



## Comparative Juridical Analysis of Indonesian and Malaysian Prosecutor's Authority in Handling Cases Crime Corruption

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### **Abstract**

There is a difference in authority between the Prosecutor's Office of the Republic of Indonesia and the Prosecutor's Office of Malaysia in handling criminal acts of corruption, where prosecutors in Indonesia must temporarily resign from their positions in the Prosecutor's Office while handling criminal acts of corruption, apart from that, in handling criminal acts of corruption, prosecutors work based on orders and act for and on behalf of the Corruption Eradication Commission (KPK). The formulation of the problem in this research is what is the Authority of the Prosecutors of the Republic of Indonesia and Malaysia in Handling Corruption Crime Cases? What are the similarities and differences between the authority of the Indonesian prosecutor's office and the authority of the Malaysian prosecutor's office in handling corruption cases? What are the causes and reasons for the similarities and differences between the authority of the Indonesian prosecutor's office and the authority of the Malaysian prosecutor's office in handling corruption cases? The method used is descriptive qualitative. The results of this research are that the authority of the Republic of Indonesia Prosecutor's Office and the Malaysian Prosecutor's Office in eradicating criminal acts of corruption is in accordance with Law Number 30 of 2002 concerning the Corruption Eradication Commission and the Malaysian Corruption Prevention Commission (SPRM) Act 2009. Similarities and differences between the Indonesian Prosecutor's Office and the Malaysian Prosecutor's Office in prosecuting criminal acts of corruption, refer to Article 51 Paragraph (3) of Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK) in Indonesia and Article 60 Paragraph (2) of the Malaysian Corruption Prevention Commission (SPRM) Deed in Malaysia. The authority given to the Prosecutor's Office of the Republic of Indonesia and the Prosecutor's Office of Malaysia differs in the role of the Prosecutor's Office in eradicating corruption. In eradicating corruption, the role of the Indonesian Prosecutor's Office is as an investigator and prosecutor, this authority is given by the conditions in Article 39 Paragraph (3), whereas in Malaysia, which is the Malaysian Corruption Prevention Commission (SPRM), it can become a public prosecutor on or with permission from the Public Prosecutor, if if permission is not given, then the prosecutor himself remains the public prosecutor as explained in Article 60 Paragraph (2) so this cannot be disputed and is absolute.

**Keywords:** *Authority; Prosecutor; Eradication of Corruption Crimes*

## **Introduction**

The Prosecutor's Office of the Republic of Indonesia is one of the bodies whose functions are related to judicial power and government institutions that exercise state power in the field of prosecution as well as other authorities which are exercised independently by the Attorney General's Office, the High Prosecutor's Office and the District Attorney's Office in accordance with the applicable state power law.<sup>1</sup> Law Number 5 of 1991 concerning the Prosecutor's Office provides an explanation that the prosecutor's office as one of the law enforcement institutions is required to play a greater role in upholding the supremacy of law, protecting public interests, upholding human rights, as well as eradicating Corruption, Collusion and Nepotism. So previously the prosecutor's office was given the mandate to act as the sole public prosecutor in resolving corruption cases.

The granting of authority to the Corruption Eradication Commission (KPK) as the sole institution that can eradicate criminal acts of corruption, its implementation causes a reduction in the duties and authority of prosecutors in investigations and prosecutions and creates a dualism of authority between the KPK institution and the Prosecutor's Office. Bearing in mind that the Prosecutor's Office has the principle of *dominus litis*, namely that it is the main institution that owns cases and is the only one that exercises state power in the field of prosecution in actually monopolizing the prosecution and resolution of criminal cases, so that judges cannot ask for criminal cases that occur to be handed over to them, judges are also in resolving cases. only passive and waiting for demands from the public prosecutor.<sup>2</sup>

However, the rule contained in the formulation of Article 6 letter c of Law Number 30 of 2002 concerning the Corruption Eradication Commission is that the Corruption Eradication Committee has the task of carrying out investigations, inquiries and prosecutions for criminal acts of corruption. Apart from that, Article 8 Paragraph (2) and Paragraph (3) states that in exercising its authority, the Corruption Eradication Committee (KPK) can take over the investigation or prosecution of perpetrators of criminal acts of corruption that are being carried out by the police or the prosecutor's office, and in taking over the investigation and prosecution, the police or the prosecutor's office must hand over the suspect and all files no later than 14 working days, starting from the date of receipt of the KPK's request

The public prosecutor who prosecutes criminal acts of corruption is indeed a Public Prosecutor (vibe Article 51 Paragraph (3) of Law Number 30 of 2002 concerning the Corruption Eradication Commission) who comes from the Prosecutor's Office itself, but the authority given is limited because in Article 39 Paragraph (2) and Paragraph (3) explains that investigations, investigations and prosecutions are carried out based on orders and act for and on behalf of the Corruption Eradication Commission (KPK) so that investigators, investigators and public prosecutors who are employees of the Corruption Eradication Commission (KPK) are temporarily dismissed from the police agency. and prosecutor while serving as an employee at the Corruption Eradication Commission. So the role of the prosecutor who carries out the prosecution is explicitly a KPK employee. In fact, in the Guidelines on the Role of Prosecutors and the International Association of Prosecutors which explains that the prosecutor is the sole prosecution institution (single prosecution system) and is also included in Article 8 Paragraph (5) of Law Number 16 of 2004 concerning the Indonesian Prosecutor's Office that the state will guarantee that prosecutors carry out their profession without intimidation, interference, temptation, inappropriate interference or unverified disclosures regarding civil, criminal or other liability.

