

NORMATIVE AMBIGUITY IN LEGAL ASSISTANCE BY STATE ATTORNEYS: CHALLENGES IN PREVENTING CORRUPTION IN DEVELOPMENT PROJECTS

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ABSTRACT

National development is a strategic instrument to achieve public welfare as mandated by the 1945 Constitution of the Republic of Indonesia. However, large-scale infrastructure and public procurement projects remain highly vulnerable to corruption and budget misappropriation. The Prosecutor's Office of the Republic of Indonesia, through the State Attorney (Jaksa Pengacara Negara - JPN), holds a vital mandate in providing legal assistance as a preventive instrument. Despite its significance, the current legal construction of JPN's authority is hindered by regulatory uncertainties. This research aims to analyze the normative construction of JPN's authority in legal assistance for development projects and to formulate strategies for optimizing this role as an effective preventive measure against corruption. The research employs a normative juridical method with a statutory and conceptual approach, utilizing primary and secondary legal materials through qualitative-descriptive analysis. The findings reveal a significant vagueness of norms (*vague norm*) within internal regulations, particularly concerning the definitive starting point of legal assistance. This uncertainty causes JPN to adopt a passive and reactive stance, only intervening upon receiving formal requests from government agencies, which often occurs after the crucial planning stage. Consequently, the preventive function fails to mitigate risks during the high-risk pre-contract phase. The research concludes that a regulatory reconstruction is essential to establish a more proactive and mandatory legal assistance framework for strategic projects. This optimization would provide legal certainty, protect project executors from administrative errors, and ensure the integrity of state finances by closing loopholes for corruption since the project's inception.

Keywords: Corruption Prevention, JPN Authority, Legal Assistance, State Attorney, Vagueness of Norms.

1. INTRODUCTION

National development serves as the primary instrument for realizing the state's objectives as enshrined in the Preamble of the 1945 Constitution of the Republic of Indonesia, namely to protect the entire Indonesian nation and to promote public welfare. A concrete manifestation of this development is implemented through government projects, particularly in infrastructure, the procurement of goods and services, and public services. In practice, however, the government development project sector remains one of the areas most vulnerable to irregularities and corruption. According to findings from the Corruption Eradication Commission (KPK), the procurement of goods and services, along with development projects, continues to dominate the number of corruption cases in Indonesia.

The Attorney General's Office of the Republic of Indonesia holds a strategic role in the field of Civil and Administrative Law to provide legal assistance for development projects as a preventive instrument. Nevertheless, there are fundamental issues regarding the normative construction of the authority of State Attorneys (*Jaksa Pengacara Negara* - JPN), which result in sub-optimal prevention functions. The ambiguity of norms within the relevant regulations often leads to JPN being involved only when a formal request is submitted by the relevant agency. Consequently, JPN's involvement tends to be passive, adopting a "wait-and-see" approach. This creates a risk of misconduct, as legal assistance is not integrated from the crucial early stages.

This research is essential to analyze the normative construction of JPN's authority and to determine how to optimize such legal assistance in supporting corruption prevention. The objective of this study is to provide an in-depth description of the authority of JPN as a preventive instrument in civil and administrative law. The originality of this article lies in its normative study of the statutory regulations governing prosecutorial authority to ensure legal certainty in the implementation of development projects.

2. LITERATURE REVIEW

A systematic review of previous research indicates that while studies on the role of the Prosecutor's Office in Civil and Administrative Law are extensive, significant gaps remain that justify the importance of this study. Existing relevant research generally focuses on the Prosecutor's legal aid function in representing the state in court (litigation). The strength of these studies lies in their success in dissecting the procedural aspects of JPN's special power of attorney during trials. However, their weakness lies in the minimal discussion regarding the preventive-non-litigious **legal assistance** function during the planning stages of development projects.

Other studies have examined the effectiveness of project oversight through functional audits but often overlook the juridical preventive instruments possessed by JPN. This provides a compelling argument for conducting this research to develop a study on optimizing the role of JPN, specifically to address the practical vacuum caused by existing procedural ambiguities.

This research intends to enhance the understanding that the preventive function is not merely a matter of administrative supervision, but also the safeguarding of legal norms from the project's initiation to mitigate corruption risks at an early stage.

Theoretical Framework

The theoretical foundation supporting this research includes a summary of legal theories relevant to resolving the ambiguity of norms, namely:

- **Theory of Legal Certainty:** Based on the philosophy of Gustav Radbruch, law must contain the value of certainty (*rechtssicherheit*). In this study, the theory of legal certainty is used to analyze that a regulation must be clear and not give rise to multiple interpretations. The ambiguity of norms regarding the starting point of JPN's assistance is a form of uncertainty that hinders the law's function as a preventive instrument.
- **Theory of Authority:** This theory is employed to dissect the legitimacy of the State Attorneys' actions. The authority of JPN to provide legal considerations is an authority granted by law to protect state interests. An explanation of this concept of authority is crucial in determining the boundaries and scope of JPN's juridical intervention in government development projects.
- **Concept of Legal Assistance:** This is a fundamental principle in civil and administrative law aimed at providing **legal opinions** to ensure that every stage of a project possesses strong legality. This concept serves as the primary tool in addressing the risk of irregularities arising from the lack of legal oversight during the pre-contractual stage.

