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The position of the attorney general of the republic of Indonesia is based on the doctrine of Trikrama Adhyaksa

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Abstract
The position of the Public Prosecution Service of the Republic of Indonesia becomes important to be posted as it should be and based on what has been aspired in the doctrine of Trikrama Adhyaksa. The position is very important considering the prosecutor's office is an executive agencies that part of its authority to carry out the task of the judiciary. prosecutors should be independent even as an executive agencies, this is reflected in the doctrine of Adhyaksa Trikrama. Legal research is the science of *sui generis*, whose research differs from social research. Approach method to get a typical *juridisch denken* used in describing the study of the criminal acts of corruption on the participation of capital from local governments to local companies then the type of research that the authors use is the type of research that the author uses is the method of Legal Research. The position of the Attorney General of the Republic of Indonesia based on the 1945 Constitution of the Fourth Amendment is likened to the ministry institutions, both department and non-department. The Defense Attorney-General is a ministerial level and carries out executive duties as well as duties relating to judicial duties Suggestion. The position of the Attorney General of the Republic of Indonesia based on the Doctrine of Trikrama Adhyaksa, the Attorney General of the Republic of Indonesia as the State Higher Institution and the highest claimant institution that has the authority to. The Attorney General as the supreme prosecutor, the investigator's supervisor and the executive function of Quasi-judicial and Quasi-judicial Quasi.

Keywords: attorney general doctrine Trikrama Adhyaksa

1. Introduction
The Constitution is the giver and the giver of borders, as well as on how the power of the state must be exercised [1]. The Constitution is also the frame and the basis of the birth of legislation is hierarchically under the constitution. In Indonesia, the 1945 Constitution is a constitutional foundation governing State institutions, positions, functions and authorities. Power and authority when concentrated only in a State institution without any check and balance then the power and authority tend to be diverted. "Power tends to corrupt, and absolute power corrupts absolutely", According to Lord Acton's expression.

Moral power should not be left only to the intent, or the personal traits of someone who happens to be holding it. Whatever good someone, whose name of power must still be regulated and restricted [2]. Therefore, in realizing a State institution or government institution to be good then it needs to be considered and get improvement there are two aspects namely; First: the institutional and second positions; The moral aspect of the individual who runs the institution.

The Attorney of the Republic of Indonesia has existed since the independence of Indonesia was proclaimed. The term of the Prosecutor Office is used officially by the Japanese Occupation Territory Act No. 1 of 1942, which was subsequently replaced by Osuma Seirei Number 3 of 1942, Number 2 of 1944 and Number 9 of 1944. The Regulation is still used in the Republic of Indonesia based on Government Regulation No. 2 In 1945 the Chairman of the People's Representative Assembly *Gotong Royong* with letter Number: 5263 / DPR-GR / 1961 dated June 30, 1961 and letter Number: 5261 / DPR-GR / 1961 dated June 30, 1961 regarding the ratification of the draft law on the provisions of the Central Prosecutor, further submitted to the President for ratification. Finally, the government on June 30, 1961 passed the Law No. 15 of 1961 on the Basic Provisions of the Public Prosecutor of the Republic of Indonesia. To regulate and determine the position, duties and authority of the Prosecutor Office in order to serve as a tool of revolution and to place the prosecutor in the organizational structure of the department, Law No. 16 of 1961 on the Establishment of the High Prosecutor. In the New Order era there was a new development concerning the Attorney General of the Republic of Indonesia, namely the amendment of Law of Law Number 15 Year 1961, in 1991 changed with the enactment of Law Number 5 Year 1991 on the Attorney of the Republic of Indonesia. Entering the reform period Law on the Attorney also changed with the enactment of Law No. 16 of 2004 on the Indonesian republican prosecutor's office.

The Prosecutor's Office was never mentioned in the 1945 Constitution, which became the juridical foundation of the Attorney General's Office only reflected in Chapter IX which

[1] Ayumadi Azzra, *Pendidikan Kewargaan (Civic Education), Demokrasi, Hak Asasi Manusia dan Masyarakat Madani,* Kencana Prenada Media Group, 2008, p. 72
[2] Jimly Asshiddiqie, *Format Kelembagaan Negara dan Pergeseran Kekuasaan Dalam UUD 1945,* FH UII PRESS. Yogyakarta. 2005, p. 37

regulates the judicial power of Article 24 paragraph (1), namely "Judicial power is exercised by a Supreme Court and other judicial bodies according to law. While in article 2 mentioned "The structure and authority of the judiciary is regulated by law". This is also a consideration that is formulated in the consideration of Act Number 16 of 2004 About the Attorney of the Republic of Indonesia.

The position of the Prosecutor as an executive agencies is regulated in Article 2 of Law no. Law No. 16 of 2004 on the Prosecutor's Office, whose position of Attorney General is equal or equal to the minister is a very unequal placement with the authority possessed by the prosecutor institution as one of the law enforcement agencies by law is authorized as investigator (in certain criminal acts), Public Prosecutor, Executor, State Attorney and intelligence functions in law enforcement. Such a great authority and should be carried out independently of one side but otherwise not placed in the real place but placed under the President and aligned with the minister as auxiliary of the president thus the authority possessed by the prosecutors can hardly be carried out independently as mandated by the Act.

Post reform there are three aspects that need to be reformed that is legal aspect, economic aspect and political aspect, but that is felt is the reformation in political and economic aspect but in law aspect there is half-hearted reform which is seen from the absence of government effort in encouraging the reinforcement permanent law enforcement agencies such as Indonesian Police (POLRI) and the Attorney as law enforcement agencies, but the government takes more pragmatic paths by producing harvesting institutions in law enforcement such as the Constitutional Court (MK), Judicial Commission (KY) and an independent ad hock agency named *Komisi Pemberantasan Korupsi* (KPK) (Corruption Eradication Commission). The birth of a permanent institution such as the Constitutional Court and the Judicial Commission is a necessity because of the extent of authority possessed by the Supreme Court (MA), the funds for the development of the authority being handled and the need for a new institution that is specific to handle it. Another reason is different from the establishment of the KPK as a temporary institution to deal with crimes called corruption extra ordinary crime, this institution was formed because the prosecutor's office and the Police are considered not able to handle corruption eradication, although previously established the Corruption Centered at the Attorney General Republic of Indonesia. It is a long debate why the Attorney General of the Republic of Indonesia is considered incapable of handling law enforcement as expected by the community and as mandated by the Law. This can't be separated from the first two things how the position of the Attorney General of the Republic of Indonesia, the second; how to form the personality of the Prosecutor in charge of carrying out the appointed functions and authorities. Forward the withdrawal of prosecutor's performance is inseparable from both elements and these two elements are interrelated with each other.