This is different from Malaysia, where the role of the prosecutor remains the sole public prosecutor, even though there is a special prosecution division within the Malaysian Anti-Corruption Agency or MACC (Malaysia Anti-Corruption Commission), known as the Malaysian Anti-Corruption

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<sup>1</sup>O. Mufrohim, and R. Herawati, "Independence of the Prosecutor's Office as a Legal Structure in the Criminal Justice System in Indonesia," *Journal of Indonesian Legal Development*, vol. 2, no. 3, pp. 373-386,

<sup>2</sup>Dina Natalia Kumampung. *Duties, Functions and Discretion of Judges to Judge and Decide Criminal Cases*. *Lex Administratum*, Vol. VI/No.2/Apr-Jun/2018

Commission (SPRM), which is an institution under the Office of the Prime Minister. Malaysia. The Attorney General in Malay in Malaysia is known as a state attorney, namely as the main legal advisor in the Malaysian government whose role is also as a lawyer (lawyer) and general prosecutor (Public Prosecutor) for the kingdom. Article 145 of the Malaysian Law on Federal Institutions regulates the position, function and authority of the attorney general who is appointed by the Yang Dipertuan Agung based on advice from the Prime Minister. The attorney general's position as the state's highest legal official is to provide advice to the Yang Dipertuan Agung or the Council of Ministers regarding all legal issues referred to him and to carry out the functions assigned to him by the constitution and other written laws. There are two main authorities of the attorney general granted by the federal institution, namely the authority to prosecute and the guardianship of public interests, namely the authority obtained based on common law.<sup>3</sup>In Article 145 Paragraph (3) of the Malaysian Federal Constitutional Law, it is stated that the State Attorney has the power, and this power must be exercised according to his discretion, to bring, carry out or stop any trial regarding a wrongdoing, other than the trial before him. Syariah Court, Bumiputra Court or Military Court.

There is a difference in authority between the Prosecutor's Office of the Republic of Indonesia and the Prosecutor's Office of Malaysia in handling criminal acts of corruption, where prosecutors in Indonesia must temporarily resign from their positions in the Prosecutor's Office while handling criminal acts of corruption, apart from that, in handling criminal acts of corruption, prosecutors work based on orders and act for and on behalf of the Corruption Eradication Commission (KPK). So, explicitly, the role of prosecutors who work here have become KPK employees so that the KPK has the right to be the sole investigator and prosecutor in eradicating corruption, whereas prosecutors in Malaysia continue to act as sole Public Prosecutors even though there is a special prosecution division within the Malaysian Anti-Corruption Agency (MACC) namely the Malaysian Corruption Prevention Commission (SPRM). The Malaysian Corruption Prevention Commission (SPRM) can play a role in carrying out prosecutions by fulfilling the requirements that the initiation of prosecution can be carried out with or with permission from the Public Prosecutor himself so that there is confirmation in the regulations that the full basis for prosecution is clearly the authority of the Prosecutor. General itself. The rules are absolute and cannot be refuted because apart from being regulated in the 2009 Malaysian Corruption Prevention Commission (SPRM) Act, they are also in the Malaysian Federation Institution Law.

### ***Formulation of the Problem***

From the problems explained in the background above, the problem formulation in this research is:

1. What is the Authority of the Prosecutors of the Republic of Indonesia and Malaysia in Handling Corruption Crime Cases?
2. What are the similarities and differences between the authority of the Indonesian prosecutor's office and the authority of the Malaysian prosecutor's office in handling corruption cases?
3. What are the causes and reasons for the similarities and differences between the authority of the Indonesian prosecutor's office and the authority of the Malaysian prosecutor's office in handling corruption cases?

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<sup>3</sup>Herman Indra Sakti. 2021. Criminal Law Policy Regarding Criteria for Dismissal of Criminal Cases by the Attorney General. *Badam Law Journal*, Vol. 6, Issue 2, September 2021

## Discussion

### 1. The Authority of Prosecutors of the Republic of Indonesia and Malaysia in Handling Corruption Crime Cases

Article 8 Paragraph (5) of Law Number 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office states that the state will guarantee that Prosecutors carry out their profession without intimidation, harassment, temptation, inappropriate interference or disclosures whose truth has not been verified, whether for civil, criminal or criminal liability. other.<sup>4</sup>In fighting corruption cases, the United Nations (UN) invites all countries to refer to the 2003 United Nations Concentration Against Corruption (UNCAC) convention (United Nations Anti-Corruption) which has the advantage of being able to work together regarding the exchange of information in preventing and eradicating corruption where prosecutors continue to carry out prosecutions and become sole investigators in corruption institutions in their respective countries, as well as general rules that apply to all prosecutors referring to the Guidelines on the Role of Prosecutors and the International Association of Prosecutors which have been mutually agreed upon by each country -the same thing that the prosecutor is the dominus litis or owner of the case, which is universal in various criminal justice systems in the world so that the prosecutor becomes the sole prosecution institution (single prosecution system).

