



Balancing Independence and Accountability: Reforming Prosecutorial Immunity in Indonesia's Legal System



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Abstract

This research examines the juridical implications of Article 8 paragraph (5) of Law Number 11 of 2021 concerning the Indonesian Attorney General's Office, which stipulates that any legal action against prosecutors such as summons, detention, search, and interrogation must be approved by the Attorney General. While the provision was originally intended to safeguard institutional independence, its application has raised serious concerns regarding the erosion of the equality before the law principle and the emergence of internal impunity mechanisms. Using a normative juridical approach combined with statutory, conceptual, and case study methods, this study analyses the extent to which Article 8(5) contradicts the principles of a democratic rule of law, particularly due process of law, equality before the law, and institutional accountability. Several high-profile case studies involving prosecutors such as Pinangki Sirna Malasari and Urip Tri Gunawan illustrate the operational obstacles and legal stagnation created by this hierarchical authorization requirement. The study finds that the provision creates structural barriers to justice and fosters unequal treatment under the law. Reformulating Article 8(5) into a notification mechanism rather than a permission system would ensure a more balanced relationship between institutional protection and legal accountability. Significantly, this research contributes to the development of legal thought on prosecutorial reform by offering a normative framework that strengthens equality before the law and provides policy recommendations for enhancing transparency and accountability within Indonesia's prosecution system.

Keywords: Legal Accountability, Equality Before the Law, Rule of Law, Indonesia's Legal System

I. Introduction

In a constitutional state (*rechtstaat*), the law functions as an instrument regulating the relationship between state power and the rights of citizens. One of the main principles inherent in the concept of the modern constitutional state is the principle of equality before the law, which guarantees that every individual, including state officials, has an equal standing before the law without special treatment. This principle is the foundation of the justice system and is a key indicator of the integrity and accountability of a country's legal system.¹

¹ Fuller, L. L. (1969). *The Morality of Law*. Yale University Press

In Indonesia, this principle is not only recognised in legal doctrine, but also explicitly guaranteed in Article 27 paragraph (1) and Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia. However, in the practice of law enforcement, not all institutional actors are treated equally. The existence of a number of articles in legislation actually provides special privileges or protection to certain groups, one of which is Article 8 paragraph (5) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia (Attorney General's Office Law).

The article states that: In carrying out their duties and authorities, the summoning, examination, search, arrest, and detention of prosecutors can only be carried out with the permission of the Attorney General.² This provision essentially provides limited immunity to prosecutors from legal action by other institutions without the highest institutional approval within the Attorney General's Office. Although intended as an effort to maintain institutional independence and integrity, this article has sparked serious controversy in the context of the principles of legal equality and accountability of power. This is because, in practice, prosecutors as law enforcers may be involved in criminal acts but are protected by a highly hierarchical and closed internal mechanism.

The controversy has become increasingly prominent following the emergence of various cases involving prosecutors, ranging from the case of prosecutor Urip Tri Gunawan, the case of prosecutor Pinangki Sirna Malasari, to cases of bribery and extortion in various High and District Prosecutor's Offices that have continued to recur over the past two decades.³ In several of these cases, the handling process has often been considered slow, non-transparent, and even resulting in light sentences. This has led to a public perception that the Attorney General's Office has become an institution that is 'almost untouchable' by the national law enforcement system.

Several constitutional law experts have criticised the existence of such norms. Jimly Asshiddiqie, for example, believes that legal protection for law enforcement professionals should not lead to immunity, as this would undermine the principle of due process of law.⁴ Similarly, Mahfud MD emphasises that institutional accountability must be guaranteed even within the framework of institutional protection, as power without control tends to lead to abuse.⁵

Saldi Isra also believes that norms that grant special privileges to law enforcement officials such as prosecutors or judges should be accompanied by strong external oversight to prevent them from becoming loopholes for impunity.⁶ Meanwhile, Laica Marzuki emphasises that all state actors must be subject to the principle of public accountability, including in the internal enforcement of the law by law enforcement agencies themselves.⁷

A number of previous studies have highlighted institutional issues within the Attorney General's Office in the context of national legal reform. Kusnadi⁸ emphasised the importance of modernising the Attorney General's Office so that it is more adaptive to the demands of society, but did not touch on the juridical aspects of the structural provisions in Article 8 paragraph (5). Yulianti⁹ examined the dilemma between legal certainty and the independence of prosecutors,

² Law No. 11 year 2021 concerning Amendments to Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, Pasal 8 ayat (5).

