

The legal standing of the high prosecutor's office as a mediator in the resolution of civil disputes between the government and civil society

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ABSTRACT

This study analyzes the legal status and institutional role of the Indonesian Prosecutor's Office in mediating civil disputes between the government and civil society. Although the Prosecutor's Office holds a *sui generis* position under national law—exercising prosecutorial powers alongside authority in civil and administrative matters—its structural placement within the executive branch raises concerns about neutrality and independence. The dual role of the Prosecutor's Office as both mediator and State Attorney creates an inherent conflict of interest, potentially undermining the neutrality, procedural justice, and equality of arms essential to ADR. Drawing on doctrinal analysis and theories of procedural justice and separation of powers, this study argues that overlapping functions compromise mediation legitimacy. Public trust may decline when mediation is facilitated by an institution aligned with the disputing party. The study recommends limiting the Prosecutor's Office to consultative functions, while substantive mediation should be handled by independent bodies. Clear functional demarcation and strengthened ethical guidelines are necessary to safeguard neutrality, accountability, and the rule of law.

Keywords: prosecutor's office, mediation, conflict of interest, procedural justice, ADR, separation of powers, legal neutrality

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1. INTRODUCTION

In a democratic rule-of-law state, the relationship between the government and its citizens must be based on the principles of transparency, accountability, and fairness. In practice, however, disputes between the government and private individuals frequently arise in civil matters, including land conflicts, construction service contracts, and business licensing. Litigation, while formally available, is often time-consuming, costly, and adversarial, undermining social harmony. As scholars of dispute resolution note, mediation—one of the core mechanisms of Alternative Dispute Resolution (ADR)—offers a more flexible, participatory, and solution-oriented process (Boulle, 2005). In Indonesia, mediation reflects the constitutional mandate of Article 28 D (1) of the 1945 Constitution, ensuring fair legal protection.

The Prosecutor's Office holds a unique position in Indonesia's legal framework. Article 30(2) of Law No. 16/2004, as amended by Law No. 11/2021, authorizes prosecutors to represent the State in civil and administrative matters (Republic of Indonesia, 2004). Through the Civil and Administrative Division (Datun), amicable settlements between the government and citizens may be facilitated. However, its dual role as a state representative and mediator creates a structural conflict of interest. Neutrality is fundamental to mediation (Rawls, 1971; Sander & Goldberg, 1994).

Concerns intensify because it is placed under the executive branch, making it potentially biased when handling government-related disputes. Public trust in mediation depends on the mediator's perceived impartiality (Cooter & Ulen, 2008). When mediators are structurally aligned with one party, the equality of arms is compromised.

Thus, this study examines the legal status of the Prosecutor's Office as a mediator in civil disputes, identifies potential conflicts of interest, and evaluates its alignment with the principles of neutrality, procedural justice, and ADR objectives.

2. METHOD

This study employs a normative legal research method that focuses on analyzing laws, regulations, and legal doctrines relevant to the role of the prosecutor's office in civil dispute mediation. The primary legal materials used include the 1945 Constitution of the Republic of Indonesia, Law No. 16 of 2004 as amended by Law No. 11 of 2021, and the Supreme Court Regulation (PERMA) No. 1 of 2016 on Mediation. These materials form the basis for examining the formal authority of the High Prosecutor's Office and its compatibility with the established principles of neutrality in dispute resolution. Secondary materials, such as scholarly articles, legal commentaries, international mediation standards, and comparative administrative law studies, provide supporting insights into both the theoretical and practical dimensions of mediation involving state institutions (Asshiddiqie, 2010). A conceptual approach is applied to understand the nature of neutrality and conflict of interest, while a statutory approach is used to evaluate the coherence and adequacy of existing regulations. Through qualitative analysis of these materials, this study identifies legal gaps, interprets normative principles, and formulates recommendations for strengthening the regulatory framework governing the mediatory role of the Prosecutor's Office.

3. DISCUSSION

3.1 The Concept of Mediation in Civil Law

Mediation is an essential component of Alternative Dispute Resolution (ADR) and relies on the foundational principles of neutrality, voluntariness, and impartial facilitation. A mediator must not hold any structural or institutional interest that may influence the outcome—an idea strongly supported by classical and contemporary mediation scholarship (Rawls, 1971; Sander & Goldberg, 1994). However, in Indonesia, the Prosecutor's Office presents a challenge due to its institutional position under the executive branch, creating inherent asymmetry in disputes involving civil society and the government.

The Prosecutor's Office also has the authority to act as the State Attorney (Jaksa Pengacara Negara), defending the government's interests in civil and administrative cases. This dual role—government advocate and mediator—raises legitimate concerns regarding the neutrality of the judge (Cooter & Ulen, 2008). As Mochtar Kusumaatmadja emphasized, neutrality is indispensable in mediation, ensuring trust, fairness, and substantive justice.

Procedural justice theory supports this concern, as fairness must be reflected in both the process and outcome (Rawls, 1971). When the mediator is structurally aligned with one of the disputing parties, the legitimacy of the mediation is compromised. In this regard, independent mediation bodies, such as the Ombudsman, National Human Rights Commission, or certified non-governmental mediators, offer greater guarantees of impartiality.