#### a. The Authority of the Prosecutor of the Republic of Indonesia in Handling Corruption Crime Cases

Prosecutors must work professionally as part of the criminal justice system without discrimination. The principle of equality before the law must be prioritized by the prosecutor's office, so that the principle of Indonesia as a rule of law can be realized, and the goals of the rule of law can be achieved, namely benefit, certainty and justice for all parties.<sup>5</sup>Only with justice for all parties can the Indonesian state experience the existence of law in its life.

One of the legal authorities tasked with carrying out law enforcement in corruption cases is the Republic of Indonesia Prosecutor's Office in addition to the Corruption Eradication Commission ("KPK") and the Police.<sup>6</sup>This means that the prosecutor's office is also given the authority to investigate corruption cases. As explained above, according to the provisions of Article 30 paragraph (1) letter d of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it is explained that: In the criminal field, the prosecutor's office has the duty and authority to carry out investigations into certain criminal acts based on law. Furthermore, in the explanation of Article 30 paragraph (1) letter d of the Attorney General's Law of the Republic of Indonesia, it states: The authority in this provision is the authority as regulated for example in Law Number 26 of 2000 concerning Human Rights Courts and Law Number 31 of 2000. 1999 concerning Eradication of Corruption Crimes as amended by Law Number 20 of 2001 jo. Law Number 30 of 2002 concerning the Corruption Eradication Commission. From what is described above, it is very clear that the Prosecutor's Office has the authority to carry out investigations into cases of criminal acts of corruption. To meet the expectations of the public who continue to demand and hope that corruption cases can be stopped or eradicated, the prosecutor's office must work as hard as possible. Or at least the prosecutor's office can reduce the number of corruption.

<sup>4</sup>Jojon Desduan Lumban Gaol. Joko Setiyono. 2023. The Urgency of Legal Protection for Prosecutors. Al Qalam: Religious and Social Scientific Journal, 2621-0681

<sup>5</sup>Prihandana, R., Murthi, TSW, Tambunan, JE, & Syafari, I. (2023). The Authority of the Prosecutor in the Civil Sector is Based on Article 30 of Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. *Halu Oleo Law Review*, 7(1), 111–128.

<sup>6</sup>Hibnu Nugroho. 2013. Effectiveness of Coordination and Supervision Functions in Investigating Corruption Crimes by the Corruption Eradication Commission. *Journal of Legal Dynamics* Vol. 13 No. September 3, 2013

The Prosecutor's Office as an element of law enforcement in Indonesia in carrying out its duties, functions and authority is regulated in law. The Prosecutor's Law currently in force is Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. To carry out law enforcement duties, the Prosecutor's Office has law enforcement officers called Prosecutors. In the Public Prosecutor's Office of the Republic of Indonesia, the Prosecutor is a functional position, and the prosecutor in carrying out his duties, functions and authority can be divided according to the assignment given by the head of the prosecutor's office, including as a Public Prosecutor in criminal justice, and as a State Attorney in civil justice. and state administration<sup>7</sup>.

Specifically regarding the duties of the prosecutor's office in enforcing corruption cases in the criminal realm, one of its duties is to eradicate criminal acts of corruption.<sup>8</sup>As a law enforcer, prosecutors must focus on their role as law enforcers in eradicating criminal acts of corruption. Based on articles 30 to 34 in the Republic of Indonesia Prosecutor's Law, the duties and authority of the Republic of Indonesia Prosecutor's Office are:

1. The prosecutor carries out the prosecution;
2. The prosecutor carries out the judge's determination after a court decision has permanent legal force;
3. Prosecutors supervise the implementation of conditional criminal decisions, supervised criminal Decisions, and conditional release decisions;
4. Prosecutors carry out investigations into certain criminal acts based on law;
5. Prosecutors complete certain case files and for this reason can carry out additional examinations before they are submitted to court, the implementation of which is coordinated with investigators. Specifically for point (d) in the article above, one of the duties and authorities of the prosecutor's office is to carry out investigations into certain criminal acts based on law; The particular criminal act in this case is a criminal act of corruption.

