

## The Role Of The Prosecutor's Office As A State Attorney In Resolving State Administrative Disputes At The Batuah Market In Banjarmasin City

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### Abstract

Referring to the Prosecutor's Office Law Number 11 of 2021 concerning the Prosecutor's Office, one of the roles of the Prosecutor's Office is as a State Attorney who acts as a mediator or facilitator in disputes or disputes between State Institutions, Central / Regional Government Agencies and BUMN / BUMD in the fields of Civil and State Administration. In accordance with Attorney General Regulation Number 7 of 2021 concerning Guidelines for the Implementation of Law Enforcement, Legal Assistance, Legal Consideration, Other Legal Actions, and Legal Services in the Civil and State Administration Sector. One of the Legal Assistance carried out by the Banjarmasin State Attorney's Office is in the settlement of State Administration Disputes at Batuah Market, Banjarmasin City.

**Keywords:** Role of the Prosecutor's Office, State Attorney, Dispute, State Administration

### Abstrak

Mengacu pada Undang-Undang Kejaksaan Nomor 11 Tahun 2021 tentang Kejaksaan, salah satu peran Kejaksaan adalah sebagai Pengacara Negara yang berperan sebagai mediator atau fasilitator dalam perselisihan atau sengketa antar Lembaga Negara, Instansi Pemerintah Pusat/Daerah dan BUMN/BUMD di bidang Perdata dan Tata Usaha Negara. Sesuai dengan Peraturan Jaksa Agung RI Nomor 7 Tahun 2021 tentang Petunjuk Pelaksanaan Penegakan Hukum, Bantuan Hukum, Pertimbangan Hukum, Tindakan Hukum Lain, dan Pelayanan Hukum di Bidang Perdata dan Tata Usaha Negara. Salah satu Bantuan Hukum yang dilakukan oleh Kejaksaan Negeri Banjarmasin adalah dalam penyelesaian Sengketa Tata Usaha Negara di Pasar Batuah Kota Banjarmasin.

**Kata Kunci:** Peran Kejaksaan, Jaksa Pengacara Negara, Sengketa, Tata Usaha Negara

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## A. INTRODUCTION

One of the powers possessed by the Public Prosecutor's Office of the Republic of Indonesia is as a public prosecutor which is explicitly explained in Article 1 paragraph (1) of Law Number 11 of 2021 concerning the prosecutor's office: "The Public Prosecutor's Office is a government agency whose functions are related to judicial power that exercises state power in the field of prosecution and other authorities based on the Law."

As for its duties as a prosecuting agency, the prosecutor's office also functions in civil aspects and state administration, where the prosecutor's office is able to represent the government as a State Attorney in civil and state administration cases.<sup>1</sup> The Prosecutor's Office as a State Attorney has roles and functions that are explained in more detail in Article 18 Paragraph (2) of Law Number 11 of 2021.

The profession of a State Attorney is similar to that of a public lawyer with the aim of being dedicated to his client, and defending his rights by using legal arguments and principles of propriety in society.<sup>2</sup> The role of the State Attorney is also explained in the guidelines for the implementation of law enforcement, legal assistance, legal considerations, other legal actions, and legal services in the fields of civil and state administration, as stipulated in the regulation of the Attorney General of the Republic of Indonesia No. 7 of 2021.

The factor that encourages him to carry out his duties in the field of civil and state administration is because he observes many complex problems taking place in the public. One example is problems such as land ownership or state assets by citizens. In this context, the government requires legal assistance to resolve the problem of returning state assets in the form of land. This is where the government is able to utilize the services of the prosecutor's office, where the role of the Prosecutor's Office as the State Attorney is expected to restore the state assets. This process can involve settlement through litigation (in court) or non-litigation (out of court).

The type of legal services provided by prosecutors as government lawyers at the Banjarmasin State Attorney's Office is the return of land/state assets, one of which is the Batuah market dispute case between the City Government and Batuah market residents. The Mayor of Banjarmasin issued Decree No. 109 of 2022 which regulates the Strategic Development Program in the Regional Trade and Industry Office. The

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<sup>1</sup> [http://www.kejaksaan.go.id/tentang\\_kejaksaan.php?id=I](http://www.kejaksaan.go.id/tentang_kejaksaan.php?id=I), diakses Rabu, 01 Maret 2023. Pukul 02.26 WITA

<sup>2</sup> Profil Jaksa Agung Muda Perdata Dan Tata Usaha Negara Pada Tahun Ke- 11 (Jakarta, 1994), h.20.

city government wants to renovate the Batuah market area, because there has been a change in the function of the market land, which should be used for selling and buying locations, but is now used more for residential land for residents who live in the Batuah Market, as a result residents reject the Decree.

