



Normative Inconsistency in Prosecutors' Functional Position and Personnel Management Regulation in Indonesia

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Abstract

Background: Indonesian legislation creates a regulatory conflict between Law No. 11 of 2021 on the Attorney General's Office, which requires a specific Government Regulation governing prosecutor personnel management, and Law No. 20 of 2023 on the State Civil Apparatus, which applies the general functional-position framework to prosecutors as civil servants. The absence of the mandated regulation for more than four years has created a normative vacuum (*rechtsleemte*) that may undermine prosecutorial independence.

Objective: This study examines the normative inconsistency between the two statutes, analyzes its consequences for prosecutorial independence, and proposes a normative model for the overdue Government Regulation mandated by Article 36 of the Prosecution Law.

Methods: The study employs normative legal research using statutory, conceptual, and comparative approaches and analyzes the problem through three theoretical frameworks: Rule of Law (*Rechtsstaat*) theory grounded in Pancasila, Friedman's Legal System theory, and the Office Theory (*Ambtenleer*) of Logemann and Marbun.

Results: The analysis shows that the general civil service framework applied to prosecutors through the ASN Law is structurally incompatible with the quasi-judicial character of the prosecutorial function. The *rechtsleemte* leaves prosecutors exposed to career-based pressure that the Prosecution Law formally prohibits but that the personnel system does not structurally prevent at the normative level.

Conclusion: A Government Regulation is constitutionally necessary and feasible and should incorporate five elements: recognition of the quasi-judicial nature of the prosecutorial function, protection of career independence, an independent oversight body, an appropriate salary structure, and coordination with the State Civil Apparatus Commission.

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INTRODUCTION

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia declares Indonesia a *rechtsstaat*, requiring that every institution entrusted with state authority be

organized, empowered, and protected through legal instruments that are coherent, adequate, and proportional to the authority it exercises. The Attorney General's Office holds a central position in this constitutional architecture: it serves as the state prosecutor, executes final and binding court decisions, and functions as *dominus litis* in criminal proceedings from the prosecution stage through the execution of judgments (Atmasasmita, 2011; Maringka, 2022). Recent scholarship on prosecutorial authority has established that legal substance and legal structure are the most decisive factors in determining the clarity of that authority and the overall effectiveness of law enforcement mechanisms (Triyono et al., 2026).

Two primary statutes currently regulate the legal status of prosecutors in personnel matters, and they do so in ways that cannot be reconciled on the face of the texts. Law No. 16 of 2004, as amended by Law No. 11 of 2021, on the Attorney General's Office (the Prosecution Law) recognizes the special character of the prosecutorial function. Through Article 36, it mandates a Government Regulation specifically governing prosecutor personnel management, acknowledging that the general civil service framework is insufficient for this purpose. Law No. 20 of 2023 on State Civil Apparatus (the ASN Law) classifies prosecutors within the Non-Manual Position category as functional officials under Article 13 in conjunction with Article 18 paragraph (1) letter a, subjecting them to administrative mechanisms applicable uniformly to all functional positions, without regard to the quasi-judicial character of prosecutors' work (Mahendra, 2012). The distance between what the law demands and what the existing instruments provide captures the gap between *das sollen* and *das sein*: legislation calls for an independent and professional prosecutorial service, while the personnel instruments in force were designed for ordinary civil servants (Mufrohim, 2020).

The Government Regulation mandated by Article 36 has not been issued since the Prosecution Law entered into force in 2021. This prolonged absence constitutes a *rechtsleemte*, or normative vacuum, with direct consequences for the independence of the Attorney General's Office. The Constitutional Court of the Republic of Indonesia has on multiple occasions affirmed that prosecutorial independence is a constitutional value that the state must protect through institutional design, including personnel mechanisms free from channels of political or bureaucratic pressure (Constitutional Court Decision No. 68/PUU-XV/2017; Constitutional Court Decision No. 6/PUU-XXII/2024; Constitutional Court Decision No. 15/PUU-XXIII/2025). Without a specific legal framework for prosecutors, even functions formally recognized by statute face inconsistent implementation and lack the normative tools needed to give practical effect to the independence that legislation proclaims (Tas et al., 2026).