³ ICW. (2021). *Potret Pengawasan Internal Kejaksaan RI*. <https://antikorupsi.org>

⁴ Asshiddiqie, J. (2006). *Pengantar Ilmu Tata Negara*. Jakarta: Konstitusi Press

⁵ Mahfud MD. (2009). *Politik Hukum di Indonesia*. Jakarta: Rajawali Pers.

⁶ Isra, S. (2013). *Menguji Independensi Penegak Hukum*. Jakarta: Seknas FITRA.

⁷ Marzuki, L. (2010). *Kekuasaan dan Etika Konstitusi*. Yogyakarta: FH UGM

⁸ Kusnadi, D. (2021). *Reformasi Lembaga Kejaksaan dalam Menjawab Tantangan Modern*. *Jurnal Konstitusi*, 18(4), 459-478.

⁹ Yulianti, E. (2022). Penegakan Hukum terhadap Jaksa: Antara Kepastian dan Independensi. *Jurnal Hukum & Pembangunan*, 52(1), 1-18. DOI : doi.org/10.21143/jhp.vol52.no1.3323

but did not provide a conceptual model to overcome potential conflicts norms in law enforcement practice. Meanwhile, Prasetyo¹⁰ highlighted the problem of accountability of the Attorney General's Office as a law enforcement agency, but did not specifically examine the legal impact of the Attorney General's licensing authority on prosecutors under him. These three studies reveal a research gap regarding how the hierarchical licensing norm in Article 8(5) has the potential to create structural impunity and weaken the principle of equality before the law.

Considering these developments, this paper is important as an academic effort to legally examine the position of Article 8 paragraph (5) of the Attorney General's Office Law in the Indonesian legal system. This research stems from concerns that this provision has made the Attorney General's Office an unbalanced power in the national law enforcement system. In other words, instead of guaranteeing the independence of the institution, this provision actually strengthens the dominance of internal power and weakens oversight of attorney general's office officials who are suspected of misconduct.

II. Research Problems

This paper will focus on two main issues: (1)

1. How does the legal analysis of Article 8(5) of Law No. 11 of 2021 relate to the principle of equality before the law?
2. How can norms be reformulated to ensure the accountability of the Indonesian Attorney General's Office without violating the principle of institutional independence?

III. Research Methods

This study uses a normative legal research method with a primary focus on analysing positive legal norms, legal principles, and legal doctrines governing the Attorney General's authority to grant permission for legal proceedings against active prosecutors as stipulated in Article 8 paragraph (5) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. This approach was chosen because the issues under review are normative and conceptual in nature, with the aim of assessing the conformity of these legal norms with constitutional principles such as the rule of law and equality before the law. In its implementation, this study also uses a statute approach, a conceptual approach, and a comparative approach to gain a comprehensive understanding of the position of the Attorney General's Office in the national legal system and to compare similar practices in several countries, such as the Netherlands, Germany, and South Korea.

The data used is secondary data consisting of primary legal materials (related legislation, including the 1945 Constitution of the Republic of Indonesia and the Attorney General's Office Law), secondary legal materials (legal literature, previous research results, national and international scientific journals from 2018 to 2025, as well as expert opinions and institutional documents such as those from the Prosecutor's Commission, the National Human Rights Commission, ICW, and BPHN), and tertiary legal materials (legal dictionaries, encyclopaedias, and academic reports). Data collection was carried out through literature studies, searches of academic databases such as Google Scholar, Sinta, Scopus, and DOAJ, as well as documentation

¹⁰ Prasetyo, A. (2022). *Kekuasaan Kejaksaan dan Problem Akuntabilitas dalam Negara Hukum*. *Jurnal Penegakan Hukum dan Keadilan*, 3(2), 211-227.

and comparison of legal documents across countries. Data analysis was carried out qualitatively and normatively through inventorying norms, classifying legal issues, interpreting and constructing laws, and comparative analysis. Data validity was maintained through source triangulation and logical testing based on general legal principles and the theory of the rule of law. Using this method, the study is expected to contribute scientifically to strengthening the principle of equality before the law and reforming the Attorney General's Office to be more democratic, transparent, and accountable.