The background of the above problem then the problems to be in carefully and analyzed are the following problems:

1. How is the position and authority of the Prosecutor Office based on the 1945 Constitution of the 4th amendment?
2. How is the position and authority of the Attorney based on Trikrama Adhyaksa doctrine?

2. Research Methods

Legal research is the science of *sui generis*, whose research differs from social research. Approach method to get a typical *juridisch denken* used in describing the study of the criminal acts of corruption on the participation of capital from local governments to local companies then the type of research that the authors use is the type of research that the author uses is the method of Legal Research.

According to Alvi Syahrin that legal research can be done by academics and legal practitioners with various approaches in accordance with their respective professions:

1. He jurists have a distinctive pattern of thought that is *juridisch denken* based on the concept, principles and legal system that he knows, this way can only be understood by a law scholar and can't be understood by non-jurists because of their different minds. Legal research is a daily activity of a law scholar. Legal research is a process to discover the rule of law, the legal principles and legal doctrines to answer the legal issues faced.
2. Legal research is the daily activity of a law scholar, and only able / can be done by a law degree, as a person who deliberately in the learner to understand and master the discipline of law
3. Legal research is a routine activity for every jurist: a judge making a decision, an advocate formulating a lawsuit or a legal opinion at the request of the client or a prosecutor shall make a claim or indictment
4. Legal research should be viewed from a juristic perspective, which conducts research with the aim of legal problem solving which ultimately has benefits or benefits to society [3].

Legal science has its own peculiarities that are normative or prescriptive, which implicate the method of legal research as a whole. Character of Normative Research Methods are as follows:

1. The formulation of the problem should not be in the word asked (?)
2. There is no data collection (no data source, data collection techniques and data analysis)
3. Not knowing the population and sampling because the normative study examines the interrelation of various rules of law
4. Normative research is not identical with qualitative
5. The science of normative law is full of values not value-free [4].

The legal research steps aim to solve the problems encountered, as well as seek answers to the problem is true or false, good or deplorable, reasonable or unnatural. In the study of legal science is also not known the use of statistics, both parametric and non-parametric, qualitative or quantitative analysis because it is not related to legal research.

Normative legal science is not the same as the social science methodology that focuses only on empirical things by

[3]Alvi Syahrin, *Penelitian Hukum,* http: //alviprofdt. blogspot.com /2014/02/ penelitian-hukum.html#more/diakses tgl 11 Mei 2017.

[4]H.M. Hadin Muhjad dan Nunuk Nuswardani, *Penelitian Hukum Indonesia Kontemporer***,** Genta Publishing, Bantul, 2012, pl.24.

measuring empirical paradigms, whereas Normative Law Research focuses more on problem solving (Legal Problem Solving), produces legal opinion (Legal Opinion), Whereas legal research in the strict sense is Dogmatic Law or legal doctrine (de rechtsleer method) whose job is the decryption of positive law, positive legal system, positive law analysis, positive law interpretation, positive law judgment and in certain case also do explanation [5].

Legal research is distinguished in research for the purposes of practical and academic (theoretical) study interests. For the practical purposes of legal research conducted is legal dogmatic research, while research for the interest of the academic world (theoretical) and lawmakers is research in the level of legal theory (research of legal theory) [6].

3. Theory and Conception

3.1. Power Theory

This theory of separation of powers has been introduced by John Locke. Against John Loke's state thinking through his book "Two Treaties of Government" separates state power into three forms of power: legislative power, executive power, and federative power [7]. This theory of separation of powers was then further developed by M. De Secondat Baron de Montequieu or known as Montesquieu who divided power into three forms of power, namely legislative powers, executive power and judicial power [8].

Sir Ivor Jennings in his book The Law and the Constitutions divides the separation of powers into the separation of powers in a material sense and the separation of powers in a formal sense. What is meant by the separation of powers in a material sense is the separation of powers in the sense of power sharing is firmly defended in the duties. While what is meant by the separation of powers in the formal sense is that the division of power is not strictly defended [9].Separation of power in the material sense is called "separation of power". While in the formal sense is called "the division of power " [10].

3.2. Separation of Power Theory.

The doctrine of the state based on law (*de rechts staat and the rule of law*) implies that the law is supreme and the obligation of every state or government organizer to submit to the law (subject to the law). There is no power above the law (above to the law) [11]. The state based on the law contains elements of separation or sharing of power [12].

The term separation of power in the Indonesian language is a translation of the concept of separation of power based on the theory of *trias politica* in Monstesque view, must be separated and structurally differentiated in the non-interference of state organs and the affairs of the organs of other States [13].

3.3. Sharing of Power theory

In this system there are 3 (three) different branches of power, the executive is run by the President, the legislature is run by the Parliament, and the judiciary is run by the Supreme Court. At the present time this principle is no longer embraced, because in reality the task of the legislature makes the law, has included the executive in making it. In contrast to the judicial field, the principle is still followed, to guarantee freedom and to make decisions in accordance with the principles of the rule of law [14].

Separation of power means that the power of the state is separated in black and white, both organ separation and functional separation. While the division of power means that power is shared between institutions and the same authority can be done by other institutions but with different models. The theory of separation of powers popularized through the teachings of *trias politica* Montesquieu. Based on "The Spirit of Laws" Montesquieu gives a portrait of British rule. Montesquieu concluded that the freedom of the British nation rested on two main endorsements: "the fundamental separation of executive, legislative and judicial power, and the combination of monarchy, aristocracy and democracy in Kings, Nobles and Peoples [15]. The doctrine of the separation of powers from Montesquieu was inspired by John Locke's view in his book "Two Treaties on Civil Government" and the British constitutional practice. Locke distinguishes between three kinds of powers:

1. The power of legislation;
2. The power to execute things (executive) on internal affairs, including the Government and the Court; and
3. The power to act against foreign elements for the interest of the State or the interests of the citizens of that country whom Locke calls the federative power [16].

Montesquieu makes an analysis of British rule:

1. When the legislative and executive powers are united on the same person, or on the same high institution, there is no freedom;
2. There will be no freedom, if the judicial power is not separated from the legislative and executive powers;
3. And it will ultimately be a very sad thing if the same person or the same agency is exercising those three powers, namely establishing the law, executing public decisions and adjudicating individual crimes or disputes [17].

