

The Nature of The Role of State Attorney Prosecutors in Legal Assistance in The Civil and State Administrative Fields

Samsiska Dien Ermika Syamsu¹, Sufirman Rahman², Syahrudin Nawi³, M. Kamal Hidjaz⁴ and Zainuddin⁵

Abstract

This research aims to comprehensively examine the role of the State Attorney in providing legal assistance within Civil and State Administration, assess its effectiveness in resolving legal disputes, and identify key factors influencing its efficacy. Adopting a theoretical framework that integrates normative legal research and sociological legal research, the study analyzes laws governing the State Attorney's functions while evaluating how these are perceived and applied in practice. Through a descriptive approach utilizing mixed methods, including the study of legal documents, interviews with State Attorneys, and field observations, the research reveals that while the State Attorney plays a crucial role in representing the legal interests of various entities, including the state, government, BUMN/BUMD, and the community, its ability to effectively resolve legal disputes in Civil and State Administration settings is hindered by complexities in legal frameworks, limitations in human resources and infrastructure, varying levels of public legal awareness, and the prevailing legal culture. This study's findings offer practical and theoretical insights that can guide enhancements in legal assistance practices and policy development within the field.

Keywords: State Attorney, Legal Aid, Effectiveness, Legal Dispute, Civil, State Administration

INTRODUCTION

Indonesia as a state of law has an obligation to enforce the law, which leads to the establishment of law enforcement agencies such as the AGO. Although the AGO has a strategic role in prosecution, its implementation has not always been significant. Although the Constitution does not explicitly explain the position of the AGO, Law No. 48/2009 provides a foundation for its functions. The AGO has a role in civil and state administration, including providing legal assistance to the state and government. Driving factors include the complexity of community issues that require legal assistance. The AGO also contributes to dispute resolution and provides legal opinions. The AGO's role in civil and administrative matters makes a significant contribution to society and government, both in resolving problems and in representing the state's interests in the legal arena. Despite challenges such as independence issues, the potential for the AGO to make further contributions to law enforcement in the future remains great.

The role of the State Attorney (JPN) in representing the interests of the state or government in civil and state administrative cases is very important. Although it has not been fully utilized by government institutions and state-owned enterprises, its existence has great potential to protect state assets and maintain the authority of the government. However, there are several problems associated with the position of the JPN, such as independence that is sometimes questioned, especially in the context of dispute resolution involving parties with political interests.

Nevertheless, the role of the Attorney General's Office of the Republic of Indonesia, including the JPN, still has great potential to continue to contribute to maintaining justice and law enforcement in Indonesia. By enhancing its capabilities and independence, as well as paying attention to ethics in carrying out its duties, the

¹ Universitas Muslim Indonesia. E-mail: samsiskadienermikasyamsu@gmail.com, <https://orcid.org/0009-0001-3745-9080>

² Universitas Muslim Indonesia E-mail: Sufirman.rahman@umi.ac.id, <https://orcid.org/0009-0003-4972-3138>

³ Universitas Muslim Indonesia E-mail: syahrudin.nawi@gmail.com, <https://orcid.org/0009-0005-5098-4866>

⁴ Universitas Muslim Indonesia E-mail: kamal.hidjaz@umi.ac.id, <https://orcid.org/0009-0006-9802-0609>

⁵ Universitas Muslim Indonesia E-mail: zainuddin.zainuddin@umi.ac.id, <https://orcid.org/0000-0002-7321-8516>

AGO can be more effective in providing legal protection to the state and society.