Across diverse legal traditions, the institutional design of prosecutorial services has been recognized as a critical determinant of the quality of the rule of law. The United Nations Guidelines on the Role of Prosecutors (1990) establish that the tenure, promotion, and disciplinary procedures of prosecutors shall be governed by objective criteria and insulated from improper interference. The Council of Europe's Venice Commission has repeatedly emphasized that prosecutorial autonomy in career management constitutes a prerequisite for democratic governance (Venice Commission, Opinion No. 924/2018). International scholarship has shown that prosecutorial independence is a decisive factor in a state's capacity to uphold the rule of law. Where the appointment, dismissal, and disciplinary procedures for prosecutors are not governed by clear and transparent rules that meet professional standards, there is a structural risk of pressure and institutional erosion that cannot be resolved through informal arrangements alone (Gorbanov et al., 2025; Voigt, 2019). The problem in Indonesia is precisely this: prosecutors are exposed to that structural risk because the dedicated personnel regulation that would address it has not been issued, and the existing framework, drawn from instruments designed for the general civil service, does not contain the independence-protection criteria needed for a quasi-judicial office.

Three theoretical frameworks guide this analysis, each approaching the normative problem from a distinct but complementary angle. The *Rechtsstaat* concept, as operationalized through Indonesia's Pancasila legal philosophy, holds that every exercise of state power must be grounded in law and that institutions entrusted with quasi-judicial authority must be regulated through instruments proportional to that authority and adequate to protect the independence it

requires (Asshiddiqie, 2010; Dimiyati et al., 2021; Manan, 1998; Pieris & Widiarty, 2007). Lawrence M. Friedman's legal system theory identifies three interdependent components, namely legal structure, legal substance, and legal culture, whose combined integrity determines whether a legal system functions effectively; a deficiency in any one component weakens the others, and the absence of an adequate Government Regulation for prosecutors constitutes precisely such a substantive deficiency that reverberates across all three dimensions (Friedman, 1975; Sudrajat, 2018). The office theory, or *ambtenleer*, developed by J.H.A. Logemann and elaborated in the Indonesian administrative law context by S.F. Marbun, treats an office as a legal entity carrying defined rights, obligations, and protections proportional to the authority it exercises; the prosecutorial office exercises quasi-judicial authority as *dominus litis*, yet its holders remain subject to the general civil service framework designed for administrative and technical roles, a disproportion that the *ambtenleer* identifies as *rechtsonzekerheid*, or legal uncertainty, within the Indonesian system (Logemann, 1948; Marbun, 2011). Taken together, the three frameworks converge on the same demand: the normative vacuum left by the non-issuance of the Government Regulation under Article 36 must be remedied through an instrument whose content reflects what the quasi-judicial character of the prosecutorial office requires.

This article addresses three interrelated research questions. First, whether the position of prosecutors as functional officials has been regulated adequately and consistently in Indonesian legislation. Second, why the normative inconsistency in this regulation affects the independence of the Attorney General's Office. Third, how a Government Regulation on Prosecutor Personnel Management can be realized to guarantee that independence. The comparative dimension draws on legal scholarship and institutional design across the Netherlands, Brazil, and South Korea, including analyses published in international journals that bear directly on prosecutorial institutional design (Andyaksa et al., 2026). Previous studies most proximate to this inquiry include Sahal (2021), who examined the dual status of prosecutors under the ASN framework but did not analyze the specific normative implications of Article 36's non-implementation; Mufrohim (2020), who identified the *das sollen/das sein* gap in prosecutorial regulation but limited their analysis to doctrinal description without proposing a normative model; Sudirdja (2019), who evaluated the credit-point system's applicability to prosecutors but did not connect this structural mismatch to the broader question of prosecutorial independence. None of these studies integrated multiple theoretical frameworks to construct a comprehensive normative model for the mandated Government Regulation, leaving a clear academic gap that the present study addresses. The novelty of this study lies in the simultaneous application of all three theoretical frameworks to a specific and persistent normative gap in Indonesian prosecutorial law and in the construction of a five-element normative model calibrated to the quasi-judicial character of the prosecutorial office. The new doctrinal proposition emerging from this integration, absent in prior scholarship, is that prosecutorial personnel management in a Pancasila-based *Rechtsstaat* requires a *sui generis* regulatory framework that simultaneously satisfies three conditions: (i) institutional autonomy proportional to quasi-judicial authority (derived from *ambtenleer*), (ii) substantive and structural coherence across all three Friedman dimensions (derived from legal system theory), and (iii) constitutional adequacy measured against the Court's independence jurisprudence (derived from *Rechtsstaat* theory). Each of the five proposed normative elements is derived from the intersection of these theoretical requirements with specific Indonesian legal problems and comparative findings.