This condition causes the same king or legislature to impose tyrannical laws and execute them in a tyrannical manner. But according to Montesquieu if the executive and legislative

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[5] *Ibid*., p. 24
[6] Alvi Syahrin, *Loc.Cit*.
[7] John Locke, *Two Treatises of Government*, New Edition, Everyman, London, 1993, p. 188.
[8] Koentjoro Poerbopranoto, *Sedikit Tentang Sistim Pemerintahan Demokrasi*, Cet. 3, PT Eresco, Bandung, 1978, hal. 23.
[9] Sir Ivon Jennings, *The Law and the Constitutions*, The English Language Book, London 1956, p. 22.
[10] *Ibid.*
[11] Bagir Manan, *Lembaga Kepresidenan*, FH UII Press. Jakarta, 2003, p. 11
[12] *Ibid*
[13] Jimly Asshiddiqie, *Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi*, Konstitusi Press. Jakarta, 2006, p. 15.
[14] Mahendra, A.A. Oka, *Undang-Undang Kejaksaan Republik Indonesia Memantapkan Kedudukan dan Peranan Kejaksaan*, Pustaka Sinar Harapan, Jakarta 1996, p.122
[15] Montesquieu, *The Spirit of Laws, Dasar-Dasar Ilmu Hukum dan Ilmu Politik*, translated, oleh M. Khoiril Anam, Nusamedia, Bandung 2007, p. 62
[16] Wirjono Prodjodikoro, *Azas-Azas Hukum Tata Negara di Indonesia, Jakarta Timur*, Dian Rakjat. 1983. p. 16
[17] Montesquieu, Baron de. *The Spirit of the Laws*. Diterjemahkan oleh Thomas Nugent, Hafner Press, New York, 1949

powers are combined, then we still have a moderate government, provided at least the judicial power is separated. [18].

While Donner and Goodnow have the same view in view of the division of state power. According to Donner, all activities undertaken by the authorities only cover two different areas, namely;

a. the field that determines the goal to be achieved or the task to be performed;
b. The field that determines the embodiment or execution of the intended purpose or task [19].

While Goodnow develops a commonly termed teaching with a dipraja, that is;

a) Policy making function; and
b) Policy executing function.

The most influential view of the world on this subject is as developed by Montesquieu, namely the existence of three branches of state power covering the functions of the legislature, executive and judicial.

Though this doctrine of the Montesquieu tries of politics is most influential in the constitution-making and in the practice of state administration in the world, its execution is purely objected. The reasons are as follows:

a. Absolute separation shall result in the existence of a state body not placed under the control of another state body. The absence of this oversight means that there is a state body to act beyond its limits and cooperation between the state bodies becomes difficult;
b. Since these three functions can only be submitted to a particular state body or in other words it is not possible to accept the fixed principle that each state body can only be entrusted with one particular function, it will exchanged the formation of a legal state modern (*modern rechstaat*) where the state body is entrusted with more functions than it is possible to coordinate some functions [20].

The country consistent in carrying out this Montesquieu theory is the United States, but it is not pure, because between the three state bodies each of which has its own work, in completing certain tasks is overseen by other state bodies. This system is known as a "check and balance" or "surveillance system.

According to Bachsan Mustafa the purpose of this check and balances system is:

1. To avoid the possibility that any of the three bodies of the State shall act beyond its limits of power to be arbitrary;
2. For the three functions to be balanced in each particular circumstance, so it needs to be held a certain supervision as well. So the check and balances system is casuistic.

Basically Montesquieu does not propose a form of rigid and absolute separation, and he outlines a number of examples where executive, legislative and judicial powers overlap. In essence the power of the king to veto is included in the legislative branch, and the parliamentary right to investigate how the law is exercised and the right to hold the king's minister accountable leads to overlap with the executive power. Furthermore, the High Council of the nobility serves as a court of justice in a hearing of accountability, adjudicating one of their own members accused of a particular crime, or softening a sentence imposed by a lower court [21].

3.4. The position of the 1945 Constitution after the 4th amendment

The view of whether the 1945 Constitution embraces separation of powers or power-sharing, we can use the criteria made by Ivor Jenning. Jennings in his book "The Law and the Constitution" sets up a criterion for judging whether a Constitution embraces a theory of separation or power sharing. Jenning says that separation of powers can be seen from material and formal angles. The separation of power in the material sense means that the division of power is firmly defended in state tasks that characteristically demonstrate the separation of powers in three parts: legislative, executive and judicial. Conversely, if the division of power is not strictly defended, it is called the separation of powers in a formal sense [22].

According to Moh. Kusnardi and Harmaily Ibrahim, the separation of powers in a material sense can be referred to as the separation of powers. While the separation of power in the formal sense is called division of power. That the separation of powers is horizontal in the sense of power is split into functions reflected in equal and check-balancing state institutions. While the division of power is vertical in the sense that the manifestation of power is distributed vertically downward to the higher institutions of the country under the institution of people's sovereignty [23].

After the 1945 Constitution was amended, there was a fundamental change that the sovereignty of the people was no longer fully implemented by the MPR, but implemented by many state institutions according to the provisions set forth in the constitution. The material changes to the Fourth Amendment of the 1945 Constitution have repositioned the state institutions and relationships between state institutions. The strengthening of democracy (the sovereignty of the people) and the presidential government system has led to a shift of power between the executive and legislative, and puts judicial institutions as the enforcers of the rule of law.

After the 1945 Constitution is amended, there are various changes in the constitutional provisions that are fundamental.

a. The People's Consultative Assembly (MPR) is no longer the State Supreme Agency.

Before the 1945 Constitution was amended the President was an MRR mandate, established the GBHN and elected the President and Vice President. However, after the amendment of the MPR and the President become equal, the President is elected directly by the people (Article 3 and Article 6A paragraph 1). The President and / or Vice President can't be

[18] *Ibid.*

[19] Kusnardi, *Hukum Tata Negara Indonesia*, Pusat Studi Hukum Tata Negara FH UI, Jakarta, 1988, p. 145

[20] Bachsan Mustafa, *Pokok-Pokok Hukum Administrasi Negara*, PT. Citra Aditya Bakti. Bandung 1990, p. 4.

