JURNAL HUKUM Khaira Ummah
ISSN : 1907-3319
sinta 3 Science and Technology Index
Degree No: 286/DST/C3/HM.01.00/2026
Vol. 21 No. 03 (September) 2026

Functional Differentiation of Police Investigators in the Pre-Prosecution Stage

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Abstract. The pre-prosecution stage is a strategic phase in Indonesia's criminal justice system because it is the link between the investigation and prosecution processes. In practice, this stage often presents problems in the form of inefficiency, friction of authority, and the back-and-forth of case files between police investigators and public prosecutors. This problem stems from the infirm application of the principle of functional differentiation, especially in determining the limits of the technical authority of investigation and the authority of juridical assessment of the prosecution. This study aims to analyze the concept of affirmation of functional differentiation of police investigators in the pre-prosecution stage and formulate its ideal arrangement from the perspective of the *ius constituendum* of Indonesian criminal procedural law. The research method used is normative legal research with legislative, conceptual, and comparative approaches. The results of the study show that affirmation of functional differentiation is necessary to prevent overlapping authority and strengthen functional coordination between investigators and public prosecutors. In addition, future arrangements need to set clear deadlines, integrated coordination mechanisms, and objective standards for assessing the completeness of case files in order to realize an effective, efficient pre-prosecution process and ensure legal certainty and protection of the rights of the parties.

Keywords: *Criminal; Functional Differentiation, Investigators; Justice; Legal System.*

1. Introduction

The pre-prosecution stage is a crucial phase in Indonesia's criminal justice system because it serves as a bridge between the results of an investigation and the prosecution process. At this stage, the investigation case file is submitted to the public prosecutor for examination of its formal and material completeness before the case can be declared complete (P-21) and transferred to the court. If the public prosecutor finds that the investigation results are incomplete, the case file is returned to the investigator with instructions for correction (P-19)

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and further completion. This mechanism is intended to ensure that every case brought to trial meets the required evidentiary standards and is consistent with the principles of a fast, simple, and low-cost judicial process (Dewi et al., 2020; Sudibyo & Saptomo, 2025). However, in practice, the pre-prosecution stage often encounters various obstacles, particularly in the form of coordination challenges, procedural friction, and inefficiencies (Indranugraha & Artha, 2019; Hamaminata, 2023; Amrullah, 2024). The friction is mainly due to the blurring of the functional differentiation between the authority of police investigators and public prosecutors at this stage.

The principle of functional differentiation under the Criminal Procedure Code emphasizes a clear division of duties and authority among law enforcement agencies, particularly between investigators, primarily the police, and public prosecutors. This principle was initially intended to establish horizontal coordination and a system of checks and balances between law enforcement institutions (Anggraeni et al., 2023). Under the Criminal Procedure Code, the police are primarily responsible for the investigation function, including collecting evidence and establishing the factual and legal basis of a case, while public prosecutors are responsible for the prosecution function, including assessing the sufficiency of evidence for bringing a case to trial (Kawengian, 2017). This separation of functions is, in principle, a means of clarifying the role of each institution and preventing overlapping responsibilities (Anggraeni et al., 2023). However, the rigid implementation of the principle of functional differentiation actually poses a problem for coordination in the pre-prosecution stage because there is no clear boundary regarding which matters fall entirely within the technical domain of investigation and which fall within the authority of the public prosecutor's assessment.

Due to the lack of clear boundaries between these functions, case files may be repeatedly returned and resubmitted between investigators and public prosecutors during the pre-prosecution stage. The Criminal Procedure Code and its implementing regulations do not clearly prescribe limits on the duration or frequency of case-file returns (P-19), potentially allowing cases to remain unresolved for an extended period at the pre-prosecution stage (Indranugraha & Artha, 2019). Public prosecutors seeking to ensure the completeness of case files may repeatedly return them to investigators with additional instructions, while investigators may consider that the investigation has been adequately conducted within the scope of their authority. This situation can prolong case handling beyond a reasonable period. Previous research indicates that differences in perspective between public prosecutors, who are oriented toward meeting the evidentiary standards required for prosecution and trial, and investigators, who may consider the available two pieces of evidence sufficient to support the investigation, can contribute to repeated exchanges of case files and delays in the pre-prosecution process (Zaman & Ardiansah, 2025). This condition may undermine the principles of a fast, simple, and low-cost judicial process and potentially affect the rights of suspects and victims to obtain legal certainty (Sudibyo & Saptomo, 2025).

