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The Legal Politics of Prosecutors' Mandatory Retirement Age under Law Number 11 of 2021

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Abstract: This study examines the politics of law underlying the amendment to the retirement age of prosecutors under Law Number 11 of 2021 amending Law Number 16 of 2004 concerning the Public Prosecution Service of the Republic of Indonesia, as well as its implications for prosecutorial professionalism and institutional independence. The reduction of the mandatory retirement age for prosecutors from 62 to 60 years has generated considerable debate, as it is considered inconsistent with the objective of developing professional prosecutors through extensive education, professional training, and long-term career experience. This research employs a normative juridical method using both statutory and conceptual approaches. Legal materials were collected through library research encompassing legislation, academic books, scholarly journals, and relevant court decisions, which were subsequently analyzed qualitatively. The findings demonstrate that the amendment to the prosecutors' retirement age under Law Number 11 of 2021 was not supported by sufficiently comprehensive and persuasive arguments regarding the urgency of such reduction. Furthermore, the study identifies an inconsistency in legal policy, as the rationale of professionalism previously used to justify the extension of the retirement age was subsequently employed to support its reduction. The amendment also has the potential to affect the effectiveness, professionalism, and independence of the Public Prosecution Service within Indonesia's national law enforcement system.

Keywords: Politics of Law; Prosecutor, Retirement Age; Professionalism

Introduction

The Office of the Attorney General of the Republic of Indonesia holds a strategic constitutional mandate within the structure of judicial power, particularly as the holder of the *dominus litis* principle or the absolute controller of criminal prosecutions.¹ Within the framework of a state governed by the rule of law, the Prosecutor's Office plays a significant role not only as a prosecutorial institution but also as an institution that supports the realization of equitable law enforcement and provides legal certainty for society.² Regulations concerning the status, authority, and personnel system of prosecutors must therefore be formulated consistently and with a long-term orientation in order to effectively support the development of national law.³

The development of regulations concerning the Office of the Attorney General of the Republic of Indonesia demonstrates the dynamics of legal politics that have evolved alongside changes in state policy orientation and developments in the constitutional system.⁴ The regulation of the Prosecutor's Office,

¹ Tiar Adi Riyanto, "Fungsionalisasi Prinsip Dominus Litis Dalam Penegakan Hukum Pidana Di Indonesia," *Lex Renaissance* 3, no. 2 (2021): 481–92.

² N I A Gabriella Kaihena, Audi H Pondaag, and Donna O Setiabudhi, "Kedudukan Dan Fungsi Kejaksaan Dalam Sistem Ketatanegaraan Di Indonesia," *Lex Administratum* 11, no. 2 (2023): 1–11.

³ Yassine Chami, Mohamed Elmadni Elsharaf, and Enas Qutieshat, "Justice in the Balance : Activating Legislative-Reality Harmony to Ensure Fair Judicial Rulings Between Sharia And Modern Legal Systems," *Law Reform* 22, no. 1 (2026): 238–60.

⁴ Askana Fikriana and Muhammad Ilham Munadi, "Kedudukan Kejaksaan Dalam Ketatanegaraan Dari Prespektif (Hukum Tata Negara)," *Dalihan Na ToluJurnal Hukum, Politik Dan Komunikasi Indonesia* 2, no. 02 (2024): 100–106.

which was initially governed under Law Number 15 of 1961 concerning the Fundamental Provisions of the Office of the Attorney General of the Republic of Indonesia, was subsequently amended through Law Number 5 of 1991 concerning the Office of the Attorney General of the Republic of Indonesia, before ultimately being revised through Law Number 16 of 2004 concerning the Office of the Attorney General of the Republic of Indonesia. Each of these regulatory changes reflects the legislature's efforts to adjust the position, functions, and authority of the Prosecutor's Office in accordance with constitutional developments, the legal reform agenda, and the demands for professionalism among law enforcement officials in realizing an effective, independent, and just judicial system.⁵

The most recent amendment to the Prosecutor's Law was enacted through Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Office of the Attorney General of the Republic of Indonesia.⁶ This law introduced several significant changes, one of which concerns the mandatory retirement age for prosecutors. Prior to the amendment, Article 12 letter c of Law Number 16 of 2004 stipulated that prosecutors were to be honorably discharged upon reaching the age of 62 (sixty-two) years. However, through Law Number 11 of 2021, this provision was amended, reducing the mandatory retirement age for prosecutors to 60 (sixty) years.