[21] Montesquieu, *The Spirit of Laws, Dasar-Dasar Ilmu Hukum dan Ilmu Politik*, diterjemahkan oleh M. Khoiril Anam, Nusamedia, Bandung 2007, p. 64

[22] Kusnardi, 1983, *Susunan Pembagian Kekuasaan Menurut Sistem Undang-Undang Dasar 1945*, PT Gramedia, Jakarta, p. 143

[23] Jimly Asshiddiqie, *Format Kelembagaan Negara dan Pergeseran Kekuasaan Dalam UUD 1945*,FH UII PRESS. Yogyakarta. 2005. p. 35

dismissed by the legislative body (MPR / DPR) through a political decision, but must first be decided legally by the constitutional law enforcement agency (Article 7B). Similarly, the DPR (whose members are directly elected by the people) can't be dissolved / frozen by the President (Article 7C). Especially in law enforcement that judicial power is an independent power to administer justice to enforce law and justice (Art. 24).

b. Reinforce the original power of each state institution.

The House of Representatives holds the power to form laws (Article 20 paragraph 1), then reaffirmed in Article 20A which not only has the function of legislation, but also the function of budget and supervisory functions. The President holds the power of government (Article 4) and the Supreme Court and the Constitutional Court exercise judicial authority (Article 24). While other state institutions are also authorized, their authority is related to the executive, legislative and judicial (oversight of the use of state finances by BPK, as provided for in Article 23E), as well as one of them (eg KY relating to the Supreme Court's Supreme Court Justice as stated in Article 24B).

c. Rules of relationship between State institutions

The arrangement of relations between state institutions, so that cooperation between state institutions in carrying out the people's mandate can be done well and prevent the occurrence of abuse of power by the state institutions concerned. In the 1945 Constitution quite a lot of amendments governed this relationship, namely:

1. In the field of legislation the President shall be entitled to submit a bill to the Parliament (Article 5 paragraph 1), and every draft law is discussed by Parliament and President to obtain mutual consent (Article 20 paragraph 2);
2. Relations between the People's Legislative Assembly, the Constitutional Court and the People's Consultative Assembly in the process of dismissing the President and / Vice President during his tenure (Articles 7A and 7B);
3. The relationship between the President and the People's Legislative Assembly in international treaties, declaring war and peace (Article 11), appointment of state officials, such as in the appointment of ambassadors and placements of other states (Article 13), and granting amnesty and abolition (Article 14 paragraph 2) ;
4. The relationship between the President and the Supreme Court only limited consideration in granting pardons and rehabilitation by the President (Article 14).

2. Conception

The notion of the word conception is as follows:

a. Understanding; opinion (understand);

b. The design (ideals and so on) that have been in mind [24].

The concept that the author uses in analyzing the three problems by using three models of concepts used by the author The problems studied there are three things, namely the first and second problems by using the following concepts:

[24]http://kbbi.co.id/arti-kata/konsepsi.

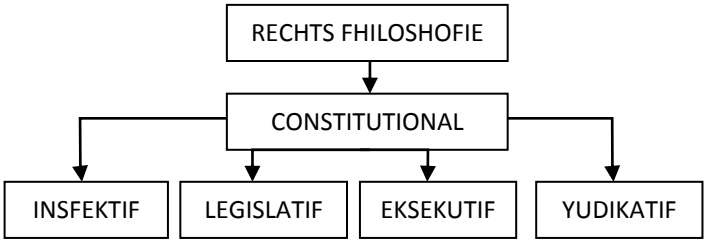

Fig 1: Structure of Constitution Based on the 1945 Constitution of the 4th Amendment

The above concept is used to understand the position of the Prosecutor's Office based on the 1945 Constitution of the 4th amendment. The above scheme is a scheme of Indonesian governance after the fourth amendment.

5. Discussion

1) The position of the Prosecutor's Office under the 1945 Constitution of the 4th amendment.

Based on the formulation of Article 24 paragraph (1) of the 1945 Constitution reads "Judicial power is an independent power to administer the judiciary to enforce law and justice". Paragraph. (2) "Judicial power shall be exercised by a Supreme Court and its subordinate courts within the jurisdiction of the general courts, the judiciary of the religious courts, the military environment and the administrative court of the state, and by the Constitutional Court." Paragraph (3) "Other bodies whose functions relate to the powers of the judicial authorities are regulated by law".

The Constitution of the 1945 Constitution has never mentioned the Attorney General's Office and does not regulate in general the whereabouts of the prosecutor's office. The AGO is only formulated and included in Article 24 paragraph (3) namely "Other bodies whose functions relate to the powers of the judicial authorities are regulated by law". The formulation of this article illustrates that the Attorney is a body and its functions relating to the judicial power, of course in this case also other institutions such as prisons (prisons), advocates and other institutions. It is this foundation that gave rise to a separate law on institutions relating to the judicial power. The formulation of judicial powers formulated in article 1 of Law no. Law No. 14 of 1970 on the judiciary is as follows: "Judicial Power is the power of an independent State to administer the judiciary to enforce law and justice pursuant to Pancasila, for the implementation of the State of the Republic of Indonesia". Authentic interpretation of the contents of this article is found in the Elucidation of Article 1, namely:

> "The free judicial power of the Judiciary implies in it the Judicial Authority free from interference by other State authorities, and freedom from coercion, directive or recommendation coming from extra judiciary parties, except in matters permitted by law. Freedom in exercising judicial authority is not absolute, since the duty of the Judge is to uphold law and justice based on Pancasila by interpreting the law and seeking the foundations and principles on which it is based, through the cases confronted with it, so that its decisions reflect feelings of justice of the Nation and the People of Indonesia ". In the

contents of the above article it is clear that judicial power here interpreted is the power in receiving, examining and deciding cases. It can be seen from the elucidation of chapter 1 the words of the judge are specifically mentioned and the phrase "through the things which are confronted to him".

In the contents of the above article it is clear that judicial power here interpreted is the power in receiving, examining and deciding cases. It can be seen from the elucidation of chapters 1 of the words of the judge specifically mentioned and the phrase "through the things which are confronted to him". The meaning of this phrase indicates that the judicial power in Law no. 14 of 1970 on Powers The principles of the judiciary regulate the power of judges and the judiciary in settling cases which are accepted, examined and decided by judges. Judicial power in the formulation of Law no. 14 of 1970 does not mention other institutions such as, Investigators, Public Prosecutors, Prosecutors and Corrections as part of the judicial authorities. In the next chapter in chapter 2 (two) as follows:

1. "The Implementation of Judicial Power listed in article 1 shall be submitted to the Courts and established by law, with the main duty of receiving, examining and adjudicating and resolving any matter submitted to him".
2. Other tasks than those referred to in paragraph (1) may be given to him under the laws and regulations. The organizer of the judicial power here also refers to the judiciary and explicitly with the phrase "the principal duty to receive, examine and judge and to settle every matter brought to him." None of the judicial authorities in question is the investigator or public prosecutor as the party to submit cases to the judiciary.

