areas of civil law and public administration—serving as the State Attorney—as well as in state asset recovery, law enforcement intelligence, and the safeguarding of national strategic policies.³³ After explaining the authorities established in the various fields mentioned above, the author also discusses the development of the independence of the Attorney General's Office in Indonesia; to make this easier to understand, the author provides a table outlining the development of the independence of the Attorney General's Office in Indonesia.

Table 1. Characteristics of the Development of the Independence of the Prosecutor's Office in Indonesia.³⁴

Aspect	Law No. 16 of 2004	Law No. 11 of 2021	Implications
Institutional status	Government agency	Still a government agency	No structural changes
Independence	Conducted independently	Reaffirmed independently	Strengthening functional independence
Authority	Prosecution, civil, administrative	Plus asset recovery and legal intelligence	Expansion of institutional functions

³² Pasal 30B ayat (1) Undang-Undang Nomor 11 Tahun 2021 tentang Perubahan atas Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia.

³³ Kejaksaan Republik Indonesia, ruang lingkup kewenangan kelembagaan.

³⁴ Diolah dari Pasal 30 dan Pasal 30A Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia sebagaimana telah diubah dengan Undang-Undang Nomor 11 Tahun 2021.

Attorney General	Appointed by the President	Remains appointed by the President	Executive relations remain strong
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Based on the table, it is evident that the strengthening of the independence of the Attorney General's Office has primarily occurred in terms of normative aspects and the expansion of functions, rather than through changes in institutional design. This indicates that the main challenge to the independence of the Attorney General's Office in Indonesia still lies in practical implementation, particularly in maintaining the objectivity of prosecutions when dealing with cases involving political, economic, or power-related interests. Thus, the analysis of the theory of independence by Bruce A. Green and Fred C. Zacharias emphasizes that, under such conditions, formal independence alone is insufficient; the success of objective prosecution depends heavily on professionalism, integrity, and internal oversight. The risk of political interference, economic pressure, or power interests remains if professional values are not consistently upheld.³⁵

Thus, the analysis of the theory of independence by Bruce A. Green and Fred C. Zacharias emphasizes that, under such conditions, formal independence alone is insufficient; the success of objective prosecution depends heavily on professionalism, integrity, and internal oversight. The risk of political interference, economic pressure, or power interests remains if professional values are not consistently upheld.³⁶ Through this, the internal values of the Prosecutor's Office itself are also strengthened by the Tri Krama Adhyaksa principle, which emphasizes loyalty, integrity, and wisdom as the moral foundation of the prosecutorial profession. This principle serves as an ethical guideline to ensure that prosecutors act not

³⁵ Fred C. Zacharias, "The Professional Discipline of Prosecutors," *Journal of Legal Ethics* 6, no. 2 (1993): 123–45.

³⁶ Penguatan independensi melalui reformasi kelembagaan Kejaksaan.

only in accordance with their formal authority but also in accordance with their moral responsibility toward substantive justice.³⁷

Based on this comparative legal approach, it can be understood that efforts to strengthen the independence of the Attorney General's Office in Indonesia have thus far been primarily achieved through normative regulations and the expansion of institutional authority. This is evident from regulatory changes that have expanded the role of the Attorney General's Office not only in criminal prosecution but also in civil matters, public administration, the recovery of state assets, and the safeguarding of national strategic policies. However, these changes have not yet fully addressed the institutional design aspects related to the structural relationship between the Attorney General's Office and the executive branch.³⁸

Based on the above discussion, the author draws the conclusion that, through an analysis of the comparative theory by Bruce A. Green and Fred C. Zacharias presented in the first section above, the author emphasizes the importance of internalizing professional ethics and culture within institutions.³⁹ The Tri Krama Adhyaksa principles, which emphasize loyalty, integrity, and wisdom, align with Bruce A. Green and Fred C. Zacharias's theory of independence, as these principles guide prosecutors to enforce the law not only based on formal authority but also on a moral responsibility toward substantive justice. Overall, the analysis in the discussion of the first proposition indicates that formal strengthening through regulations and authority alone is insufficient, as the independence of the prosecution service will only be truly effective if legal norms, professional culture, and the individual ethics of prosecutors are upheld simultaneously, particularly

³⁷ Peraturan Jaksa Agung Nomor PER-014/A/JA/11/2012 tentang Kode Perilaku Jaksa

³⁸ Henry Yoseph Kindangen, "Jaminan Konstitusional terhadap Kemandirian Kejaksaan dalam Melaksanakan Kewenangan Penuntutan," *Masalah-Masalah Hukum* 50, no. 4 (2021).