It is important to distinguish between two distinct gaps motivating this study. The regulatory gap consists of the non-issuance of the Government Regulation mandated by Article 36, a legal-institutional problem. The research gap, separately identified through literature mapping, consists of the absence of scholarly work that integrates personnel management analysis, functional independence doctrine, and the Article 36 mandate within a unified theoretical framework capable of generating specific normative prescriptions. This study offers both theoretical and practical contributions. Theoretically, it advances the doctrinal understanding of prosecutorial personnel law by demonstrating that the *ambtenleer* concept of proportional office protection, when integrated with Friedman's systemic analysis and *Rechtsstaat* principles, generates specific normative prescriptions beyond what each framework produces independently. Practically, the five-element normative model provides a

concrete substantive blueprint for the Government, the Attorney General's Office, and legislative drafters tasked with preparing the Government Regulation under Article 36, while also informing the State Civil Apparatus Commission's approach to accommodating *sui generis* positions within the ASN framework.

METHOD

This research employed normative legal research, treating law as a norm as its primary object of study. The central problem was normative: a conflict between two primary legislative instruments and the absence of a mandated implementing regulation required resolution through the construction of new legal norms (Soekanto, 2003). Three approaches were combined. The statute approach (*pendekatan perundang-undangan*) involved a systematic examination of all legislation governing prosecutors as functional officials, mapping consistencies and inconsistencies across the normative hierarchy (Marzuki, 2011). The conceptual approach (*pendekatan konseptual*) drew on doctrinal analysis of the three theoretical frameworks identified in the Introduction to evaluate the existing legal framework and construct a normative model (Marzuki, 2011). The comparative approach (*pendekatan perbandingan*) examined the regulation of prosecutor personnel in the Netherlands, Brazil, and South Korea to identify models and standards relevant to the Indonesian context (Marzuki, 2011). These three jurisdictions were selected using a purposive functional-comparative design based on three criteria: (i) the Netherlands represented the civil law tradition from which Indonesia's legal architecture historically derives, providing a "most similar system" comparison for prosecutorial institutional design; (ii) Brazil represented a large developing democracy with a continental legal system that had successfully implemented constitutional guarantees for prosecutorial career autonomy; and (iii) South Korea represented an East Asian jurisdiction that had undergone recent reform of its prosecutorial personnel system within a civil service framework structurally analogous to Indonesia's ASN system.

Primary legal materials comprised the 1945 Constitution; Law No. 16 of 2004, as amended by Law No. 11 of 2021; Law No. 20 of 2023; Government Regulation No. 11 of 2017, as amended by Government Regulation No. 17 of 2020; Minister of Administrative Reform and Bureaucratic Reform Regulation No. 1 of 2023; and relevant Constitutional Court decisions. Secondary materials included legal textbooks, peer-reviewed journal articles, and doctoral dissertations (Soekanto, 2003). The secondary literature encompassed recent scholarship published in internationally indexed journals addressing prosecutorial systems and institutional design in Indonesia and comparable jurisdictions (Triyono et al., 2026). Analysis proceeded through qualitative normative analysis employing descriptive-analytical, comparative, and legal-construction techniques. Operationally, inconsistency was determined through three tests: (i) hierarchical analysis, which examined whether lower-level norms contradicted higher-level norms; (ii) *lex specialis* assessment, which determined whether the specific statutory mandate under Article 36 was given operative effect or displaced by the general framework under the ASN Law; and (iii) compatibility analysis, which tested whether the two statutory instruments could coexist through implementing regulations or instead produced irreconcilable obligations. Comparative findings were converted into normative model elements through functional-equivalence analysis, which identified the institutional mechanisms in comparator jurisdictions that performed the same protective functions that the proposed Government Regulation would need to perform in Indonesia (Siagian, 2008).