In optimising the role of the State Attorney (JPN), several steps can be taken. First, it is necessary to increase understanding and enforcement of the independence of JPNs in carrying out their duties as state attorneys. This is important to maintain integrity and fairness in the legal process. For example, in the case of the BRI II Building dispute on Jalan Sudirman Jakarta, there were arguments stating that BRI as a state-owned enterprise should not use a JPN as a legal representative. Similar opinions come from legal practitioners such as Agustinus Dawarja. According to Agustinus, the Memorandum of Understanding (MoU) between the AGO and SOEs needs to be considered carefully. If the MoU is intended to prevent corruption in SOEs, it is considered legitimate. However, if the content of the MoU is to make the JPN a lawyer representing SOEs in civil and state administrative cases, the validity of such an agreement is questionable. Another legal issue related to the JPN's duties is her independence. In some situations, the JPN's position as a legal representative is not considered independent. For example, when the JPN represented the General Election Commission (KPU) in a presidential election dispute at the Constitutional Court, this led to objections from parties who felt that the KPU was not neutral because it used a JPN who was directly under the President who was also a party to the dispute.

THEORETICAL FRAMEWORK

The theoretical framework employed in this research integrates normative legal research and sociological legal research. Normative legal research involves the analysis of regulations and laws pertaining to the role and function of the State Attorney. On the other hand, sociological legal research evaluates the practical application of these regulations and their perception by the public and relevant institutions. This combined approach allows for a comprehensive understanding of both the legal framework and its real-world implementation and impact.

The Nature of the State Attorney's Role in Legal Assistance in the Civil and Administrative Fields

In law enforcement, the AGO must play an active and visible role in the entire legal process to ensure compliance with the law and prevent offences. This law enforcement must be in line with the principles of the rule of law based on Pancasila, with the rule of law as the primary basis. As a law enforcement institution, the AGO must be independent and free from external intervention, in order to create fair, honest and transparent law enforcement and achieve the true purpose of the law. Prosecutors are required to uphold the principle of presumption of innocence (fair trial) and the principle of equality before the law. In addition, the prosecutor's office has the role of community protection and protection with duties, functions, and authorities regulated by law, which include criminal, civil, and state administrative law enforcement. In the field of civil and state administration, the AGO acts to maintain legal order, legal certainty, and protect the interests of the state and the civil rights of the community. However, there are obstacles where several government bodies have not given special powers to the prosecutor's office in handling civil and state administrative cases, so that the prosecutor's office has not been optimal in carrying out its role in accordance with the provisions of Article 30 Section (2) of the Prosecutor's Office Law.

The functions of the prosecutor's office in this area cover several aspects:

Ensuring the Rule of Law: The Public Prosecution Service is authorised by law or court decision to ensure the rule of law.

Securing State Wealth: The AGO can use civil instruments to secure state assets, such as in corruption cases.

Preserving Government Authority: The prosecution acts passively to maintain the authority of the government in civil and administrative cases.

Protecting Public Interests: The Public Prosecution Service can represent the interests of the public in legal actions, including through class actions or class actions.

The AGO also has an important role in handling various cases involving state losses due to corruption offences, both through civil lawsuits and other legal actions. The principle of asset recovery is an important part of law enforcement against corruption, in accordance with international provisions such as the Convention Against Corruption. The Attorney General's Office is authorised to return assets resulting from corruption, supporting the objectives of the Corruption Eradication Act.

This authority is a form of effort from the Government to enforce the law in the field of business activities, by ensuring that Limited Liability Companies (PT) carry out their business activities in accordance with applicable regulations as an effort to improve national resilience. According to the provisions of the Company Law, there are two reasons underlying the prosecutor's authority to act as an applicant for the dissolution of a Limited Liability Company (PT) in the District Court, namely: (1) because there is a single shareholding in the Limited Liability Company (PT) or (2) because the Limited Liability Company (PT) has committed an act of violation of the public interest and/or laws and regulations. Application for the dissolution of a Limited Liability Company by the State Attorney, the law gives legal standing or *legitima persona standing in judicio* to the attorney general to apply for dissolution on the grounds that the company violates the public interest or the company commits acts that violate laws and regulations.

In addition, the AGO can also apply for the dissolution of a Limited Liability Company (PT) that violates the public interest or laws and regulations, as stipulated in Law No. 40/2007 on Limited Liability Companies.