³⁹ Fred C. Zacharias, *Prosecutorial Ethics and the Right to a Fair Trial* (New York: Oxford University Press, 2006), 45.

when handling cases involving political, economic, or power-related interests.⁴⁰

2. The Independence of the Prosecutor's Office in the United States

The independence of the Attorney General's Office in the United States is examined through a comparative law approach; according to legal theorists Bruce A. Green and Fred C. Zacharias, it is essential to compare legal systems across nations to understand institutional characteristics, mechanisms of independence, and the interaction between positive law and prevailing legal culture.⁴¹ It is important to note that A. V. Dicey's concept of the rule of law in the United States is rooted in the Anglo-Saxon tradition and emphasizes three main elements.⁴² *First*, the rule of law, meaning that the law is the supreme authority in the state, so that no government action may be arbitrary or outside the law. *Second*, equality before the law, which means that everyone, without exception, is subject to the same laws and is treated fairly by the judicial system. *Third*, the existence of a judicial process that guarantees the protection of individual rights through an independent and impartial court system. These three principles form an essential foundation for establishing a state governed by the rule of law that upholds justice and legal certainty, as stated.⁴³

The institutional design of the United States is based on the principle of the separation of powers, which was influenced by the ideas of Montesquieu and enshrined in the United States Constitution of 1787. This

⁴⁰ Fred C. Zacharias, *Prosecutorial Ethics and the Right to a Fair Trial* (New York: Oxford University Press, 2006), 45.

⁴¹ René David and John E. C. Brierley, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*, 3rd ed. (London: Stevens & Sons, 1985), 17–20.

⁴² A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (London: Macmillan, 1885), 110–122.

⁴³ *Introduction to the Study of the Law of the Constitution*, A. V. Dicey (London: Macmillan, 1885), 183–205.

system divides state power into three main branches—the legislative, executive, and judicial—each of which has its own distinct functions and authorities and oversees the others through a system of checks and balances.⁴⁴ Within this framework, the independence of the prosecution in the United States can be analyzed through several dimensions, particularly in the context of differences in legal traditions and constitutional structures compared to other countries, such as Indonesia. The existence of the independence of the prosecutorial institution in the United States cannot be separated from the nature of its constitutional system, which embraces federalism, a strict separation of powers, and a common law tradition that has developed through judicial precedent.⁴⁵

The criminal justice system in the United States operates within a decentralized structure spanning the federal and state levels.⁴⁶ This situation means that prosecutorial authority is not concentrated in a single institution, but is distributed across various jurisdictions, each of which has considerable autonomy in carrying out its law enforcement functions. This design theoretically affords prosecutors greater independence, as prosecutorial decisions do not depend entirely on a single administrative authority but remain subject to constitutional oversight through the mechanism of checks and balances.⁴⁷

Constitutionally, the status of the federal prosecution service is derived from the United States Constitution, specifically Article II, which vest executive power in the President. Within this framework, federal prosecutorial functions fall under the purview of the executive branch

⁴⁴ Montesquieu, *The Spirit of the Laws*, trans. Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone (Cambridge: Cambridge University Press, 1989), 157–166.

⁴⁵ American Bar Association, Model Rules of Professional Conduct, 2023 edition, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/.

⁴⁶ B. F. M. T. Simbolon, *Juridical Review of Comparative Prosecution Systems in Indonesia and the United States* (Paris: Atlantis Press, 2022).

⁴⁷ Ahmad Sofian, “Penguatan Kapasitas Jaksa Melalui Koordinasi Dalam Proses Penyidikan Dan Penuntutan Dalam RUU KUHP: Studi Perbandingan AS, Belanda Dan Indonesia,” *PAMPAS: Journal of Criminal Law* 6, no. 2 (2025): 183–217.

through the United States Department of Justice, which is led by the Attorney General of the United States. The Attorney General is appointed by the President with the consent of the United States Senate pursuant to the appointments clause; thus, from the outset, the office has been embedded in a system of political legitimacy controlled by the legislative branch.⁴⁸ This model demonstrates that although the federal prosecution service is part of the executive branch, there are constitutional mechanisms that prevent the president from unilaterally dominating the federal prosecution structure. From the comparative law perspective of Bruce A. Green and Fred C. Zacharias, this decentralized model demonstrates that independence is not only related to legal norms but is also supported by an institutional structure that distributes authority so that it is not concentrated in a single administrative entity.⁴⁹

At the federal level, day-to-day prosecution is carried out by United States Attorneys stationed in each federal district. They represent the federal government in both criminal and civil cases and are administratively accountable to the Attorney General, but in practice they have considerable professional discretion in determining prosecution strategies.⁵⁰ State-level systems vary, as prosecutorial functions are carried out by district attorneys or state attorneys, who are governed by the respective state constitutions and laws. In many jurisdictions, these officials are directly elected by the public, thereby deriving their independence from direct democratic legitimacy granted by local voters. This dual federal–state structure creates a more pluralistic form of independence than the centralistic model, as prosecutorial policies may vary across regions according to local legal priorities. From the perspective of René David’s comparative law theory, this decentralized model demonstrates that independence is not only

⁴⁸ U.S. Const. art. II, §1 dan §2; lihat juga B. F. M. T. Simbolon, *Juridical Review of Comparative Prosecution Systems in Indonesia and the United States* (Paris: Atlantis Press, 2022).

⁴⁹ 28 U.S.C. §§ 501–509 tentang pembentukan dan organisasi *United States Department of Justice*.