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This dilemma arises because each institution operates under different professional responsibilities. On the one hand, public prosecutors adhere to the principle of *dominus litis*, under which they exercise control over the prosecution process and determine whether a case meets the requirements to proceed to prosecution (Riyanto, 2021). As a *dominus litis*, the prosecutor is responsible for ensuring that the case brought to trial has strong enough evidence to reach a guilty verdict (Sofian, 2025). Consequently, the prosecutor demanded a high and complete quality of the case file. On the other hand, police investigators have autonomy and professional expertise in carrying out investigative duties. Investigators are authorized to determine investigation strategies and techniques, schedule for examining witnesses, determining suspects, and conducting internal case titles according to the needs of case disclosure. The technical independence of these investigators must be respected, as long as the investigator has met the minimum standards of proof. Overlap may occur when prosecutors provide instructions that investigators perceive as extending beyond the scope of the investigation, while prosecutors may consider that investigators have not sufficiently addressed the elements of the offense in accordance with the evidentiary requirements for trial. The tension between the prosecutor's role as *dominus litis* and the investigator's professional autonomy therefore requires a clear delineation of their respective roles and responsibilities.

Without a clear delineation of roles and responsibilities, the implications can be significant. First, case files may be repeatedly returned between investigators and public prosecutors. Previous research has found that the absence of clear limits on the number of times a case file may be returned can leave some cases unresolved and, in certain circumstances, at risk of being abandoned (Indranugraha & Artha, 2019). Second, the focus of evidentiary efforts may become misaligned, with investigators directing evidence toward one aspect of the case while prosecutors require further examination of another, resulting in inefficiencies in establishing the relevant facts. Third, prolonged case handling may extend beyond the legally permitted period of detention for suspects. Such delays may undermine the principles of due process of law and the right of suspects to a speedy and fair trial. For victims and complainants, delays in resolving cases may likewise postpone access to the justice they seek. At a broader level, ineffective pre-prosecution practices may contribute to the accumulation of criminal cases and increase pressure on correctional institutions. This phenomenon shows that the principle of functional differentiation in current practice has not been optimally implemented, and even tends to be a source of new problems.

On the other hand, there is a view that clear functional differentiation can actually strengthen the effectiveness of case handling if it is accompanied by good coordination. In modern case management, a strict separation of functions is not intended to create bureaucratic barriers, but rather to allow each law enforcement officer to focus on his or her expertise while still working in an integrated manner (Dewi et al., 2020; Yunus, 2020). Investigators can focus on collecting lawful and relevant evidence and reconstructing the circumstances of the alleged offense, while public prosecutors can concentrate on assessing the sufficiency of the evidence

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and developing an appropriate prosecution strategy for trial. Although these functions are distinct, they are interdependent and must operate in a coordinated manner. Affirming functional differentiation therefore means establishing clear boundaries between the respective roles of investigators and public prosecutors while maintaining effective coordination between them. Such an approach does not imply institutional separation without communication; rather, cooperation can be strengthened when role boundaries are respected and supported by intensive and constructive communication (Sitoresmi, 2018). In the context of system comparison, in a civil law country such as the Netherlands, the investigation and prosecution functions are under one roof (under the Ministry of Justice) so that coordination is smoother (Sofian, 2025). Indonesia does not adhere to such an institutional model, but through better arrangements, the spirit of coordination can be improved even if the functions remain separate.

Departing from these needs, this study aims to formulate normative constructions and operational parameters to affirm the functional differentiation of investigators in the pre-prosecution stage. The affirmation in question includes the limits of their respective authority (investigators vs. public prosecutors), objective indicators of the quality of case files, inter-agency coordination and supervision patterns, and accountability mechanisms that ensure that no party abuses their authority. It is hoped that with this affirmation, the pre-prosecution process can run more effectively and transparently without sacrificing the rights of the parties. Clear Standard Operating Procedures (SOPs) need to be prepared, starting from the quality of the Notice of Commencement of Investigation (*Surat Pemberitahuan Dimulainya Penyidikan*/SPDP) and attachments to the initial file, the procedure for providing specific and measurable P-19 instructions, the deadline for file improvement, the objective criteria for the assessment of complete files (P-21), to integrated coordination forums such as the joint case between investigators and prosecutors. Thus, the principle of functional differentiation is maintained, but the coordination gap can be filled with rules that bridge the differences in functions synergistically. This reform initiative is in line with the national criminal procedure law reform agenda, where the new Criminal Procedure Code is expected to overcome the weaknesses of pre-prosecution practices so far.