The authority of the Public Prosecution Service to dissolve a Limited Liability Company (PT) is not new. Article 32 of the Prosecutor's Office Law states that the Prosecutor's Office may be assigned other duties and authorities based on the law. This is confirmed in Article 146 Section (1) of the Limited Liability Company Law (UUPT) which states that the District Court may dissolve a company at the request of the Public Prosecutor's Office if the company violates the public interest or laws and regulations.

The Limited Liability Company Law provides several duties and functions to the Public Prosecutor's Office:

- Submitting an application to the District Court to examine the company to obtain evidence that the company violates the public interest, which may lead to dissolution by court order.

- Submitting an application to the District Court to dissolve the company if it is found to have violated the public interest or laws and regulations.

- Submitting a request to replace the liquidator if the liquidator does not perform his duties properly or the company's debts exceed its assets.

Based on Article 138 of the Company Law, if the court examination shows that the company has committed acts that harm the state or public interest, the Public Prosecutor's Office must apply to the District Court to dissolve the company.

Legal aid broadly means efforts to help the underprivileged in the legal field. According to Buyung Nasution, this has three interrelated aspects: the formulation of legal rules, the monitoring of compliance with those rules, and the education of the public about their importance.

One of the five tasks of the State Attorney is to provide legal aid, which can be used by both central and local governments. Based on the Instruction of the Attorney General of the Republic of Indonesia Number: Ins. 002/Q/9/1994 dated 1 September 1994 on legal aid procedures, the Attorney General's Office must implement legal aid in accordance with the principles of orderly, simple, and optimal. This legal aid means the provision of legal services to government agencies or state institutions based on a special power of attorney. Attorney General Instruction Number: INS-002/G/9/1994 stipulates that legal aid must fulfil the following conditions:

- Each request for legal aid must be accompanied by a comprehensive legal review to anticipate the case at hand, including an analysis of the strengths, weaknesses and opportunities in the case.

- Government agencies or state institutions may authorise the AGO to represent them as plaintiffs or defendants.

For cases involving the President, Ministers, or Minister-level State Officials, a special power of attorney with the right of substitution is granted to the Attorney General of the Republic of Indonesia or the Deputy Attorney General for Civil and State Administration. For other officials at the central level, the power of attorney is given to the Deputy Attorney General for Civil and State Administration, while at the regional level it is given to the Head of the High Prosecutor's Office or the Head of the District Attorney's Office.

According to the Regulation of the Attorney General Number: PER-018/A/JA/07/2014 on Standard Operating Procedures at JAMDATUN, legal aid is the duty of the State Attorney in civil and state administrative cases to represent state institutions, government agencies at the central/regional level, BUMN/BUMD based on a special power of attorney, either as a plaintiff or defendant, which is carried out in litigation or non-litigation.

The utilisation of the services of the State Attorney in providing legal aid by the government is carried out through the granting of a Special Power of Attorney (SKK) to the Attorney. Before the SKK is given, a Memorandum of Understanding (MoU) is usually made between the government and the Attorney General's Office.

Requests for legal aid to the State Attorney are not immediately accepted, but go through a case review stage. The State Attorney appointed in the SP-1 (review warrant) format must conduct a careful legal analysis. The State Attorney team will invite the applicant to present the case and provide supporting data. This case review aims to ensure that the case is within the scope of the duties and authority of the State Attorney in the fields of civil and state administration, and that there is no conflict of interest. If after the review it is found that the State Attorney can provide legal assistance, then the application can proceed.

Requests for legal aid must be submitted in writing by attaching a Special Power of Attorney with the Right of Substitution and related documents. Legal assistance is provided in both litigation and non-litigation matters, with the State Attorney representing government agencies or state institutions as plaintiffs or defendants in civil and state administrative law cases.

The use of State Attorney services provides benefits such as cost savings as these services are free, in contrast to private law firms that charge fees. In addition, the use of this service also maximises the implementation of the duties of the State Attorney in accordance with Law No. 16/2004 on the Prosecutor's Office of the Republic of Indonesia. However, the prosecutor's office cannot provide legal assistance for criminal cases and personal acts of government officials.