However, prosecutors are part of law enforcement who have the authority to uphold legal justice. Therefore, prosecutors must be able to carry out the law well in accordance with the principles of legal certainty and justice. Prosecutors must be able to empower the law in accordance with the functions and objectives desired by the law, including empowering all legal products against perpetrators of criminal acts of corruption.<sup>9</sup>Thus, the independence of the Prosecutor's Office of the Republic of Indonesia in carrying out its duties, functions and authority in law enforcement efforts in corruption cases is very important to pay attention to, considering the very strategic position of the Prosecutor's Office as part of the law enforcement apparatus in administering an independent judiciary to uphold law and justice for the community.<sup>10</sup>

If the duties and authorities of the prosecutor's office are seen in accordance with Law Number 16 of 2004 concerning the Prosecutor's Office, Article 30 paragraph 1 (a) and (d), regarding the matter referred to, the initial step taken is to prepare instructions regarding a series of types of information that will be required; who holds the information; whether such information can be provided and to whom; who will be responsible (investigator, prosecutor, PPATK, and so on) for obtaining this information. Regulatory competence regarding the duties and authority of the Republic of Indonesia Prosecutor's

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<sup>7</sup>Adriansya Mukhtar, Maruf Hafidz & Muhammad Fachri Said. 2022. Position of the Prosecutor as Executor Representing the State in the Criminal Justice System. *Journal of ux generalis* volume 4 number 4

<sup>8</sup>Hutadjulu, H. (2013). Optimizing the Role of the Prosecutor's Office in Eradicating Corruption Crimes in the Era of Regional Autonomy. *Unsrat Law Journal*, 1(5), 92-102

<sup>9</sup>Polontalo, RSD (2018). Independence of Prosecutors as Public Prosecutors in Corruption Crimes According to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. *Lex Crimen*, 7(6)

<sup>10</sup>Ramadani, RM (2020). Review of Analysis of the Republic of Indonesia Prosecutor's Office from Organizational Culture Perspective. *Paramarta Discourse: Journal of Legal Studies*, 19(1), 9-16.

Office can be seen normatively in several statutory provisions regarding the Prosecutor's Office, as will be explained below.

Confirmed in Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia Article 30:

1. In the criminal field, the Prosecutor's Office has the following duties and authorities:
  - a. Carrying out prosecution;
  - b. Carry out judge's determinations and court decisions that have obtained permanent legal force;
  - c. Supervise the implementation of conditional criminal decisions, supervised criminal decisions, and conditional release decisions;
  - d. Carrying out investigations into certain criminal acts based on the Law;
  - e. Complete certain case files and for this reason can carry out additional examinations before being handed over to court, the implementation of which is coordinated with investigators.
  
2. In the field of civil and state administration, the Prosecutor's Office with special powers can act inside or outside the court for and on behalf of the State or government. According to the provisions above, the prosecutor serves as a public prosecutor who carries out "prosecutory actions". According to the Criminal Procedure Code in Article 1 point 7, it states as follows: "Prosecution action is to transfer a criminal case to the competent District Court in accordance with the method regulated in this law with a request that it be examined and decided by the Judge at trial. court".
  
3. In the field of public order and peace, the Prosecutor's Office also carries out activities:
  - a. Increasing public legal awareness;
  - b. Securing law enforcement policies;
  - c. Securing the circulation of printed materials;
  - d. Supervision of beliefs that could endanger society and the State;
  - e. Prevention of abuse and/or blasphemy of religion
  - f. Research and development of law and criminal statistics.

The existence of the authority of the Corruption Eradication Commission (KPK) in taking over criminal acts of corruption that are being carried out by the police or prosecutor's office causes a reduction in the duties and authority of prosecutors in investigations and prosecutions and creates a dualism of authority between the Corruption Eradication Commission (KPK) as the sole institution for handling corruption and the prosecutor's office as the sole prosecution institution (*dominus litis*) which one and inseparable (*een en ondeelbaar*). Even though it already has its own provisions for corruption cases which are focused on being the authority of the Corruption Eradication Commission as stated in Article 11 of Law Number 30 of 2002.

However, the realization of its implementation still creates a dualism of authority in handling corruption cases, such as what happened in the corruption case committed by Elly Engelbert Lasut, a Regent of the Talaud Islands Regency, suspected of corruption by the Regional Foster Parents Movement (GDOTA) worth 1.5 billion, whose prosecution was carried out by a Prosecutor. not from the KPK. The corruption problem was then transferred to the Corruption Crime Court (TIPIKOR) to the Manado District Court. However, the Panel of Judges at the Manado Corruption Crime Court (TIPIKOR) handed down a verdict of pure acquittal against the defendant Elly Engelbert Lasut. Oikurnia Zega SH as the Public Prosecutor, who is very confident that the GD-OTA account was transferred from APBD funds to the defendant's account and has caused state financial losses of IDR 1.5 billion, then filed an appeal to the Supreme Court. The Supreme Court also stated that the Public Prosecutor's demands were unacceptable.