The formulation of the problem in this study is as follows: What is the concept of affirming the functional differentiation of police investigators at the pre-prosecution stage? How does the *ius constituendum* regulate the functional differentiation of police investigators at the pre-prosecution stage based on the provisions of criminal procedure law in Indonesia?

2. Research Methods

This research uses normative (doctrinal) legal research methods, namely research that relies on literature materials and the interpretation of applicable laws and regulations (Marzuki, 2013). The approaches used include a statute approach, which examines the Criminal Procedure Code (KUHAP) and related regulations (the Prosecutor's Law and technical regulations on pre-prosecution), a conceptual approach, which examines key concepts such

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as functional differentiation, *dominus litis*, and the integrated criminal justice system in the context of criminal law enforcement, and a limited comparative approach, which examines the practice of investigator-prosecutor relations in other countries (the Dutch civil law system) as a consideration of the *ius constituendum*. In addition, where relevant, a case approach is also used, for example, by examining Constitutional Court decisions related to the rights of suspects in the pre-prosecution stage or case studies of investigator-prosecutor friction in handling certain cases.

The types of data collected are secondary data in the form of primary, secondary, and tertiary legal materials. Primary legal materials include laws and regulations that regulate investigation and prosecution, including the Criminal Procedure Code (Law Number 8 of 1981), Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (especially Article 30 paragraph (1) letter a, which alludes to pre-prosecution), as well as implementing regulations such as the Attorney General's Regulation on SOPs for handling general criminal cases. This also includes jurisprudence or relevant court decisions (for example, Constitutional Court Decision Number 130/PUU-XIII/2015, which examined the rights of suspects in pre-prosecution). Secondary legal materials include legal literature (textbooks, commentaries on the Criminal Code, monographs) and scholarly articles in legal journals that discuss the police-prosecutor relationship of authority, evaluation of pre-prosecution practices, and the idea of reform. Doctrines from experts are also used to enrich the conceptual analysis (Arief, 2013; Hamzah, 2008; Harahap, 2002). Tertiary materials are in the form of supporting sources such as legal dictionaries, encyclopedias, and regulatory indexes that help clarify the context of legal terminology. The data collection technique was carried out through an in-depth literature study of these materials. Furthermore, the data were analyzed qualitatively using a descriptive-analytical method, that is, by explaining the content of relevant rules or doctrines, then analyzing existing gaps or problems, and drawing normative conclusions regarding the solutions offered. The results of the analysis are presented systematically to answer the formulation of the problem that has been determined.

3. Results and Discussion

3.1. The Concept of Affirming the Functional Differentiation of Police Investigators in the Pre-Prosecution Stage

Functional differentiation is a principle in Indonesia's criminal procedure law that emphasizes the clear division of functions and authorities between investigative institutions and public prosecutors. Historically, this principle was adopted by the 1981 Criminal Procedure Code as a correction to the previous system, which was considered to place prosecutors in a position that was too dominant over investigators. Article 1 Number 1 of the Criminal Procedure Code defines investigators as members of the National Police or other officials authorized by law, while Article 1 Number 6 of the Criminal Procedure Code defines public prosecutors as prosecutors who are authorized to prosecute and execute court decisionsIn addition, Article

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13 of the Criminal Procedure Code emphasizes that public prosecutors are authorized to conduct prosecutions and perform other duties within the framework of judicial power. From these provisions, it appears that the Criminal Procedure Code separates the roles of the police and public prosecutors: the police focus on investigation, including collecting evidence and completing case files, while public prosecutors focus on prosecution, including bringing cases before the court (Basir, 2026). Differentiation here means that each institution performs its respective functions and does not interfere with the functions of the other institution (Tongat, 2022). Thus, conceptually, affirming functional differentiation means ensuring that the *demarcation line* between the duties of investigators and public prosecutors is maintained in accordance with the provisions of the law, while ensuring a proportionate coordination mechanism.