The Attorney General's Office of the Republic of Indonesia plays a role in providing legal audits for various legal purposes. In accordance with Law No. 16/2004, legal considerations provided by the AGO include legal services to government agencies, state institutions, or SOEs, both in the civil and state administrative fields. This legal consideration is delivered through coordination forums or other media outside the judicial process. The provision of legal considerations must be optimal, objective, and based on the law. This can be done through Muspida meetings or other forums that discuss legal aspects in various issues such as legislation, land acquisition, evictions, and licensing. Legal considerations are provided to avoid losses for the government and ensure contracts or agreements fulfil the principles of good governance. The AGO has the authority to provide legal considerations as a preventive measure so that officials do not make decisions without legal basis. This helps officials go through the correct mechanisms so that the decisions taken are not against the law. In other areas of legal action, the AGO is also tasked with saving state assets and upholding the authority of the government. This includes claims for compensation for the benefit of the state or society.

The Attorney General's Office can also file a civil lawsuit related to losses resulting from corruption offences based on the provisions in Articles 32, 33, and 34 of Law Number 31 Year 1999. In a corruption-related civil lawsuit, the state can file a claim if there is insufficient evidence for criminal proceedings, the suspect dies, or after a permanent court decision. This lawsuit allows the state to claim assets suspected of originating from corruption from convicts, heirs, or other related parties.

Effectiveness of the Role of the State Attorney in the Implementation of Legal Assistance in the Civil and State Administration Sectors

The Prosecutor's Office, as an important part of the government apparatus tasked with law enforcement, does not only have responsibilities as a public prosecutor in criminal cases. They also have a role in civil matters, known as the Civil and State Administration (DATUN) field. In this case, the AGO has prosecutors who act as state lawyers, representing the government in civil and state administrative matters.

Law No. 16 of 2004 on the Public Prosecution Service of the Republic of Indonesia confirms the duties and powers of the Public Prosecution Service in the Civil and State Administrative fields. This includes the ability of the AGO to file cassations with the Supreme Court in civil and state administrative matters. Although the term 'state attorney' is not explicitly used in the regulations, the AGO has the authority to act on behalf of the government in and out of court, in accordance with Article 30 Section (2) of the AGO Law.

To regulate the implementation of the duties and authority of the Attorney General's Office in the field of civil and state administration, Regulation of the Attorney General of the Republic of Indonesia Number PER-018/A/J.A/07/2014 was issued. This regulation replaces the previous regulation which is considered no longer in accordance with the needs and development of the times. This regulation regulates various aspects such as the duties and functions of the secretariat, civil director, director of state administration, and director of recovery and protection of rights at Jamdatun.

In carrying out its duties, the Civil and State Administration Section performs various functions, including the preparation of technical policies, controlling law enforcement activities, implementing compensation claims for court decisions, providing legal assistance to the public, fostering cooperation with related agencies, providing legal advice to the Attorney General, and improving the ability of law enforcement officers in their jurisdictions.

However, the role of the Attorney General's Office in civil cases has not been fully utilised by stakeholders. This is due to various factors, both in terms of the legal subject itself and environmental factors in the Prosecutor's Office's jurisdiction. As a result, the general public has not fully realised the role of the Prosecutor's Office as the State Attorney in accordance with existing laws and regulations.

Based on the data above, the results showed that 55% of the respondents stated that it was effective, 33% were less effective, and 27% were not effective. The results of research related to the achievements of rescue and recovery in the field of civil and state administration show that the Banjarbaru District Attorney's Office succeeded in saving state money of Rp 2,146,352,113 and recovering state money of Rp 191,282,904 in the period 2023-2024. One of the dispute settlements conducted by the State Attorney of the Banjarmasin District Attorney's Office was a dispute over State Administration in Batuah Market. Here, the Mayor of Banjarmasin asked the head of the Banjarmasin State Attorney's Office to represent him as a State Attorney. Because the head of the Banjarmasin State Attorney's Office also acts as a State Attorney, a letter of substitution was given to the State Attorney in the field of Civil and State Administration. The legal consideration conducted by the State Attorney is to provide assistance to the Banjarmasin City Government in the field of state administration based on a request letter from the Mayor of Banjarmasin. The obstacle encountered was the delay of the request letter. Although the dispute lawsuit was filed on 11 April 2022, the application letter to the Banjarmasin State Attorney's Office was only received on 18 May 2022.