Based on Law no. 16 year 2014 Act, About the Attorney on consideration of the consideration of the Prosecutor's Law there are three things that become the basis and position of the Attorney:

a. that the Unitary State of the Republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia, the enforcement of law and justice is one of the absolute requirements in achieving the national objectives;
b. that the Attorney General of the Republic of Indonesia is one of the institution whose functions relate to the judicial authority under the 1945 Constitution of the State of the Republic of Indonesia;
c. that in order to further strengthen the position and role of the Attorney of the Republic of Indonesia as the government agency implementing state power in the prosecution should be free from the influence of others [25],

In letter (a) there are points of law enforcement and justice, which become the basic foundation in achieving the goal of the state, at this point the Attorney is one of the institutions that will be expected to be able to uphold the law and achieve the results of justice in the midst of society. As a law enforcement, the court is an institution that serves as an institution that implements the Act as a frame or reference of justice created and legalized by the Legislature.

In the letter (b) of the sentence "that the Attorney General of the Republic of Indonesia is one of the bodies whose functions relate to the judicial authorities according to the 1945 Constitution of the State of the Republic of Indonesia." This sentence is interpreted that the unity is not part of the judicial authority as stipulated in Law no. 14 of 1970 but only the parties concerned with the judicial power. Therefore, it is true that the Public Prosecution Service or Prosecutor's Office is an executive, not a judicial institution. The implications of the contents of this article indicate that the AGO is part of the executive in implementing legislation, although in the implementation of its duties the prosecutor is independent. This is in accordance with the contents of Article 2 of Law no. 16 of 2014 on the prosecutor's office as follows:

1. The Attorney General of the Republic of Indonesia hereinafter referred to in this Law as the Public Prosecution Service shall be a government institution exercising state power in the field of prosecution and other authorities under the law.
2. The state power referred to in paragraph (1) shall be implemented independently.
3. The Attorney as referred to in paragraph (1) shall be one and inseparable.

If it is understood from the regulation of the Attorney General's office on which the "other bodies whose functions relate to the powers of the judicial authorities shall be governed by law". As one of the institutions that have vices related to the judicial authority, it is reasonable for the prosecutor's office to be regulated in a special article in the Constitution of this Country.

The issue of putting prosecutors and prosecutors on the executive or judiciary institutions has been a long time it is evident from Beneč's view of the problem of classifying the prosecution system into a state power section of France, beginning at the time of the "minister public", a kind of forerunner of the prosecuting agency, a position which not only has a public (action) function, but also has a supervisory function over the court. This can be seen, when the "Napoleon's Criminal Code" was published, "*procereur d'etat*" earned its position as a "lawyer", began to arise problems and the need to re-think on the facts whether the Prosecutor (prosecution system) belonged to the executive power or property of judicial power [26].

Placing the seat of the Public Prosecution Service as part of the government (executive) is not prohibited since it is part of the executive's task to remember its duties and authorities. But placing the AGO as part of or parallel with the cabinet is a mistake. Because the AGO will be easily intervened by executive power.

> *Menurut Marwan Effendi, Undang-Undang Nomor 16 Tahun 2004 belum mewujudkan independesi kejaksaan. Hal ini diyakini masih adanya pengaturan yang ada adanya intervesi kuasa esekutif terhadap kuasa kejaksaan, tergantung pasal 2 ayat (1) yang dapat disimpulkan*

[25]Konsideran menimbang dalam UU No' 16 tahun 2014 Tentang Kejaksaan

[26]Beneč Štefan, *"Independence of Prosecution"* (Paper presented in Seminar "The prosecutor's office in a democratic and constitutional state" organized by The General Prosecutor's Office and the Slovak National Supporting Committee of Europe 2000, 25 April 2003 – 27 April 2003), p. 14

"Kejaksaan sebagai suatu lembaga pemerintahan yang melakukan kuasa negara di bidang penuntutan" mengandung makna yang kejaksaan merupakan suatu lembaga yang berada di bawah eksekutif ". hal ini berarti, kejaksaan tidak penting independen atau merdeka, karena di pengaruhi oleh kuasa esekutif [27]. (According to Marwan Effendi, Law No. 16 of 2004 has not yet realized the independence of the prosecutor's office. It is believed that there is still an existing arrangement of interim executive power to the attorney's authority, depending on Article 2 paragraph (1) which can be concluded "The Public Prosecution Service as a government institution conducting state power in the prosecution" contains the meaning that the Attorney is an institution located at under the executive. "This means that the prosecutor's office is not important independent or independent because it is influenced by the executive power).

The position of the Attorney General of the Republic of Indonesia as part of the government (executive) remains as an executive agencies under the presidency which is equivalent to the president's assistants in carrying out executive duties in accordance with the function of each institution. It should be understood that the position and authority of the prosecutor office does not merely imply the task of the executive but also the duties on behalf of the government and on behalf of the State. The 1945 Constitution does not provide the space and the regulation of the prosecutor's office optimally so that the prosecutor's office from the period from order to order becomes a tool of power.

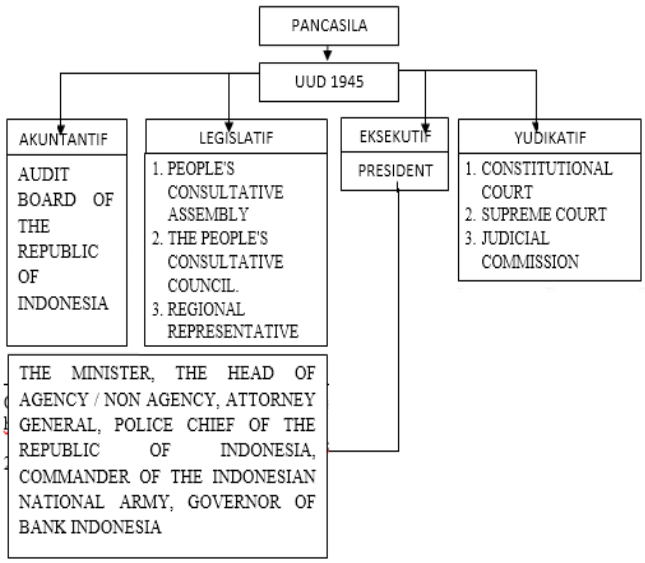

Fig 3: Structure of the Prosecutor's Office based on the fourth amendment of the 1945 Constitution