The amendment to the mandatory retirement age for prosecutors has generated debate from both constitutional and law enforcement perspectives. The reduction in retirement age is perceived as creating concerns regarding the consistency of the state's legal policy in fostering the professionalism of law enforcement officials.⁷ On the one hand, the state demands increasingly higher standards of professionalism, integrity, and quality in law enforcement; on the other hand, the period of service for prosecutors has instead been shortened. In fact, the development of professional prosecutors requires extensive education, training, practical experience, and a prolonged career trajectory. Such circumstances raise questions regarding the rationality of the legislature's legal policy in determining the retirement age for prosecutors.

This amendment also gives rise to issues of equality in legal policy when compared with other professions associated with judicial power. Judges, for instance, are subject to a higher mandatory retirement age, despite prosecutors likewise constituting an essential component of the criminal justice system. Such disparity in regulation raises questions concerning the consistency of legislative policy within the national law enforcement system, particularly in relation to the principles of professionalism, institutional independence of law enforcement bodies, and guarantees of effective law enforcement.

These issues were subsequently subjected to judicial review before the Constitutional Court in Decision Number 27/PUU-XX/2022. The petitioners argued that the reduction in the retirement age for prosecutors potentially resulted in disproportionate treatment when compared with other officials exercising functions within the sphere of judicial power. This judicial review demonstrates that the regulation of prosecutors' retirement age is not merely an administrative personnel matter, but is also closely related to the state's legal-political design in structuring the national law enforcement system.

From the perspective of legal politics, the enactment and amendment of legal norms should be grounded in clear legal objectives and reflect the direction of state policy. Legal politics concerns not only the process of formulating legislation, but also the underlying considerations, orientations, and objectives intended to be achieved through such legal norms. According to Mahfud MD, legal politics constitutes the legal policy that will be or has been implemented by the state in order to achieve the objectives of the state. Accordingly, the amendment to the mandatory retirement age for prosecutors must be analyzed not solely from a normative perspective, but also in terms of the legal policy orientation underlying its enactment.⁸

⁵ Pemerintah Pusat, "Undang-Undang (UU) Nomor 11 Tahun 2021 Tentang Perubahan Atas Undang-Undang Nomor 16 Tahun 2004 Tentang Kejaksaan Republik Indonesia" (2021).

⁶ Pemerintah Pusat, "Undang-Undang Republik Indonesia Nomor 16 Tahun 2004" (2004).

⁷ Jordan A Sklansky, "The Nature and Function of Prosecutorial Power," *Journal of Criminal Law and Criminology* 106, no. 3 (2016).

⁸ Moh. Mahfud MD, *Membangun Politik Hukum, Menegakkan Konstitusi* (Jakarta: Rajawali Pers, 2010).

Previous studies concerning the Prosecutor's Office have generally focused on its position and independence within the constitutional system, the exercise of prosecutorial authority, and the constitutional review of the Prosecutor's Law. For instance, research conducted by Deni Kasukma examined the position and independence of the Prosecutor's Office within the Indonesian constitutional system based on Law Number 16 of 2004 concerning the Office of the Attorney General of the Republic of Indonesia. In addition, research by Ardiansyah dan Romli, analyzed the independence of prosecutorial authority in the law enforcement process and the potential for governmental intervention in the exercise of prosecutorial functions.⁹ Another study conducted by Yumentu highlighted the position of the Prosecutor's Office within the Indonesian constitutional system and its relationship to the institutional independence of the prosecutorial body.¹⁰ Nevertheless, studies specifically analyzing the legal politics underlying the amendment to the prosecutors' mandatory retirement age under Law Number 11 of 2021 remain relatively limited. Existing studies tend to treat the issue of prosecutors' retirement age merely as an administrative personnel matter or solely as an issue of constitutional review.¹¹ In fact, the amendment is also related to the direction of state legal policy in strengthening prosecutorial professionalism, safeguarding the independence of law enforcement, and restructuring the national criminal justice system.¹²

Based on these circumstances, this study offers novelty by not merely examining the constitutionality of the norm concerning prosecutors' retirement age, but also analyzing the direction of the legislature's legal politics in determining amendments to the mandatory retirement age for prosecutors and its implications for the professionalism and independence of the Prosecutor's Office as a law enforcement institution. Accordingly, this study is expected to contribute academically to the development of legal politics scholarship, particularly with regard to the design of legal policy in the field of law enforcement.