Based on this rejection, a dispute arose between the Batuah community and the Banjarmasin City Government, so the Mayor of Banjarmasin issued a Power of Attorney to the Banjarmasin District Attorney's Office as a legal representative of the City Government in the Batuah Market dispute in the capacity of State Attorney. The Head of the Banjarmasin District Attorney's Office issued a substitution letter to the civil and administrative affairs division at the Banjarmasin District Attorney's Office and appointed a State Attorney to represent the City Government. This is because Regulation of the Minister of Home Affairs No. 12/2014 on Guidelines for Handling Cases within the Ministry of Home Affairs and Local Government states that only State Attorneys in the region can be the Mayor's legal representative.<sup>3</sup>

## **B. RESEARCH METHODS**

In this research, the method used is empirical legal research method, qualitative approach, with the research location in Banjarmasin City, South Kalimantan, namely the Banjarmasin State Attorney's Office in the field of civil and state administration, Banjarmasin City Government in the legal bureau and Pasar Batuah Banjarmasin City. Using primary and secondary data, namely interviews and collecting documents through documentation and using descriptive data analysis techniques.

## **C. DISCUSSION**

### **1) The Role of the Attorney General's Office as a State Attorney in the Settlement of State Administrative Disputes in Batuah Market, Banjarmasin City**

Based on role theory, the focus is on examining and analyzing the roles played by institutions and society to handle and overcome various problems that arise in social life, nation and state. There are two types of institutions, namely:

- a. Formal institutions are legitimate entities officially established by the government to carry out tasks related to the common life and governance of the country. These formal institutions include organizations responsible for the execution of government (executive), lawmaking (legislative), and law enforcement (judicial).

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<sup>3</sup> Gusti Rakhmad Samudera, Jaksa Pengacara Negara, *Wawancara Pribadi*, di Kejaksaan Negeri Banjarmasin Selasa, 28 Maret 2023.

- b. Non-formal institutions are entities that society forms in response to needs in society, with the aim of dealing with various problems that arise among its citizens.<sup>4</sup>

Based on this theory as a backing for researchers to determine how the role of the Prosecutor's Office as a State Attorney in Settling State Administrative Disputes in Batuah Market.

Article 1 paragraph 1 of Law Number 11 of 2021 concerning the Prosecutor's Office states that the Prosecutor's Office is a government agency whose functions are related to judicial power that exercises state power in the field of prosecution and other authorities based on the Law. As explained in role theory, the Prosecutor's Office is a formal institution known to be an institution that carries out the Law (Judiciary). People who serve as Public Prosecutors are referred to as Public Prosecutors. In addition, the Prosecutor's Office not only has Public Prosecutors but also has State Attorneys in the Civil and State Administration (Datun) section in representing the Central Government, regions, and the private sector based on a Special Power of Attorney from the Authorizer.

As the Mayor of Banjarmasin gives a special power of attorney to the Head of the Banjarmasin State Attorney's Office and the Head of the Attorney's Office substitutes it to the civil and administrative affairs section as the Banjarmasin Mayor's Attorney. This is where the role of the Prosecutor's Office as a State Attorney is as a legal representative of the Banjarmasin City Government.

Governance according to Francis N. Botchway is "the conscious management of regime structures with a view to enhancing the legitimacy of the public realm".<sup>5</sup> The meaning of the term "governance" is the systematic organization of government structures with the aim of realizing legitimacy in the context of public life. The focus of legitimacy is on legal instruments, governments, non-governmental organizations, and processes directly related to human rights. Francis N. Botchway's definition of governance always highlights the concept of authority, i.e. legitimate, legitimized authority or power.

Based on the theory of Francis N. Botchway Francis N. Botchway Researchers determine the Mayor who has legitimacy in issuing Decree Number 109 of 2022 concerning the Regional Strategic Development Program of the Banjarmasin Trade

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<sup>4</sup> Salim, dkk. Penerapan Teori Hukum Pada Penelitian Disertasi Dan Tesis, Ed.1, Crt.3 (Depok: Raja Grafindo, 2017), h. 142-143.