If the position of the Attorney General is still under the President whose position is equal to the Ministers and Heads of heads / institutions then it is very difficult for this institution to perform its functions and authority independently, because like it or not the Attorney General should always follow the President's agenda such as Cabinet Meetings limited which certainly affects the Prosecutor General in performing his duties independently as provided by the Act. The above description, it is impossible task of a prosecutor can be independent to deal with crimes committed by unscrupulous officials let alone officials-these are high officials of the State, coupled with the eastern culture who feel hesitate to crack down on the elements who are in a state-level position higher than the Attorney. If the position of the Attorney General as it is today, there will be a sense of shame for the prosecutor's office to investigate the officials who are at the level of the minister or head of the government agency / agency. The highest possibility is being investigated by the Prosecutor only at the deputies in ministries, agencies or government agency.

History has shown this nation that the prosecutor's office was born only to a guided democracy period that could maintain its independence as an investigator and public prosecutor, when President Soekarno asked the Attorney General to release the minister investigated by the Prosecutor and was rejected by the Attorney General. The rest of the Attorney General and his staff are only as instruments of power and used to perpetuate the power of the ruler.

2. The ideal position and authority of the Attorney based on the doctrine of Trikrama Adhyaksa.

The Attorney General's doctrine has three aspects: First, *Satya*; Loyalty that comes from honesty, good to God Almighty, to self and family and to fellow human beings. Second *Adhy*; Perfection in the duty and the main element of ownership of a sense of responsibility towards God Almighty, to yourself and family and to fellow human beings. Third, *Wicaksana*; Wise in speech and behavior especially in the exercise of power and authority. The three doctrine content there are three basic principles that are reflected from this institution, namely; loyalty, perfection, and wisdom. These three principles are interesting to understand, namely the principle of loyalty and excellence is formed with the abstract word that begins with the prefix-to and the ending, which comes from the word concrete loyal and perfect, while for the third principle is formed from the word concrete direct that is wise. The meaning of the two principles above shows that these two principles reflect the value of an unattainable inability with a concrete understanding of it indicates that the two principles are the study of metaphysical science and ontology, meaning that the agency's responsibility is vertically not on the institution of the State which is concrete (Government / State) but higher on the things that are abstract. Or the value of abstraction that must be reflected and accounted for the most faithful and perfect, while for the third principle is the value of the derivation of the faithful and perfect principles that are expected to be wise.

The great authority without being accompanied by a proper position certainly causes an institution can't use its authority maximally, it is answered how the function of the Attorney General of the Republic of Indonesia in carrying out its authority in law enforcement that is considered unsatisfactory so it takes a temporary institution to take over the authority of

[27]Marwan Effendi, *Kejaksaan dan Fungsinya dari Prespektif Hukum*, PT. Gramedia, Jakarta, 2005, p. 124.

the Attorney specifically to investigation of criminal acts of corruption. The great Attorney's authority can't be maximized without comprehensive institutional reform and reinforcement. Strengthening the institution should focus on four aspects, namely, the aspect of authority, aspects of position / institutional structure and aspects of human resources. These three aspects must be built simultaneously with three different targets.

The position of the Attorney General as an executive agencies which is directly under the President whose position at the level of the minister as auxiliary to the President in the government in fact gives birth bias in law enforcement efforts in Indonesia especially in the authority of the investigation of certain crimes (Corruption and gross human rights violations), Concerning the public interest that can be intervention by the power of the President especially as the Head of State or head of Government, thus the jargon of the law as commander only exists in speech and written in the principle of law but difficult to apply. The position of the Attorney General which is not affirmed in the 1945 Constitution and is only regulated as an auxiliary body on the basis of the Law causing its position to become gray thus its functions and authorities are always adjusted to the taste of the regime in power, when seen from the birth of the AGO good regime The old ode and the new order and during the reformation period have always made the Prosecutor as a tool of power not as an independent law enforcement instrument as mandated in the doctrine of *Trikrama Adhyaksa*. The position of the Prosecutor Office as the highest prosecution institution should be part of one of the higher institutions of the State whose position is the same as other high institutions, it is not formulated by the founders of this country specifically in the 1945 Constitution before amendment or after amendment.

Another possibility is that the prosecutor institution becomes a State institution with pure juridical status, whose position as a high prosecution institution by placing the Attorney General's Office parallel to the Supreme Court, the Judicial Commission and the Constitutional Court. If the prosecutor's office is given this position, then from the aspect of independence in carrying out the tasks it is possible to achieve, because the position is free of vertical intervention except horizontally a small possibility will also occur, but unlike now both directions of intervention, both vertical and horizontal are very open to happen. The description if visualized will be illustrated in the scheme as follows:

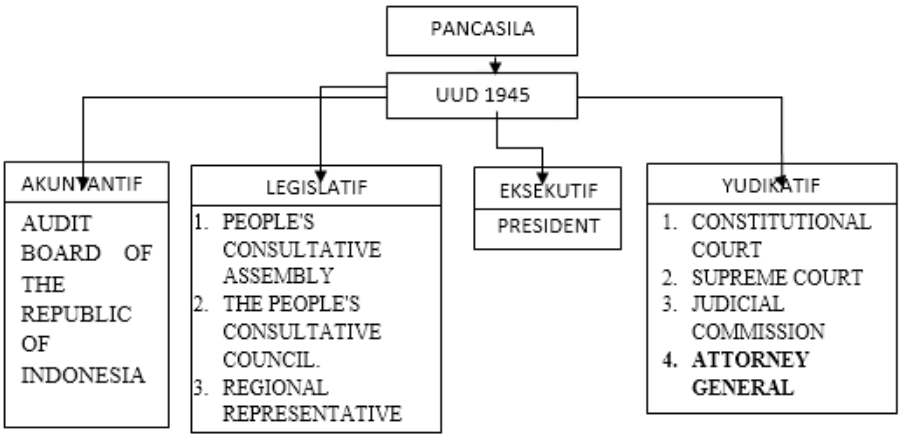

Fig 4: Position of the Prosecutor as a Pure Judicative

If the position of the Prosecutor as the highest prosecutor and placed as a pure judicial institution, the psychiatric aspect of the independence of the Attorney General and the Supreme Court of Justice can be maintained. However, the negative aspect affects the function and authority of the Attorney that has been attached to a prosecutor. Based on Law no. 16 of 2004 on the R.I. Has also regulated the duties and authorities of the Public Prosecution Service as provided in Article 30, namely:

1) In the criminal field, the Prosecutor's Office has the duty and authority:
- Prosecute;
- Conducting judges and court decisions that have obtained permanent legal force;
- Conduct oversight of the execution of conditional rulings, supervisory rulings, and conditional decisions;
- Conducting investigations of specific crimes under the law;
- Complete certain case files and therefore may conduct additional checks before being transferred to the courts which, in their implementation, are coordinated with the investigator.

