

ETIKA DAN KARISMA SEBAGAI PENDAKWA SYARIE



Disampaikan oleh:

**Nor Azizah binti Aling
Timbalan Pendakwa Raya
Bahagian Pendakwaan
Jabatan Peguam Negara**

KUASA DAN PELANTIKAN PENDAKWA RAYA DI BAWAH UNDANG-UNDANG (Dalam Konteks Undang-Undang Jenayah Sivil)

Perkara 145(3) Perlembagaan Persekutuan memperuntukkan seperti yang berikut:

“Peguam Negara hendaklah mempunyai kuasa yang boleh dijalankan menurut budi bicaranya, untuk memulakan, menjalankan atau memberhentikan apa-apa prosiding bagi sesuatu kesalahan, selain prosiding di hadapan mahkamah Syariah, mahkamah anak negeri atau mahkamah tentera.”

Subseksyen 376(3) Kanun Tatacara Jenayah memperuntukkan seperti yang berikut:

“Pendakwa Raya boleh melantik orang yang layak dan sesuai untuk menjadi Timbalan Pendakwa Raya yang hendaklah berada di bawah kawalan dan arahan am Pendakwa Raya dan boleh menjalankan segala atau apa-apa hak dan kuasa yang terletak hak atau boleh dijalankan oleh Pendakwa Raya dengan atau di bawah Kanun ini atau mana-mana undang-undang bertulis yang lain kecuali apa-apa hak atau kuasa yang dinyatakan untuk dijalankan oleh Pendakwa Raya sendiri dan dia boleh menamakan mana-mana Timbalan Pendakwa Raya itu sebagai Timbalan Kanan Pendakwa Raya.”

FUNCTIONS OF PUBLIC PROSECUTOR

- ❑ To exercise the powers of the Attorney General as the Public Prosecutor in accordance with section 376 of the Criminal Procedure Code *[Act 593]*.
- ❑ To conduct prosecutions in the Session Courts and Magistrate Courts.
- ❑ To conduct criminal trials, appeals, applications and revisions in the High Court.
- ❑ To conduct appeals and applications in the Court of Appeal and the Federal Court.
- ❑ To give advice and instructions to all enforcement agencies in relation to investigations and criminal prosecutions.
- ❑ To peruse investigation papers and to decide whether to institute prosecutions or otherwise.

PP v. Lee Eng Kooi [1993] 2 CLJ 534

Vincent Ng J memutuskan seperti yang berikut:

“Public interest consideration demands that criminals be apprehended, rightly charged, fairly tried, justly convicted and appropriately sentenced. It is only through an interplay of good law officers, honest but able DPPs, ethical lawyers and competent Magistrates and Judges that these essential links in the administration of justice and maintenance of law and order is ensured for society; a shortfall in any of these links hardly serves public interest.”



ETIKA

ETHICS

THE CODE OF CONDUCT FOR PROSECUTORS (2012)

Independence

- ❖ The Prosecutor shall be independent in his judgment and in the performance of his professional duties, free of any extraneous influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reasons.

Honesty, fairness and impartiality

- ❖ The Prosecutor in performance of his professional duties shall be honest, fair and impartial, honouring the presumption of innocence and equality of individuals in the face of the law. He shall avoid impropriety and the appearance of impropriety and situations which might reasonably give rise to suspicions or appearance of favouritism and partiality.

ETHICS

- ❖ **The Prosecutor shall not by word or by deed create an impression of bias or partiality. He shall not express or support opinions which are directed towards restrictions or insults on the grounds of race, descent, place of birth, gender, religion, nationality, disability, age, sexual orientation, professions, material or social status.**
- ❖ **The Prosecutor shall not allow any personal views about ethnics or nationality, disability, sex, race, religious beliefs, social status, political affiliations and views, or sexual orientation of the suspect, victim or witness influence their decision.**
- ❖ **The Prosecutor shall be self-critical in being able to recognise his own mistakes and apologise for his mistakes and unwitting unethical conduct prior and during a trial.**
- ❖ **The Prosecutor shall not make any representation concerning the possible outcome of cases under adjudication.**
- ❖ **The Prosecutor shall exercise his best endeavours in the performance of his professional duties.**

ETHICS

Loyalty

The Prosecutor shall, upon receiving instructions from any superior, refrain from disseminating that instruction or information relating to that instruction or being openly critical about the said instructions received to any unrelated person.