⁵⁰ Title 28 United States Code.

related to legal norms but is also supported by an institutional structure that distributes authority so that it is not concentrated in a single administrative entity.⁵¹

A key characteristic of prosecutorial independence in the United States is the development of the concept of prosecutorial discretion—that is, the prosecutor’s discretionary authority to determine whether to prosecute a case, the type of charges to file, the evidentiary strategy, and even the possibility of dismissing the case. In the common law system, discretion is a central element of functional independence, as prosecutors are granted significant latitude to assess legal interests and the effectiveness of law enforcement in each case.⁵² This discretion has also given rise to the practice of plea bargaining—that is, negotiations regarding a guilty plea between prosecutors and defendants—which is a defining feature of the U.S. criminal justice system.

Through this mechanism, most criminal cases are resolved without a full trial, making the prosecutor’s role crucial to the final outcome of the case. According to Bruce A. Green and Fred C. Zacharias, the effectiveness of the legal system depends heavily on the ability of legal actors to make professional decisions based on legal norms, evidence, and moral considerations. In the United States (U.S.), prosecutors have the authority to determine whether a case will be prosecuted, the type of charges to be filed, and the resolution of the case through plea bargaining. This discretion allows prosecutors to balance substantive legal interests with procedural efficiency, while affirming the prosecutor’s role as a minister of justice who does not merely seek to win cases.⁵³

⁵¹ U.S. Const. art. II, §2 (Appointments Clause); 28 U.S.C. §541 mengenai pengangkatan *United States Attorneys* oleh Presiden dengan persetujuan Senat.

⁵² George F. Cole & Christopher E. Smith, *The American System of Criminal Justice*, 16th ed. (Boston: Cengage Learning, 2019), hlm. 302–305.

⁵³ Ronald F. Wright & Marc L. Miller, “The Worldwide Accountability Deficit for Prosecutors,” *Washington & Lee Law Review* 67, no. 4 (2010): 1587–1590.

The prosecutorial discretion system in the United States is very broad, but it is subject to strong limitations imposed by ethical obligations and the principles of due process of law. One key milestone is the *Brady v. Maryland* decision, which requires prosecutors to disclose evidence that exonerates the defendant (exculpatory evidence).⁵⁴ This ruling reaffirms that prosecutors are not merely parties seeking to win cases, but rather ministers of justice responsible for upholding substantive justice. In addition, the professional ethical standards established by the American Bar Association through the Model Rules of Professional Conduct require prosecutors to uphold integrity, objectivity, and transparency, and prohibit conflicts of interest. Violations of these standards may result in the dismissal of a case, professional disciplinary sanctions, or even criminal liability in cases of abuse of authority.⁵⁵ To make it easier to understand, the author has summarized the characteristics of prosecutorial independence in the United States in a table.

Table 2. Characteristics of the Development of Prosecutorial Independence in the United States.⁵⁶

Aspect	Federal Level	State Level	Implications
Institutional Status	The Department of Justice within the executive branch	District Attorney / State Attorney	Decentralized structure
Appointment of Leadership	The President and Senate confirmation	Generally elected by the people	Different forms of political legitimacy
Prosecutorial Authority	Federal crimes	State crimes	Policy variations across jurisdictions
Independence	Prosecutorial discretion	Local prosecutorial autonomy	High degree of autonomy

⁵⁴ *Brady v. Maryland*, 373 U.S. 83 (1963).

⁵⁵ Bennett L. Gershman, *Prosecutorial Misconduct*, 2nd ed. (St. Paul: Thomson Reuters, 2015).

⁵⁶ Diolah dari George F. Cole & Christopher E. Smith, *The American System of Criminal Justice* (2019); Ronald F. Wright & Marc L. Miller, "The Worldwide Accountability Deficit for Prosecutors," *Washington & Lee Law Review* (2010).

Oversight	Congress, the courts, and the Inspector General	The public, state courts	Multi-layered accountability
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Based on these characteristics, the independence of the prosecution in the United States is established not only through legal norms but also through an institutional culture that demands non-interference in prosecutorial decisions. Although the Attorney General of the United States is a political appointee in the President's cabinet, constitutional tradition dictates that decisions on individual cases should not be directly influenced by political interests. However, in cases involving national interests or prominent political figures, debates over the politicization of prosecutions continue to arise and remain subject to public and legislative scrutiny.⁵⁷

In this second discussion, the author concludes, based on the comparative legal analysis by Bruce A. Green and Fred C. Zacharias, that the independence of the prosecution in the United States is the result of the interaction between institutional structure, discretionary authority, oversight mechanisms, and professional culture.⁵⁸ This model highlights that functional independence can be effective without being absolute, provided it is supported by checks and balances and a well-established legal tradition. Thus, the existence of prosecutorial independence in the United States demonstrates a balance between professional autonomy and institutional accountability, which can serve as a model for law enforcement reforms in other countries, including Indonesia.

3. Comparative Constitutional Studies The Independence of the Prosecutorial System in Indonesia and the United States

⁵⁷ 28 U.S.C. §§ 501–509 tentang organisasi *United States Department of Justice* dan kedudukan *Attorney General*

⁵⁸ René David and John E. C. Brierley, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law*, 3rd ed. (London: Stevens & Sons, 1985), 17–25.