The public prosecutor who is within the Corruption Eradication Commission (KPK) institution to be able to prosecute criminal acts of corruption is indeed a Public Prosecutor (vibe Article 51 Paragraph (3) of Law Number 30 of 2002 concerning the Corruption Eradication Committee) who comes from the Prosecutor's Office itself, but the authority given limited because Article 39 Paragraph (2) and Paragraph (3) explains that inquiries, investigations and prosecutions are carried out based on orders and act for and on behalf of the Corruption Eradication Commission (KPK) so that investigators, investigators and public prosecutors who are employees of the Corruption Eradication Commission Corruption (KPK) was temporarily dismissed from the police and prosecutor's offices while he was an employee at the Corruption Eradication Commission. So it is clear that the role of the prosecutor who carries out the investigation and prosecution has become an employee of the Corruption Eradication Commission who is given the authority to carry out the function of prosecuting criminal acts of corruption, no longer placing the prosecutor as described in the Criminal Procedure Code (KUHAP) as the highest public prosecutor. forwarding the results of investigations into general criminal acts to the court, even though the role of this prosecutor remains from the prosecutor's office and is only temporarily suspended at the prosecutor's office while carrying out his function as KPK public prosecutor.

### **b. The Authority of Malaysian Prosecutors in Handling Corruption Crime Cases**

The authority of prosecutors in eradicating corruption in Malaysia is different from the role of prosecutors in Indonesia where prosecutors in this country remain public prosecutors even though there is an anti-corruption commission listed in Malaysian Law Deed 694 concerning the 2009 Malaysian Corruption Prevention Order (SPRM) Deed.<sup>11</sup> The anti-corruption institution in Malaysia is called MACC (Malaysia Anti-Corruption Commission) which has a prosecution division, namely the Suruhanjaya Prevention of Rasuah Malaysia (SPRM) which is an institution under the Office of the Prime Minister of Malaysia. In Part I, Article 2 of the 2009 SPRM Deed, it is explained that the main task of this deed is to promote the integrity and accountability of public and private sector administration by establishing free and responsible anti-corruption agents and educating public authorities, public officials and the public about corruption and its impacts. poor conditions in the public and private sectors as well as community services.

In the investigation process, Suruhanjaya employees are obliged to submit information (BAP) to the Public Prosecutor or to Suruhanjaya employees with the rank of Pesuruhjaya (Commissioner) who have been authorized by the Attorney General (Public Prosecutor). Based on the information provided in writing, if there is a reasonable suspicious reason and there is evidence of an alleged violation, then the Suruhanjaya officers can be given the power to examine, search for and seize anything that is evidence and can examine, detain and transfer it to another location. whoever deems it necessary to carry out interrogation by seizing and taking whatever items the person finds.

The Public Prosecutor is not only responsible for the investigation process carried out by Suruhanjaya employees,<sup>12</sup>but also has the authority to carry out prosecutions in the trial process because in Part VII Article 58 it is stated that the prosecution of an offense under this Deed may not be initiated except by or with the permission of the High Prosecutor. This is clearly emphasized and is the basis that prosecution is entirely under the authority of the Public Prosecutor himself. It is also explained in Article 60 Paragraph (2) that the power of the General Prosecutor under subsection (1) must be exercised by him alone. However, this law in Article 72 provides an exception for not carrying out any court proceedings, prosecution or other proceedings which may be taken, brought, initiated or maintained in any court in the presence of an opposing authority:

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<sup>11</sup>Panghiutan Nasution. 2018. The Relationship between Law Enforcement Agencies in Combating Corruption Crimes in Indonesia. *Kalam Justice Journal* Volume 6 Number 1

<sup>12</sup>SANDOVAL, Excel Brayen; KORNELIS, Yudi. Constitutional Court Decision Number 70/PUU-XVII/2019: Destroy the Independence of the Corruption Eradication Committee? *Journal of Judicial Review*, [SI], v. 24, n. 1, p. 105-134,

1. Malaysian Government
2. Malaysian government officials or Suruhanjaya
3. Members of the Advisory Board (Advisory Council) or Special Committee (Special Committee) or other Bureau (Committee) established under or based on this Law.
4. Anyone acting legally on behalf of the Malaysian Government, the Suruhanjaya Commission, Malaysian Government Officials or Suruhanjaya.

In this regard, whatever is issued in the form of an order, direction, instruction, written notification or whatever must be based on this law and the action or statement that occurs must be carried out or made,<sup>13</sup> or omitted from being done or made in good faith. Based on the explanation above, the Malaysian Corruption Prevention Commission is a prosecution division within the Malaysian Anti-Corruption Agency (MACC) which, if you wish to carry out a prosecution, must do so with or with the permission of the Public Prosecutor (Penasar Raya) as stated in Article 145 Paragraph (3) of the Law. The Malaysian Federal Constitutional Court states that state attorneys have the authority to exercise absolute discretion which cannot be opposed or replaced by any authority including the court in initiating, carrying out or stopping any infringement proceedings, other than proceedings before the Syariah Court, District Children's Court (Native Court) or Military Court.