Integrity

The Prosecutor shall at all times maintain the honour and dignity of his profession.

The Prosecutor shall always conduct himself professionally, in accordance with the laws and the rules and ethics of his profession.

The Prosecutor shall at all times exercise the highest standard of integrity and care and ensure that his conduct is above reproach.

ETHICS

- ❖ **The Prosecutor shall not allow his family, social or other relationships to improperly influence his conduct as Prosecutor. The Prosecutor shall not use or lend the prestige of his position as a Prosecutor to advance his private interests or those of a member of his family or of anyone else, nor shall he convey or permit anyone to convey the impression that anyone can improperly influence him in the performance of his duties.**

- ❖ **The Prosecutor shall disqualify himself from performing his professional duties, where in the circumstances he is unable to act impartially. Such circumstances include, but are not limited to, instances where:**
 - (a) he has actual bias or prejudice concerning an accused, complainant, or witness;**

 - (b) he previously served as a counsel for another party or was a material witness in the prosecution; and**

 - (c) he or a member of his family, has an interest in the outcome of the prosecution.**

ETHICS

Confidentiality

- ❖ It shall be the Prosecutor's obligation to ensure the confidentiality of the information he has acquired during the performance of his professional duties, except cases when the law prescribes the right or duty to disclose such information.
- ❖ The Prosecutor shall not use confidential information acquired in the course of carrying out his official duties for his or any other person's personal benefit or to any other person's detriment.

Professional growth and competence

- ❖ The Prosecutor shall take reasonable step to maintain and enhance his knowledge, competency, skills and qualities necessary for the proper performance of his duties, keep himself well informed of relevant legal developments, including applicable human rights norms, take advantage for this purpose of those training and other facilities which are available to them.

ETHICS

Conduct and relationship

Conduct outside work - He shall refrain from carrying out activities which would be in conflict with his official duties or which may tarnish his professional reputation.

The Prosecutor shall not accept any gifts and benefits from persons who are within the sphere of the Prosecutor's influence which might in any way affect the performance of the Prosecutor's official duties and decision making. If the gifts and benefits have been given against his will or without his knowledge, he shall report to his superior immediately after becoming aware of it stating the circumstances in which the gifts and benefits were provided.

ETHICS

Conduct and relationship

Relationship between Prosecutors - The Prosecutor shall not be openly critical about the lack of knowledge, mistakes or inadvertence of fellow colleagues in and outside of court proceedings.

Relationship with the Court - respect and preserve the dignity of the Court, his own dignity and dignity of the legal service when appearing and before in communicating with the court; always observe the rules of the Court and respect its impartiality. Prosecutors must take all necessary steps to ensure that his actions do not bring the Court into disrepute.

Outside any judicial proceeding, make disparaging comments on any decisions of the Court, or about how the Court must proceed in a specific case, nor give information to others on the action of the Court about which he has gained knowledge.

ETHICS

Conduct and relationship

Relationship with Counsel - The Prosecutor shall act fairly, honestly and courteously towards all legal representatives appearing or acting in proceedings before the Court. The Prosecutor shall not communicate with a represented accused except through or with the permission of that accused's counsel.

Relationship with victim and witnesses - preserve professional confidentiality and take all reasonable measures to protect the privacy and safety of victims, witnesses and their families in accordance with the law, to treat victims with appropriate compassion, and to make reasonable efforts to minimise inconvenience to witnesses. **Be sensitive to the vulnerabilities of certain victims and witnesses.**

Inform the witness the protection under section 132 of the Evidence Act 1950 if he is to give evidence that might incriminate himself. Do not offer or give the witness any monetary or other incentive for his or her testimony.

ETHICS

Conduct and relationship

Relationship with the Accused person –

- ❖ Ensure that evidence favourable to the accused is disclosed in accordance with the law and the requirements of a fair trial;
- ❖ Ensure that cross-examination of an accused is fairly and professionally conducted, and material put to an accused is considered on reasonable grounds to be accurate and its use justified in the circumstances of the trial; or
- ❖ refrain from contact and action with the accused or suspects which may cast doubt on his objectivity. Where such contact or action are necessary, it shall be conducted, whenever possible, in official premises and official notes or recording shall be made about the discussion with such a person.