Based on the foregoing discussion, this study aims to analyze the legal politics underlying the amendment to the mandatory retirement age for prosecutors under Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Office of the Attorney General of the Republic of Indonesia, as well as to examine its implications for the professionalism and independence of the Prosecutor's Office within Indonesia's law enforcement system.

Method

This study employs a normative legal research method with a descriptive-analytical nature.¹³ Normative legal research is utilized to examine legal norms, legal principles, and legal policies related to the regulation of the mandatory retirement age for prosecutors under Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Office of the Attorney General of the Republic of Indonesia.

The approaches applied in this study include the statute approach and the conceptual approach.¹⁴ The statute approach is conducted through an examination of various laws and regulations related to the Prosecutor's Office and the law enforcement system in Indonesia.¹⁵ Meanwhile, the conceptual approach

⁹ Ferry Ardiansyah and Romli SA, "Independensi Kewenangan Kejaksaan Republik Indonesia," *Elqonun Jurnal Hukum Ketatanegaraan* 1, no. 1 (2023): 97–114.

¹⁰ Desi Yumentu, "Kedudukan Kejaksaan Republik Indonesia Dalam Sistem Ketatanegaraan Indonesia," *Elqonun Jurnal Hukum Ketatanegaraan* 1, no. 1 (2023): 61–78.

¹¹ Rachel E Barkow, "Can Prosecutors End Mass Incarceration?," *JSTOR* 11, no. 2 (2019): 1365–98.

¹² Gabriel Kalalo and Arman Tjoneng, "Peran Komisi Kejaksaan Dalam Mengawasi Kinerja Kejaksaan Sebagai Pelaksana Asas Dominus Litis Dalam Penyelesaian Perkara Korupsi Artikel Jurnal Terpublikasi," *Unes Law Review* 6, no. 4 (2024): 9935–46.

¹³ Peter Mahmud Marzuki, *Penelitian Hukum (Edisi Revisi, Cetakan Ke-15)* (Jakarta: Kencana, 2021).

¹⁴ Moh Mujibur Rohman et al., "Methodological Reasoning Finds Law Using Normative Studies (Theory, Approach, and Analysis of Legal Materials)," *Maqasidi* 4, no. 2 (2024): 204–21, <https://doi.org/10.47498/maqasidi>.

¹⁵ Tim MaPPI-FHUI, *Bunga Rampai Kejaksaan Republik Indonesia* (Depok: Badan Penerbit FH UI, 2015).

is employed to analyze the concepts of legal politics, professionalism, and the independence of the Prosecutor's Office within the constitutional system.¹⁶

The legal materials utilized in this study consist of primary, secondary, and tertiary legal materials. The primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Office of the Attorney General of the Republic of Indonesia, as well as other statutory regulations relevant to the object of study. Secondary legal materials are derived from books, scholarly journals, research findings, and the opinions of legal scholars relevant to the study. Tertiary legal materials consist of legal dictionaries, encyclopedias, and other supporting sources.¹⁷

The collection of legal materials is conducted through library research involving various printed literature and electronic sources. Subsequently, the legal materials are analyzed qualitatively through methods of legal interpretation and examined systematically in order to formulate legal arguments concerning the legal politics underlying the amendment to the mandatory retirement age for prosecutors and its implications for the professionalism and independence of the Prosecutor's Office.

Findings and Discussion

The Legal Politics Underlying the Amendment to the Provisions on the Mandatory Retirement Age of Prosecutors under Law Number 11 of 2021

According to E. Utrecht, legal politics constitutes a normative discipline that determines the provisions that ought to exist.¹⁸ Such normative provisions may take the form of substantive and/or procedural regulations, thereby enabling legal politics to function as a determinant of both the mechanisms and objectives intended to be achieved in the formulation or implementation of legislation.¹⁹ Several objects of inquiry are examined within legal politics, including the objectives to be achieved by the prevailing legal system, the most appropriate methods for attaining such objectives, whether the existing legal system should be amended, the mechanisms through which such amendments should be carried out, and whether a conceptual framework may be developed to facilitate the determination of objectives and the means to achieve them.²⁰ In addition, legal politics may also be understood as the official policy of the state concerning regulations that will be enacted or not implemented in order to achieve state objectives, including the manner in which legislative products are shaped by political, economic, and socio-cultural considerations, as well as matters relating to law enforcement.²¹