This study did not involve human or animal participants and therefore did not require ethical approval; all data were collected in accordance with institutional academic standards. The primary foreign legal materials analyzed included, for the Netherlands, the *Wet op de rechterlijke organisatie* (Judicial Organisation Act) and the *Besluit rechtspositie rechterlijke ambtenaren* (Decree on the Legal Position of Judicial Officers); for Brazil, Articles 127–130 of the *Constituição Federal* (1988) and *Lei Complementar No. 75/1993* (Organic Law of the Federal Public Ministry); and, for South Korea, the Prosecutors' Office Act (검찰청법) and the State Public Officials Act (국가공무원법).

RESULTS AND DISCUSSION

Results

Normative Inconsistency: The Legislative Conflict

The central legal problem this article examines is not a mere drafting oversight but a structural contradiction between two primary legislative instruments that reflect incompatible assumptions about the nature of the prosecutorial office. The Prosecution Law proceeds from the premise that prosecutors occupy a position of sufficient institutional distinctiveness to warrant dedicated personnel regulation, as the plain text of Article 36 demonstrates. The ASN Law proceeds from the opposite premise: that prosecutors are functional officials like any other, subject to the same administrative architecture that governs engineers, archivists, and statisticians. These two legislative premises create a tension that requires resolution: while it is conceptually possible for a prosecutor to be classified as a functional official and simultaneously be subject to special personnel arrangements, the ASN Law's implementing regulations (Government Regulation No. 11 of 2017, as amended by Government Regulation No. 17 of 2020) do not provide a mechanism for carving out *sui generis* personnel regimes within the functional position framework. This renders the two statutory mandates operationally incompatible in the absence of the dedicated Government Regulation, and the Indonesian legal system has yet to resolve the contradiction because the Government Regulation that Article 36 anticipated has not been issued (Sahal, 2021).

The constitutional dimension of this conflict is more than contextual background. Article 1 paragraph (3) of the 1945 Constitution declares the state a *rechtsstaat*, and the Constitutional Court has consistently held that this declaration carries substantive content: institutional independence must be embedded in the legal instruments governing law enforcement bodies, not merely proclaimed in general principles (Constitutional Court Decision No. 68/PUU-XV/2017; Constitutional Court Decision No. 15/PUU-XXIII/2025). Read alongside Article 36 of the Prosecution Law, this jurisprudence generates a strong interpretive signal—distinguishable from a judicially enforceable constitutional obligation but exceeding a mere statutory expectation—that the Government Regulation contemplated by Article 36 should be issued to give substantive effect to the constitutional value of prosecutorial independence. Its continued absence therefore represents not only a regulatory gap but also a failure to give effect to a constitutional value that the Court has recognized and the legislature itself acknowledged by inscribing the mandate in statute (Maringka, 2022).

The credit point system illustrates why the general functional position framework is structurally unsuitable for prosecutors and why the claim that prosecutors are merely one category of functional official among many cannot withstand doctrinal scrutiny. Under Minister of Administrative Reform Regulation No. 1 of 2023, career advancement in a functional position depends on accumulating credit points assigned to defined work outputs. This model presupposes that the holder of the position can plan and produce those outputs on a regular schedule (Hartini et al., 2008). The prosecutorial function operates on precisely the opposite logic: a prosecutor's workload is determined largely by case intake, the discretion of the police in forwarding investigations, and the complexity of evidence that arrives from outside the prosecutor's control. A prosecutor who handles ten high-complexity corruption cases in a year may accumulate fewer credit points than one who processes a hundred minor cases, yet the former may contribute more substantially to the prosecutorial mandate (Sudirdja, 2019). This inversion of institutional logic is not a deficiency correctable merely by adjusting credit point weights; it reflects a categorical mismatch between the functional position framework and the nature of the prosecutorial office.