IV. Result and Discussion

1. Legal Analysis of the Impact of the Application of Article 8 Paragraph (5) on the Principle of Equality Before the Law.

In the theory of the rule of law (*rechtstaat*), everyone is subject to the law without exception, including law enforcement officials themselves. However, Article 8 paragraph (5) of the Attorney General's Office Law states that: "In carrying out their duties and authorities, the summoning, examination, search, arrest, and detention of prosecutors can only be carried out with the permission of the Attorney General".

This provision gives rise to the interpretation that prosecutors are in a different legal position compared to other law enforcement officials, such as the police, KPK investigators, or ministry officials. Thus, there is a legal stratification that erodes the principle of equality before the law, as mandated in Article 27 paragraph (1) of the 1945 Constitution.

Constitutional law expert Prof. Jimly Asshiddiqie warned that power without transparent control mechanisms would lead to "absolute and undemocratic power." including in internal law enforcement.¹¹ Meanwhile, Prof. Saldi Isra emphasised that special treatment for one institution actually weakens the rule of law and opens the door to impunity.¹² From a human rights perspective, Laica Marzuki believes that the legal system should not create a new legal caste for state officials. Everyone—including law enforcement officials—must be held accountable through legal mechanisms that are equal and non-discriminatory.¹³

In addition, legal philosopher Lon Fuller, in *The Morality of Law*, argues that law must be generalisable and foreseeable, i.e. it must be universally applicable and predictable in its application. If the law is applied differently based on a person's position, then the morality of the law itself is lost.¹⁴ In this case, Article 8 paragraph (5) contains a norm that violates the generality of law because it only applies to one particular profession and creates unaccountable structural protection. In practice, this article has been used to halt legal proceedings against a number of prosecutors suspected of criminal offences. A report from Indonesian Corruption Watch (ICW) states that between 2010 and 2023, at least 16 cases of alleged corruption involving prosecutors were hampered because they were held up by the Attorney General's licensing procedures.¹⁵

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¹¹ Asshiddiqie, J. (2006). *Hukum Tata Negara dan Konstitusi*. Jakarta: Sekretariat Jenderal MK RI

¹² Isra, S. (2013). *Menjaga Independensi Lembaga Peradilan*. Jakarta: PSHK

¹³ Marzuki, L. (2010). *Etika Kekuasaan dan Konstitusi*. Yogyakarta: FH UGM

¹⁴ Fuller, L. L. (1969). *The Morality of Law*. Yale University Press

¹⁵ ICW. (2021). *Potret Pengawasan Internal Kejaksaan*. <https://antikorupsi.org>

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Jimly Asshiddiqie emphasised that power without transparent control mechanisms would lead to undemocratic absolute power. This view was reinforced by Wardani's research, which showed that weak oversight mechanisms for legal institutions often gave rise to a culture of impunity that eroded public trust in the judicial system.¹⁶ Furthermore, research by Prasetyo and Kusnadi confirms that the internal system of the Attorney General's Office is still dominated by a hierarchical structure that closes off external control and causes power asymmetry among law enforcement officials.¹⁷

From a human rights perspective, Laica Marzuki believes that the legal system should not create a new legal caste for state officials. Everyone, including law enforcement officials must be held accountable through equal and non-discriminatory legal mechanisms. This view is in line with the empirical findings of Setiyono (2018), which emphasise that the accountability of law enforcement agencies is a constitutional pillar of a democratic state governed by the rule of law.¹⁸