2) In the civil and administrative sectors of the state, the Public Prosecutor may have acted in or outside the court for and on behalf of the state or government.
3) In the field of public order and public order, the Public Prosecution Service shall organize the following activities:
- Increasing public legal awareness;
- Safeguarding law enforcement policies;
- Security of circulation of printed matter;
- Surveillance of trust flows that could endanger communities and countries;
- Prevention of misuse and / or blasphemy;
- Research and development of criminal statistical law.

In addition to the authority above the Attorney Office also has the authority set forth in other laws such as Article 138 of Law

no. 40 year 2007 About limited liability Public Prosecutor's Office may publicly inspect the Limited Liability Company:

a. The Company commits an act unlawful that harms shareholders or third parties; or
b. Members of the Board of Directors or the Board of Commissioners conduct unlawful acts that harm the Company or its shareholders or third parties.

The position of the Prosecutor-General who is placed to be a pure judicature will automatically remove the authority of the executives in the field of executive such as is the executor of the decision of the Court, to declare a Limited Liability Company on behalf of the State and the Prosecutor may cancel marriage in the name of his position (Article 26 paragraph (1) Year 1974).

If the Attorney General's Office is designated as a pure judicature, the authority that can be granted to the Prosecutor-General is as the highest prosecution institution and to the prosecutor whose position is from the center to the pure area can only prosecute in the judicial hearing, hereinafter referred to as the Prosecutor. While the task of prosecutors outside the court especially in the field of non-justice then the task becomes executive duty. Therefore, most of the tasks currently under the jurisdiction of the Attorney General and all prosecutors should be released when the prosecutor's office is placed on the jurisdiction of a Judicial State institution.

As a middle ground for the Prosecutor's Office in exercising its authority and position in the constitution in accordance with the doctrine of "Satya Adhi Wicaksana". So the placement of the Public Prosecutor of the Republic of Indonesia as a state institution is required. CHAPTER IV of the 1945 Constitution before it was stipulated to regulate the Supreme Advisory Council (DPA) initially served to give consideration to the President as the mandate of the MPR, the chapter was abolished in the Fourth Amendment of the 1945 Constitution because its duties and functions were taken over by the Presidential Advisory Council (Watimpres). It should be in Chapter IV that it is arranged about the Greatness of Indonesia as executor of executive duties and as well as parties associated with judicial power. The placement of the Attorney General's Office or the Attorney General as a State institution is solely because of its position as an independent institution and can't be intervened by other State institutions. This can only be achieved if the position of the prosecutor is equivalent to other state institutions.

The Attorney General of the Republic of Indonesia as a State institution executing executive duties is when the execution of the duties is carried out by the Prosecutor. Understanding prosecutors based on Law no. Law No. 16 of 2004 on the Prosecutor's Office is as follows: "The prosecutor is a functional official authorized by law to act as public prosecutor and judicial court executive who has obtained permanent legal force and other authorities under the law" [28].

The prosecutor has a broader meaning in carrying out the government's (executive) duties in law enforcement therefore the Prosecutor acts on behalf of the State and government outside the court, except for the State Attorney (Jaksa Pengacara Negara) may represent the government and the State inside and outside the court. The segregation between the prosecutor and the public prosecutor is strictly necessary when placing the authority and position of the prosecutor as a quasi-executive or as a quasi-judiciary.

The definition of the Public Prosecutor is "the prosecutor who is authorized by this law to prosecute and implement the judge's determination [29]. The above understanding shows that between the prosecutor and the prosecutor is a body but a different function. This understanding also provides an illustration that the function of the prosecutor and the public prosecutor indicates his or her position in the constitutional institution as a Quasi executive or Quasi judiciary.

Based on the definition of the Prosecutor and the Public Prosecutor it can be categorized that the position of the Attorney in performing his duties and authority is the Executive Quasi, this is in accordance with the formulation of Article 7 paragraph (4) as follows:

"In carrying out its duties and authorities, the prosecutor shall always act in accordance with the law by observing religious norms, modesty, morality, and obliged to dig up and uphold the values of humanity living in society, and always maintain the honor and dignity of his profession."

As a Prosecutor, execution of duties and jurisdiction by law. Understanding the law here is interpreted by written or unwritten law, the law inscribed in legislation while the unwritten is the rules that are still respected and embraced by the community as a local wisdom. As the public prosecutor in carrying out his duties and the authority of the law in the judge is the task of being a Quasi Judiciary. The view is unreasonable because of the public prosecutor's prosecution in filing a lawsuit, a public prosecutor is required to use the dam as set out in Article 8 paragraph (3) of Law no. 16 of 2004 On the prosecutor's office that "For the sake of justice and truth based on Belief in the Almighty, the Prosecutor prosecutes with confidence on the basis of valid evidence". When the revelation "For the Sake of Justice and Truth Based on Belief in the One Supreme"., written in the prosecution's demands, the Public Prosecutor makes a claim as a Quasi Judgment that administers the judicial power not only as a party to the judicial authorities.