<sup>5</sup> Francis N. Botchway, "Good Governance: The Old, The New, The Principle, and The Elements." Florida Journal of International Law Vol. 13, No.1 (2000), h. 161.

and Industry Agency (Disperdagin). The decree contains a planning program for the revitalization of the Batuah Market area. However, the Batuah Market community rejected this and sued the Mayor of Banjarmasin to the Banjarmasin Administrative Court so that the Mayor asked for Legal Aid to the Banjarmasin State Attorney's Office as Legal Counsel in the Batuah Market dispute. This is where the role of the Prosecutor's Office as a State Attorney in the civil and state administration division can be litigated (in court) and non-litigation (outside the court) based on the special power of attorney.

The dispute originated from the rejection of the Mayor's Decree, because the Batuah community felt that they had private property rights in the market, namely their house buildings. According to St. Thomas Aquinas "In Summa Theologica 2.2, quaest. 66, art. 2 ad 1, St. Thomas definitely states his position in reference to the problem of private property:

The possession of all things in common is ascribed to the natural law, not in the sense that the natural law dictates that all things should be possessed in common, and that nothing should be possessed as one's own, but in the sense that no division of possessions is made by the natural law. This division arises from human agreement which belongs to the positive law. Hence the ownership of possessions is not contrary to the natural law, but a super-addition (adinventio) thereto devised by human reason".<sup>6</sup>

From the theory of Santo Thomas, it is associated that the Batuah community feels that they have ownership rights in the Batuah Market because they have lived in the Batuah village area from the beginning. Even though they do not have land certificates for the buildings they occupy and only pay PBB (Land and Building Tax) every year so they feel they belong to them. Whereas it is the City Government that owns the land / state assets in Batuah Market based on the Right to Use Certificate No. 98. Which is seen based on ownership, it is clear that the City Government owns it rather than the Batuah Community.

From this, there was a State Administrative dispute between the Batuah Market Community and the Banjarmasin City Government, in which the City Government was represented by its legal counsel, namely from the State Attorney. State Administrative Disputes according to the provisions of Article 1 Point 10 of Law Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts are conflicts/disputes arising in the field of

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<sup>6</sup> Hermann Chrous and Robert J. Affeldt, "The Problem of Private Property According to St. Thomas Aquinas", law journal, Vol. 34 No. 3 (1950-1951), h. 151

state administration between the government (institutions/TUN Officials) and the public/civil legal entities as a result of the issuance of state administrative decisions, this includes labor disputes based on applicable laws and regulations.

To resolve State Administrative disputes arising as a result of the issuance of a State Administrative Decree *Beschikking* can be done through 2 (two) ways, namely:<sup>7</sup>

1) Through Administrative Measures

Article 75 paragraph (1) of Law Number 30 of 2014 concerning Government Administration that "Citizens who are aggrieved by Decisions and/or Actions may submit Administrative Efforts to the Officials who determine and/or carry out Decisions and/or Actions, paragraph (2) states that the administrative efforts as referred to in paragraph (1) consist of:

- a) Submission of an objection letter submitted to the State Administrative Agency/Official who issued the original Decision (Determination/*Beschikking*);
- b) Administrative appeals are addressed to the superior official/other agency of the State Administrative Agency/Official who issued the decision, which is authorized to review the disputed Administrative Decree.

2) Through Lawsuit

Article 1 point 11 of Law 51/2009 defines a lawsuit filed with the Administrative Court as a request containing a claim against a state administrative body or official and submitted to the court for a decision.

Based on the provisions of Law of the Republic of Indonesia Number 9 of 2004 concerning State Administrative Courts Article 53 reads as follows:

- a) Any person or civil legal entity who feels that their interests have been harmed by a State Administrative Decision may file a written lawsuit with the competent court containing a demand that the disputed State Administrative Decision be declared null or invalid, with or without a claim for compensation and/or rehabilitation.
- b) The grounds that may be used in a lawsuit as referred to in paragraph (1) are:
  - (1) The challenged State Administrative Decision is contrary to the prevailing laws and regulations;
  - (2) The challenged State Administrative Decision is contrary to the general principles of good governance.