Lon Fuller, in *The Morality of Law*, argues that law must be generalisable and foreseeable, meaning that it must be universally applicable and predictable in its application. If the law is applied differently based on a person's position, then the morality of the law itself is lost. In this case, Article 8 paragraph (5) contains a norm that violates the generality of law because it only applies to one particular profession and creates structural protection that is not accountable. Yulianti's findings reinforce this argument by showing that excessive protection of prosecutors has the potential to hinder due process of law and weaken the integrity of the criminal justice system.¹⁹

In practice, this article has been used to delay legal proceedings against a number of prosecutors suspected of criminal offences. A report by ICW states that between 2010 and 2023, at least 16 cases of alleged corruption involving prosecutors were hampered by licensing procedures imposed by the Attorney General. Fadhillah's research also confirms that the practice of granting immunity or amnesty to law enforcement officials weakens the rule of law and damages the public's perception of justice.²⁰

The above studies indicate that Article 8 paragraph (5) legally creates an anomaly in the Indonesian legal structure. This norm has shifted from protecting independence to protecting power, thereby weakening the effectiveness of the principle of substantive legal justice. The results of research by Yasin and Saputra even show that without external oversight, law enforcement officials tend to practise selective accountability, only accountable internally, but

¹⁶ Wardani, D. (2021). *Budaya impunitas dan lemahnya akuntabilitas lembaga penegak hukum*. *Jurnal Hukum dan Etika*, 7(2), 198–209.

¹⁷ Prasetyo, A. (2022). *Kekuasaan Kejaksaan dan problem akuntabilitas dalam negara hukum*. *Jurnal Penegakan Hukum dan Keadilan*, 3(2), 211–227; Kusnadi, D. (2021). *Reformasi lembaga Kejaksaan dalam menjawab tantangan modern*. *Jurnal Konstitusi*, 18(4), 459–478.

¹⁸ Setiyono, B. (2018). *Akuntabilitas lembaga penegak hukum: tinjauan konstitusional*. *Jurnal Konstitusi*, 15(3), 513–527.

¹⁹ Yulianti, E. (2022). *Penegakan hukum terhadap jaksa: antara kepastian dan independensi*. *Jurnal Hukum & Pembangunan*, 52(1), 1–18. DOI : 10.21143/jhp.vol52.no1.3323

²⁰ Fadhillah, I. (2022). *Amnesti dan ancaman impunitas oleh presiden*. *Jurnal Ilmu Hukum UMSU*, 8(2), 101–112.

not open to the public.²¹ The following case study illustrates concretely how this norm operates in practice:

Table 1. Case Study of Prosecutors and Legal Outcomes

Name of Prosecutor / Individual	Related Case	Time of Incident	Outcome / Verdict
Urip Tri Gunawan	BLBI bribery	2008	Arrested by the Corruption Eradication Commission (KPK), sentenced to 20 years in prison.
Kusnin (Jaksa Jateng)	Customs bribery	2016	Arrested with SGD 294,000, investigation influenced by superiors.
Dwi Seno Wijanarko, Subri, Deviyanti, Fauzi	Extortion and bribery in local cases	2018–2020	Sentenced to 1.5–10 years in prison in separate verdicts.
Pinangki Sirna Malasari	Bribery and obstruction of the Djoko Tjandra investigation	2020	Sentenced to 4 years, reduced from the initial demand of 10 years.
Jaksa JS	Obstruction of internal investigations	2023	Still under investigation, handled internally by the Attorney General's Office.

In the case of Prosecutor Pinangki, for example, her involvement in the Djoko Tjandra scandal was only investigated after intense public and media scrutiny. The issuance of Guideline No. 7 of 2020 by the Attorney General's Office, which requires the Attorney General's permission to investigate prosecutors, further emphasises the strength of institutional protection for its internal apparatus.²²

Constitutional law expert Prof. Saldi Isra stated that such norms widen the gap of “institutional impunity”, which is legal immunity obtained not because of constitutional provisions, but because of internal procedural mechanisms that block external control.²³ Meanwhile, Prof. Mahfud MD reminded us that “the protection of the law enforcement profession is not a guarantee of freedom from the law.”

