

## **Prosecutor's Intelligence Functions in Preventing Corruption: Strategic Development Security Technical Guideline Perspective**

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Submitted: 2022-10-09 | Reviewed: 2023-04-06 | Revised: 2023-04-27 | Accepted: 2023-04-27

**How to cite:** Dharma, Andri, et al. "Prosecutor's Intelligence Functions in Preventing: Strategic Development Security Technical Guideline Perspective." *Dialogia Iuridica*, Vol. 14, No. 2, 2023, pp. 001-026.

**DOI:**  
<https://doi.org/10.28932/di.v14i2.5557>

### **ABSTRACT**

*Corruption crimes are cracked down not only by repressive efforts but also by preventive efforts. The Indonesian Public Prosecutor's Office has several stages of preventive efforts to carry out its intelligence functions. Indonesia's Attorney General's Office has introduced a new program called Security for Strategic Development - Regional Investment in implementing intelligence functions. The issue is what the legal status of the Technical Guidelines on Security for Strategic Development and Regional Investments of the Indonesian Public Prosecutor's Office in Anti-Corruption will be in terms of legal certainty. This study is a prescriptive legal study, descriptive analysis. A legal approach is used as the data is subject to various laws and regulations. Data collection through library and field research surveys accompanied by documentary study and interviews. Based on the qualitative analysis, the results show that the Strategic Development of the Indonesian Public Prosecutor's Office for Prevention of Corruption Crimes and Technical Guidelines for Security of Local Investments regulation was made by Law No.16 of 2004*

*concerning the Attorney General's Office of the Republic of Indonesia, Law No.17 of 2011 concerning State Intelligence, as well as the Regulation of the Attorney General No.PER-006/A/JA/07/2017 concerning the Organization and Work Procedure of the Indonesian Prosecutor's Office does not include the authority to prevent corruption based on the 2004 Attorney General's Law. B-484/D/Dpp/03/2020, dated March 12, 2020, by adapting it to Law No.11 of 2021 concerning the Indonesian Attorney General's Office, to provide legal certainty to prevent corruption.*

**Keywords:** *Attorney; Intelligence Function; Strategic Development Security*

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## I. INTRODUCTION

Law sets what should be done and what should not be done. Achmad Ali defines law as a set of rules or stipulations in a system, which functions to decide what should be done and what should not be done as a citizen. Law stems from the community and other sources deemed legitimate by the highest authority in the community, and is applied by all community members in their daily life. Any violation of law may result in sanction from the highest authority.<sup>1</sup>

In the Indonesian Dictionary, law is defined as rules set by an authority or a tradition that is deemed to be in force by and for many people; laws, regulations, and alike for controlling the public life, principles, guideline, and judge's decision.<sup>2</sup>

Laws are not aimed only at individuals who clearly exhibit unlawful behaviors but also at potential unlawful act and the state's instrument to enforce the legal system.<sup>3</sup> Criminal law study emerges as one of the most important discussions in the field of law.

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<sup>1</sup> Ali, Achmad. *Menguak Tabir Hukum*. Bogor, Ghalia Indonesia, 2008, p. 30-31.

<sup>2</sup> Rama, Tri. *Kamus Lengkap Bahasa Indonesia*. Surabaya, Karya Agung, 2008, p. 175.

<sup>3</sup> Hartanti, Evi. *Tindak Pidana Korupsi*. Jakarta, Sinar Grafika, 2007, p. 1.

According to Hazewinkel-Suringa, Criminal law could be defined as a set of rules containing prohibition and obligation that leads to legal sanctions once violated.<sup>4</sup>

There are two types of criminal law: material and formal ones. The material criminal law deals with guidelines and depiction of an offense, while the formal criminal law deals with how the state, through its functionaries, enforces the material law. Any behavior violating this rule could be categorized as an offense. One of the most phenomenal offenses is corruption. As one of the extraordinary crimes, corruption is usually committed by a respectable, powerful individual with an authority, and his/her victim often does not realize their action, as mentioned in the UN's International convention in Vienna, 7 October 1978.<sup>5</sup>

Corruption has been proven to bring massive impacts on the country. It causes difficulty in poverty alleviation efforts, limited access to public facilities, and increasing good and service prices. Rampant corruption cases in Indonesia have affected the fluctuation of offense amid the society, causing the society to tend not to recognize law and prefer anarchy to judge offenders. This condition requires significant attention from all parties.<sup>6</sup>

In addition to the Komisi Pemberantasan Korupsi's (Corruption Eradication Commission, hereafter KPK) responsibility, corruption should receive more serious attention from other law enforcers, including the Police and Public Prosecution Office of the Republic of Indonesia. They are independent institutions who are mandated by Law No.31 of 1999 on Eradication of Criminal act of Corruption, which is amended by Law No.20 of 2001 (Hereafter, Anti Corruption Law). Corruption eradication should also receive considerable attention from all relevant stakeholders. Investigation of criminal act of corruption belongs to the police authority, as mentioned by the MoU jointly agreed by Police of the Republic of Indonesia (Polri), KPK, and Public

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<sup>4</sup> Wahyuni, Fitri. *Dasar-Dasar Hukum Pidana di Indonesia*. Tangerang Selatan, Nusantara Persada Utama, 2017, p. 3.

<sup>5</sup> Hatta, Muhammad. *Kejahatan Luar Biasa (Extra Ordinary Crime)*. Lhokseumawe, Unimal Press, 2019, p. 95.

<sup>6</sup> *Ibid*, pp. 8-9.