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<sup>7</sup> Erna Dwi Safitri, Nabitatus Sa'adah. "Jurnal Pembangunan Hukum Indonesia." Vol 3 No 1 (2021), h. 34-45.

From the settlement method regarding the issuance of KTUN Beschikking, researchers analyzed that, through administrative efforts, the Batuah Market Community who felt aggrieved by the Decision or Action had the right to submit administrative efforts to the Mayor of Banjarmasin. Administrative efforts as intended consist of: An objection letter can be submitted to the State Administrative Agency/Official who issued the initial Decision (Determination/Beschikking), namely the Mayor of Banjarmasin. Meanwhile, an administrative appeal can be submitted to the superior official/other agency that has the authority to conduct a re-examination of the disputed decision, here it can be the Banjarmasin City Government.

Based on the provisions of Law Number 9 of 2004 concerning State Administrative Courts Article 53 in Paragraph (1) here, the person or civil legal entity referred to by the researcher is the Batuah Market Community who feels affected by the Banjarmasin Mayor's State Administrative Decree Number 109 of 2022 concerning the Regional Strategic Development Program of the Trade and Industry Office, has the right to file a written lawsuit to the competent State Administrative Court. The lawsuit may contain a demand that the State Administrative Decree issued by the Mayor of Banjarmasin be declared invalid or void, with or without a claim for compensation and/or rehabilitation. The reasons that can be used as the basis for a lawsuit involve the conflict of Banjarmasin Mayor Decree Number 109 of 2022 regarding the Revitalization of Batuah Market with applicable laws and regulations, as well as conflicts with general principles of good governance (AAUPB).

According to Article 1 paragraph (3) of the 1945 Constitution, "Indonesia is a State of Law". In the concept of the rule of law, what should guide the dynamics of state life is law, not politics or economics. The concept of the rule of law is articulated through the development of legal instruments as a functioning and fair system, and involves the preparation of an orderly and organized political, economic and social institutional structure and infrastructure. In addition, the rule of law is pursued through the development of a legal culture and awareness that is rational and impersonal in the lives of groups, nations and states. Friedrich Julius Stahl, a Continental European jurist, identified the characteristics of the rule of law as follows: a) human rights; b) separation or division of powers to guarantee human rights known as Trias Politika; c) human rights known as Trias Politika; and d) administrative justice in dispute resolution.<sup>8</sup> One of the characteristics of the State of Law is the existence of an administrative court, known as the State Administrative Court, which functions to

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<sup>8</sup> Winda Harefi, "Hubungan Negara Hukum Dengan Peradilan Tata Usaha Negara", *Jurnal Fiat Justicia*, Vol.3 No.2 (September 2017), hal. 552-553.

resolve State Administrative disputes. In its analysis, the Batuah Market Community was correct in filing a lawsuit to the Banjarmasin State Administrative Court because of the Banjarmasin Mayor's Decree Number 109 of 2022 concerning the Revitalization of Batuah Market.

## **2) Obstacles Faced by the State Attorney in the Settlement of State Administrative Disputes at Batuah Market in Banjarmasin City**

In accordance with PERJA Number 7 of 2021 dated December 14, 2021, the Attorney General's Office is assigned duties and functions in the Civil and State Administration (DATUN) sector as a state attorney which includes:

- 1) Legal aid is the duty of the State Attorney (JPN) in civil and state administrative cases to represent state institutions, government agencies at the central / regional levels, BUMN / BUMD based on a Special Power of Attorney, both as plaintiffs and defendants conducted in litigation and non-litigation.
- 2) Legal consideration is the duty of the State Attorney to provide legal opinion (Legal Opinion / LO) and / or assistance (Legal Assistance) in the field of Civil and State Administration on the basis of requests from state institutions, government agencies at the central / regional levels, BUMN / BUMD, whose implementation is based on an order from JAM DATUN, KAJARTI, KAJARI.
- 3) Legal services are the duty of the State Attorney to provide explanations on civil and administrative law issues to members of the public who request them.
- 4) Law enforcement is the duty of the State Attorney to file a lawsuit or application to the court in the civil field as stipulated by laws and regulations in order to maintain legal order, legal certainty and protect the interests of the state and government as well as the civil rights of the community, including: marriage annulment, dissolution of Limited Liability Company (PT) and bankruptcy declaration.
- 5) Another legal action is the duty of the State Attorney to act as a mediator or facilitator in the event of a dispute or matter of dispute between state institutions, central / regional government agencies, BUMN / BUMD in the field of Civil and State Administration.