## 2. Similarities and Differences in the Authority of the Republic of Indonesia Prosecutor's Office and the Authority of the Malaysian Prosecutor's Office in Handling Corruption Crime Cases

Based on the description above, the data can be reduced as in the following table

No	Indicator	Indonesia	Malaysia
1	Legal Basis for the Prosecutor's Office in Corruption Cases	Law Number 16 of 2004 in conjunction with Law Number 30 of 2002	Malaysian Corruption Prevention Commission Act 2009
2	Corruption Institutions	Corruption Eradication Commission	Malaysian Corruption Prevention Commission
3	The role of prosecutors in eradicating corruption	Prosecutors as investigators and prosecutors who have become KPK employees	The prosecutor is responsible for corruption cases that occur in collaboration with the SPRM and remains the sole public prosecutor of the prosecutor's office itself
4	Prosecutor's Authority	As an Investigator and Prosecutor for the Anti-Corruption Agency (KPK)	As the sole Public Prosecutor of the anti-corruption agency (MACC)

The similarity between the authority of the Republic of Indonesia Prosecutor's Office and the Malaysian Prosecutor's Office in handling criminal acts of corruption is the authority to prosecute in

<sup>13</sup>Zain, I., Abbas, S., & Idami, Z. (2019). Rahn Agreement Clauses from the Perspective of Islamic Law and the Urgency of the Notary in Preparing It. *IUS QUIA IUSTUM Law Journal*, 26(2), 410–431



criminal acts of corruption; In resolving corruption cases, the Republic of Indonesia Prosecutor's Office and the Malaysian Prosecutor's Office have similarities in being given the authority to carry out prosecutions for criminal acts of corruption. This is stated in Article 51 Paragraph (3) of Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK) in Indonesia and Article 60 Paragraph (2) of the 2009 Malaysian Corruption Prevention Commission (SPRM) Deed.

The differences are several things:

1. The role of the Prosecutor's Office in eradicating corruption

In eradicating corruption, the role of the Indonesian Prosecutor's Office is as an investigator and prosecutor, this authority is given by the conditions in Article 39 Paragraph (3), namely that he must be temporarily dismissed from the prosecutor's office while he is an employee of the Corruption Eradication Commission and in Article 39 Paragraph (1) carrying out his duties and functions to act. based on orders and acting for and on behalf of the Corruption Eradication Commission (KPK) so that the investigation and prosecution are explicitly carried out by the Corruption Eradication Committee

Meanwhile, in Malaysia, the person who is the prosecutor is still the prosecutor himself, as explained in Article 60 paragraph (2), so this cannot be disputed and is absolute.

2. Investigation and Prosecution System

Indonesia adheres to a system of investigation and prosecution carried out by prosecutors at the Corruption Eradication Commission, which is explicitly the Corruption Eradication Commission (KPK) which is capable of carrying out investigations and prosecutions (vibe Article 8 Paragraph (2) of the Corruption Eradication Commission Law).

This is different from the investigation and prosecution system in Malaysia, namely the Malaysian Anti-Corruption Agency (MACC) which has a prosecution division called Suruhanjaya Prevent Rasuah Malaysia (SPRM) whose job is as an investigator which does not reduce the role of the police in the slightest as an investigator and also the prosecution is carried out absolutely by the party. Attorney. The Malaysian Corruption Prevention Commission (SPRM) can carry out prosecutions on or with the permission of the Public Prosecutor (Penasar Raya) itself and cannot be represented. (vibe Article 60 Paragraph (2) of the 2009 Malaysian Corruption Prevention Commission Act.

There are regulations in the law that give the Corruption Eradication Committee (KPK) the authority to take over investigations, investigations and prosecutions of perpetrators of criminal acts of corruption that are being carried out by the police and prosecutors (vibe Article 8 Paragraph (2) of the Corruption Eradication Committee Law). The application of the principle of discretion given by the government to the KPK institution aims to create effectiveness and proportionality in handling criminal acts of corruption which are increasingly developing in Indonesia. The Corruption Eradication Commission is a state institution which in carrying out its duties and authority is independent and free from the influence of any power (vibe Article 3 of Law 30 of 2002 concerning the Corruption Eradication Committee). The independent nature of the Corruption Eradication Committee means that the police and prosecutors must also be independent and unable to intervene.

Several journal references explain that it can be concluded that the Corruption Eradication Commission has become an institution of public trust, the Corruption Eradication Committee is given broad authority to become a single, independent institution in handling cases of criminal acts committed by officials or state administrators to enrich themselves and harm the community, both in cases of criminal acts. corruption or money laundering crimes. Apart from that, there is no difference between prosecutors either within the Prosecutor's Office or those serving at the Corruption Eradication Commission. Because the prosecutor still comes from the Prosecutor's Office itself. There is an application of legal fiction, namely assuming that everyone knows the law (presumption *iures de iure*),

including farmers who have not graduated from elementary school or even residents who live in rural areas, so that ignorance of the law cannot be forgiven (*ignorantia juris non excusat*), then someone cannot argue and evade the legal trap by claiming that they do not know or do not know the law or the existence of applicable laws and regulations.

Looking at the wider and supported authority of the Corruption Eradication Commission in handling criminal acts of corruption, there are advantages and disadvantages if the handling of criminal acts of corruption with the authority of prosecutors is still carried out with or on behalf of the Corruption Eradication Commission itself, thus making the Corruption Eradication Commission the sole investigator, investigators and prosecutors and the prosecutors become employees of the Corruption Eradication Commission. .