This study employs a comparative constitutional studies approach with the aim of identifying the degree of independence of the prosecutorial system in Indonesia and the United States. The selection of the United States as a comparative case is based on the characteristics of the prosecutorial system within the common law tradition, which is known for its relatively broad prosecutorial discretion and well-developed institutional oversight mechanisms based on the principle of checks and balances.⁵⁹ For this reason, the U.S. prosecutorial system is often cited in comparative law studies to assess the design of prosecutorial independence in modern constitutional states.⁶⁰

The comparison was conducted descriptively using the normative doctrinal analysis technique, which involves an analysis of legal norms, legal doctrines, and institutional practices related to the independence of the prosecution service. This approach is commonly used in constitutional law research to compare institutional designs across countries in order to identify ideal principles of constitutional regulation.⁶¹ The primary legal sources used in this comparative analysis include the 1945 Constitution of the Republic of Indonesia, the Attorney General's Office Act of the Republic of Indonesia, the Criminal Procedure Code (KUHAP), and the academic article "Prosecutorial Neutrality" by Fred C. Zacharias and Bruce A. Green (2004).

The comparison focuses on several key aspects, namely the constitutional status of the Prosecutor's Office, its institutional status, the mechanism for appointing the agency's leadership, protection from political interference, prosecutorial discretion, oversight mechanisms, transparency

⁵⁹ United States Department of Justice, *About the DOJ: Mission, History, and Organization*, accessed March 15, 2026, <https://www.justice.gov/about>

⁶⁰ Bruce A. Green & Fred C. Zacharias, "Prosecutorial Neutrality," *Wisconsin Law Review* (2004):838-840

⁶¹ Arif Hidayat dan Martitah, *Buku Ajar Hukum Tata Negara* (Semarang: Fakultas Hukum Universitas Negeri Semarang, 2018)

in law enforcement, and the professional culture of prosecutors.⁶² Using this framework, a comparative analysis was conducted to identify the degree of independence of the prosecutor's office and to determine the institutional model that most closely aligns with the principle of independence within the law enforcement system. Through this descriptive-comparative approach, the analysis aims not only to identify the similarities and differences between the prosecutorial systems in Indonesia and the United States, but also to identify the ideal model for prosecutorial independence that is consistent with the principles of the rule of law and modern criminal justice systems.⁶³

Based on the theoretical framework of prosecutorial independence, Bruce A. Green and Fred C. Zacharias argue that prosecutorial independence should be understood as legally and policy-bound discretion, not as absolute freedom without oversight. In the United States, federal prosecutors have broad prosecutorial discretion, but they remain bound by federal statutes, United States Department of Justice guidelines, and documented internal policies. In contrast, in Indonesia, prosecutorial discretion is recognized within the framework of the Attorney General's Office of the Republic of Indonesia through the Attorney General's Office Act and the Code of Criminal Procedure; however, its exercise remains within a hierarchical structure that places prosecutors under the coordination of the Attorney General. A fundamental difference lies in the aspect of the absence of improper influence—that is, the requirement that prosecutorial decisions must be free from improper political influence.⁶⁴

Furthermore, the theoretical analysis by Bruce A. Green and Fred C. Zacharias underscores the importance of rational prudential judgment—

⁶² Peter de Cruz, *Comparative Law in a Changing World*, 3rd ed. (London: Routledge-Cavendish, 2007), hlm. 5–7.

⁶³ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: Kencana, 2010), hlm. 24.

⁶⁴ Bruce A. Green & Fred C. Zacharias, "Prosecutorial Neutrality," *Wisconsin Law Review* (2004): 837–917.

that is, the use of rational consideration and professional discretion in determining whether a case is worth prosecuting. In the United States, this is often linked to the efficiency of law enforcement and the public interest, whereas in Indonesia it relates to the application of the principle of prosecutorial discretion and the principle of *dominus litis*, which are still evolving in practice. Independence must also be directed toward a justice-oriented prosecutorial role, meaning that prosecutors are not merely defenders of the state's interests, but public officials tasked with upholding justice.⁶⁵

This doctrine has long been established in the U.S. legal system as the concept of the “minister of justice,” whereas in Indonesia, this orientation is emphasized through the obligation to uphold the law, justice, and human rights. Two other indicators are policy consistency and ethical self-restraint in a low-review environment. The United States has relatively consistent prosecution policy guidelines set forth in Department of Justice policy documents, whereas in Indonesia, the direction of prosecution policy remains heavily influenced by the current Attorney General. This is because prosecutorial decisions are often difficult to challenge through judicial channels; consequently, ethical oversight plays a crucial role in the United States, where it is reinforced by the media, Congress, and professional associations, whereas in Indonesia, the effectiveness of oversight relies heavily on internal mechanisms and a culture of institutional integrity.⁶⁶

A comparative constitutional study of the independence of the prosecutorial system in Indonesia and the United States shows that the institutional design of the prosecutorial system is determined not only by legal norms, but also by constitutional traditions, the structure of government, and the prevailing philosophy of the rule of law. From the

⁶⁵ Bruce A. Green & Fred C. Zacharias, “Prosecutorial Neutrality,” *Wisconsin Law Review* (2004): 837–916.