Prosecution Office, i.e., No.KEP-049/A/J.A/03/2012, No.B/23/III/2012, and No.SP3-39/01/03/2012 on Optimizing Eradication of Criminal Act of Corruption.<sup>7</sup>

In MoU No.KEP-049/A/J.A/03/2012, No.B/23/III/2012, and No.SP3-39/01/03/2012 on Optimizing Eradication of Criminal Act of Corruption, dated 29 March 2012, with regard to the second section of handling criminal act of corruption, article 8 states that:

- “1. When involving parties investigate the same target, in order to avoid duplication of investigation, any institution that issues the investigation order letter first is obliged to continue its investigation or based on the agreement between involving parties.
2. The investigation done by the public prosecution office and POLRI should be informed to KPK, and its progress is reported to KPK at least once in three months.
3. KPK should receive the recapitulation of the monthly report regarding the investigation done by the public prosecution office and Polri.
4. The preliminary investigation and full investigation done by one of these three parties could be transferred to one another following the regulation, by firstly conducting a preliminary hearing attended by the involving parties and recorded in a hearing report.”

A synergistic collaboration among KPK, public prosecution office, police, and the public is necessary to eradicate corruption,<sup>8</sup> the public prosecution office emerges as one of the law enforcers with important role in eradicating corruption. Article 2 paragraph (2) of Law No. 16 of 2004 on Prosecution states that the public prosecution is mandated to prosecute and investigate criminal acts of corruption. In this regard, the public prosecution office plays a strategic role in eradicating and preventing corruption. They are demanded to proceed the perpetrator and return the financial state's loss. However, the public prosecution office's repressive approach is still suboptimal to prevent and overcome increasingly rampant corruption cases. Repressive acts, on the other hand, lead to poor budget absorption and hindered developmental project due to excessive fear among economic actors and the governmental apparatus. Furthermore, an aggressive law enforcement also faces normative legal hindrances due to conflict of

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<sup>7</sup> Investigation of criminal act of corruption belongs to the police authority, as mentioned by the MoU jointly agreed by Police of the Republic of Indonesia (Polri), KPK, and Attorney General, i.e., No. KEP-049/A/J.A/03/2012, No. B/23/III/2012, and No. SP3-39/01/03/2012 on Optimizing Eradication of Criminal Act of Corruption.

<sup>8</sup> Sosiawan, Ulang Mangun. “Peran Komisi Pemberantasan Korupsi (KPK) Dalam Pencegahan dan Pemberantasan Korupsi.” *Jurnal Penelitian Hukum De Jure*, Vol. 19, No. 4, 2019, pp. 517-538, <http://dx.doi.org/10.30641/dejure.2019.V19.517-538>.

norms. H.M. Prasetyo states that the public prosecution office is currently developing a progressive law enforcement that focuses not only on legal certainty but also the benefit aspect.<sup>9</sup>

It is important to note that the public prosecution office is the only institution with authority to execute court rulings (executive ambtenaar).<sup>10</sup> In addition to handling criminal cases, public prosecution office is also mandated to handle civil and state administrative cases,<sup>11</sup> i.e., representing the government in civil and state administrative cases as the public prosecutor.<sup>12</sup> In this regard, the public prosecution office is given an authority to act as the public prosecutor and implement the court rulings, in addition to other authorities stipulated by law.<sup>13</sup>

According to H.M. Prasetyo, the public prosecution office has formed the Government and Developmental Security and Supervisory Team (TP4D) to oversee the development and prevent state's loss.<sup>14</sup> However, this program has been removed and replaced by the Strategic Development and Regional Investment Security program to prevent criminal acts of corruption. If the strategic development project is categorized as the national development, the security would be done by the public prosecution office of the Republic of Indonesia or the High Prosecution office. If the project does not belong to the national/regional strategic project, a legal assistance is asked to the Department of Civil Cases and State Administrative Cases.

Corruption cases in the anti-corruption court in Medan District Court from 2019 to 2021 are presented in the following table:

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<sup>9</sup> Prasetyo, H.M. "Inovasi Penegakan Hukum Berbasis Paradigma Restoratif, Korektif dan Rehabilitatif Untuk Percepatan Pembangunan Nasional." The awarding ceremony of Doctorate Honoris Causa in Law, 22 Februari 2018, Faculty of Law, Universitas Diponegoro, Scientific Speech.

<sup>10</sup> Imron, Ali. "Peran dan Kedudukan Empat Pilar Dalam Penegakan Hukum Hakim Jaksa Polisi Serta Advokat Dihubungkan Dengan Penegakan Hukum Pada Kasus Korupsi." *Jurnal Surya Kencana Dua: Dinamika Masalah Hukum dan Keadilan*, Vol. 6, No. 1, 2016, pp. 83-107, <http://dx.doi.org/10.32493/jdmhkdmhk.v6i1.340>.

<sup>11</sup> Yusuf, Muhammad, et al. "Kedudukan Jaksa Sebagai Pengacara Negara Dalam Lingkup Perdata dan Tata Usaha Negara." *Jurnal Yustika*, Vol. 21, No. 2, 2018, pp. 12-28, <https://doi.org/10.24123/yustika.v21i02.1500>.

<sup>12</sup> Yusni, Muhammad. *Keadilan dan Pemberantasan Tindak Pidana Korupsi: Perspektif Kejaksaan*. Surabaya, Airlangga University Press, 2019, p. 10.

<sup>13</sup> Kejaksaan Agung RI. "Tentang Kejaksaan." [https://www.kejaksaan.go.id/profil\\_kejaksaan.php?id=1](https://www.kejaksaan.go.id/profil_kejaksaan.php?id=1), *Kejaksaan Agung RI*, accessed on 27 April 2022.

<sup>14</sup> Prasetyo, H.M., *Loc.Cit.*

**Tabel 1. Corruption Cases Proceeded in Anti-Corruption Court in Medan District Court in 2019 – 2021.**

Year	December last year	Registered cases	Ruling	Minutes
2019	40	4	2	2
2020	35	5	6	0
2021	26	7	4	1
Apr-22	34	7	8	5

Source: Information System for Case Search in Medan District Court, April 2022.