The formation of legislation, as regulated under the laws governing legislative drafting, constitutes the authority of the House of Representatives (DPR) together with the President, who jointly deliberate upon and approve every bill. Insofar as the President ratifies a bill into law, both the President and the DPR exercise shared powers in the legislative process. The process of legislative drafting consists of several stages, namely planning, drafting, deliberation, ratification, and promulgation. Furthermore, the drafting of legislation must also fulfill requirements concerning academic papers, public dissemination, and sources of legislative materials and information.²²

Law of the Republic of Indonesia Number 12 of 2011 concerning the Formulation of Laws and Regulations, as amended several times and most recently by Law of the Republic of Indonesia Number

¹⁶ Valentino Nathanael Prabowo, Tjondro Tirtamulia, and Hesti Armiwulan, "Independensi Kejaksaan Agung Republik Indonesia," *Calyptra* 12, no. 2 (2024).

¹⁷ Yati Nurhayati, Ifrani, and M. Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia (JPHI)* 2, no. 1 (2021): 1–20.

¹⁸ Otong Rosadi and Andi Desmon, *Studi Politik Hukum* (Yogyakarta: Thafa Media, 2013).

¹⁹ Deny M Ramdhany, Dedi Junaedi, and Jeny Mellysa Ariyanti, "Dinamika Politik Dan Hukum Dalam Mempengaruhi Penegakan Hukum Di Indonesia," *Themis: Jurnal Ilmu Hukum* 3, no. September (2025): 47–56.

²⁰ Rosadi and Desmon, *Studi Politik Hukum*.

²¹ Moh. Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: PT Raja Grafindo, 2012).

²² Purnomo Sucipto, "Apa Yang Perlu Diketahui Untuk Membuat Peraturan Perundang-Undangan?," Setkab.go.id, accessed February 25, 2015, <https://setkab.go.id/apa-yang-perlu-diketahui-untuk-membuat-peraturan-perundang-undangan/>.

13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formulation of Laws and Regulations (Law on the Formulation of Laws and Regulations), aims to encourage the realization of national legal development objectives implemented in a planned, integrated, and sustainable manner that ensures legal certainty and sovereignty, as mandated by the 1945 Constitution of the Republic of Indonesia.

Based on the Law on the Formulation of Laws and Regulations, the planning stage in legislative drafting conducted jointly by the DPR and the President in preparing the list of Bills (*Rancangan Undang-Undang/RUU*) to be drafted is referred to as the National Legislation Program (*Program Legislasi Nasional/Prolegnas*). Prior to the inclusion of a Bill in the *Prolegnas*, the DPR and/or the Government, as the initiating party, must first prepare an Academic Paper (*Naskah Akademik*) before the Bill is formally proposed.

Pursuant to the General Provisions of Article 1 point 11 of the Law on the Formulation of Laws and Regulations, an Academic Paper (*Naskah Akademik*) is defined as follows:

“An Academic Paper is a document resulting from legal research or legal studies and other research findings concerning a particular issue that can be scientifically accounted for regarding the regulation of such issue in a Draft Law, Draft Provincial Regulation, or Draft Regency/Municipal Regulation as a solution to legal problems and the legal needs of society.”

The enactment of Law Number 11 of 2021, which amended several provisions of Law Number 16 of 2004, was based on a proposal submitted by Commission III of the House of Representatives of the Republic of Indonesia (DPR RI) on 31 August 2020 concerning the Explanatory Statement for the Proposal of the Bill on Amendments to the Prosecutor’s Law during the meeting of the Legislative Body of the DPR RI. The proposal submitted by Commission III of the DPR RI essentially stated the following:

- a. The Prosecutor’s Office, which is currently specifically regulated under Law Number 16 of 2004, has been subjected to several judicial review petitions concerning the *dominus litis* principle exclusively vested in prosecutors;
- b. In carrying out law enforcement, the Prosecutor’s Office is encouraged to shift from retributive justice toward restorative justice. In addition to preventive and repressive approaches in law enforcement, other approaches should also be adopted as forms of prosecutorial discretion in accordance with contemporary developments;
- c. New legal norms have emerged as a consequence of Indonesia’s ratification of various international conventions, thereby affecting several principal duties, functions, and authorities of the Prosecutor’s Office;
- d. Furthermore, based on the explanatory statement of Commission III of the DPR RI, several provisions were proposed for refinement in the Draft Prosecutor’s Law, including the following:
 1. The refinement of prosecutorial authority to conduct investigations into certain criminal offenses not limited solely to corruption crimes, but also including money laundering offenses, forestry crimes, gross human rights violations, and other criminal offenses regulated by law;
 2. The regulation of Law Enforcement Intelligence (*Judicial Intelligence*) in accordance with the Law on State Intelligence;²³
 3. The regulation of supervisory authority over printed materials and multimedia, adjusted to Constitutional Court Decision Number 6-13-20/PUU-VIII/2010 dated 13 October 2010, which stipulated that the Prosecutor’s Office, as a state institution responsible for safeguarding the circulation of printed materials, must undertake seizure or other legal measures through judicial process. Considering technological developments, the term “multimedia” was subsequently incorporated;

²³ James Kraska, “Intelligence Collection and the International Law of the Sea,” *Stockton Center for International Law* 99 (2022).

4. The regulation of the *Advocaat Generaal* function for the Attorney General. Fundamentally, the Attorney General possesses the authority of *Advocaat Generaal*, as recognized, inter alia, under the Law on the Supreme Court, whereby the Attorney General may submit legal opinions in cassation proceedings before the Supreme Court;²⁴
5. The strengthening of prosecutorial human resources through the development of professional, academic, technical, and official education and training;
6. The regulation of prosecutorial authority to cooperate with foreign law enforcement agencies as well as international institutions and organizations;²⁵
7. The regulation of other prosecutorial authorities, including the provision of considerations and information as materials for verification concerning the existence or absence of alleged legal violations that are being or have been processed in criminal proceedings for purposes of appointment to public office or the granting of titles, decorations, and honors; and
8. The reaffirmation of the role of the Prosecutor's Office in safeguarding the integrity and sovereignty of the state and the nation during states of emergency, civil or military emergencies, and wartime conditions.

The Report of the Legislative Body concerning the Results of the Adjustment of the National Legislative Program (Prolegnas) for Priority Bills of 2021 and Amendments to the National Legislative Program for 2020–2024, which was approved during the Working Meeting on 14 January 2021 and presented at the Plenary Session of the DPR RI on 23 March 2021, included in Appendix I the List of Priority Bills under the 2021 National Legislative Program. The appendix specifically listed the Bill concerning Amendments to Law Number 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia, in which the column concerning the Academic Paper and Draft Bill stated that both were prepared by the DPR/Commission III/Government.

Furthermore, in the Academic Paper of the Bill concerning Amendments to Law Number 16 of 2004 (Academic Paper), the discussion regarding the retirement age of prosecutors constituted one of the chapters examining the implementation practices, existing conditions, and obstacles deemed to present legal issues, with the following explanation:

"The formation of professional prosecutors requires the completion of various levels of education and the accumulation of experience in carrying out prosecutorial functions, duties, and authorities. In accordance with the professionalism and functions of the Prosecutor's Office, individuals may be appointed as prosecutors at a minimum age of 25 (twenty-five) years and a maximum age of 35 (thirty-five) years, while the mandatory retirement age for prosecutors, which was previously set at 62 (sixty-two) years, has been amended to 60 (sixty) years."

Based on these issues, the chapter concerning the scope of the substantive provisions to be incorporated into the legislation implemented the matter of prosecutors' age limits through provisions relating to the dismissal of prosecutors. The Academic Paper stipulates the following:

"The amendment to the requirement for the honorable dismissal of prosecutors from office upon reaching the age of 60 (sixty) years, which was previously stipulated at 62 (sixty-two) years. The amendment to the requirements for the dishonorable dismissal of prosecutors from office on the grounds of imprisonment pursuant to a court

²⁴ Asep Nursobah, "45,50% Permohonan Kasasi Perkara Pidana Diajukan Oleh Jaksa," Kapnitreaan Mahkamah Agung, 2023, Pengaturan fungsi Advokat General bagi Jaksa Agung. Pada dasarnya, Jaksa Agung memiliki kewenangan Advocaat Generaal sebagaimana yang disebutkan salah satunya dalam Undang-Undang tentang Mahkamah Agung dimana Jaksa Agung dapat mengajukan pendapat teknis hukum dalam perkara kepada Mahkamah Agung dalam permohonan Kasasi.