ETHICS

Conduct and relationship

Relationship with the media – The Prosecutor must recognise that there is no specific obligation on the Prosecution to provide information to the media. However, the Prosecutor must also recognise that the public relies upon the media for accurate news reporting. Therefore, the Prosecutor shall give the media necessary, accurate and objective information on the case at hand, duly taking into consideration all the circumstances of the case and the rights and interests of all the parties involved.

The Prosecutor shall not discuss with the media matters which include the likely outcome of proceedings, the intended approach of the prosecution, any privileged information including legal advice and internal case discussion with colleagues or law enforcement officers and the existence of any negotiation of a plea of guilty or other disposition. There shall also be no discussion on policy issues or personalities to the media. The Prosecutor shall not disclose any information which may reasonably lead to the identification and location of a protected person as provided under the law unless authorised to do so.



KARISMA

THE ART OF ADVOCACY

❖ The art of advocacy is effective communication to the canvas of the mind through the artwork of four brushes:

- ❑ effective speaking;
- ❑ effective writing;
- ❑ effective reading; and
- ❑ effective listening.



❖ Art of conducting cases in court both by argument and by the manner of bringing out the evidence so as to convince the court. It is very important to DPPs who conducting case in court.

❖ Advocacy is art of persuasion or art of convincing others. Observe Court Decorum.

ATTIRE



PAKAIAN

1. Mahkamah Majistret
Mahkamah Sesyen
 - Berpakaian formal
2. Mahkamah Tinggi /
Rayuan/Persekutuan
 - Berpakaian formal
 - Jubah



CASE PRESENTATION

- DPP should be armed with IP, exhibits, witness statements, prepared questions, law books and statutes.**
- DPP should attend the court at least half an hour before the court starts.**
- Witnesses should be called in sequence. Normally complainant should be called first then followed by other witnesses who can corroborate and complete the story so that to unfold the narrative.**
- The case should be presented in the clearest and simplest way possible to enable the court to understand the evidence presented. It is important that the facts presented is understood by the court.**
- DPP should ask short and simple question. DPP must know the answer to every question posed. DPP must guide the witness by asking relevant, step by step question. Leading question should be avoided whenever possible.**
- Any doubt or omission should be clarified and explained through the witnesses. All material witnesses should be called to avoid s. 114(g) of Act 56 be invoked.**

Panduan

Penelitian Kertas Siasatan

5. Sebagaimana YBhg. Dato' / Tuan / Puan sedia maklum, minit dalam kertas siasatan berkenaan dengan arahan / tindakan lanjut / keputusan yang telah dibuat kepada Pegawai Penyiasat hendaklah dibuat

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dengan jelas dan terperinci. Minit yang terperinci juga hendaklah dibuat dalam kertas siasatan berkenaan dengan sebab-sebab pertuduhan dibuat atau sebaliknya. Minit dalam kertas siasatan ini dapat membantu apabila rujukan dibuat terhadap kertas siasatan yang berkenaan.

6. Selanjutnya, YBhg. Dato' / Tuan / Puan juga adalah diingatkan bahawa semasa membuat penelitian terhadap kertas siasatan yang dikemukakan oleh Pegawai Penyiasat, kehendak *90 percent (%) rule* hendaklah sentiasa dijadikan sebagai amalan dan panduan semasa membuat penelitian dan pertimbangan terhadap kertas siasatan. Penelitian terhadap keterangan – keterangan yang ada (dalam kertas siasatan) perlu dibuat sebelum tindakan pendakwaan dikenakan dan tidak boleh bergantung semata-mata kepada taklimat oleh Pegawai Penyiasat sebelum keputusan dibuat untuk meneruskan pendakwaan terhadap sesuatu kes.

Seksyen 51A

7. YBhg. Dato' / Tuan / Puan juga hendaklah membuat penelitian yang sewajarnya ke atas kandungan dokumen sebelum sesuatu dokumen dikemukakan kepada tertuduh di bawah seksyen 51A Kanun Tatacara Jenayah [Akta 593] .