At the pre-prosecution stage, the implementation of this principle is manifested in a formal procedure: the investigator submits the investigation file to the public prosecutor (Article 8 paragraph (3) jo. Article 138 of the Criminal Procedure Code). The prosecutor then examines the file. If it is incomplete, the prosecutor *is prohibited from conducting his own investigation* into the deficiency (except in certain cases regulated by special laws), but returns the file to the investigator accompanied by instructions for completion (Article 110 paragraph (3) of the Criminal Procedure Code). This is the essence of pre-prosecution: the continuation of the investigation by the investigator at the direction of the prosecutor (Indranugraha & Artha, 2019). If the prosecutor does not return the file within 14 days, based on the explanation of Article 110 paragraph (4) of the Criminal Procedure Code, the file is considered legally complete. This provision shows that the prosecutor plays the role of an evaluator of the results of the investigation, not the executor of the investigation. The prosecutor's *dominus litis* at this stage is manifested in the authority to assess whether there is sufficient evidence to proceed with the prosecution (Riyanto, 2021). However, the position of *dominus litis* is limited by the principle of functional differentiation – the prosecutor should not be directly involved in collecting evidence or examining witnesses before the prosecution stage begins (Kawengian, 2017). The relationship between investigators and public prosecutors at the official investigation stage is called only "functional coordination", not hierarchical relationships (Tongat, 2022). In other words, normatively the prosecutor does not instruct the investigator to do his or her duties "what and how" the investigator performs, but only provides suggestions/instructions on the results of the file evaluation.

The concept of affirming functional differentiation demands clarity regarding the boundaries between the technical and legal domains at the pre-prosecution stage. *The technical domain of investigation* includes all acts of coercion and investigative activities carried out by investigators, including arrest, detention, search, confiscation, examination of witnesses and experts, forensic tests, and the preparation of Examination Minutes (*Berita Acara Pemeriksaan*/BAP). Investigators have full authority to determine the methods of gathering evidence, as long as they comply with legal procedures and investigative ethics. Meanwhile, *the prosecution*'s domain includes a juridical analysis of the results of the investigation,

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including an assessment of the fulfillment of the elements of the crime, the admissibility of evidence at trial, and the determination of whether the case can be brought before the court. At the conceptual level, investigators should not be subject to micro-management by prosecutors, so that the creativity and efficiency of investigations are not hampered (Sitoresmi, 2018). On the other hand, the prosecutor also has the right to reject files that are legally considered not to meet the requirements for proof, even if the investigator feels that it is sufficient (Kawengian, 2017). This is where differences of perspective often arise. The public prosecutor is oriented *ex ante* to prove in court, for example, requiring the testimony of key witnesses or certain scientific evidence to be confident that they can prove the charges in front of the judge (Zaman & Ardiansah, 2025). Investigators may consider this to be beyond the scope of their investigation or difficult to obtain. The affirmation of functional differentiation means that both parties understand the boundaries and at the same time the meeting point of authority. The instructions given by the prosecutor should ideally be limited to the essential matters that are formal or material requirements for the prosecution (lack of papers, need to examine expert witnesses for certain elements, etc.), not regulating the technical operational aspects of the investigation. On the contrary, investigators must be open to receiving the prosecutor's input as long as it is related to the fulfillment of the elements of the crime and the completeness of the evidence, not considered as an intervention that "patronizes" the investigator.

Practice shows this boundary line is often blurred. The difference in interpretation between prosecutors and investigators on the adequacy of evidence is a source of disguised disputes (Zaman & Ardiansah, 2025). The investigator considered that the two pieces of evidence were sufficient to meet the requirements of Article 184 of the Criminal Procedure Code, while the prosecutor considered that their quality or relevance was not strong enough to convince the judge. A case study at the Lamongan District Prosecutor's Office revealed that this difference in orientation often triggers the back-and-forth exchange of case files, which can take a considerable amount of time. This shows a lack of a shared understanding of the standard of *proof* required. The affirmation of functional differentiation at the conceptual level must be accompanied by a uniform understanding between investigators and public prosecutors regarding the criteria for complete case files. For example, it is necessary to establish measurable indicators: a case file is declared complete (P-21) not only because there are at least two pieces of evidence, but also based on whether the quality of the evidence is adequate (Rendra, 2019). If the investigator understands these criteria from the beginning, the P-19 instructions given by the prosecutor will not be out of context, but will be in line with the agreed standards.