The *lex specialis* argument, which might appear to resolve the tension in favor of the Prosecution Law, is weaker than it appears. The Prosecution Law is indeed the more specific instrument, and Article 36 takes clear precedence over the general ASN personnel framework on the question of whether a dedicated regulation should exist. But *lex specialis* cannot resolve a conflict that arises not from two competing norms but from the absence of the norm that the *lex specialis* itself mandated. As long as the Government Regulation under Article 36 remains unissued, the ASN Law fills the vacuum by default: not because it is the appropriate instrument for prosecutors but because there is no other operative instrument available. The result is that the general norm displaces the special norm through legislative inaction rather than through any

interpretive choice, a process that Marzuki (2011) identifies as one of the most practically significant sources of normative inconsistency in Indonesian legislation. Comparative research shows that this dynamic produces institutional drift: absent specific norms, institutions conform to the general framework not because that framework fits their function but because administrators have no legal alternative (Andyaksa et al., 2026).

Discussion

Impact on Prosecutorial Independence: The Structural Vulnerability

The consequences of the normative inconsistency identified above extend beyond administrative inconvenience. To understand why, one must distinguish between two forms of prosecutorial independence that the literature treats as analytically separate even when they are institutionally related. Institutional independence concerns the Attorney General's Office as a law enforcement institution: its freedom from governmental direction in exercising prosecutorial authority on behalf of the state. Functional independence concerns the individual prosecutor: the freedom to make professional judgments in specific cases, from the decision to prosecute through the determination of the applicable charge and the conduct of the trial, without exposure to career consequences that would distort those judgments (Voigt, 2019). The *rechtsleemte* in prosecutor personnel regulation does not directly threaten institutional independence in the formal sense, but it creates the structural conditions under which functional independence can be eroded silently and systematically.

This mechanism has received less analytical attention in Indonesian legal scholarship than its institutional significance warrants. When a prosecutor's career advancement, territorial assignment, and professional standing are all governed by the same administrative processes that apply to other civil servants, the formal guarantees of prosecutorial independence that appear in the Prosecution Law become practically unenforceable at the individual level. A prosecutor who is aware that transfer decisions flow through administrative channels not bound by any independence-protection criterion is operating under institutional conditions structurally similar to those of an official whose conduct is subject to supervisory discretion. Voigt (2019) empirical analysis of prosecutorial independence across jurisdictions establishes that formal legal guarantees of independence correlate weakly with actual independence when the personnel management system lacks structural protections; what determines *de facto* independence is whether career decisions are insulated from the same channels of influence that prosecutors are expected to resist in their professional work.

The Constitutional Court's decisions provide an authoritative institutional framework for this analysis. Decision No. 15/PUU-XXIII/2025 is directly relevant because the Court held that Article 8 paragraph (5) of Law No. 11 of 2021, which governs prosecutorial immunity, is conditionally unconstitutional: absolute immunity for prosecutors risks violating the equality principle under Article 27 paragraph (1) of the 1945 Constitution. The Court reasoned that the balance between prosecutorial independence and accountability can only be achieved through personnel instruments designed specifically and proportionally for the prosecutorial office, a reasoning that reinforces the constitutional imperative for the Government Regulation mandated by Article 36 of the Prosecution Law (Artyo et al., 2024; Michel, 2021). Decision No. 6/PUU-XXII/2024, which prescribed a nonpartisan cooling-off period for the Attorney General as a condition of appointment, applies the same logic at the leadership level: independence does not follow automatically from a statutory declaration but requires concrete institutional mechanisms before it takes effect in practice (Artyo et al., 2024). The Court's jurisprudence thus confirms that the *rechtsleemte* in prosecutor personnel regulation is not a peripheral technical matter but a gap in the constitutional architecture of Indonesian law enforcement.