Prestasi Timbalan Pendakwa Raya (TPR)

8. YBhg. Dato' / Tuan / Puan juga dikehendaki untuk mengawal selia TPR di bawah kendalian masing-masing. Sila beri tunjuk ajar dan panduan yang sewajarnya kepada TPR dalam mengendalikan sesuatu kes di mahkamah. Sekiranya YBhg Dato' / Tuan / Puan mendapati prestasi TPR tersebut masih lemah (walaupun setelah diberi panduan / tunjuk ajar), kerjasama adalah dimohon untuk memaklumkan perkara tersebut kepada saya untuk tindakan sewajarnya dibuat.

PRE-TRIAL PREPARATION

PRE-TRIAL PREPARATION

Review the charge

The DPP has to ensure that the accused has been charged with the right and accurate offence, based on the facts disclosed in the investigation paper. The charge should be worded as closely as possible to the wording of the section creating the offence.

Statements

The DPP must determine whether any further statements need to be recorded. Instruction must be given to the Investigation Officer (I.O) for further statements to be recorded.

PRE-TRIAL PREPARATION


Documents/ Exhibits

The DPP must ensure that all the relevant documents/ exhibits are available. The DPP must first inspect the documents i. e medical reports, sketch plan, photograph etc.

DPP must ensure that the I.O. is ready with all the exhibits and its original documents, including those that need to be certified as true copies. Sufficient copies of these documents should be made available to the defence counsel and the court.

Witnesses

DPP must decide the witnesses he is going to call to prove his case and which facts he is going to adduce through each witness. Preference should be given to witnesses whose credibilities are not in question. The DPP should identify any problematic but material witness who may turn hostile and to plan a strategy to overcome this problem.



**Rayuan Jenayah No.
W-05(M)-345-09/2016**

**Ibrahim Musa Rifa'i v. PP
(2018) 1 LNS 2182**

“[22] Prinsip undang-undang membolehkan mahkamah menerima sebahagian keterangan seseorang saksi dan menolak sebahagian keterangannya setelah keterangan saksi tersebut diteliti bersama-sama keseluruhan keterangan yang ada.

Prinsip ini dijelaskan oleh Raja Azlan Shah (ketika itu) dalam kes *PP v. Datuk Haji Harun bin Idris* [1977] 1 MLJ 15 di mukasurat 19 seperti berikut:

“The question is whether the existence of certain discrepancies is sufficient to destroy their credibility, there is no rule of law that the testimony of a witness must either be believed in its entirety or not at all. A court is fully competent, for good and cogent reasons, to accept one part of the testimony of a witness and to reject the other. It is, therefore, necessary to scrutinize each evidence very carefully as this involves the question of weight to be given to certain evidence in particular circumstances.”

PRE-TRIAL PREPARATION

Preparing questions

Questions should be properly planned and framed. This will ensure a smooth flow as well as to prevent over-sightedness or forgetfulness. It will also ensure that the DPP's train of thought will not be affected by minor upheavals in court.

During preparation of questions, it also helps the DPP to identify any documents or exhibit which the particular witness has to identify.

Anticipate and prepare for any possible objection

Objections can be made to charges preferred, the joinder of charges, joint trial, tendering of exhibits or the jurisdiction of courts. DPP should be well acquainted with all the relevant authorities.

PRE-TRIAL PREPARATION

Subpoenas

Investigation officer (I.O.) should be instructed to subpoena all persons from whom statements have been recorded or whose evidence are required to be given in court.

Sufficient time should be given to the court to process the application for the subpoenas and for the police to serve them.

PRE-TRIAL PREPARATION

Pre-trial meeting/ conference

The pre-trial meeting should be held with the I.O. and expert witnesses to ensure:

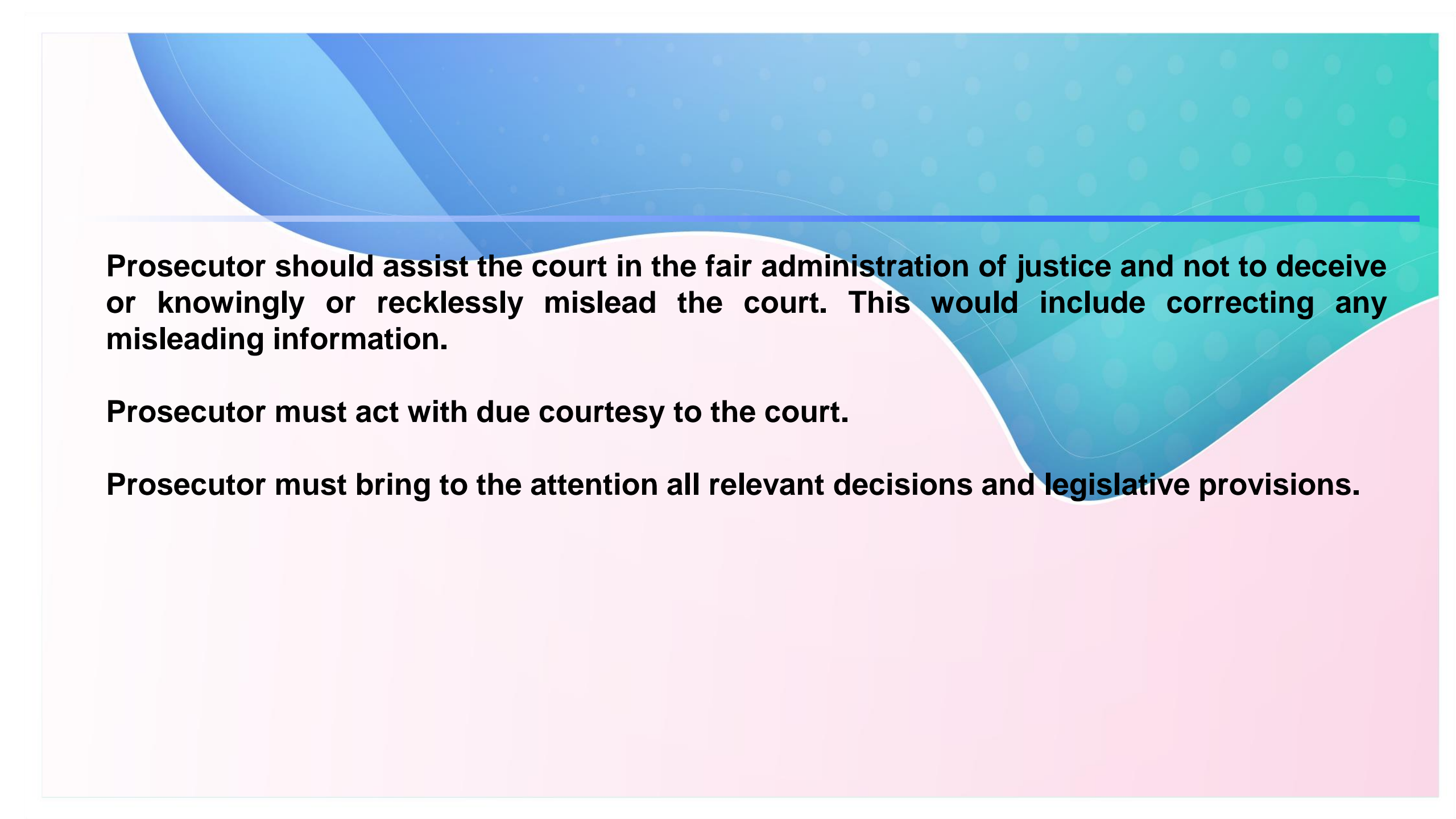
1. All the relevant exhibits are available. If the exhibits are not available, seek an explanation so that the foundation can be laid to justify the introduction of secondary evidence.
2. All relevant statements are recorded from the witnesses.
3. To seek clarification from essential witnesses as regard to any doubt/ omission (only police /expert witness).
4. If there is any clarification needed from civilian witnesses, it can be done through the I.O. by way of further recording their statements. Witness should not be coached to avoid unsavoury aspersions on the DPP.

DURING TRIAL

Duties to court

In Rondel v Worsley (1964) 1 AC 191, 227 Lord Reid:

“Every counsel has a duty to his client fearlessly to raise every issue, advance every argument and ask every question, however distasteful, which he thinks will help his client’s case. But, as an officer of the court concerned in the administration of justice, he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client’s wishes or with what the client thinks are his personal interest.”



Prosecutor should assist the court in the fair administration of justice and not to deceive or knowingly or recklessly mislead the court. This would include correcting any misleading information.

Prosecutor must act with due courtesy to the court.

Prosecutor must bring to the attention all relevant decisions and legislative provisions.

Thank you