The advantages are:

1. The independent character can be maintained from the influence of other parties, because the selection of KPK leaders is chosen by the selection committee, and the committee is selected by the president. So the KPK institution is not responsible to the executive institution;
2. the existence of special law enforcers (Special Task Force for Combating Corruption) so that they focus more on one institution in handling corruption cases;
3. can be more effective, proportional and professional in handling cases of criminal acts of corruption;
4. creation of the principle of justice that is fast, simple and low cost;
5. can make it easier for the public to report criminal acts of corruption.

The disadvantages are:

1. Lack of effective internal supervision within the KPK institution;
2. Can result in incomplete evidence in pre-trial if the inquiry, investigation and prosecution are carried out in one institution;

### **3. Causes and Reasons for Similarities and Differences in the Authority of the Republic of Indonesia Prosecutor's Office and the Authority of the Malaysian Prosecutor's Office in Handling Corruption Crime Cases**

As is known, Indonesia and Malaysia adhere to different legal systems, namely Indonesia adheres to the Civil Law legal system and Malaysia adheres to the Common Law legal system. Based on the differences in legal systems, this certainly influences the government in enforcing the law in cases of criminal acts of corruption<sup>14</sup>.

Indonesia is a country that adheres to the Civil Law System government system. The Civil Law System or Continental European legal system is a legal system that has developed in Europe for a long time. This legal system focuses on written legal rules. In a country that adheres to this government system, the existence of statutory regulations is very important, and if it is connected to the principle of legality, which means that every government action must have a basis in applicable statutory regulations.<sup>15</sup> This means that without the basis of authority granted by a regulation, all kinds of government officials will not have the authority to change the legal status or position of their citizens.

Malaysia is a country that adheres to the Common Law System. The Common Law System or Anglo Saxon legal system began to develop in England since the 11th century. Another name for this legal system is "Unwritten Law", namely law that is not written. But in reality, not all legal regulations in countries that adhere to common law are unwritten regulations, because in the common law system

<sup>14</sup>Abidin, M. Z. (2015). Review of regional incentive fund policies in supporting provincial government performance and community welfare. *Civil Service Journal*, 9(1)

<sup>15</sup>Ramadhana, K. (2019). Questioning KPK performance: Between expectations and achievements. *Integrity*, 5(2)

written laws (statutes) are also known. The source in the Common Law system is court decisions and it is through court decisions that legal rules are formed and become generally binding rules. Apart from court decisions, the Common Law system also includes customs, written legislation and state administrative regulations.

Indonesia adheres to a mixed legal system consisting of customary law, religious law and positive law based on the Criminal Code (KUHP). Meanwhile, Malaysia adheres to a combined legal system of customary law, Islamic law and common law. These differences in legal systems can influence the law enforcement process related to criminal acts of corruption in the two countries. Both Indonesia and Malaysia have law enforcement institutions that are responsible for handling criminal acts of corruption, as previously explained. Despite similarities in law enforcement institutions, differences in their mandates, powers, and independence may influence the effectiveness of corruption law enforcement in the two countries. The problem of criminal acts of corruption is quite a serious problem, both in Indonesia and Malaysia. The challenges faced in law enforcement both include weaknesses in the justice system, structural corruption, political interference, and low legal awareness in society. So in this case, joint efforts need to be made between the government, law enforcement agencies and the community to increase transparency, accountability and effectiveness in law enforcement related to criminal acts of corruption.

The Indonesian government is also aggressively making efforts to prevent corruption through a transparency and accountability approach. For example, by encouraging the adoption of good governance practices in the public sector, such as the use of e-procurement systems to reduce the risk of corruption in the procurement of government goods and services. The government has also launched various programs and initiatives to increase public awareness and participation in eradicating corruption. The Government's Role in Overcoming Corruption Crimes in Indonesia In Indonesia, the government has committed to tackling corruption crimes through various policies, regulations and specially established institutions.

The following are some of the roles of the Indonesian government in overcoming the problem of corruption, namely<sup>16</sup>:

#### 1. Establishment of the Corruption Eradication Commission (KPK)

The Corruption Eradication Commission (KPK) is an independent institution formed by the Indonesian government in 2002. The aim of establishing the Corruption Eradication Commission (KPK) as an independent institution by the Indonesian government is to carry out investigations, prosecutions and prevention of corruption effectively and firmly.

#### 2. Firm Law Enforcement

Strict law enforcement is an effort made by the Indonesian government to increase effectiveness and efficiency in handling corruption cases.

#### 3. Strengthening the State Financial Audit System

The aim of strengthening the state financial audit system in Indonesia is to increase the effectiveness and efficiency of state financial supervision and eradicate corruption.

#### 4. Collaboration with International Institutions

The Indonesian government also collaborates with international institutions. This collaboration involves exchanging information, training and technical assistance to increase capacity in dealing with corruption.