Institutional culture is also important. Organizational norms may drive mediators to unconsciously prioritize governmental interests, especially when institutions are loyal to the executive. This dynamic threatens the essence of mediation and weakens public trust, highlighting the need for procedural safeguards, conflict of interest rules, and external oversight (Hapsari & Sugama, 2019).

3.2 The Concept of Government–Citizen Disputes

Based on Law No. 16 of 2004 on the Prosecutor's Office, as amended by Law No. 11 of 2021, the Prosecutor's Office is vested with authority in civil and administrative matters, including legal assistance, legal considerations, and other legal actions in the interest of the state. This authority is inherent (*atributif*) and granted directly by statute, rather than being delegated from other executive bodies.

However, when the Prosecutor's Office acts as a mediator while simultaneously serving as the government's legal representative through the JPN, functional overlap occurs. On the one hand, the Prosecutor's Office must remain neutral as a mediator; on the other, it is obligated to defend government interests. This duality undermines the principle of the equality of arms, compromising citizens' ability to perceive the process as impartial. Therefore, the prosecutorial role in mediation should be clearly limited to avoid mixing representative and mediating functions.

This overlap illustrates the need for clearer normative boundaries regarding the role of the Prosecutor's Office in mediation. Manan (2006) emphasizes that, in a modern rule-of-law system, every governmental organ must have precise limitations to prevent abuse of power. Without clear boundaries, the Prosecutor's Office risks exceeding its designated legal functions and encroaching on domains more appropriately handled by independent mediation bodies.

From the perspective of constitutional theory, the separation of powers requires state institutions to function within distinct limits. When the Prosecutor's Office carries out mediation while also acting as government counsel, it violates the principles of checks and balances because it occupies an ambiguous position between a neutral facilitator and a government advocate. Such ambiguity undermines due process and weakens citizens' confidence in the fairness of dispute resolution mechanisms.

Moreover, dual roles generate legal uncertainty, which contradicts the principle of legal certainty under Article 1(3) of the 1945 Constitution. Practically, citizens may not know whether the Prosecutor's Office is acting as a mediator or a government defender. Thus, the need arises for regulatory clarification or technical guidelines that clearly distinguish between these roles to prevent violations of the equality before the law.

If left unregulated, this role dualism may create negative precedents and potential moral hazards, allowing prosecutors to influence mediation outcomes in favor of institutional government interests. This contradicts the principle of judicial independence and the functional separation of state powers under Article 24 of the 1945 Constitution. Therefore, internal oversight and ethical safeguards must be strengthened to prevent the misuse of mediation functions (Kusumaatmadja, 2003).

Institutional reform is also required to enhance the Prosecutor's Office's capacity to understand mediation principles aligned with public interest, rather than solely institutional interest. Training in ADR

principles, communication, restorative justice, and mediator ethics can help prosecutors distinguish between advocacy and facilitation roles. With such reforms, the Prosecutor's Office can contribute to dispute resolution through advisory and communication roles without compromising neutrality (Gustami & Marpaung, 2023).

3.3 The Legal Status of the Prosecutor's Office in Mediation

Within ADR frameworks, mediation emphasizes cooperation over confrontation. Mediators do not decide cases; instead, they facilitate communication to help the parties achieve mutually acceptable outcomes. Accordingly, the Prosecutor's Office should limit its involvement in mediation to facilitative functions rather than acting as a decision-maker or advocate for one party.

This limitation is crucial for upholding procedural and substantive justice, particularly in vertical disputes between the government and the citizenry. The Prosecutor's Office can still contribute by providing legal opinions, ensuring procedural compliance, and supporting government agencies. However, substantive mediation should be entrusted to independent mediators.

Comparative legal systems demonstrate that separating law enforcement from mediation functions helps prevent conflicts of interest. Prosecutors may serve as legal advisors but not mediators. Such institutional separation strengthens neutrality, accountability, and public confidence. Reforming the mediation role of the Prosecutor's Office aligns with the restorative justice frameworks seen in countries such as Canada and New Zealand, where mediation preserves social relationships while protecting citizens' rights.

Ultimately, institutional reform is needed to transform the Prosecutor's Office into a true guardian of public interest. Clear role boundaries will protect its integrity, uphold the rule of law, and support fair civil dispute resolution.

4. CONCLUSION

This study concludes that the Prosecutor's Office occupies a unique legal position as both a prosecutorial institution and a civil representative of the state. However, when performing the role of mediator in disputes involving government and civil society, the institution faces inherent structural conflicts of interest that compromise neutrality.

The dual function of advocacy and facilitation contradicts principles of procedural justice, impartiality, and separation of functions. For these reasons, prosecutorial mediation should be limited to advisory and facilitative roles, while independent mediators should handle substantive dispute resolution.

To strengthen public trust and align Indonesia with international ADR standards, reforms must include clearer role boundaries, ethical safeguards, conflict-of-interest regulations, and the appointment of independent mediators in disputes involving state parties.

Ethical Approval

This study did not involve human participants, personal data, or interventions and therefore did not require ethical approval.

Informed Consent Statement

Not applicable. The study did not involve human subjects or primary data collection.

Authors' Contributions

Conceptualization, A.; methodology, A., A.P., and F.N.P.; formal analysis, A.; writing – original draft, A.; writing – review and editing, A.P. and F.N.P.

Disclosure Statement

No potential conflict of interest was reported by the authors.

Data Availability Statement

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