The comparison with the judicial branch shows how far the disparity extends. Indonesian judges, who exercise adjudicative authority over the determination of criminal liability, are managed through the Judicial Commission and the Supreme Court under frameworks that treat independence as a nonnegotiable criterion at every career stage, from selection through discipline and removal. Indonesian prosecutors, who exercise quasi-judicial authority as *dominus litis* over the pretrial and trial phases of criminal proceedings, are managed through the general civil

service framework under criteria designed primarily for administrative and technical roles. The doctrinal justification for this differential treatment has never been clearly articulated in Indonesian legal scholarship or in the legislative record, because there is none: the difference reflects an accident of institutional history rather than a principled distinction between two categories of legal office (Brouwer, 1998; Hadjon, 1987). Office theory, which requires that the protection afforded to an office be proportional to the authority it carries, demands that this disparity be corrected through the mechanism the Prosecution Law already anticipated: a dedicated Government Regulation.

The structural vulnerability has a collective institutional dimension that goes beyond individual career concerns. Where prosecutors cannot assume that their professional judgments will be evaluated on professional criteria alone, the incentive to exercise prosecutorial discretion in ways that invite administrative displeasure is structurally reduced. The literature documents patterns of cautious prosecution in high-profile cases and reluctance to deploy the *dominus litis* principle against politically sensitive targets in ways that suggest career considerations operate alongside professional ones (Ghonu, 2015). The research of Tas et al. (2026) on the nonlitigation functions of the Attorney General's Office documents this dynamic at the institutional level: normative uncertainty in the regulatory framework translates into inconsistent professional practice, and inconsistent practice erodes public trust in the institution. Empirical evidence from the proximate oversight ecosystem corroborates this conclusion: survey research on public trust in the Indonesian Attorney General's Commission found that 89 percent of the variance in public trust is explained by institutional communication quality and service responsiveness, both of which depend structurally on the normative framework that governs the institution (Hutagalung & Hermanu, 2025).

Toward a Government Regulation: A Normative Model

Diagnosing the normative inconsistency and tracing its consequences for prosecutorial independence establishes the basis on which the Government Regulation mandated by Article 36 must be built. The substantive content of that regulation cannot be drawn from the general civil service framework; it must reflect what the quasi-judicial character of the prosecutorial office requires. The three theoretical frameworks applied throughout this article converge on that demand, and the comparative study of three jurisdictions where a comparable design problem arose shows that workable solutions share common structural features across different constitutional traditions. The normative model proposed in this section draws on both sources to specify five elements whose justification follows from the analysis above.

The normative premises of the model follow from the three theoretical frameworks applied throughout the article. The *rechtsstaat* principle, as applied to Indonesia through *Pancasila*, demands that every office exercising quasi-judicial authority be regulated through instruments proportional to that authority and adequate to protect the independence it requires. The legal system theory of Friedman supplies the mechanism: the deficiency is in legal substance, and unless that deficiency is remedied through the issuance of an adequate Government Regulation, neither the legal structure of the Attorney General's Office nor the legal culture of prosecutorial independence can achieve the coherence the Constitution demands. The *ambtenleer* identifies the disproportion: the prosecutorial office carries quasi-judicial authority as *dominus litis*, and the level of legal protection currently available to its holders is incommensurate with that authority. Together, these three frameworks converge on the same conclusion: the Government Regulation must be issued, and its content must be determined by the demands of the prosecutorial office, not by the convenience of administrative uniformity (Friedman, 1975; Logemann, 1948; Rahardjo, 2000).

The Netherlands provides the most structurally direct comparative precedent. The Dutch prosecutorial personnel framework is documented in primary legislation, specifically the *Wet op de rechterlijke organisatie* and the *Besluit rechtspositie rechterlijke ambtenaren*, which classify prosecutors as *rechterlijke ambtenaren* (judicial officers) with statutory protections regarding appointment, transfer, and disciplinary proceedings. Dutch prosecutors are classified as *rechterlijke ambtenaren*, or judicial civil servants, under the *Wet op de rechterlijke organisatie*, a classification that explicitly recognizes the judicial character of the prosecutorial function and

places prosecutor career management in a framework distinct from the general civil service (Brouwer, 1998). What matters in the Dutch model is not the existence of a separate framework as such but the substantive role that independence plays within it: prosecutorial appointments flow through collegiate bodies rather than ministerial discretion, disciplinary proceedings require independent review, and involuntary transfer is unavailable as an administrative tool. The Dutch model shows that a dedicated prosecutorial career system can be maintained within a larger state employment architecture without creating an institution unaccountable to law; the accountability mechanisms are redesigned to fit the office rather than abandoned (Šramel, 2022, p. 364).