According to researchers, the existence of PERJA Number 7 of 2021, the Attorney General's Office is given duties and functions in the field of Civil and State Administration (DATUN) as a state attorney, including legal assistance to the City Government, has been carried out in litigation (in court) of state administration but there are still obstacles, namely the lack of administrative evidence from the Banjarmasin City Government for the State Attorney in providing evidence to the trial,



while in non-litigation (outside the court) the obstacles faced by the State Attorney cannot carry out socialization with the Batuah Market Community due to the absence of the Batuah Market Community. Legal considerations carried out by the State Attorney provided assistance to the Banjarmasin City Government in the field of state administration based on a letter of request from the Mayor of Banjarmasin Number B/0859/180.KUM/V/2022. The obstacle faced here is the problem of the Mayor's Application Letter to the Banjarmasin District Attorney's Office asking the State Attorney as their legal representative for the delay in the Application Letter. Where the dispute lawsuit was filed on April 11, 2022 but the letter of request for assistance to the Prosecutor's Office on May 18, 2022. Legal services regarding negotiations by the State Attorney allocated the transfer of the Batuah Market Community's residence to the Maghfirah Ganda flats on Jalan Tembus Mantuil Kelayan Selatan, South Banjarmasin District, Banjarmasin City, but the obstacles faced by them rejected this, so the Batuah Market Community instead filed a lawsuit with the State Administrative Court. The law enforcement referred to by the researcher is that the State Attorney of the Banjarmasin District Attorney's Office filed a civil lawsuit in returning land owned by the Banjarmasin City Government. The obstacle faced is the lack of evidence of letters in the past that are not known to exist. Other legal actions that researchers mean are the Banjarmasin State Attorney's Office as a facilitator for the City Government agency as its attorney in the field of State Administration and mediator between the Batuah Market Community and the City Government. the obstacles faced are mediators between the Batuah Market Community and the City Government because of the assumptions of the Batuah Market Community that there will be evictions and evictions of the Batuah Market Community's residence.

A person who becomes a State Attorney based on special authority, serves on behalf of the state to carry out its functions and duties.<sup>9</sup> As a State Attorney there must be some obstacles he faces, namely the budget for the State Attorney which is very minimal because it is felt that the budget in litigation and non-litigation is very lacking, maybe it is sufficient but only for litigation. In addition, the constraints of evidence from the Authorizer to the State Attorney are very minimal and even non-existent, this is what makes it difficult for the Attorney to act in court. Some of the obstacles in state administrative disputes in Pasar Batuah consist of:

a) The completeness of many documents from the past is unknown.

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<sup>9</sup> Muhammad Jusuf, *Hukum Kejaksaan: Eksistensi Kejaksaan sebagai Pengacara Negara dalam Perkara Perdata dan Tata Usaha Negara* (Surabaya: Laksbang Justitia, 2014), h. 51.

- b) Search for information on officers or officials who were deceased at the time of the dispute.
- c) The obstacle of computerized evidence that did not exist in the past so that there was no uploading of community data.

Based on the information above, after extracting data at the Banjarmasin State Attorney's Office in the field of civil and state administration (Datun), the researcher's analysis shows that the State Attorney has played a good role in accordance with Law Number 11 of 2021 concerning Prosecutors, but there are several problems in the dispute process both in litigation and non-litigation. So according to researchers, these obstacles or problems refer to their administrative nature.

#### D. CONCLUSIONS

The role of the Prosecutor's Office as a State Attorney in resolving State Administrative disputes in the Batuah Market in Banjarmasin City has been maximized in accordance with PERJA Number 7 of 2021 of the Republic of Indonesia, one of which is legal assistance provided by the State Attorney in resolving State Administrative disputes in the Batuah Market in Banjarmasin City, this is evidenced by the rejection of Case Number 13/G/2022/PTUN.BJM.

The obstacles faced by the State Attorney in resolving state administrative disputes in the Batuah Market in Banjarmasin City are general obstacles, the lack of budget for the State Attorney in litigation and non-litigation and special obstacles such as the lack of evidence of administrative correspondence

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