The data showed that the ratio between registered cases and the ruled cases is disproportionate. The trial of corruption cases takes extensive time because every witnesses' testimony should be confronted by one another. The trial is also costly, and it takes 3-6 months to rule out one registered case. In addition, the North Sumatera Province is the second most corrupt region in Indonesia.<sup>15</sup>

Some corruption cases in North Sumatera High Office's jurisdiction have been reported, including: (a) Corruption of Capital investment in the Perusahaan Daerah (PD) Pembangunan and Aneka Usaha during the 2014 fiscal year, causing Rp. 500 million losses,<sup>16</sup> (b) Corruption of Bandwidth and Internet Service Procurement in the Communication and Information Agency of Pematang Siantar City in the 2017 budget year: state's losses: 450 million rupiah,<sup>17</sup> (c) Sting Operation of Labuhan Batu Regent, North Sumatera, Pangonal Harahap in Soekarno-Hatta Airport, Tangerang, Banten, on

<sup>15</sup> Pekuwali, Daniel. "Gubernur Edy Malu, Sumut Peringkat 2 Provinsi Terkorup di Indonesia." *Kompas.com*, 10 Juni 2021, <https://regional.kompas.com/read/2021/06/10/140212478/gubernur-edy-malu-sumut-peringkat-2-provinsi-terkorup-di-indonesia?page=all>., accessed on 27 April 2022.

<sup>16</sup> Nasution, Anugerah. "Para Pejabat Siantar Dalam Pusaran Kasus Korupsi." *Tagar.id*, 23 Juli 2020, <https://www.tagar.id/para-pejabat-siantar-dalam-pusaran-kasus-korupsi>., accessed on 27 April 2022.

<sup>17</sup> Pribadi, Teguh. "Korupsi Pengadaan Internet, Kadis Kominfo Pematangsiantar dan Sekretarisnya Ditahan." *Kompas.com*, 22 Juli 2020, <https://regional.kompas.com/read/2020/07/22/22083181/korupsi-pengadaan-internet-kadis-kominfo-pematangsiantar-dan-sekretarisnya?page=all>., accessed on 27 April 2022.

Tuesday, 17 July 2018,<sup>18</sup> (d) Suspected Corruption of PT. Perkebunan Sumatera Utara (PT. PSU) in 2007 – 2019 caused a state's financial loss of Rp. 109 billion.<sup>19</sup>

These four cases were discovered between 2021 and 2021. In this regard, the ideal implementation of TP4D should be able to prevent these cases considering that the district public prosecution office has assisted and supervised the project.

Efforts on law enforcement to eradicate corruption should be done not only using repressive approaches, but also preventive approaches.<sup>20</sup> The preventive ones refer to optimizing the effectiveness of corruption prevention by promoting corruption-free society. In this regard, the public prosecution office's intelligence functions attempt to make preventive measures through several activities: conducting legal education, legal counseling, Jaksa Masuk Sekolah program, and other legal innovation to familiarize law to the community. The public currently exhibit a good perception of the public prosecution office's roles in handling criminal acts of corruption. However, it is necessary to scrutinize the implementation of the public prosecution office's intelligence function with respect to the PPS-ID program on the prevention of corruption.

The Role of the public prosecution office of the Republic of Indonesia in the PPS-ID program It is necessary to investigate the effectiveness of the preventive measure to see whether or not it is the same as the previous ineffective program. The expected preventive measure has never been well-implemented., i.e., optimization of the effectiveness of corruption prevention by promoting corruption-free society. In this regard, the public prosecution office's intelligence functions attempt to make preventive measures through several activities: conducting legal education, legal counseling, Jaksa Masuk Sekolah program, and other legal innovation to familiarize law to the community. The public currently exhibit a good perception of the public prosecution office's roles in handling criminal acts of corruption. However, it is necessary to

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<sup>18</sup> Wismabrata, Michael Hanga. "9 Kepala Daerah di Sumatera Utara Yang Terjerat Korupsi." *Kompas.com*, 19 Juli 2018, <https://regional.kompas.com/read/2018/07/19/08421331/9-kepala-daerah-di-sumatera-utara-yang-terjerat-korupsi?page=all>., accessed on 27 April 2022.

<sup>19</sup> Anonim. "2 Tersangka Korupsi Rp. 109 M PT. Perkebunan Ditahan." *CNN Indonesia*, 5 November 2021, <https://www.cnnindonesia.com/nasional/20211105093707-12-716956/2-tersangka-korupsi-rp109-m-pt-perkebunan-sumut-ditahan>., accessed on 27 April 2022.

<sup>20</sup> Drani, Fuzi Narin. "Penyelesaian Korupsi dengan Menggunakan Restoratif Justice." *Jurnal Penelitian Hukum De Jure*, Vol. 20, No. 4, 2020, pp. 605-617, <http://dx.doi.org/10.30641/dejure.2020.V20.605-617>.

scrutinize the implementation of the public prosecution office's intelligence function with respect to the PPS-ID program on the prevention of corruption.

A previous study examined the prosecutor's intelligence role in discovering criminal acts of corruption in the Buleleng District Attorney-General's office. It was an empirical legal study with statute approach, which was done by analyzing the effectiveness of a regulation. The study finding shows that the public prosecution office's intelligence functions face several hindering factors in eradicating corruption in Indonesia. The obstacle lies in increasingly advanced modes of operation and ability to remove evidence, in addition to Limited operating cost and human resources, lack of willingness to give information to intelligent, parties disagreeing with Intelligence, and minimum information about corrupt officials' asset transferred to the third party, and the Covid-19 pandemic.<sup>21</sup>

This descriptive study applied a normative legal approach. Data were collected from existing laws using library research, field research, and documentary study.

This study specifically analyzes the role of Strategic Development Security Technical Guideline- Regional Investment (PPS-ID) in preventing criminal act of corruption from the legal certainty perspectives.

## **II. DISCUSSION**

### **1. Hierarchy of Law regarding Public Prosecution Service's Roles in Preventing Corruption**

This study used the legal certainty perspective to analyze the role of Strategic Development and Regional Investment Security Technical Guideline (PPS-ID) of the Public Prosecution Service in preventing criminal acts of corruption. It applied Hans Kelsen's stufenbau theory.<sup>22</sup>

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<sup>21</sup> Dananjaya, I Made Dwi Narendra, et al. "Peranan Intelijen Kejaksaan Dalam Pengungkapan Kasus Tindak Pidana Korupsi (Studi Kasus Kejaksaan Negeri Buleleng)." *Jurnal Preferensi Hukum*, Vol. 3, No. 1, 2022, pp. 12-16, <https://doi.org/10.22225/jph.3.1.4593.12-16>.