The State Attorney also took other legal actions, such as facilitating the City Government as its legal representative in the field of State Administration and mediating between the Batuah Market Community and the City Government. The obstacle faced was the assumption of the Batuah Market Community towards the eviction of their residence. Legal assistance carried out by the State Attorney aims to ensure that the procurement of goods/services is carried out in accordance with the needs, the established procedures have been fulfilled, the goods/services obtained can be accounted for, and prevent the practice of corruption, collusion and nepotism. Non-litigation dispute resolution processes, such as negotiation, mediation, and arbitration, are considered more likely to result in a win-win solution agreement than going to court. State Attorneys can also conduct out-of-court dispute resolution by providing legal considerations, advice, and legal opinions. Case settlement by State Attorneys is conducted based on a Special Power of Attorney, with good

coordination with the Authorising Attorney regarding the case material. State Attorneys must also understand the scope of state finances and state assets to avoid state financial losses due to corruption offences.

Factors Affecting the Effectiveness of the State Attorney's Role in Legal Assistance in the Civil and Administrative Sectors

Legal substance includes norms, rules and laws that are binding and serve as guidelines for law enforcement. The influence of this factor on the role of State Attorneys in civil and administrative matters is significant, as shown in the diagram, which shows that most respondents considered this factor to be influential. State Attorneys face difficulties in civil lawsuits, mainly due to the differences between criminal and civil law and the protracted litigation process.

Human resources also affect the effectiveness of State Attorneys. Specialised competence in civil and administrative matters is required, but there are still obstacles in understanding and utilising the DATUN function. Limited facilities and infrastructure are also an obstacle, especially in case settlement and mediation processes.

Public legal awareness is also important. Despite legal counselling efforts, there is still a lack of public understanding of the role of the State Attorney. Co-operation between government agencies and the AGO is also not always optimal. The legal culture of the community plays an important role in the effectiveness of the role of the State Attorney. A culture that still tends to avoid dealing with the prosecutor's office can hinder the resolution of legal issues through mediation or legal aid offered by the State Attorney.

Community Legal Culture factor. Harmonious legal substance must be supported by consistent law enforcement, as well as by a legal culture that encourages community legal services and awareness. However, there are still public habits that tend to regard the prosecutor's office as a frightening institution, so they do not fully understand that the prosecutor's office can also provide legal assistance. The results showed that the legal culture of the community had a significant effect on the effectiveness of the role of the State Attorney. Most respondents recognised that legal culture still influences people's perceptions and attitudes towards the role of the State Attorney. There are still many people who do not understand that the prosecutor's office can also provide legal assistance and resolve problems through mediation or kinship.

Thus, to increase the effectiveness of the role of the State Attorney, it is important to continue to improve the public's understanding of the functions and services provided by the State Attorney's Office in the areas of civil and administrative law. More comprehensive and communicative legal counselling efforts can be a solution to changing public perceptions and attitudes towards prosecutors and strengthening a better legal culture.

CONCLUSION

The essence of the role of the State Attorney in legal assistance in the Civil and State Administration Sector is to represent the interests of the state and individuals in resolving legal disputes, both through litigation and non-litigation channels. State Attorneys can act in and out of court, filing a lawsuit if necessary, but still not involving the role of State Attorneys in legal assistance. Factors affecting the effectiveness of the role of the State Attorney in legal assistance in the Civil and Administrative Sector are legal substance factors, human resource apparatus factors, facilities and infrastructure factors, public legal awareness factors, and legal culture factors.

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