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<sup>16</sup>Fikri, A. (2020). The Corruption Eradication Committee (KPK) detains the Minister of Social Affairs in connection with a case of alleged bribery in the procurement of Covid-19 social assistance. Public Relations Bureau of the Corruption Eradication Commission

The Indonesian government has played a significant role in tackling criminal acts of corruption in this country. They have demonstrated a strong commitment to eradicating corruption and creating good governance. To achieve this goal, the government has established various anti-corruption institutions and mechanisms aimed at preventing, detecting, investigating and prosecuting corruption cases. The Malaysian government has also taken several actions to tackle criminal acts of corruption, as follows<sup>17</sup>:

#### 1. Anti-Corruption Legal Framework

The Malaysian government has established a strong legal framework to fight corruption. The most significant Anti-Corruption Law is the Malaysian Corruption Prevention Commission Act 2009 (Akta SPRM).

#### 2. Malaysian Corruption Prevention Commission (SPRM)

SPRM is an independent body responsible for law enforcement related to corruption in Malaysia. This commission has the power to investigate, prosecute and eradicate corruption in the public and private sectors.

#### 3. International Collaboration

The Malaysian government also plays an active role in international cooperation in tackling corruption. Malaysia has been a member of the United Nations Convention against Corruption (UNCAC) since 2008 and has been involved in joint efforts with other countries to fight corruption globally.

#### 4. Technology and Innovation

The Malaysian government is also adopting technology and innovation in their efforts to tackle corruption. They have implemented electronic systems such as e-procurement (electronic procurement of goods/services) to reduce the risk of corruption in the government procurement process.

Basically, the Indonesian and Malaysian governments have carried out good law enforcement and prevention of criminal acts of corruption. However, what differentiates the two is the awareness of different state officials and state administrators. It cannot be denied that awareness of state officials and administrators in Indonesia regarding criminal acts of corruption is quite low, there are still many state officials who have a very high sense of dissatisfaction with wealth. Thus, the Indonesian state will not be free from cases of criminal acts of corruption when awareness of this matter is not good.

### **Conclusion**

1. The authority of the Republic of Indonesia Prosecutor's Office and the Malaysian Prosecutor's Office in eradicating criminal acts of corruption is in accordance with Law Number 30 of 2002 concerning the Corruption Eradication Commission and the Malaysian Corruption Prevention Commission (SPRM) Act of 2009. In eradicating corruption, the role of the Indonesian Prosecutor's Office is as an investigator and prosecutor with the authority This is given with the conditions in Article 39 Paragraph (3), namely that he must be temporarily dismissed from the prosecutor's office while he is an employee of the Corruption Eradication Commission and in Article 39 Paragraph (1) carrying out his duties and functions acting based on orders and acting for and on behalf of the Corruption Eradication Commission ( KPK) so that investigations and prosecutions are explicitly carried out by the Corruption Eradication Commission, whereas in Malaysia the role of the Public Prosecutor (Penasar Raya) remains as a public prosecutor which cannot be disputed and is absolute because it is explained in Article 60 Paragraph (2)

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<sup>17</sup>Bahoo, S. (2020). Corruption in banks: A bibliometric review and agenda. *Finance Research Letters*

2. The similarities and differences between the Indonesian Prosecutor's Office and the Malaysian Prosecutor's Office in prosecuting criminal acts of corruption refer to Article 51 Paragraph (3) of Law Number 30 of 2002 concerning the Corruption Eradication Commission (KPK) in Indonesia and Article 60 Paragraph (2) of the Malaysian Corruption Prevention Commission Act. (SPRM) in Malaysia. The authority given to the Prosecutor's Office of the Republic of Indonesia and the Prosecutor's Office of Malaysia differs in the role of the Prosecutor's Office in eradicating corruption. In eradicating corruption, the role of the Indonesian Prosecutor's Office is as an investigator and prosecutor, this authority is given by the conditions in Article 39 Paragraph (3), namely that he must be temporarily dismissed from the prosecutor's office while he is an employee of the Corruption Eradication Commission and in Article 39 Paragraph (1) carrying out his duties and functions. acting based on orders and acting for and on behalf of the Corruption Eradication Commission (KPK) so that investigations and prosecutions are explicitly carried out by the Corruption Eradication Commission, whereas in Malaysia, which is the Malaysian Corruption Prevention Commission (SPRM), it can become a public prosecutor for or with permission from the Public Prosecutor, If permission is not given then the prosecutor himself remains the public prosecutor as explained in Article 60 Paragraph (2) so this cannot be disputed and is absolute.
3. Basically, the Indonesian and Malaysian governments have carried out good law enforcement and prevention of criminal acts of corruption. However, what differentiates the two is the awareness of different state officials and state administrators. It cannot be denied that awareness of state officials and administrators in Indonesia regarding criminal acts of corruption is quite low, there are still many state officials who have a very high sense of dissatisfaction with wealth. Thus, the Indonesian state will not be free from cases of criminal acts of corruption when awareness of this matter is not good.

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