<sup>22</sup> Hijbers, Theo. *Filsafat Hukum*. Yogyakarta, Kanisius, 1995, p. 44.

Grounded from the Law No.16 of 2004 on Public Prosecution Service of the Republic of Indonesia, public prosecution service serves as one of the law enforcement institutions and is demanded to play a more active role in enforcing law supremacy, public interest protection, human rights protection, and corruption, collusion, and nepotism eradication.<sup>23</sup>

Countermeasuring corruption becomes one of the public prosecution service's primary missions that should be carried out optimally following Indonesia's law enforcement in Indonesia. A range of policies and instructions of the attorney general are issued to promote the intensity of the role in handling corruption cases in order to keep up with the increasingly advanced modes of operation of corruption.<sup>24</sup>

Corruption is not only Indonesia's problem. It is a problem most countries worldwide are combating. Therefore, United Nation Convention Against Corruption (UNCAC) is agreed, which is ratified by Indonesia through law No.7 of 2006 on the ratification of the 2003 United Nations Convention Against Corruption.<sup>25</sup>

Several factors are believed to be the causes of corruption, including: (a) poor legal enforcement (low probability of being arrested, prosecuted, and punished, in addition to the bureaucratic mafia), (b) potential bureaucratic administration (broad permit, authority, bureaucratic chain, etc.), (c) low salary, (d) open opportunities, (e) salary gap, and (f) poor morality.<sup>26</sup>

According to Andi Hamzah, some factors of corruption include: (a) insufficient salary when compared to the increasing needs, (b) cultural background, (c) poor management and ineffective and inefficient control, opening opportunities to corrupt, and (d) modernized corruption opportunity".<sup>27</sup>

With regard to corruption issues, the government of the Republic of Indonesia has put maximum efforts to combat corruption, as shown by the issuance of Presidential Instruction No.2 of 2014 on Prevention and Eradication of Corruption, dated 21 March

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<sup>23</sup> Yusni, Muhammad. *Op.Cit.*, p. 11.

<sup>24</sup> *Ibid*, p. 12.

<sup>25</sup> *Ibid*.

<sup>26</sup> *Ibid*, p. 12.

<sup>27</sup> Yusni, Muhammad. *Op.Cit.*, p. 16.

2014.<sup>28</sup> As a follow-up of prevention and eradication of corruption, as mandated in presidential regulation No. 55 of 2012 on the long term (2012-2015) and short-term (2012-2014) National Strategy of Prevention and Eradication of Corruption.

Another regulation is the Presidential Regulation No.54 of 2018 on the National Strategy of Corruption Eradication. The regulation was issued in order to optimize the prevention of corruption by improving synergy and collaboration among ministries, institutions, regional governments, and other stakeholders, including KPK. It is necessary to develop more focused, measured, and impact-oriented strategies.

The legal foundations of corruption eradication in Indonesia are as follows: (a) Law No.31 of 1999 on Eradication of Criminal act of Corruption, as amended by Law No.20 of 2001 on the Amendment of Law No.31 of 1999 on Eradication of Criminal Act of Corruption, (b) Law No.28 of 1999 on State Administration Clean and Free from corruption, collusion, and nepotism, (c) Law No. 30 of 2002 on Corruption Eradication Commission, (d) Law No.16 of 2004 on The Public Prosecution Service of the Republic of Indonesia, (e) Governmental Regulation No.71 of 2000 on the Implementation Guideline of Public participation and Awarding in Prevention and Eradication of Criminal Act of Corruption.

The General Attorney of the Republic of Indonesia also issues the Circular letter on the alleged corruption investigation other than above-mentioned provisions, including Circular Letter of General Attorney of the Republic of Indonesia No.SE-017/A/JA/08/2015 on the Investigation of alleged criminal acts of corruption.

Based on the theory of legal certainty, the hierarchy of law regarding Public Prosecution Service's Roles in Preventing Corruption could be presented as follows: (1) Legal Basis: (a) Law No.16 of 2004 on The Public Prosecution Service of the Republic of Indonesia, (b) Law No.28 of 1999 on State Administration Clean and Free from corruption, collusion. (2) Legal Substance of Prevention of Corruption: (a) Law No. 31 of 1999 on Eradication of Criminal Act of Corruption, (b) Law No.20 of 2001 on the

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<sup>28</sup> Presidential Instruction No. 2 of 2014 aims to: 1) Ministers of Kabinet Indonesia Bersatu II; 2) Cabinet Secretary; 3) Attorney General; 4) Chief of Indonesian National Police; 5) Heads of Presidential working unit for supervision and control of development; 6) Heads of non-ministerial governmental institutions; 7) Secretary-General of The State's High level Institutiton; 8) Governors; and 9) Regent/Mayor.

Amendment of Law No.31 of 1999 on Eradication of Criminal Act of Corruption. 31 of 1999 on Eradication of Criminal Act of Corruption. (3) Implementing Regulation: Governmental Regulation No.71 of 2000 on the Implementation Guideline of Public participation and Awarding in Prevention and Eradication of Criminal Act of Corruption.