²⁵ Pavlenko Dmytro, "Foreign Experience in the Regulating of Administrative Legal Functions of the Prosecution Service," *Visegrad Journal on Human Rights* 11, no. 3 (2023): 66–74, <https://doi.org/10.61345/1339-7915.2023.5.9>.

decision having permanent legal force for committing a criminal offense punishable by a minimum term of imprisonment of 2 (two) years ... and so forth.”

The process of formulating legislation often involves amendments to provisions deemed to contain legal or practical issues. In this context, the mandatory retirement age for prosecutors, which was previously regulated at 62 (sixty-two) years of age, was amended and reduced to 60 (sixty) years. However, as reflected in the considerations set forth in the Academic Paper, there appears to be no clear correlation between the problems identified and the existence of the retirement age limit of 62 (sixty-two) years, thereby rendering the urgency of reducing it to 60 (sixty) years questionable. This is particularly evident considering that the provisions under Law Number 16 of 2004 emphasized that the formation of professional prosecutors requires a lengthy process involving extensive education and professional experience, which formed the basis for establishing the honorable retirement age of prosecutors at 62 (sixty-two) years.

Conversely, the brief explanation provided in the Academic Paper merely states that professional prosecutors must undergo various levels of education and accumulate experience in carrying out their duties, functions, and authorities. In line with the professionalism and functions of the Prosecutor's Office, the retirement age for prosecutors, which was previously set at 62 (sixty-two) years, was subsequently amended to 60 (sixty) years. Furthermore, as reflected in the Report of Commission III of the DPR RI concerning the Bill on Amendments to Law Number 16 of 2004 on the Prosecutor's Office of the Republic of Indonesia during the Plenary Session of the Second Sitting Period of the 2021–2022 Legislative Session on Tuesday, 7 December 2021, also referred to as the Second Reading, one of the substantive issues discussed in the Bill was stated as follows:

“The age requirements for the appointment of prosecutors and the honorable retirement age for prosecutors. As an adjustment to the increasingly rapid development of the educational system, in which students are completing undergraduate education at younger ages, and simultaneously to provide longer career opportunities, the Working Committee agreed to amend the age requirements for appointment as a prosecutor to a minimum age of 23 (twenty-three) years and a maximum age of 30 (thirty) years. In addition, the Working Committee also agreed to amend the mandatory retirement age for prosecutors through Article 12 of this Law, reducing it from 62 years to 60 years.”

In relation to these provisions, amendments were made not only to the mandatory retirement age for prosecutors but also to the age requirements for appointment as prosecutors. Previously, pursuant to Article 9 paragraph (1) letter e of Law Number 16 of 2004, it was stipulated that: “The requirements for appointment as a prosecutor shall include a minimum age of 25 (twenty-five) years and a maximum age of 35 (thirty-five) years.” Currently, however, the age requirement for appointment as a prosecutor has been amended to a minimum age of 23 (twenty-three) years and a maximum age of 30 (thirty) years.

Viewed through the lens of James Coleman's rational choice theory, human behavior is understood as being influenced by particular considerations directed toward the attainment of certain objectives.²⁶ When associated with the concept of the rule of law, Indonesia, as a state founded upon Pancasila in accordance with the objectives enshrined in the Preamble to the 1945 Constitution of the Republic of Indonesia, should formulate legal norms based upon rational and purposive considerations. The normative provisions concerning the retirement age and honorable dismissal of prosecutors were initially grounded in practical considerations, as Law Number 16 of 2004 expressly recognized that the formation of professional prosecutors requires a lengthy process involving various stages of education

²⁶ Sugeng Pujileksono, “Pemahaman Korupsi Dalam Teori Pilihan Rasional Dan Hubungan Prinsipal-Agen,” *Jurnal Sosial Dan Ilmu Politik* 2, no. 2 (2022): 139–51.

and professional experience. On this basis, the mandatory retirement age for prosecutors, which had previously been set at 58 (fifty-eight) years, was subsequently increased to 62 (sixty-two) years.