Brazil offers the most constitutionally direct parallel. The *Ministério Público's* status under Articles 127 to 130 of the Federal Constitution of 1988 is the product of a constituent decision to treat prosecutorial independence as a structural guarantee of the democratic order, not the product of ordinary legislation. Three features of the Brazilian model are directly relevant to the Indonesian design problem. The irremovability guarantee under Article 128 paragraph (5) functions as more than a shield against arbitrary dismissal: it signals throughout the career system that professional judgment, not administrative compliance, is the criterion on which careers advance. The prohibition on political affiliation removes the most direct channel through which external influence can enter the career system. The *Ministério Público* administers its own career through internal collegiate bodies with no ministerial authority over individual career decisions, eliminating the conflict of interest that arises when career decisions about prosecutors are made by the same executive branch whose decisions prosecutors may be required to examine. Indonesia's Prosecution Law is ordinary legislation rather than a constitutional provision, but the substantive design lessons translate directly: independence requires structural guarantees at the career-management level (Michel, 2021).

South Korea's post-2021 reforms supply a third reference that is relevant because they were designed to address prosecutorial overreach rather than prosecutorial subordination, yet they confirm the same design principle from an opposite direction. The reform of career evaluation criteria to require assessment based on legal quality and professional integrity rather than case-clearance rates demonstrates that the personnel framework governing prosecutors must be calibrated to the functions prosecutors perform. A high case volume is not a marker of prosecutorial quality; a rigorous, well-reasoned prosecution in a complex case is, even when it results in fewer numbers on an administrative scorecard. The Korean experience thus makes plain that any personnel framework for prosecutors that imports administrative throughput metrics from the general civil service will systematically misalign institutional incentives with the prosecutorial mandate (Hutagalung, 2023).

The five substantive elements of the proposed Government Regulation follow directly from the theoretical analysis and comparative evidence. The first and foundational element is a statutory definition of the prosecutorial functional position as one of judicial character. This definitional anchor operates as a clarification within the scope of statutory delegation under Article 36, which expressly authorizes the Government Regulation to regulate "matters concerning the management of prosecutor personnel." Recognizing the quasi-judicial character of the position does not create a new legal status exceeding the statute but rather specifies the nature of the position that the statute already acknowledged as warranting special regulation, with the legal consequence that independence criteria apply to the prosecutorial career system in the same way they apply to the judicial career system. This definition is not rhetorical: it determines the legal basis on which every other element of the regulation rests, and it gives operative legal force to the constitutional holding that prosecutorial distinctiveness must be reflected in institutional design. Without this anchor, the remaining elements remain vulnerable to administrative reinterpretation. The second element is a set of career-management criteria, binding on all relevant decision-makers, including the State Civil Apparatus Commission, that treat prosecutorial independence as a nonderogable requirement in appointment, transfer, promotion, and removal decisions. No transfer or removal proceeding may be initiated or sustained on grounds unrelated to professionally established conduct, objectively assessed legal performance, or disciplinary violations established through a fair process; decisions that cannot be grounded in one of these criteria are *ultra vires*. The third element is an independent career-oversight board.

To ensure genuine independence while operating within the Attorney General's Office, the board should comprise: (i) a majority of members appointed from outside the institution (retired senior judges, legal academics, and civil society representatives); (ii) fixed, nonrenewable terms to prevent institutional capture; (iii) transparent appointment through a selection committee involving the Judicial Commission or an equivalent body; (iv) conflict-of-interest safeguards prohibiting members with active prosecutorial careers from serving; and (v) binding review authority over career decisions, with accountability to the State Civil Apparatus Commission. Within the Attorney General's Office, the board should be constituted with representation from the prosecutorial corps and with genuine review authority over career decisions on independence-protection grounds before those decisions become final; advisory status without veto power does not protect functional independence when career interests conflict with professional judgments, as both the Dutch and Brazilian models confirm. The fourth element is a salary and benefit structure calibrated to the quasi-judicial character of the prosecutorial role, providing the economic security that office theory identifies as a material precondition of independence: a prosecutor whose economic position is insecure is structurally more susceptible to career-based pressure than one whose material standing is commensurate with the authority of the office. The fifth element is a coordination protocol with the State Civil Apparatus Commission specifying which career decisions remain within the exclusive competence of the prosecutorial oversight board and which require coordination with the Commission, preserving both the specialized character of prosecutorial career management and the accountability linkages required by the ASN Law (Siagian, 2008).