The authority of the Public Prosecution Service with regard to corruption cases is mentioned in the following documents (a) TAP MPR-RI No.XI/MPR/1998 on the State Administration Clean and Free from Corruption, Collusion, and Nepotism, jo. Presidential Instruction No.30 of 1998 on the Eradication of Corruption, Collusion, and Nepotism, dated 02 December 1998, (b) Article 13 jo. Article 284 paragraph (2) of Criminal Procedure Code, jo. Article 17 of the Governmental Regulation No.27 of 1983 on the Implementation of Criminal Procedure Code, stating that investigation authority in certain criminal offense is specifically stipulated by certain law, executed by the investigator, public prosecutors, and other investigating officials appointed by law,<sup>29</sup> (c) Law No.28 on 1999 on the State Administration Clean and Free from corruption, collusion, and nepotism, stipulating the public prosecutor's authority as an investigator in articles 1, 12, 17, 18, 20, 21, and 22, and their elucidations and article, (d) Article 30 paragraph (1) letter d of Law No.16 of 2004 on Prosecution, stipulating that the public prosecutor is authorized to perform specific investigation of a certain criminal act based on the law, and (e) Presidential Regulation No.38 of 2010 on the Organization and Work Procedure of the Public Prosecution Service of the Republic of Indonesia, which is then implemented through the Attorney General Regulation No.PER-009/A/JA/01/2011, dated 21 January 2011, and Attorney General Regulation No.PER-006/A/JA/07/2017 on the organization and work procedure of Public Prosecution of The Republic of Indonesia.

A public prosecutor's authority, according to article 14 of the Criminal Procedure Code, is to (a) Receive and examine an investigation report from the investigator and the investigator assistant, (b) conduct pre-prosecution when there is any

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<sup>29</sup> Article 13 of the Criminal Procedure Code states that the public prosecutor is the prosecutor entitled with authority to make prosecution. See: Saragih, Yasmirah Mandasari. "Peran Kejaksaan Dalam Pemberantasan Tindak Pidana Korupsi di Indonesia Pasca Undang-Undang Nomor 20 Tahun 2001 tentang Pemberantasan Tindak Pidana Korupsi." *Al'Adl*, Vol. 9, No. 1, 2017, pp. 49-66, <http://dx.doi.org/10.31602/al-adl.v9i1.802>.

shortcoming in the investigation process by paying attention to article 11 paragraphs (3) and (4), by providing feedbacks to improve the investigator's investigation, (c) extend the detention period, execute the detention or advanced detention and change the detainee's status once the case is transferred by the investigator, (d) write a charge letter, (e) delegate cases to the court.

In handling corruption, a prosecutor holds the authority to act as an investigator and as a public prosecutor.<sup>30</sup> According to article 10 paragraph (1) of the Criminal Procedure Code, when the investigator completes the investigation, he/she is obliged to immediately hand over the case report to the public prosecutor. With regard to criminal acts of corruption, the investigator-prosecutor who have completed the preliminary investigation and full investigation process, they should hand over the case report, the suspect, and the evidence to the public prosecutor to make a charge plan to be applied to the district court.<sup>31</sup>

## **2. The Intelligence Function of Prosecution Service of the Republic of Indonesia**

The legal basis of the primary duties and functions of the Prosecution Service Service's intelligence department is stipulated in the Regulation of the Attorney General of the Republic of Indonesia No.PER-006/A/JA/07/2017 on the organization and work procedure of the Public Prosecution Service of The Republic of Indonesia. The main duties and functions of the North Sumatera High Public Prosecution Office's intelligence department with regard to the corruption prevention in North Sumatera province are as follows:

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<sup>30</sup> According to Putu Ary Prastya Ningrum, the existence of PPS as an investigator in corruption case could not be holistically understood using one perspective because the Fact shows that there are courts that could not accept the reason that the public prosecutor has an authority to investigate criminal act of corruption. PPS's authority to investigate criminal act of corruption still questionable and has been tested in the constitutional court. The court focuses on article 30 letter d of Law on Prosecution, i.e., the prosecution's office authority to investigate certain criminal act (corruption). The Supreme Court has answered this legal issue by issuing its legal advice no. KMA/102/III/2005, dated 9 March 2005, stating that public prosecutor holds an authority to investigate criminal act of corruption after the enactment of Anti-corruption law. See: Ningrum, Putu Ary Prastya. "Kewenangan Kejaksaan Dalam Penyidikan Tindak Pidana Korupsi." *Pariksa: Jurnal Hukum Agama Hindu*, Vol. 2, No. 2, 2018, pp. 1-7, <https://doi.org/10.55115/pariksa.v2i2.698>.

<sup>31</sup> Sari, Novi Mardihana and I Nyoman Budiana. "Limitatif Kewenangan Jaksa Penuntut Umum Dalam Tindak Pidana Korupsi." *Jurnal Kertha Semaya*, Vol. 8, No. 9, 2020, pp. 1324-1331, <https://doi.org/10.24843/KS.2020.v08.i09.p03>.

- “a. Performing intelligence activities of investigating, securing, and supporting the prevention of criminal act in order to enforce the law in a preventive manner or repressive manner in ideological, political, economic, financial, sociocultural, defense, and security domains, preventing certain people from committing their criminal acts and/or participating in administration of public order and safety and countermeasuring criminal offense, tort, and administratively unlawful act in their jurisdiction;
- b. Providing intelligence support to the PPS's duty, collaborating, coordinating, and improving legal awareness of the local people in their jurisdiction.”

Within the context of strategic development security, the intelligence department is supported by the so-called Directorate D, whose duty is to prepare the policy formulation, intelligence activities, and intelligence operations related to the strategic development security.

The scope of strategic development security covers the road infrastructure, rolling stock facilities, airport, telecommunication, harbor, smelter, water management, dam, agriculture, marine, electricity, alternative energy, natural oil and gas, science and technology, housing, tourism, prioritized industrial area or special economic zone, cross-border post, and other facilities to support successful government and strategic project at regional and national level.