⁶⁶ Bruce A. Green & Fred C. Zacharias, “Prosecutorial Neutrality,” *Wisconsin Law Review* (2004): 837–915.

perspective of modern constitutional law, the Attorney General's Office is a constitutional actor that plays a strategic role in law enforcement; therefore, its independence must be guaranteed structurally, functionally, and personally to ensure the upholding of the principles of the rule of law, equality before the law, and the protection of human rights.⁶⁷

However, from the perspective of comparative constitutional studies, independence from political pressure in the United States is not absolute. Prosecutors who are elected through general elections are also susceptible to electoral pressure, public opinion, and local political agendas. This demonstrates that the independence of the prosecution in a democracy is always caught in a tension between professional autonomy and democratic accountability.⁶⁸ Thus, comparative constitutional studies of the prosecutorial systems in Indonesia and the United States show that the independence of the prosecution is a multidimensional concept that must be guaranteed through legal norms, institutional structures, and legal culture. In Indonesia, the prosecutor's office remains structurally part of the executive branch under the President; however, its functional independence in the conduct of prosecutions needs to be strengthened through mechanisms of transparency, public oversight, and judicial accountability, as has evolved in the practice of the prosecutorial system in the United States. To facilitate the identification of similarities and differences in the design of prosecutorial independence in Indonesia and the United States, the results of the comparative analysis are summarized in the following comparison matrix.⁶⁹

Table 3. Comparison Matrix of Similarities and Differences in the Independence of the Prosecutor's Office in Indonesia and the United States

⁶⁷ Barda Nawawi Arief, *Bunga Rampai Kebijakan Hukum Pidana* (Jakarta: Kencana, 2010), hlm. 25.

⁶⁸ Angela J. Davis, *Arbitrary Justice: The Power of the American Prosecutor* (Oxford: Oxford University Press, 2007), hlm. 16–18.

⁶⁹ Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan* (Jakarta: Kencana, 2010), hlm. 15–16.

Criteria Aspect	Indonesian Attorney General's Office	U.S. Department of Justice	Independence Test Indicators
Constitutional Status	It is not explicitly provided for in the 1945 Constitution the main provisions are contained in the Attorney General's Office Act	Established under Article II of the U.S. Constitution through the Department of Justice	The constitutional basis of the institution
Mechanism for Appointing the Attorney General	Appointed and removed by the President without the approval of the House of Representatives	Appointed by the President with the consent of the Senate	System of checks and balances
Institutional Status	Government agencies under the President	The Department of Justice, as part of the federal executive branch	Position within the state power structure
Prosecutorial Discretion	The principle of dominus litis the prosecutor controls the case	Broad discretion for federal prosecutors	Professional independence in prosecution
Protection from Political Interference	Relatively limited due to direct ties to the President	There is congressional oversight and judicial review	Political insulation
Transparency in Prosecution	Case information is generally provided through press conferences or limited publications	An indictment is a public document and can be challenged in court	Public accountability

Oversight System	Internal oversight of the Attorney General's Office and political oversight by the House of Representatives	Oversight by Congress, courts, and professional ethics bodies	Institutional oversight mechanisms
Professional Culture	The Trapsila Adhyaksa values emphasize institutional loyalty and integrity	The "officer of justice" doctrine, which positions prosecutors as guardians of justice	Professional Values Orientation

Sumber: Diolah berdasarkan UUD 1945, Undang-Undang Kejaksaan Republik Indonesia, U.S. Constitution Article II.

Based on the comparison matrix in Table 3, the differences in the design of prosecutorial independence in Indonesia and the United States lie primarily in structural dimensions, oversight mechanisms, and the prosecutorial discretion held by prosecutors.⁷⁰ The prosecutorial system in the United States combines relatively broad professional discretion with mechanisms of checks and balances through legislative oversight, judicial review, and greater transparency in criminal prosecution.⁷¹ In contrast, the prosecutorial system in Indonesia places the Prosecutor's Office structurally within the executive branch, with a more hierarchical and centralized organizational structure; as a result, the independence of the prosecution depends largely on normative provisions in legislation and the institutional integrity of law enforcement officials.

This comparative analysis aims to identify institutional elements that can strengthen the functional independence of the Attorney General's Office

⁷⁰ Barda Nawawi Arief, *Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan* (Jakarta: Kencana, 2010), hlm. 15–16.

⁷¹ Bruce A. Green & Fred C. Zacharias, "Prosecutorial Neutrality," *Wisconsin Law Review* (2004): 837–839.

in Indonesia without altering its structural position within the constitutional system.⁷² Strengthening the independence of the prosecution service within the framework of a democratic rule of law is not only related to its institutional position within the state's power structure, but also to the development of mechanisms for public accountability, transparency in law enforcement, and the professionalism of prosecutors as officers of justice who are committed to justice and the public interest.⁷³

After examining the comparison between the United States and Indonesia discussed in the third section, the authors conclude—based on the theory of Bruce A. Green and Fred C. Zacharias—that the independence of prosecutorial agencies is determined not only by written legal norms but also by professional autonomy and institutional culture. Indonesia operates under the principle of *dominus litis*, which grants prosecutors the authority to determine which cases to prosecute; however, in practice, this authority remains subject to a strict hierarchy and coordination with the Attorney General, so that functional independence is limited to the scope of discretion prescribed by law. Unlike in the United States, prosecutors in Indonesia have broad prosecutorial discretion in determining charges, prosecution strategies, and the dismissal of cases. This discretion is balanced by mechanisms of professional ethics, judicial oversight, and public transparency, ensuring that functional independence operates effectively without being absolute.