CONCLUSION

This article has established that the normative relationship between the Prosecution Law and the ASN Law presents a structural contradiction between two irreconcilable legislative premises and that this contradiction carries consequences for prosecutorial independence that Indonesian legal scholarship has not examined with adequate institutional specificity.

The *rechtsleemte* created by the non-issuance of the Government Regulation is not merely a matter of delayed implementation. The Constitutional Court has affirmed in successive decisions from 2017 through 2025 that prosecutorial independence carries constitutional content, and Article 36 of the Prosecution Law itself expresses the legislature's recognition that the general civil service framework is inadequate for prosecutors. These two convergent signals create an expectation that the Government Regulation will be issued; its continued absence constitutes a failure to give legal effect to that expectation. The ASN Law's placement of prosecutors within the general functional position framework cannot be reconciled with the Prosecution Law's recognition of the special character of the prosecutorial office, and the credit-point system applied under the general framework is structurally incompatible with the nature of prosecutorial work. The *lex specialis* principle offers no solution because the special instrument to which it would give precedence does not yet exist. The consequence, as Friedman's legal system theory reveals, is a systemic deficiency: the absence of adequate legal substance weakens both the structure of the Attorney General's Office and the conditions under which a genuine culture of prosecutorial independence could take institutional form.

The more significant consequence is structural rather than political. The *rechtsleemte* does not produce direct interference in prosecutorial decisions; rather, it establishes the institutional conditions under which self-censorship in the exercise of prosecutorial discretion becomes rational for individual prosecutors without any single actor exerting improper influence. Voigt (2019) cross-jurisdictional analysis shows that *de facto* independence tracks personnel-system design more closely than formal legal guarantees, which explains why Indonesia's strong formal guarantees provide weaker protection than they appear to. The unjustified disparity between the judicial and prosecutorial career systems, which office theory identifies as a legally indefensible differentiation between offices of equivalent authority, is the clearest institutional expression of this structural problem.

The comparative study of the Netherlands, Brazil, and South Korea shows that the design problem posed by Article 36 has been resolved in jurisdictions with very different constitutional traditions, confirming that the solution is neither legally exotic nor administratively impractical.

The five-element normative model proposed above draws each of its elements from the preceding analysis: the definitional anchor constituting the prosecutorial position as one of a judicial character; the independence-protection criteria governing career decisions; the independent oversight board providing institutional enforcement; the salary structure addressing material vulnerability; and the coordination protocol with the State Civil Apparatus Commission preserving the specialized character of prosecutorial career management within the broader civil service accountability framework. The model's value lies not in the originality of any single element but in demonstrating that they form a legally coherent system responsive to the specific demands of the prosecutorial office within Indonesia's constitutional order.

The Government Regulation mandated by Article 36 has been overdue since 2021. The doctoral research from which this article derives will provide the detailed normative content for that regulation, including the specific textual formulations of the five elements and the mechanisms for harmonization with the ASN Law's general framework. Further research should examine the constitutional question of whether Article 36 creates a justiciable obligation and the procedural question of which actors have standing to challenge the continued non-issuance of the regulation before the Constitutional Court or the administrative courts.

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AUTHOR CONTRIBUTION STATEMENT

Johannes Ronald Elyeser Roparulian Hutagalung: conceptualisation, formal analysis, investigation, methodology, writing (original draft), writing (review and editing). Hulman Panjaitan: supervision, validation, writing (review and editing). Tomson Situmeang: supervision, validation, writing (review and editing). Inri Januar: supervision, validation, writing (review and editing).

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