More specifically, Jimly Asshiddiqie argues that the requirement for superior approval for legal proceedings against officials is a legacy of the colonial power system and is no longer in line with the principles of constitutional democracy.²⁴ Meanwhile, from a professional ethics perspective, Laica Marzuki considers that such protection is only valid if accompanied by ethical mechanisms that are transparent and accessible to the public.²⁵ Thus, Article 8 paragraph (5) legally creates an anomaly in the Indonesian legal structure. This norm has shifted from

²¹ Yasin, P. H. (2025). *Legal analysis of restorative justice and impunity in law enforcement*. *Jurnal Hukum Syariah*, 10(1), 33–49; Saputra, R. (2025). *Reformasi KUHAP dan akuntabilitas penegak hukum*. *PSHK Journal of Law*, 5(1), 33–50.

²² Kejaksaan RI. (2020). *Pedoman Nomor 7 Tahun 2020*. Jakarta

²³ Isra, S. (2021). *Menjaga Keseimbangan Kekuasaan Yudisial*. Jakarta: Seknas PSHK

²⁴ Asshiddiqie, J. (2010). *Konstitusi dan Konstitusionalisme Indonesia*. Jakarta: Konstitusi Press

²⁵ Marzuki, L. (2020). *Keadilan dan Etika Lembaga Negara*. Yogyakarta: FH UGM

protecting independence to protecting power, thereby weakening the effectiveness of the principle of substantive legal justice.

2. Reformulation of Articles that Better Guarantee Accountability and Control over the Power of the Attorney General's Office as an 'Untouchable' Entity.

An important aspect of the revision of Article 8 paragraph (5) is the reformulation of the control mechanism that continues to protect the independence of the Attorney General's Office, but eliminates the potential for absolute immunity. In the context of modern constitutional law, the concept of checks and balances applies not only between branches of power, but also within law enforcement institutions themselves.²⁶

This reformulation model can refer to practices in various democratic countries, where legal action against prosecutors is carried out through administrative notification mechanisms, rather than substantive authorisation. This is in line with Kusnadi's idea of promoting modern prosecutorial governance based on transparency and public openness.²⁷

In the national context, Wardani and Setiyono's research confirms that legal institutional reform can only be effective if accompanied by strong public oversight mechanisms.²⁸ Therefore, the approach offered in this study emphasises the concept of an administrative notification system as a form of open oversight that respects the functional independence of prosecutors without hindering legal proceedings against prosecutors suspected of violations.

This reformulation is also supported by the findings of Rengku and Senewe, which highlight the need for external institutions such as the Prosecutor's Commission and the Corruption Eradication Commission (KPK) to play a role in enforcing prosecutor accountability.²⁹ Lengkong and Senewe's research adds that collaboration between legal institutions is key to ensuring that legal proceedings against officials do not stop at the administrative level.

Thus, the results of this study reinforce the argument that administrative notification is a normative model that balances institutional protection and legal transparency – a legal design that is compatible with the principles of the rule of law and equality before the law.

Apart from the national perspective, several recent studies also reinforce the urgency of updating the Attorney General's authorisation norms. Rachman explained that the structure of the Attorney General's Office in Indonesia has characteristics of hierarchical immunity similar to the colonial pattern during the Dutch East Indies era, where leadership authorisation became a tool for internal power control that was often abused.³⁰

Taufiq's study even emphasises that this hierarchical authorisation system creates an internal impunity barrier – a procedural obstacle that hinders transparency and independent

²⁶ Prasetyo, A. (2022). *Kekuasaan Kejaksaan dan problem akuntabilitas dalam negara hukum*. *Jurnal Penegakan Hukum dan Keadilan*, 3(2), 211–227.

²⁷ Kusnadi, D. (2021). *Reformasi lembaga Kejaksaan dalam menjawab tantangan modern*. *Jurnal Konstitusi*, 18(4), 459–478.

²⁸ Wardani, D. (2021). *Budaya impunitas dan lemahnya akuntabilitas lembaga penegak hukum*. *Jurnal Hukum dan Etika*, 7(2), 198–209; Setiyono, B. (2018). *Akuntabilitas lembaga penegak hukum: tinjauan konstitusional*. *Jurnal Konstitusi*, 15(3), 513–527.