Conclusion

Based on the results of the analysis, the author concludes that; *first*, the legal independence of the Attorney General's Office of the Republic of Indonesia has been recognized in Law No. 11 of 2021, which affirms that the

⁷² Arif Hidayat dan Martitah, *Buku Ajar Hukum Tata Negara* (Semarang: Fakultas Hukum Universitas Negeri Semarang, 2018), hlm. 122.

⁷³ Vicki C. Jackson dan Mark Tushnet, *Comparative Constitutional Law* (New York: Foundation Press, 2014), hlm. 145.

Attorney General's Office exercises state authority in the field of prosecution independently. This independence is reflected in the authority of *dominus litis*, prosecutorial discretion, and the exercise of prosecutorial functions without interference from other parties. However, institutionally, the Attorney General's Office remains part of the executive branch, as the Attorney General is appointed and dismissed by the President; consequently, the independence it enjoys is more functional than structural. In practice, the effectiveness of this independence is heavily influenced by the quality of leadership, organizational culture, the integrity of officials, and the effectiveness of both internal and external oversight mechanisms within the national law enforcement system.

Second, the independence of the prosecution service in the United States exhibits a distinct character. The prosecutorial function falls under the executive branch through the United States Department of Justice, which is led by the Attorney General of the United States pursuant to Article II of the United States Constitution; however, its independence is reinforced by mechanisms of checks and balances, such as Senate confirmation, legislative oversight, and transparency in judicial proceedings. The tradition of prosecutorial discretion in the common law system also affords prosecutors greater professional latitude in determining prosecution policy. Thus, the independence of the prosecution in the United States is not only established through legal norms but is also supported by a professional culture, institutional oversight, and a legal tradition that has evolved consistently.

Third, the comparison shows that the two countries have different models of prosecutorial independence, in line with their respective constitutional designs. Indonesia maintains a hierarchical and centralized model that places the prosecution within the government structure, while the United States has developed a more decentralized model with stronger institutional oversight. There is no such thing as a completely ideal model of independence, as each system has its own strengths and limitations,

which are shaped by constitutional structures, legal traditions, and political dynamics. Therefore, efforts to strengthen the independence of the Attorney General's Office in Indonesia should focus on regulatory reforms that clarify the institutional status of the Attorney General's Office, enhance the transparency of the mechanism for appointing the Attorney General, improve internal professionalism, and promote the development of ongoing academic research so that the prosecution system becomes increasingly independent, accountable, and consistent with the principles of a democratic rule of law.

Based on the above conclusions, the author recommends that: (i) the House of Representatives and the President, as the legislative branch, should strengthen guarantees of the independence of the Attorney General's Office through more comprehensive legislative and regulatory reforms, particularly regarding the constitutional status of the Attorney General's Office and the establishment of more transparent and accountable mechanisms for appointing the Attorney General; (ii) The Attorney General's Office of the Republic of Indonesia, in exercising state authority in the field of prosecution, needs to enhance professionalism, integrity, and transparency by strengthening internal oversight systems and consistently enforcing the code of ethics. This measure aims to ensure that the independence of the Attorney General's Office is not only guaranteed in principle but is also realized in the practice of law enforcement; and (iii) legal scholars and researchers are encouraged to continue developing studies on the independence of the prosecution service through a comparative law approach, in order to enrich academic discourse and provide policy recommendations for strengthening an independent and accountable law enforcement system in a democratic state governed by the rule of law.