Directorate D of the PPS's intelligence department, according to Article 224 of the Regulation of the Attorney General of the Republic of Indonesia No.PER-006/A/JA/07/2017 on the organization and work procedure of Public Prosecution Service of The Republic of Indonesia, has several functions as follows: (a) designing work plan and program and the escorting activities report, as well as the securing strategic development project at national and regional level, (b) preparing policy formulation, intelligence activities, and intelligence operations relate to the strategic development security, (c) preparing, collecting, and studying relevant law and regulations regarding national or regional strategic development, with respect to the strategic development security, (d) planning, mapping, and analyzing governmental and development problems in national or regional strategic development, with respect to the strategic development security, (e) planning, escorting, and securing national and regional strategic development project with respect to the strategic development security, (f) preparing monitoring, and evaluating the escorting and security activities, (g) controlling and assessing the escorting and security of strategic development project,

(h) coordinating with ministers or institutions and regional government, and other organizations related to the strategic development security; (i) implementing, reviewing, and reporting the coordinating with the Governmental Internal Supervisory board with regard to the policy assessment done by the implementer of strategic development project, either at national or regional level, (j) planning and socializing the duties, authority, and function of strategic development security to ministries, SOEs, District-owned enterprises, regional government, and other organization related to the strategic development security, (k) forecasting intelligence condition relate to the strategic development security, (l) guiding and providing intelligence technical guidance and administration to the District Prosecution office and the prosecution office as State's representatives in foreign country, (m) implementing directorate administrative affairs; and (n) implementing other functions assigned by Deputy Attorney General on Intelligence Affairs.

Main duties and functions of the intelligence department above do not mention prevention of criminal acts of corruption. Their primary duties and functions are to make reports, to control, coordinate with other ministerial institutions, etc. These functions constitute the intelligence activities in contexts of investigation, security, and support to the prevention of criminal acts in order to improve the law enforcement in a preventive and repressive manner. Their work domains include ideological, political, economic, financial, sociocultural, defense, and security domains, preventing certain people from committing their criminal acts and/or participating in administration of public order and safety and countermeasuring criminal offense, tort, and administratively unlawful act in their jurisdiction..

Article 145 paragraph (2) of the Regulation of Attorney General of the Republic of Indonesia No.PER-006/A/JA/07/2017 states that the PPS's intelligence department functions to perform preliminary investigation, secure, and prevent criminal acts in order to support the law enforcement in preventive and repressive manner in ideological, political, economic, financial, sociocultural, defense, and security domains, in addition to preventing individuals from committing certain acts and/or participating in administration of public order.

### **3. The PPS's Technical Guideline of Strategic Development and Regional Investment Security for preventing criminal act of corruption: A legal certainty perspective**

The legal certainty theory was used to answer the first problem, i.e., How the technical guideline of Strategic Development and Regional Investment Security (PPS-ID) of the Public Prosecution Office is designed to prevent criminal acts of corruption.

The theory was proposed by Gustav Radbruch, who stated that the law is positive. Law is based upon facts, and the facts should be formulated clearly to prevent misinterpretation and to allow easier implementation. The positive laws should not be changeable easily.<sup>32</sup>

#### **3.1 Philosophical Foundation**

The 1945 Constitution has explicitly stated the goal, bases, and principles of state administration. The state goals, or the national goals, is clearly stated in the fourth paragraph: (a) To protect the whole Indonesian nation and the entire native land of Indonesia, (b) To advance public welfare, (c) To educate life of the nation, (d) To participate in the execution of world order which is by virtue of freedom, perpetual peace and social justice.

The public prosecution office is basically a judiciary institution that performs the executive function, who safeguard the constitution, people's rights, and the state's sovereignty in the field of prosecution, whose role is central in the country's legal system because of its *dominus litis* and *executief ambtenaar* roles. Public prosecution office also holds authority to investigate certain criminal acts, such as gross violation of human rights, corruption, money laundering, deforestation, and act as the state's attorney inside and outside the court, and participate in public order and safety. This authority indicates that the public prosecution plays a strategic role in the law and justice system, which also covers various life aspects, including social, economic, cultural, defense, and security.

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<sup>32</sup> Julyano, Mario and Aditya Yuli Sulistyawan. "Pemahaman Terhadap Asas Kepastian Hukum Melalui Konstruksi Penalaran Positivisme Hukum." *Jurnal Crepido*, Vol. 1, No. 1, 2019, pp. 13-22, <https://doi.org/10.14710/crepido.1.1.13-22>.

From a philosophical perspective, in order to enforce law and achieve justice, institutional repositioning and strengthening are necessary to reassert the existence of the Public Prosecution Office as a judiciary institution that executes executive functions, which is done independently and free from any intervention. In this regard, a range of efforts are necessary to present a public prosecution office that performs executive functions independently and professionally with justice- and legal certainty-oriented, especially for justice seekers. This is important to achieve the national goals that are consistent with Pancasila values and the 1945 Constitution, i.e., to protect the entire Indonesian nation, through law enforcement that upholds law supremacy and human rights.<sup>33</sup>

### **3.2 Legal Foundation**

The legal foundation of Technical Guideline No.B-484/D/Dpp/03/2020 regarding the Strategic Development Security, Part I number 4, are as follows: (a) Law No.16 of 2004 on Public Prosecution, (b) Law No.17 of 2011 on State Intelligence, (c) Regulation of Attorney General No.PER-006/ A/ JA/ 38 of 2017 on the Organization and Work Procedure of the Public Prosecution Service of the Republic of Indonesia, as amended by the Attorney General Regulation No.6 of 2019 on the Amendment of Regulation of Attorney General No.PER-006/A/JA/07/2017 on the organization and work procedure of Public Prosecution Service of The Republic of Indonesia, (d) The Regulation of Public Prosecution Service of the Republic of Indonesia No.4 of 2019 on the Prosecution's Intelligence Administration of the Republic of Indonesia.

In addition to the above-mentioned bases, article 30B letter b of Law No.11 of 2021 on the Amendment of Law No.16 of 2004 on Public Prosecution, mandating that the Public Prosecution service should participate in creating a condition that supports development, is also used.

Article 30B letter B of Law No.11 of 2021 on the Amendment of Law No.16 of 2004 on Public Prosecution, state that:

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<sup>33</sup> *Ibid*, pp. 123-124.