The words "For the Sake of Justice and Truth based on Belief in the One Supreme", are sworn words by the prosecutor against the Creator and this revelation is higher than that used by the judges only by the word "For Justice Based on Belief in the One Supreme". The word "Truth", in addition to the demands of the demands, is a sign that a Public Prosecutor not only sees the truth in the trial, but also sees the chronological truth of the proceedings of the crime or the offense also outside the court. It means that a prosecutor may see and understand the facts of legal proceedings and facts outside the court then the facts are tested together with the judges in the hearing. It is interesting to change the case of prosecution is the revelation "For the Sake of Justice and Truth based on Belief in the One Supreme". Never used by the prosecutor in his demand but only using the term "for justice" and even then written under the prosecutor's office where the Attorney Is on duty. And as long as the authors are prosecutors and

[28] Article 1 paragraph (1) No. 16 of 2004 Act, About the Attorney of the Republic of Indonesia

[29] Article 1 paragraph (2) No. 16 of 2004 Act, About the Attorney of the Republic of Indonesia

prosecutors the authors do not dare to use the urges "For the Sake of Justice and Truth based on Belief in the One Supreme", in prosecution because the lack of technical guidance from the leadership and the term "for justice" has been considered common and applied to every Demands. The prosecutor should use this trial and make the prosecutor better understand that the prosecution process in the court of a prosecutor does not represent the superior, but is representing justice and truth.

The above description when included in the constitutional structure and formulated in the constitution, the Attorney General of the Republic of Indonesia is depicted in the structure below:

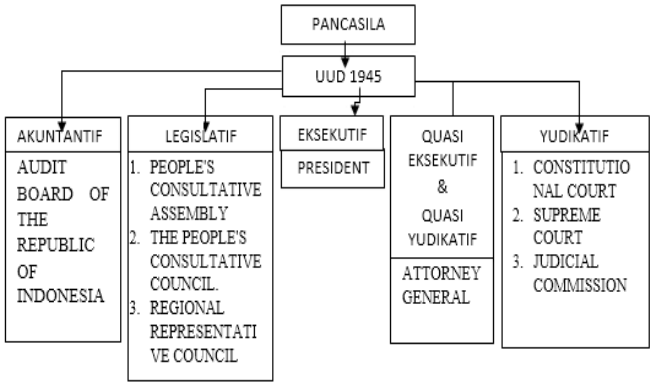

Fig 5: The position of the Attorney General as an Executive Quasi and Judiciary Quasi

In the above structure it is understood that the position of the Prosecutor is needed as a liaison between the executive on the one hand and the judiciary on the other. This is very necessary because separating the executive with the judiciary in black and white something is not possible because considering these two institutions have different roles. The Executive as an institution that implements the Law, the Judiciary as an institution that examines the Law. Attorney as the dominant institution runs the Law (executive) but in carrying out the Act a Prosecutor as a Public Prosecutor should represent the State and the public in making the prosecution before the trial that will be tested by the judges. It is a demanding act that places a prosecutor as a judicial Quasi in the judicial system, the judge as the recipient sub-system, the examiner and the case-breaker, the Prosecutor is a prosecution sub-system, and legal counsel as the defendant's defendant sub-system.

The placement of the Attorney General as a State institution implies the independence of the Prosecutor General and the Prosecutors in performing their duties as both the Executive Quasi and the Quasi Judiciary. Back to the doctrine of the Prosecutor's Office; Faithfulness, perfection and wisdom of accountability to the one and only God, the personal, the outcome and the fellow human beings. This doctrine can only be reached when the Attorney General's office is fixed on an independent body and becomes a State institution.

Under the name Adhyaksa is Judge the highest who leads and oversees Dhyaksa, this opinion is in line with the opinion of H.H. Juynboll said that Adhyaksa was the superintendent (*opzichter*) or the supreme judge (*oppenrrechter*). To realize the position of Attorney General as supreme judge is not possible but has been taken over by Supreme Court. However, making the Attorney General as the highest prosecution institution in Indonesia is still possible if the Attorney General of the Republic of Indonesia serve as a State institution. Once this is achieved then the position of military prosecutors must also be subject under the Attorney General.

If the Attorney General of the Republic of Indonesia becomes a State institution then the Attorney General's authority other than as the highest prosecution agency may also be the supervisor of all investigators in this country, since the spread of investigators in some institutions does not have a supervisor who serves as a check and balance, even if there is only the internal supervisor of the investigator in the form of inherent supervision. When investigator investigators have not been established then case engineering will continue to occur because investigators with capital independence will be able to do anything in accordance with the personal desires and wishes of his superiors. This is in accordance with the opinion of Beneč Štefan, theoretically the problem is also caused by some role owned by the Prosecutor, namely:

> *He could understand it as a legal representative of the police department and to express the opinions of the police before the court…. On the other hand, the prosecutor could consider himself primarily a court representative being held responsible for applying the rules determined to check police practices or to proceed in favor of prosecuted persons in a different way. An another possibility is that a prosecutor* [30].

The prosecutor can check the investigation process, the investigator's investigation which is not in accordance with the regulation of law enforcement, at this time there is no supervision on the investigator to make a position of vulnerability in criminalizing the basis of power not by law. Thus, the position of the Prosecutor should be strengthened in order to achieve what is aspired in the consideration of Law no. 16 year 2004 that is; "The Unitary State of the Republic of Indonesia is a constitutional state based on Pancasila and the 1945 Constitution of the State of the Republic of Indonesia, the recognition of law and justice is one of the absolute requirements in achieving national goals".

6. Cover Analysis

Discussion of the three problems mentioned above it can be understood that to establish and create a qualified institution in law enforcement then it must start from preparing the institution maturely starting from the aspect of the position, the structure of the institution. When an institution has gained a place in accordance with the ideals, principles and doctrines of the institution then the next step is that the State through the institution must be responsible for giving birth and create the institutional drive either individually or in groups towards the better. Giving a great position and authority when it falls into the wrong hands then the position and authority are vulnerable to being diverted.

[30] *Ibid.*

7. Conclusion

1. The position of the Attorney General of the Republic of Indonesia based on the 1945 Constitution of the Fourth Amendment is likened to the ministry institutions, both department and non-department. The Defense Attorney-General is a ministerial level and carries out executive duties as well as duties relating to judicial duties Suggestion.
2. The position of the Attorney General of the Republic of Indonesia based on the Doctrine of Trikrama Adyaksa, the Attorney General of the Republic of Indonesia as the State Higher Institution and the highest claimant institution that has the authority to. The Attorney General as the supreme prosecutor, the investigator's supervisor and the executive function of Quasi-judicial and Quasi-judicial Quasi.

8. Suggestions

1. If the 1945 Constitution is amended then the Attorney General's Office should be placed as a State Institution and mentioned in Chapter IV of the 1945 Constitution which prior to the amendment regulates the Supreme Council of consideration.
2. In order for the Attorney General's Office to become the highest prosecution agency and the Attorney may be the supervisor of all investigators spread in various institutions, also clarify the duty of the prosecutor as Quasi executive and Quasi judiciary.

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