References

- Agassi, Muhammad Adhe, Rikki Hendrawan, and Arkan Aziz Mubarak. "Analisis Politik Hukum Undang-Undang Nomor 3 Tahun 2020 Tentang Perubahan Atas Undang-Undang Nomor 4 Tahun 2009 Tentang Pertambangan Mineral dan Batubara." *Jurnal Ilmiah Multidisiplin* 1, no. 11 (2023): 397–412.
- American Bar Association. 2020. *ABA Model Rules of Professional Conduct*. Chicago: American Bar Association.
- Antara News. "Artalyta Didakwa Suap Urip untuk Kepentingan Sjamsul Nursalim." May 21, 2008. <https://www.antaranews.com/berita/102985/artalyta-didakwa-suap-urip-untuk-kepentingan-sjamsul-nursalim>.
- Antara News. "Kaleidoskop 2020 Kejagung: Dari Jiwasraya hingga Jaksa Pinangki." December 29, 2020. <https://www.antaranews.com/berita/1923232/kaleidoskop-2020-kejagung-dari-jiwasraya-hingga-jaksa-pinangki>.
- Ardiansyah, F., and S. A. Romli. "Independensi Kewenangan Kejaksaan Republik Indonesia." *ELQONUN*, 2023.
- Ardiansyah, F., and S. A. Romli. "Independensi Kewenangan Kejaksaan Republik Indonesia." *Jurnal Riset Multidisiplin Edukasi (JURMIE)*, 2023. <https://journal.hasbaedukasi.co.id/index.php/jurmie/article/view/1609>.
- Arief, B. N. (2010). *Bunga rampai kebijakan hukum pidana*. Jakarta: Kencana.
- Arief, B. N. (2010). *Masalah penegakan hukum dan kebijakan hukum pidana dalam penanggulangan kejahatan*. Jakarta: Kencana.
- Arliman, Laurensius. "Pembagian dan Pemisahan Kekuasaan Ketatanegaraan di Indonesia." *Ensiklopedia of Journal* 6, no. 3 (2024): 305–311.
- Asshiddiqie, Jimly. 2006. *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*. Jakarta: Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi.
- Asvina, Dewi Aulia, R. Juli Moertiono, and Agusta Ridha Minin. "Optimalisasi Peran Jaksa dalam Penegakan Hukum terhadap Tindak Pidana Perikanan pada Pelaksanaan Penuntutan." *Iuris Studia: Jurnal Kajian Hukum* 6, no. 1 (2025): 151–156.
- Azis Gaffar. "Violation of the Prosecutor's Professional Code of Ethics in the View of Islamic Law and Its Application in Court." *Al-Masail: Journal of Islamic Studies* 2, no. 3 (2024): 100–112.
- Baihaki, Ahmad. "Rekonstruksi Kewenangan Kejaksaan dalam Hal Penyidikan sebagai Upaya Memenuhi Dominus Litis." *Proceedings of Airlangga Faculty of Law Colloquium* 1, no. 1 (2024): 71–79.
- Budijarto, Agus, and Endang Sulistyaningsih. "Enhancing Roles and Functions of Prosecutorial Attachés and Consuls in Efforts to Provide

- Legal Protection for Indonesian Citizens Committing Crimes Abroad.” *The Prosecutor Law Review* 2, no. 1 (2024): 1–29.
- Chemerinsky, Erwin. 2015. *Constitutional Law: Principles and Policies*. New York: Wolters Kluwer.
- Cole, George F., dan Christopher E. Smith. 2019. *The American System of Criminal Justice*. 16th ed. Boston: Cengage Learning.
- Cruz, P. de. (2007). *Comparative law in a changing world* (3rd ed.). London: Routledge-Cavendish.
- Davis, A. J. (2007). *Arbitrary justice: The power of the American prosecutor*. Oxford: Oxford University Press.
- Darmadi, Nanang Sri, and Intan Betta Pratiwi. “Pengaruh Desakan Publik terhadap Independensi Hakim dalam Menangani Perkara Penistaan Agama (Studi Kasus Putusan No.1537/Pid.B/2016/PN JKT.UTR).” Accessed March 6, 2026. <https://jurnal.unissula.ac.id/index.php/JIMU/article/view/34914>.
- Denis, Rosel, and Runtunuwu. “Perlindungan Hukum terhadap Korban Tindak Pidana Pencurian Data Pribadi.” *Khatulistiwa: Jurnal Pendidikan dan Sosial Humaniora* 5, no. 4 (2025): 206–230. <https://doi.org/10.55606/khatulistiwa.v5i4.7487>.
- Effendy, Marwan. 2005. *Kejaksaan Republik Indonesia: Posisi dan Fungsinya dalam Perspektif Hukum*. Jakarta: Gramedia.
- Fauzan Al-Asari. “Etika Pelaksanaan Tugas dan Jabatan Kejaksaan.” *Jurnal Sains Student Research* 2, no. 3 (2024): 667–677. <https://doi.org/10.61722/jssr.v2i3.1457>.
- Gershman, Bennett L. 2015. *Prosecutorial Misconduct*. 2nd ed. St. Paul: Thomson Reuters.
- Ginting, Yuni Priskila. “Etika Profesi Jaksa sebagai Gerbang Keadilan Sistem Hukum Republik Indonesia.” *Jurnal Pengabdian West Science* 2, no. 8 (2023): 633–645.
- Green, B. A., & Zacharias, F. C. (2004). Prosecutorial neutrality. *Wisconsin Law Review*, 2004, 837–917. Retrieved from https://digital.sandiego.edu/cgi/viewcontent.cgi?article=1013&context=lwps_public
- Hamzah, Andi. *Hukum Acara Pidana Indonesia*. Jakarta: Sinar Grafika, 2014.
- Hidayat, Arif, and Martitah. *Buku Ajar Hukum Tata Negara*. Semarang: Fakultas Hukum Universitas Negeri Semarang, 2018.
- Husnullail, M. “Teknik Pemeriksaan Keabsahan Data dalam Riset Ilmiah.” *Journal Genta Mulia* 15, no. 2 (2024): 70–78. <https://ejournal.stkipbbm.ac.id/index.php/gm>.
- Icha Cahyaning, and Rizki. “Kedudukan Kejaksaan dalam Penegakan Hukum di Indonesia Berdasarkan Kitab Undang-Undang Hukum Acara Pidana.” *UMJember Proceeding Series* 4, no. 3 (2025): 41–51. <https://proceeding.unmuhjember.ac.id/index.php/nms/article/view/745/708>.
- Jackson, V. C., & Tushnet, M. (2014). *Comparative constitutional law* (3rd ed.). New York: Foundation Press.