In addition, the concept of functional differentiation does not mean functional isolation. Collaboration between functions is still needed in the corridor of mutual respect for authority. In the theory of the integrated criminal justice system, even though the functions are handled by different agencies, the law enforcement process must be seen as a continuous unit (Nursyamsudin & Samud, 2022). This means that ideally there should be a bridging

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mechanism at critical points. For example, the joint case is held before the submission of the first stage of the file. This mechanism has actually been adopted informally in some places: investigators invite prosecutors to expose cases before the file is declared complete, so that prosecutors can provide initial input (Maringka, 2017). Thus, at the time the file is sent, the risk of P-19 recurrence can be reduced. The affirmation of differentiation here is not to eliminate communication, but rather to normalize communication forums so that there is a synchronization of understanding without violating the independence of the task. The forum for "holding integrated cases" between the National Police and the Prosecutor's Office, if strengthened on a legal basis, will be a concrete implementation of collaboration within the framework of differentiation of functions.

In terms of accountability, clarifying the boundaries of functions also means clarifying who is responsible for a process omission or failure. Today, when cases stall at the pre-prosecution stage, there is often mutual blame between institutions: the police feel that the prosecutor is demanding too much, while the prosecutor feels that the police are incompetent to complete the case file. With a firm delineation of roles, accountability becomes clear. If the prosecutor's instructions are specific but the investigator does not carry them out properly, the investigator's performance can be evaluated (Sitoresmi, 2018). On the other hand, if the investigator has worked according to the SOP but the prosecutor is too convoluted in returning the case file, this can be reported through a supervision mechanism (for example, through a police-prosecutor coordination forum or functional supervision at the Prosecutor's Office). In the context of ius constitutum, unfortunately, there is no formal mechanism to "force" the two parties to resolve their differences. The affirmation of functional differentiation therefore also includes the creation of a deadlock resolution protocol: for example, after two P-19s, a discussion could be held between three parties (investigators, prosecutors, and superiors from both institutions) to determine whether the case can be improved or discontinued. With such rules, checks and balances can still operate without allowing the process to drag on without clarity.

From a comparative perspective, Indonesia adheres to the principle of limited opportunity: prosecutors should not stop cases indiscriminately unless the legal grounds are met. Unlike in the United States, for example, prosecutors are very dominant in determining the prosecution from the beginning (Sofian, 2025). In the Netherlands and France, prosecutors even control the investigation (prosecutor instructors) so there is no separate pre-prosecution phase (Riyanto, 2021). The concept of functional differentiation in Indonesia was actually born from the spirit that each law enforcer should focus on his or her duties and prevent abuse of authority. However, as a consequence, the role of the prosecutor becomes passive in waiting for files (Rozi, 2017). The concept of affirmation needed now is refocusing: strengthening the role of the prosecutor without violating the principle of separation of functions. Conceptually, this can be achieved by providing a portion of the prosecutor's involvement early in the investigation stage as a non-technical supervisor. Non-technical supervision means that the prosecutor follows the progress of the investigation (through the

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SPDP that is received immediately, informal communication, or coordination between institutions) (Law Number 16/2004, Article 30(1)(a) Explanation). That way, the prosecutor can provide input before the BAP is closed, but the operational decision remains in the hands of the investigator.

It is concluded that the concept of affirming functional differentiation requires clear but flexible role boundaries in coordination. Police investigators must be assured of their authority over all investigative actions up to the second stage of handover, while prosecutors are responsible for assessing the results of the investigation and directing the fulfillment of prosecution requirements. This clarity must be accompanied by rules governing interaction: when and how prosecutors can provide instructions, how detailed such instructions should be, how long investigators have to complete them, and what the consequences are if they are not fulfilled. With such a concept, the two institutions can work harmoniously. Investigators have certainty regarding the scope of their authority in conducting investigations, while prosecutors have certainty regarding the quality of case files before they are brought to court. The resulting collaboration is no longer characterized by waiting for one another or confrontation, but by a partnership in which each institution complements the other according to its respective functions. The affirmation of functional differentiation ultimately aims to prevent overlapping authority while avoiding a vacuum of responsibility in the handling of criminal cases.