“In the intelligence domain of law enforcement, Public prosecution holds authority to:

- a. Perform the investigation, security, and support for law enforcement purpose;
- b. Create a supporting condition and securing the development activities;
- c. Conduct an intelligence collaboration with the intelligence institution and/or other country's intelligence body;
- d. Conduct prevention of corruption, collusion, and nepotism; and
- e. Conduct multimedia supervision.”

Prosecution Office intelligence serves as a part of the state’s intelligence, as stated in article 9 of Law No.17 of 2011 on the State intelligence, stating that the administrator of intelligence include: The State intelligence agency, The intelligence of Indonesian National Soldier; Intelligence of Indonesian Police, Intelligence of Public Prosecution Office; and Intelligence of Ministry/ Governmental institution and ministry.<sup>34</sup>

Article 30B letter b of Law on Prosecution states that regarding the intelligence domain of law enforcement, the Public Prosecution Office has the authority to create a condition that supports and secure the development. Therefore, the public prosecution office of the Republic of Indonesia creates a PPS-ID technical guideline.

According to Law No.16 of 2004 on Public Prosecution Service of the Republic of Indonesia, the duty and authority of Prosecution office is stipulated in the following article: (1) In criminal field, the prosecution office’s duties and authority include: (a) Prosecuting, (b) Executing the Judge ruling and court decision with permanent legal binding force, (c) Supervising the implementation of conditional verdict, supervisory verdict, and conditional release, (d) Investigating certain criminal act according to the law, (e) Completing certain case report and performing additional investigation before applied to the court through coordination with the investigation. (2) In the civil and state administrative domain, Public prosecution office has the authority to act inside or outside the court on behalf of the state and the government. (3) In order to maintain public order and safety, public prosecution office should participate in: (a) Improving public legal awareness, (b) Securing law enforcement policy, (c) Supervising print

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<sup>34</sup> Harahap, M. Dedy Iskandar, et al. “Peran Intelijen Kejaksaan Dalam Mengungkap Perkara Tindak Pidana Korupsi.” *Jurnal Ilmiah Metadata*, Vol. 3, No. 3, 2021, pp. 1122-1146, <https://doi.org/10.10101/metadata.v3i3>.

matters, (d) Supervising the indigenous belief that potentially threaten the community and the state, (e) Preventing abuse and/or religious blasphemy, (f) Conducting legal research and development, and criminal statistics.

The directorate of Strategic Development Security is under the Deputy Attorney General on Intelligence Affairs. Before turning into a directorate, it was called the TP4D. This institution was transformed during the period of Attorney General ST Burhanuddin into the Directorate of Strategic Development Security.

Since 22 December 2014, TP4D in High and District Prosecution Offices was terminated. The directorate was established and strengthened by the Presidential Instruction. At the attorney general level, the PPS office is held by the director of PPS, and at the district level, it should be held by the Section Head of PPSD. Thus, the public prosecution office should be prepared to secure the strategic development project done by the regional government.<sup>35</sup>

Deputy Attorney General on Intelligence Affairs and all working unit of the attorney general and district prosecution office, and branch district prosecution office, plays an important role in supporting National Strategic development project through the Directorate D. In this regard Amir Yanto stats that the amount of project secured by the public prosecution in 2021 was Rp. 252 trillion. Meanwhile, as per March 2022, the Attorney General and all high Prosecution offices in Indonesia escorted development projects worth Rp 50.1 trillion. It performs the function according to article 30B letter b of Law No.11 of 2021 on the Amendment of Law No.16 of 2004 on Public Prosecution,

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<sup>35</sup> In the South Kalimantan High Public Prosecution Office, the corruption rate in 2019 was lower than in 2018. This decrease, according to the Chief high prosecutor, was accounted for by the TP4D that escort the regional government project. In the 2019 period, The Office has saved 4.6 billion rupiahs, which was lower than in 2018, i.e., 7.9 billion rupiah. Currently, there are 17 cases in being investigated, which is lower than the previous year, i.e., 26 cases. Source: Sanusi, Didi G. "TP4D Dibubarkan Diganti Unit Kerja Baru Bernama PPS." *Jejakrekam.com*, 13 Desember 2019, <https://jejakrekam.com/2019/12/13/tp4d-dibubarkan-diganti-unit-kerja-baru-bernama-pps/>., accessed on 5 September 2022. Compared to North Sumatra, in 2017 all Prosecutors in North Sumatra from TP4D have overseen 736 development projects. With a value of Rp. 4.180 trillion. Meanwhile, from January to March 2018, there have been 154 development projects with Rp. 3.982 trillion. Source: Rifzaldi, Riffi. "TP4D Bukan Pengaman Proyek, Asintel Kejati Sumut: Laporkan Jaksa Nakal." *Tagar.id*, 22 Juni 2018, <https://www.tagar.id/tp4d-bukan-pengaman-proyek-asintel-kejati-sumut-laporkan-jaksa-nakal/>., accessed on 5 September 2022.

mandating that the Public Prosecution service should participate in creating a condition that supports development.<sup>36</sup>

### **3.3 Sociological Foundation**

Based on the theory of legal certainty, TP4D and PPS constitute the attorney general's policy to support the national development carried out by the executive institution, i.e., the government. In this context, the public prosecution office's paradigm shifts from prosecution and execution duties to the escort of national development. In other words, the Deputy Attorney General on Intelligence Affairs is given opportunities to support a conducive national development.

The technical guideline explicitly states that the purpose of Directorate D is to identify Threats, Hindrances, Obstacles, and Challenges on the national development project. From a institutional structure perspective, the public prosecution office has become stronger by having the intelligence affairs, especially the Directorate D that specifically handles the strategic development security.

Taking a closer look at the technical guideline No.B-484/D/Dpp/03/2020, it was issued on 12 March 2020 based on Law on Prosecution of 2004. Based on the article 1 numbers 2 and 3 of this law, and the criminal procedure code, the prosecution office holds the authority as investigator in corruption cases, public prosecutor, and executor of the court ruling.<sup>37</sup> However, Law on Prosecution of 2004 and the Criminal Code do not mention the authority of public prosecution to prevent criminal acts of corruption.<sup>38</sup> The prevention of corruption was grounded from articles 41 and 42 of the Anti-corruption law, which stipulates the public participation by reporting criminal act of corruption.