3. METHODS

This study employs a qualitative research design, specifically a **normative legal research** method. This approach is used to examine and provide an in-depth analysis of statutory regulations and legal literature pertaining to the authority of State Attorneys. The research utilizes both a **statute approach** and a **conceptual approach**. The statute approach is conducted by reviewing regulations related to the prosecution service and public procurement, while the conceptual approach is applied to construct legal arguments based on doctrines and legal principles relevant to corruption prevention.

The research focuses on **primary and secondary legal materials** as the main data sources. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 16 of 2004 concerning the Public Prosecution Service, Law Number 17 of 2003 concerning State Finance, and other relevant implementing regulations. Secondary legal materials comprise legal textbooks, academic journals, and official documents such as reports from the Corruption Eradication Commission (KPK). Data collection is carried out through **library research** by collecting, classifying, and documenting legal materials relevant to the legal assistance of development projects.

The data analysis technique used is **descriptive-qualitative analysis**. The collected data are processed systematically to draw conclusions regarding the normative construction of JPN's authority. The analytical process involves **synchronizing various regulations** to identify the procedural ambiguities that constitute the core research problem. The research hypothesis is implicitly stated through a conceptual framework suggesting that optimizing JPN's proactive role can mitigate the risk of state budget misappropriation. The results of this analysis are then used to address the research questions comprehensively and to provide recommendations for regulatory reconstruction.

4. RESULTS AND DISCUSSION

A. Normative Construction of State Attorneys' Authority in Legal Assistance

The research results indicate that the normative construction of the authority of State Attorneys (JPN) is rooted in the attributive function granted by Law Number 16 of 2004 concerning the Public Prosecution Service of the Republic of Indonesia. In the field of Civil and Administrative Law, JPN holds a mandate to provide legal considerations, one form of which is **legal assistance**. The findings of this study emphasize that legal assistance is a preventive instrument aimed at ensuring that every stage of a development project operates within the corridors of legality. This is crucial, as the presence of JPN functions as a **juridical filter** to minimize potential lawsuits and administrative errors that could lead to state losses.

However, an analysis of the implementing regulations reveals the existence of **procedural normative ambiguities**. A significant finding in this section is the absence of explicit provisions governing the **starting point** of JPN's involvement. The implication of this finding is the emergence of legal uncertainty, which causes JPN's role to become passive. JPN tends to position itself as a party awaiting formal requests from the relevant agencies or departments. The discussion of these findings explains that as long as these norms are not clarified, JPN will remain hindered by administrative barriers, preventing the prosecution's preventive power from addressing crucial aspects during the initiation phase of development projects. This normative vacuum essentially undermines the principle of legal certainty as formulated by Gustav Radbruch, which requires that laws be clear, stable, and predictable. From a theoretical perspective, the authority of JPN—while legally grounded in Law Number 16 of 2004—remains 'dormant' if the operational procedures do not mandate early intervention. The current statutory construction places the prosecutor's office in a subordinate position relative to the administrative discretion of the requesting government agencies. Consequently, JPN is unable to exercise its proactive function as a state guardian, as it must rely on an external 'request' (permohonan) before taking any legal action. This dependency creates a bottleneck in the preventive framework, where JPN often enters the scene only after the contract has been signed or when potential disputes have already surfaced.

Furthermore, the research highlights a significant discrepancy within the hierarchy of regulations. While the Prosecutor's Law provides a broad attributive mandate, the implementing regulations, such as the Prosecutor's Regulations (Peraturan Kejaksaan), fail to bridge the gap

between abstract authority and concrete procedural requirements. In administrative law, authority without specific procedural guidelines often leads to an 'abuse of discretion' or, conversely, 'administrative paralysis.' In this context, the passivity of JPN is not a result of institutional reluctance, but rather a consequence of a rigid normative structure that does not recognize JPN as an integral part of the project's internal control system. By failing to define the 'starting point' explicitly—for instance, during the drafting of the Budget Allocation Plan (RKA) or the Procurement Plan (SIRUP)—the regulation effectively strips JPN of its ability to identify and mitigate legal risks at their source.

Moreover, the lack of normative clarity results in an inconsistency of practice across various regional prosecution offices. Without a standardized procedural 'trigger,' the quality and timing of legal assistance become highly subjective, depending on the initiative of local heads of government or individual prosecutors. This research argues that a robust normative construction must move beyond mere 'legal considerations' and toward a mandatory 'legal audit' framework. By institutionalizing JPN's involvement as a prerequisite for high-risk strategic projects, the state can ensure that the corridors of legality are not just a post-facto checklist, but a foundational pillar of the entire development process. This transformation is necessary to ensure that the presence of the Prosecutor's Office serves as a genuine deterrent against maladministration and financial misappropriation, rather than a mere formality to satisfy administrative requirements.