²⁹ Rengku, J. D., & Senewe, E. (2025). *Alternatif penyelesaian pelanggaran HAM dan peran jaksa*. *Lex Privatum*, 13(1), 61–76; Lengkong, N. L., & Senewe, E. (2025). *Kejahatan HAM berat dan posisi jaksa dalam UUU 26/2000*. *Lex Privatum*, 13(2), 88–103.

³⁰ Rachman, F. (2023). *The challenge of prosecutorial independence and accountability in Indonesia*. *Asian Journal of Legal Studies*, 15(2), 87–104.

investigation of prosecutors suspected of violations.³¹ In an international comparative context, Nugroho and Wicaksono, as well as Ahmad and Rahman, highlight the importance of strengthening external oversight bodies that can balance the independence and accountability of law enforcement officials.³²

Research by Hiariej and Wijayanti shows that transparency and professional ethics must be part of the internal legal structure of law enforcement agencies, not merely administrative procedures.³³ From the perspective of progressive legal theory, Rahardjo asserts that legal institutions that close themselves off from public control are contrary to the spirit of a dynamic rule of law.³⁴ This view is relevant to Setiyawan's idea that the checks and balances mechanism within the Attorney General's Office must be based on public control, not hierarchical authorisation.³⁵

Overall, the synthesis of the various studies above reinforces the main finding of this article that Article 8 paragraph (5) has exceeded its institutional protection objectives and has become an instrument of power that closes public accountability. The reformulation based on administrative notification proposed in this study is in line with the model recommended by Lumbanraja, namely legal notification with external control by an independent institution.³⁶ With this approach, Indonesia's legal system will be more adaptive to the demands of substantive justice and able to prevent the Attorney General's Office from becoming an untouchable power.

Further studies on the reformulation of Article 8 paragraph (5) also receive strong support from recent international and national research. Maria and Leonard show that in various democratic countries such as the Netherlands and Germany, legal action against prosecutors does not require structural permission, but is carried out with administrative notification through an independent supervisory agency.³⁷

In the national context, Juwita and Alamsyah, as well as Hasanah and Supriadi, highlight that the internal permission mechanism in Indonesia often poses a serious obstacle to the effectiveness of law enforcement.³⁸ Damanik adds that the hierarchical permission system is a form of administrative overreach that contradicts the principle of public accountability in modern administrative law.³⁹

The Asian comparative legal perspective put forward by Park and Kim reinforces the idea that equality before the law can only be guaranteed if law enforcement agencies are subject to a

³¹ Taufiq, M. (2024). *Evaluating internal impunity in prosecutorial structures*. *Indonesia Law Review*, 14(1), 55–70.

³² Nugroho, A., & Wicaksono, H. (2020). *Strengthening external control over law enforcement agencies: lessons from comparative jurisdictions*. *Jurnal Hukum dan Pembangunan Ekonomi*, 12(3), 215–233; Ahmad, R., & Rahman, L. (2023). *Public accountability and institutional transparency in law enforcement agencies*. *International Journal of Law, Crime and Justice*, 72.

³³ Hiariej, E. O. S. (2022). *Etika penegakan hukum dalam negara demokrasi*. *Jurnal Etika Hukum Indonesia*, 4(1), 44–58; Wijayanti, D. (2021). *Keadilan prosedural dan transparansi lembaga penegak hukum*. *Jurnal Integritas Hukum*, 9(2), 122–137.

³⁴ Rahardjo, S. (2020). *Hukum progresif sebagai paradigma pembaruan lembaga penegak hukum*. *Jurnal Hukum Progresif Indonesia*, 10(2).

³⁵ Setiyawan, R. (2019). *Checks and balances in the Indonesian prosecutorial system*. *Constitutional Journal of Law and Policy*, 11(2), 203–219. DOI : <https://doi.org/10.31078/consrev10278>

³⁶ Lumbanraja, T. (2024). *Revisiting the attorney general's powers under Indonesian law*. *Law and Society Review Asia-Pacific*, 19(1), 22–39.

³⁷ Maria, F. (2023). *Legal oversight mechanisms for prosecutors in democratic states*. *Journal of Comparative Law and Justice*, 28(1), 65–81; Leonard, P. (2022). *The limits of prosecutorial immunity: a comparative study*. *Law and Human Rights Review*, 19(2), 89–104.