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<sup>36</sup> Rri.co.id. "Lewat PPS, Kejaksaan Amankan Kegiatan Proyek Rp. 252 Triliun." *rri.co.id*, Mei 2022, <https://rri.co.id/semarang/ruang-publik/press-release/1434535/lewat-pps-kejaksaan-amankan-kegiatan-proyek-rp-252-triliun>., accessed on 5 September 2022.

<sup>37</sup> Sutadi, Lina. "Pencegahan dan Penangkalan (Cekal) Menurut Undang-Undang Nomor 16 Tahun 2004 tentang Kejaksaan Republik Indonesia." *Law Faculty of MPU Tantular University Yure Humano*, Vol. 2, No. 1, 2018, pp. 1-18, <https://mputantular.ac.id/ojshukum/index.php/yurehumano/article/view/55>.

<sup>38</sup> Santosa, Sigit Budi. "Kewenangan Kejaksaan Sebagai Penyidik Tindak Pidana Korupsi." *Maksimagama Jurnal Hukum*, Vol. 18, No. 1, 2015, pp. 77-90, <https://doi.org/10.37303/v9i1.6>.

The authority to prevent criminal acts of corruption is mentioned in the Law on Prosecution of 2021, enacted on 31 December. 2021 The law stipulates that:

“Regarding the intelligence affair of law enforcement, public prosecution holds authority to:

- a. Perform the investigation, security, and support for law enforcement purpose;
- b. Create a supporting condition and securing the development activities;
- c. Conduct an intelligence collaboration with the intelligence institution and/or other country's intelligence body;
- d. Conduct prevention of corruption, collusion, and nepotism; and
- e. Conduct multimedia supervision”.

As mentioned above, the public prosecution office holds the authority to prevent corruption. This authority is found in the 2021 Prosecution law and did not exist in the 2004 Prosecution law. The Prosecution Office’s authority is grounded from the law.<sup>39</sup> The technical guideline made based solely on the Deputy Attorney General on Intelligence Affairs’ letter could not be categorized as law. Article 7 paragraph (1) of Law No.12 of 2011 on the Establishment of Law and Regulation, as amended by Law No.15 of 2019 on the Amendment of Law No.12 of 2011 on the Establishment of Law and Regulation, states that:

“The types and hierarchy of law and regulation is as follows:

- a. The 1945 Constitution;
- b. Decree of People's Consultative Assembly;
- c. Law/ Governmental Regulation in lieu of Law;
- d. Governmental Regulation;
- e. Presidential Decree;
- f. Provincial Government Regulation; and
- g. Regency/Municipality Government Regulation.”

The binding force of these law follows the above mentioned hierarchy of law.<sup>40</sup> As asserted in article 7 paragraph (2) of Law No.12/2011: “A regulation’s legal strength should follow its hierarchy as stated in paragraph (1).”

In other words, the technical guideline No. B-484/D/Dpp/03/2020, dated 12 March 2020 is not legally binding as it is not based on the mandatory law. Law on

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<sup>39</sup> Hutahaean, Armunanto and Erlyn Indarti. “Lembaga Penyidik Dalam Sistem Peradilan Pidana Terpadu di Indonesia.” *Jurnal Legislasi Indonesia*, Vol. 16, No. 1, 2019, pp. 27-41, <https://doi.org/10.54629/jli.v16i1.453>.

<sup>40</sup> Yuliani, Andi. “Daya Ikat Pengundangan Peraturan Perundang-Undangan.” *Jurnal Legislasi Indonesia*, Vol. 14, No. 4, 2017, pp. 429-438, <https://doi.org/10.54629/jli.v14i4.121>.

prosecution of 2021 was enacted on 31 December 2021, while the technical guideline was issued 12 March 2020 based on Law No.16 of 2004 on The Public Prosecution Service of the Republic of Indonesia.

In handling criminal cases of corruption, prosecutors should act as the investigator and the public prosecutor. Thus, its penal role in eradicating criminal acts of corruption is highly dominant.<sup>41</sup> The penal role refers to the use of criminal law to handle the cases.<sup>42</sup> Meanwhile, the public prosecution office does not have non-penal authority to prevent criminal acts of corruption.

### **III. CONCLUSION**

The legal basis of the technical guideline for Strategic Development and Regional Investment Security, i.e., Law on Public Prosecution of 2004, has not mentioned the role of Public Prosecution Office's authority in preventing criminal acts of corruption. Therefore, the technical guideline uses prevention norms based on article 4 of Law on State intelligence of 2011. The prevention norm in law on prosecution is stipulated in article 30B letter d of Law No.11 of 2021 on the Amendment of Law No.16 of 2004 on The Public Prosecution Service of the Republic of Indonesia. Therefore, the attorney general is recommended to revise the legal basis of the technical guideline No.B-484/D/Dpp/03/2020, dated 12 March 2020 by adjusting it to the prevention norm in article 30B letter d of Law No.11 of 2021 on the Amendment of Law No.16 of 2004 on The Public Prosecution Service of the Republic of Indonesia in order to provide legal certainty for the public prosecutors in preventing criminal act of corruption.

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<sup>41</sup> Barhamudin and Abuyazid Bustomi. "Jaksa Penyidik dan Penuntut Umum Dalam Pidana Korupsi Menurut Hukum Acara Pidana Indonesia." *Solusi*, Vol. 21, No. 1, 2023, pp. 68-81, <https://doi.org/10.36546/solusi.v21i1.808>.

<sup>42</sup> Iswara, I Made Agus Mahendra and Ketut Adi Wirawan. "Peran Kejaksaan Dalam Pemberantasan Tindak Pidana Korupsi Desa di Indonesia." *Kertha Wicaksana*, Vol. 14, No. 1, 2020, pp. 190-199, <https://doi.org/10.22225/kw.14.1.2020.69-76>.

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