- Misslein, and Evi Retno Wulan. "Asas Keadilan Ratio Decidendi Hakim dalam Putusan Nomor 813K/Pid2-23." *Jurnal Hukum Sehasen* 10, no. 1 (2024).
<https://jurnal.unived.ac.id/index.php/jhs/article/view/9435>.
- Muhammad, Akhmad Munawar. "Integrasi Asas Legalitas dan Asas Oportunitas: Suatu Kajian Komparatif terhadap Penerapannya dalam Praktik Penuntutan." *Rewang Rencang: Jurnal Hukum Lex Generalis* 4, no. 7 (2023): 1–15. <https://doi.org/10.56370/jhlg.v4i7.790>.
- Nia, Gabriella, and Setiabudhi. "Kedudukan dan Fungsi Kejaksaan dalam Sistem Ketenagakerjaan di Indonesia." *Lex Privatum* 11, no. 1 (2013): 1–10.
<https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/45762>.
- Nina Agus, Dyana. "Kode Etik Jaksa dan Dilema Etis dalam Implementasi Restorative Justice." *Marwah Hukum* 4, no. 1 (2026): 28–33.
- Nur Atika. "Kewenangan Jaksa dalam Perkara Tindak Pidana Pencucian Uang." *Jurnal Cakrawala Ilmiah* 2, no. 7 (2023): 3051–3056.
<http://bajangjournal.com/index.php/JCI>.
- Pradana, Rasji, and Yudha Aditya. "Relevansi Filsafat Hukum dalam Mewujudkan Independensi Kejaksaan Republik Indonesia." *Rewang Rencang: Jurnal Hukum Lex Generalis* 5, no. 10 (2024): 1–15.
<https://doi.org/10.56370/jhlg.v5i10.980>
- Putri, Indah, Jayanti Basri, Muhammad Said Karim, and Amir Ilyas. "Analisis Hukum Pidana terhadap Perbuatan Ujaran Kebencian." *UNE Law Review* 5, no. 4 (2023): 3172–3181.
- Rahardjo, Satjipto. 2014. *Ilmu Hukum*. Bandung: PT Citra Aditya Bakti.
- Ramdin. "Rekonstruksi Kebijakan Pidana dalam Penegakan Hukum Berbasis Nilai Pancasila." *Jurnal Tana Mana* 6, no. 1 (2025): 1–6.
<https://ojs.staialfurqan.ac.id/jtm/>.
- Sari, Kiki Anggela. "Kewenangan Kejaksaan sebagai Lembaga Pemerintahan di Bidang Yudikatif." *Limbago: Journal of Constitutional Law* 4, no. 2 (2024): 167–173.
- Sembiring, Almunawar, Madiasa Ablisar, Mahmud Mulyadi, and Edi Yunara. "Dasar Pertimbangan Hakim pada Upaya Peninjauan Kembali dalam Kasus Gratifikasi." *Locus Journal of Academic Literature Review* 2, no. 3 (2023).
<https://jurnal.locusmedia.id/index.php/jalr/article/view/282>.
- Simbolon, B. F. M. T. *Juridical Review of Comparative Prosecution Systems in Indonesia and the United States*. Paris: Atlantis Press, 2022.
- Sklansky, David Alan. 2008. *Democracy and the Police*. Stanford: Stanford University Press.
- Sofian, Ahmad. "Penguatan Kapasitas Jaksa melalui Koordinasi dalam Proses Penyidikan dan Penuntutan dalam RUU KUHAP: Studi Perbandingan AS, Belanda dan Indonesia." *PAMPAS: Journal of Criminal Law* 6, no. 2 (2025): 183–217.
- Suhartanto, Feri Pramudya, and Yenny Febrianty. "Perbandingan Sistem Hukum Civil Law dan Common Law." *Konsensus: Jurnal Ilmu*

- Pertahanan, Hukum dan Ilmu Komunikasi 1, no. 3 (2024): 72–83.
<https://journal.appisi.or.id/index.php/konsensus/article/view/218/359>.
- Suryani, Nilma, and Aditya Cakra Fajar. “Kapita Selekta terhadap Kebijakan Kejaksaan dalam Meneksekusi Aset Terpidana Perkara Korupsi yang Telah Habis.” *UNES Law Review* 8, no. 2 (2026): 684–694.
- Tesalonika, Rivana. “Praktik Konvensi Ketatanegaraan terhadap Masa Jabatan Jaksa Agung di Indonesia.” *Lex Privatum* 6, no. 4 (2023): 1–9.
- United States Department of Justice. *Special Counsel Regulations*, 28 CFR Part 600.
- Yanlua, Siti Zainab. “Dinamika Kewenangan Jaksa: Peran dalam Penuntutan Saat Ini dan Arah Perubahan dalam RUU KUHP.” *Al-Ahkam Jurnal Hukum Pidana Islam* 7, no. 1 (2025): 14–23.
<https://doi.org/10.47435/al-ahkam.v7i1.3637>