³⁸ Juwita, R., & Alamsyah, D. (2023). *Kelemahan mekanisme izin penegakan hukum internal di Indonesia*. *Jurnal Lex Humaniora*, 14(2), 99–116; Hasanah, N., & Supriadi, B. (2024). *Reformulasi norma kelembagaan hukum dalam konteks due process*. *Jurnal Kajian Hukum Nasional*.

³⁹ Damanik, E. (2019). *Kritik terhadap sistem izin hierarkis dalam hukum administrasi Indonesia*. *Jurnal Ilmu Hukum Administratif*, 7(2), 177–191.

system of cross-institutional oversight.⁴⁰ In the domestic context, Widodo and Abdullah emphasise that transparency and public involvement in the oversight of legal institutions are vital components in preventing impunity.⁴¹

Finally, Firdaus and Tanjung conclude that professional ethics and institutional integrity must be the main foundations of Attorney General's Office reform, in line with the objectives of the rule of law and democratic accountability.⁴² Based on a synthesis of all these findings, this study affirms that the reformulation of Article 8 paragraph 5 with an administrative notification system approach is not only legally relevant, but also ethically and institutionally urgent. This is an important normative contribution in avoiding the creation of untouchable power within the Attorney General's Office of the Republic of Indonesia.

Another aspect examined in this study is how to reformulate Article 8 paragraph (5) so that it continues to guarantee the independence of the Attorney General's Office, but also does not create absolute power without oversight. In the context of modern constitutional law, the concept of checks and balances applies not only between branches of state power, but also within institutions themselves. Therefore, it is necessary to design a mechanism for reformulating the article that maintains the independence of prosecutors in carrying out their duties, but also opens up space for external oversight by objective and independent institutions. Criminal law expert Prof. Eddy O.S. Hiariej proposes that every law enforcement institution should have an external accountability mechanism based on due process through an independent supervisory body.⁴³ For example, investigations into prosecutors suspected of violating the law can be carried out directly by the Corruption Eradication Commission (KPK) or the Prosecutor's Commission with notification to the Attorney General, without having to wait for explicit permission. This would speed up the legal process and eliminate the possibility of hierarchical influence within the Attorney General's Office. Similarly, Prof. Maria Farida Indrati emphasised the importance of open governance in law enforcement. She suggested that articles granting sole authority to the head of an institution should be accompanied by mechanisms for transparency and accountability to the public.⁴⁴

The reformulation model can also refer to international practices. In countries such as Germany and the Netherlands, legal action against prosecutors does not require permission from the highest authority of the institution, but must go through an administrative court or an independent supervisory body. This proves that protection of institutions does not have to be carried out through closed internal mechanisms. Thus, the question that is the focus of the second problem formulation is: how to design a legal norm formulation that accommodates the principle of prosecutor independence, but still guarantees openness, supervision, and fair legal accountability? The answers to these two issues will be discussed in a structured manner in the Results and Discussion section, which covers case studies, constitutional theory, legal doctrine, and normative proposals for reforming the article. One important approach in this study is the reformulation of legal norms, namely redesigning the provisions of Article 8 paragraph (5) so

⁴⁰ Park, J., & Kim, H. (2021). *Equality before the law and structural accountability: Asian perspectives*. *Asian Journal of Legal Philosophy*, 11(3), 155-173.

⁴¹ Widodo, A. (2024). *Akuntabilitas lembaga hukum dan prinsip keterbukaan publik di Indonesia*. *Jurnal Hukum Reformasi Nasional*, 13(1), 43-60; Abdullah, I. (2020). *Transparansi dan akuntabilitas penegakan hukum di era demokrasi digital*. *Jurnal Hukum dan Transformasi Sosial*, 5(3), 203-220.

⁴² Firdaus, H. (2025). *Strengthening legal ethics and institutional transparency in prosecution systems*. *Global Journal of Justice Studies*, 12(2), 92-107; Tanjung, L. (2022). *Structural reform and corruption prevention in the prosecutor's office*. *International Review of Legal Studies*, 17(1), 118-136.