3.2. Regulation of Functional Differentiation of Investigators in the Ius Constituendum Based on the Indonesian Criminal Procedure Law

The establishment of a new criminal procedure law (*ius constituendum*) is an important momentum to address the various weaknesses in current pre-prosecution practices. The government and the House of Representatives are discussing the Draft Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*/KUHAP), which is expected to improve the criminal justice system, including through the restructuring of the pre-prosecution stage (Sudibyo & Saptomo, 2025). Within the framework of the *ius constituendum*, the concept of functional differentiation is maintained as a principle, but with clearer affirmation and renewal of the relevant mechanisms. In essence, the Criminal Procedure Code seeks to address the problem of blurred boundaries between the roles of investigators through several reformulations of its provisions.

First, the KUHAP proposes to strengthen the role of the prosecutor as a *dominus litis* from the initial investigation stage. In contrast to the old Criminal Code where prosecutors tend to passively wait for files, in the new draft, prosecutors are given broader authority to be actively involved in supervising the development of investigations. For example, prosecutors can provide clues early on even before the complete file is submitted, with the aim of ensuring investigators gather important evidence from the beginning (Aridewa & Permana, 2023). This concept does not remove the differentiation of functions, because the prosecutor still does not carry out investigative actions themselves, but plays a role like quality control throughout

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the process. Thus, it is hoped that the back and forth of files can be minimized because from the beginning the two parties have been aligned in the direction of the investigation (Sudibyo & Saptomo, 2025).

Second, the affirmation of time limits in the pre-prosecution stage. One of the legal vacancies in the old Criminal Code is the absence of a clear deadline for prosecutors and investigators when files go back and forth (Indranugraha & Artha, 2019). The KUHAP answers this by setting a strict deadline for each stage (Sofian, 2025). For example, it is formulated that the investigating prosecutor is obliged to give a decision (P-21 or P-19) within a certain time (14 days) from receiving the file from the investigator. If there is no decision within that period, the file is considered legally complete so that the process can continue. On the other hand, if the prosecutor issues a P-19, the investigator is given a strict deadline to complete it (30 days or according to the arrangement). If the investigator is unable to complete within that time, the case can be stopped or re-evaluated in status. This time limit setting is very important to provide legal certainty. It is hoped that there will be no more cases that hang for years in the pre-prosecution stage due to unclear coordination. The deadline also forces both parties to be more disciplined: the prosecutor is more selective in giving instructions (not repeatedly), the investigator is also encouraged to immediately meet the shortcomings according to priorities.

Third, the *ius constituendum* encourages the establishment of an integrated coordination mechanism. One of the innovations discussed is the elimination of the term "pre-prosecution" as a separate stage, while its function is still carried out through coordination from the investigation stage (Sofian, 2025). That is, the mindset being developed is that investigation and prosecution are not completely separate phases but are connected in real time. The Criminal Procedure Code, for example, stipulates the obligation to issue the SPDP promptly (no later than 7 days after the investigation begins, according to Constitutional Court Decision Number 130/PUU-XIII/2015) so that the prosecutor is immediately informed of the case and can monitor it. In addition, the new draft encourages the use of an integrated criminal justice system based on information technology. The integration of electronic systems between the National Police and the Prosecutor's Office allows joint access to the development of case files, records of prosecutors' instructions, and progress in fulfilling those instructions (Aridewa & Permana, 2023). With such a system, coordination no longer relies solely on manual or physical communication but is institutionalized through a shared platform. The advantage is greater transparency: both the investigating supervisor and the prosecutor's supervisor can monitor these pre-prosecution interactions, thereby preventing either party from delaying the process.