B. Optimizing the Role of JPN as a Preventive Instrument Against Corruption

The discussion regarding the optimization of the JPN's role is directed toward a paradigm shift from reactive to proactive assistance. The findings indicate that the risk of state budget misappropriation is highest during the planning and pre-contractual stages, where procurement designs are frequently drafted without adequate legal oversight. The significance of this finding lies in the reality that delayed legal assistance—specifically when the contract is already underway—is no longer effective in preventing corruption that has been premeditated from the outset.

The implications of this research for legal policy suggest the necessity of reconstructing the internal regulations of the Prosecutor's Office to establish clearer timelines and indicators for JPN involvement. The research results indicate that optimizing the JPN's role can be achieved by providing space for JPN to be involved as early as the drafting of procurement documents or budget planning for strategic projects. This would close the loopholes for irregularities and provide legal protection for Commitment Making Officers (*Pejabat Pembuat Komitmen* - PPK). Consequently, legal assistance by JPN would no longer function as a mere administrative formality but would instead become a primary pillar in safeguarding the integrity of public funds and realizing clean governance free from corrupt practices.

The necessity of this optimization is further emphasized by the concept of administrative discretion which, if left unsupervised, often transforms into an avenue for criminal intent (*mens rea*). In many cases, corruption in development projects is not a result of accidental

administrative errors, but rather a deliberate manipulation of the procurement process—such as 'bid rigging' or 'gold plating' of technical specifications—occurring long before any physical work begins. By shifting JPN's involvement to the pre-contractual phase, the Prosecutor's Office provides a 'legal safeguard' that interrupts the chain of illicit intent. This proactive presence ensures that every discretionary decision made by the budget user is aligned with the principles of efficiency, transparency, and accountability as mandated by the State Finance Law.

Furthermore, the reconstruction of JPN's role acts as a strategic buffer against the 'criminalization of administrative policy.' Many Commitment Making Officers (PPK) operate under a cloud of fear, hesitant to execute strategic projects due to the potential for legal repercussions later in the project's lifecycle. This research finds that when JPN is involved from the drafting stage, they provide a legal audit that validates the administrative process in real-time. This validation serves as a form of 'legal protection' (perlindungan hukum) for officials who act in good faith (te goeder trouw). By ensuring that the procurement documents comply with the prevailing laws and regulations from the outset, JPN effectively minimizes the risk of future state losses, thereby creating a secure environment for national development to flourish without the constant threat of legal backlashes stemming from procedural misunderstandings.

Moreover, this optimization aligns with the modern theory of Preventive Justice, which posits that the state's power should be utilized to prevent harm rather than merely punishing it after it occurs. In the context of JPN, this means moving beyond the traditional role of a 'defense attorney' for the state toward becoming a 'risk manager' for state assets. The integration of digital oversight and a mandatory reporting mechanism for strategic projects would allow JPN to monitor the legal health of a project continuously. This systematic approach ensures that legal assistance is not merely an ad-hoc response to a crisis, but a foundational element of the project's governance. Ultimately, the transformation of JPN into a proactive preventive instrument is the key to closing the gaps in the anti-corruption framework, ensuring that the state budget is utilized effectively for the welfare of the public while maintaining the highest standards of legal integrity.

5. CONCLUSION AND LIMITATION

The conclusion of this study indicates that the normative construction of the State Attorneys' (JPN) authority as a preventive instrument already possesses a solid legal foundation through the function of providing legal considerations. However, its implementation is significantly hindered by procedural normative ambiguities—specifically the absence of an explicit "starting point" for involvement. This regulatory uncertainty leads to a reactive prosecutorial role that relies solely on the initiative of the requesting agency, meaning that JPN often enters the process too late to mitigate premeditated legal risks. Consequently, the research

objective of optimizing corruption prevention has not been fully achieved during the crucial planning and pre-contractual stages, where the risk of *mens rea* (criminal intent) is highest.

This study's contribution emphasizes that a reconstruction of the State Attorneys' role toward a more proactive and mandatory framework is essential. The transformation from a passive "wait-and-see" approach to a Mandatory Legal Audit model is necessary to close the loopholes for maladministration and "bid-rigging" in procurement. Furthermore, optimizing JPN's role serves as a strategic buffer against the criminalization of administrative policy, providing legal protection for project executing officials (PPK) who act in good faith. By institutionalizing JPN as a "legal risk manager" rather than a mere legal advisor, the state can ensure a secure environment for national development while safeguarding the integrity of state finances through the principles of Preventive Justice.

The limitations of this research lie in its focus, which is entirely juridical-normative, and thus does not yet address the sociological aspects or technical field constraints faced by State Attorneys in cross-sectoral coordination. Accordingly, future research is recommended to utilize a juridical-empirical approach to observe the actual effectiveness of legal assistance and to examine the integration of digital oversight systems that can connect JPN with the procurement process in real-time.

6. REFERENCES

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