Nevertheless, the amendment reducing the retirement age from 62 years to 60 years under Law Number 11 of 2021 was not supported by adequate empirical arguments or an institutional needs assessment. Neither the Academic Paper nor the legislative deliberations provided data concerning prosecutorial productivity within the relevant age range, institutional workload considerations, or the urgency of regenerating law enforcement personnel. This circumstance indicates that the amendment was more reflective of a discretionary policy than an evidence-based policy, thereby weakening the legal rationality underlying the amendment from the perspective of legal politics.

The dynamics underlying the determination of prosecutors' retirement age demonstrate that, although Commission III of the DPR RI proposed amendments to Law Number 16 of 2004, the issue of the honorable dismissal or retirement age of prosecutors was not initially identified as a principal matter requiring amendment. However, both the Academic Paper and the Second Reading deliberations subsequently treated the retirement age provision as an issue warranting legislative change.²⁷

From the perspective of Critical Legal Studies, which views law as a product of social construction closely tied to dynamics of power and ideology, legal reconstruction should pursue substantive justice rather than merely formal procedural compliance.²⁸ In this regard, the amendment to the mandatory retirement age for prosecutors reflects a significant inconsistency. The same rationale employed in the Academic Paper—namely that becoming a professional prosecutor requires a lengthy process involving extensive education and professional experience—should logically have supported the retention or strengthening of the retirement age previously set at 62 (sixty-two) years. Instead, the same reasoning was used to justify reducing the retirement age to 60 (sixty) years.

Interestingly, the amendments also introduced greater leniency concerning dishonorable dismissal provisions for prosecutors. Under the previous provision, namely Article 13 paragraph (1) letter a of Law Number 16 of 2004, prosecutors could be dishonorably dismissed if sentenced by a final and binding court judgment (*inkracht van gewijsde*) to imprisonment for a minimum period of 3 (three) months. Under the current amendment, however, the threshold has been extended to 2 (two) years of imprisonment.

In determining legislative choices, lawmakers should base their decisions upon the objectives intended to be achieved through the legal product being enacted. At the legislative formulation stage, the arguments advanced to justify the reduction in prosecutors' retirement age also demonstrate weaknesses in policy formulation.²⁹ Neither the Academic Paper nor the parliamentary deliberations comprehensively incorporated quantitative analysis or impact assessments concerning the performance of the Prosecutor's Office, particularly with respect to the effectiveness of senior prosecutors and the institutional need for personnel regeneration. This indicates that the legislative process was dominated more by institutional and administrative considerations than by data-driven analysis capable of strengthening the rationality of the legal policy.

The developments arising during the enactment process of Law Number 11 of 2021, particularly concerning the retirement age and dismissal of prosecutors, demonstrate that the most crucial aspect requiring attention lies in the substance of the legal norms themselves. No detailed explanation was provided regarding the urgency or rationale underlying the reduction of the honorable retirement age for prosecutors from 62 (sixty-two) years to 60 (sixty) years, despite the persistent argument that the formation of professional prosecutors requires extensive educational and professional experience. Conversely, greater leniency was introduced for prosecutors subject to dishonorable dismissal, particularly regarding criminal convictions by final and binding court judgments (*inkracht van gewijsde*),

²⁷ Ferry Hidayat, "Problem Independensi Kejaksaan Dari Pengaruh Kekuasaan Jadi Sorotan Para Pakar Hukum," *wartaekonomi.co.id*, 2025.

²⁸ Satjipto Rahardjo, *Hukum Progresif: Hukum Yang Membebaskan* (Jakarta: Kompas, 2009).

²⁹ David Riadi, *Pergeseran Fungsi Penuntutan* (Makasar: PT. Nas Media Indoensia, 2024).

where the threshold was extended from a minimum imprisonment sentence of 3 (three) months to 2 (two) years.

Moreover, these amendments also have implications for the institutional independence of the Prosecutor's Office, particularly in relation to career stability and the continuity of professional experience among law enforcement officials.³⁰ The reduction of prosecutors' service period potentially disrupts the accumulation of professional experience that should serve as a foundation for maintaining prosecutorial quality and the structural independence of the institution.³¹ Within the framework of a state governed by the rule of law, the stability of law enforcement institutions is determined not only by the normative scope of authority, but also by the consistency of personnel policies that support long-term professionalism. Such conditions may create the potential for diminished prosecutorial professionalism, particularly because prosecutors, as law enforcement officials, are expected to uphold and comply with the law, yet are instead afforded greater leniency through these amendments.