⁴³ Hiariej, E. O. S. (2020). *Hukum Pidana dan Keadilan Prosedural*. Yogyakarta: FH UGM.

⁴⁴ Indrati, M. F. (2014). *Perancangan Peraturan Perundang-Undangan*. Jakarta: Kanisius.

that it continues to protect the independence of prosecutors, but does not make them untouchable entities. In a constitutional democracy, every form of power must be subject to a system of public oversight and accountability.

Legal expert Prof. Eddy O.S. Hiariej emphasised that the authority to investigate law enforcement officials should not rest solely with internal superiors, as this would open up the potential for serious conflicts of interest.⁴⁵ He proposed a dual system: investigations would be conducted by an independent institution (such as the Prosecutor's Commission or the Corruption Eradication Commission), with formal notification to the Attorney General—rather than a request for permission. A comparison with the legal systems in countries such as Germany and the Netherlands shows that prosecutors who are suspected of violating the law are subject to direct investigation by external institutions or administrative courts. Permission from structural executive officials is not required.⁴⁶ The following is a proposed reformulation of Article 8 paragraph (5): In carrying out their duties and authorities, the summoning, examination, search, arrest and detention of prosecutors may be carried out by legitimate law enforcement agencies, with written notification to the Attorney General.

With this formulation, control remains outside the Attorney General's Office. The obligation to notify maintains institutional transparency, but does not hinder the legal process. In addition, strengthening the Indonesian Attorney General's Commission (KKRI) is crucial. Prof. Maria Farida Indrati proposes that the KKRI should not only function as an ethical institution, but also be given *pro justitia* authority in cases involving problematic prosecutors.⁴⁷ This approach is also in line with the Bangalore Principles of Judicial Integrity, which emphasise the importance of transparency and oversight to maintain public trust. Another form of oversight proposed is the involvement of audit institutions such as the BPK or oversight by the Indonesian Ombudsman in the initial stages of law enforcement against prosecutors, so that it does not remain the exclusive domain of the Attorney General's Office.

V. Conclusion

This study concludes that the provisions of Article 8 paragraph (5) of Law Number 11 of 2021 concerning the Attorney General's Office of the Republic of Indonesia raise legal issues because they grant procedural privileges to prosecutors that potentially violate the principle of equality before the law. The Attorney General's authorisation norm creates differences in legal treatment between Attorney General's Office officials and other citizens, thereby undermining the meaning of substantive justice and contradicting Article 27 paragraph (1) of the 1945 Constitution.

Structurally, the internal authorisation mechanism as stipulated in the article creates obstacles to accountability and opens up room for impunity in legal proceedings against prosecutors. This has the potential to undermine public confidence in the rule of law and the principle of the rule of law. This study finds that protection of the independence of the Attorney General's Office should not be provided through a substantive authorisation mechanism, but rather through a system that ensures a balance between independence and legal transparency.

Therefore, the administrative notification system model is offered as a normative alternative that allows legal proceedings against prosecutors to continue with administrative

⁴⁵ Hiariej, E. O. S. (2022). *Hukum Pidana dan Etika Penegakan Hukum*. Yogyakarta: UGM Press

⁴⁶ Lembaga Kajian Hukum UI. (2022). *Kajian Komparatif Sistem Penegakan Hukum di Eropa*. Jakarta: UI Press

⁴⁷ Indrati, M. F. (2019). *Desain Legislasi dan Lembaga Pengawasan Hukum*. Jakarta: Komnas HAM.

notification to the Attorney General, without requiring binding permission. Thus, this study addresses the main issue by emphasising that the reformulation of Article 8 paragraph (5) is necessary to be in line with the principle of the rule of law, guarantee equality before the law, and strengthen the accountability of the Attorney General's Office in the Indonesian legal system. This study concludes that the strengthening of the supremacy of law can only be achieved if all institutions, including the Attorney General's Office, are subject to the principle of justice that balances independence and accountability. A true constitutional state does not recognise any 'untouchable' entities, all are subject to the law, and the law is subject to justice.

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