The inconsistency of legal policy is further reflected in the contrast between the reduction of the mandatory retirement age for prosecutors and the relaxation of the requirements for dishonorable dismissal, whereby the minimum criminal sentence threshold was increased from 3 months to 2 years.³² This amendment demonstrates an asymmetry in legal policy design that is not grounded in the principle of systemic consistency.³³ From the perspective of legal politics, such inconsistency has the potential to weaken the binding force of legal norms and create uncertainty in mechanisms for monitoring prosecutorial ethics and discipline as law enforcement officials.³⁴

This finding is consistent with the research conducted by Rahmadhany et al., which concludes that legal politics within law enforcement practices influences not only institutional structures such as independence, oversight, and inter-institutional coordination but also the substantive dimension of law, as reflected in the clarity of legal formulations and the breadth of discretionary authority granted to law enforcement officials.³⁵ Furthermore, legal politics also shapes legal culture in ways that may give rise to patterns of selective enforcement, under-enforcement, over-enforcement, and failures of coordination among law enforcement actors. Such conditions demonstrate that inconsistencies in legal policy design have direct implications for the effectiveness of law enforcement and institutional integrity, including the Prosecutor's Office as the holder of the *dominus litis* principle within the criminal justice system.

This finding is also consistent with research concerning the evaluation of the retirement age of Indonesian workers, which demonstrates that the increase in life expectancy has rendered the retirement age limit of 55 years no longer relevant to the current demographic conditions of Indonesian society. The study emphasizes that the primary issues faced by the elderly population are related to income security and healthcare, thereby requiring retirement age policies to be adjusted in order to ensure workers' welfare after entering retirement. Furthermore, increasing the retirement age is regarded as a logical consequence of rising life expectancy, as has been implemented in various countries. Accordingly, the amendment to the mandatory retirement age for prosecutors may be understood as part of a legal policy aimed at aligning the employment system and state institutions with demographic developments and the social protection needs of state officials.³⁶

³⁰ Zaenal Arifin Mochtar, *Politik Hukum Pembentukan Undang-Undang* (Yogyakarta: EA Books, 2022).

³¹ Muhammad Luthfil Hakim, "Menakar Kepastian Hukum Dalam Batas Usia Pensiun Jaksa (Kajian Normatif Terhadap Putusan MK NOMOR 70/PUU-XX/2022)" (UIN Sunan Kalijaga Yogyakarta, 2025).

³² Sarah Nur Annisa and Patners Associates, "Republik Indonesia Dalam Perspektif Teori The New Separation Of Power," *Journal of Indonesian Law* 2, no. 16 (2021): 226–48, <https://doi.org/10.18326/jil.v2i2>.

³³ Brandon Hasbrouck, "The Just Prosecutor," *Washington and Lee University School of Law* 627, no. 3 (2021).

³⁴ Russell M Gold, "Volunteer Prosecutors," *JSTOR* 13, no. 2 (2022): 1483–1540.

³⁵ Ramdhany, Junaedi, and Ariyanti, "Dinamika Politik Dan Hukum Dalam Mempengaruhi Penegakan Hukum Di Indonesia."

³⁶ Neni Sri Wahyuni, "Mendefinisikan Ulang Usia Pensiun Bagi Pekerja Indonesia," *Jurnal Jamsostek* 2, no. 6 (2024): 1–22.

Conclusion

The amendment to the retirement age of prosecutors under Law Number 11 of 2021, reducing the retirement age from 62 to 60 years, reflects the dynamics of legal politics in regulating the institutional framework of the Prosecutor's Office. However, this amendment was not accompanied by sufficient justification regarding the urgency of lowering the retirement age, despite the legislator's continued emphasis that the development of professional prosecutors requires a long process of education and practical experience. This condition indicates an inconsistency in legal policy in the formulation of statutory norms.

Furthermore, the reduction in the retirement age has the potential to affect the professionalism and effectiveness of the Prosecutor's Office, as it may shorten the service period of prosecutors who possess extensive experience and competence. The regulation of prosecutors' retirement age should therefore be formulated in a more rational, consistent, and coherent manner, in line with the objectives of national legal development, particularly in strengthening the professionalism and independence of the Prosecutor's Office as a law enforcement institution. Accordingly, the amendment reflects the suboptimal consistency of legal politics in reinforcing the sustainable independence and professionalism of the Prosecutor's Office.

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