Fourth, the regulation of the *ius constituendum* also introduces a stricter control and accountability mechanism. The Criminal Procedure Code contains sanctions or consequences if law enforcement officials violate the specified procedures or deadlines (Sitoresmi, 2018). For example, if the prosecutor is late in examining the case file without apparent justification

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and thereby exceeds the prescribed deadline, there will be a reprimand or administrative consequences. Similarly, if the investigator does not properly follow up on the instructions, they may be sanctioned in accordance with the internal regulations of the National Police. Furthermore, the Criminal Procedure Code considers the possibility of judicial involvement at the pre-prosecution stage through the institution of the Preliminary Examining Judge (*Hakim Pemeriksa Pendahuluan*/HPP). This preliminary judge functions to supervise coercive investigative actions (detention, search, and confiscation) and assess whether the handling of cases is in accordance with legal and human rights standards. Although the HPP primarily focuses on protecting the rights of suspects, its presence also has an impact on pre-prosecution transparency. A preliminary judge can ensure that there is no protracted investigation without certainty. They can encourage prosecutors and investigators to promptly address deficiencies in the case file so that the case can proceed or be discontinued according to the circumstances. In other words, this mechanism serves as a safeguard to ensure that due process of law is enforced from the outset and that bottlenecks in the pre-prosecution process are resolved.

Fifth, the *ius constituendum* accommodates flexibility in resolving cases that were previously handled rigidly. For example, the Criminal Procedure Code discusses the possibility of applying a *restorative justice* approach to certain cases so that not all cases must proceed to formal prosecution (Sofian, 2025). Regarding the differentiation of functions, this means that investigators and public prosecutors must work synergistically in determining the categories of cases that can be resolved outside the court. It is necessary to establish joint guidelines for prosecutors and police on the criteria for case termination based on *restorative justice* or the principle of limited opportunity (Nugraha, 2020). Thus, there is no longer a situation in which responsibility is shifted between institutions when a case should be discontinued; decisions can be made quickly through coordination according to the new legal guidelines.

In the preparation of the Criminal Procedure Code, which has now become the Criminal Procedure Code, debates regarding the principle of functional differentiation had already emerged. There is an opinion that prosecutors should be given investigative authority, as in many civil law countries, so that control over the case remains in the hands of the prosecutor (Purwoleksono, 2015). However, this was opposed on the grounds that it could disrupt the integrated criminal justice system that has been adopted and potentially overlap with the authority of the National Police. Therefore, the compromise that emerged was to maintain the separation of institutions and functions while eliminating sectoral barriers through more detailed arrangements. For example, the Criminal Procedure Code does not place prosecutors in charge of investigations but gives them the authority to request investigators to take certain actions when necessary in the context of prosecution. This is essentially an affirmation of the P-19 practice that has been implemented thus far, but it is regulated more firmly and at an earlier stage. Investigators continue to conduct investigations, but prosecutors may provide input at any time during the process (Rozi, 2017). Supporting legal instruments include the Warrant of Appointment of the Investigating Prosecutor (P-16), which is issued

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immediately after the SPDP, allowing the prosecutor to actively follow the case from an early stage (Tongat, 2022). This differs from the old Criminal Procedure Code, under which the "official" prosecutor became involved only after the first stage of the case file was submitted. This innovation means that the prosecutor becomes an investigator's partner throughout the investigation, rather than merely an evaluator at the end of the process.

In addition to changes at the legal level, the *ius constituendum* requires technical regulations and harmonized institutional SOPs. A Memorandum of Understanding (MoU) or cooperation agreement between the National Police and the Attorney General's Office is needed to regulate technical coordination following the enactment of the new Criminal Procedure Code. Internal SOPs of both institutions should also be updated to establish clear procedures and time limits for fulfilling prosecutorial instructions and coordinating between investigators and prosecutors. For complex cases, an integrated investigation team involving prosecutors and relevant agencies may also be established. Thus, the *ius constituendum* provides a legal basis for strengthening integrated coordination while maintaining functional differentiation.

No less important is the aspect of legal culture. Regulatory reform without changes in bureaucratic culture will be less effective. Therefore, the *ius constituendum* calls for a paradigm shift among law enforcement officials. The mindset of "police vs. prosecutors" must change to "police and prosecutors as a law enforcement unit" with different functions. Joint education and training can be conducted regularly to strengthen understanding of each institution's role. For example, prosecutors need to understand the technical challenges of investigations in the field, while investigators need to understand the requirements of proving a case in court (Firmansyah, 2020). By understanding each other's challenges and needs, sectoral egos can be reduced. Cross-institutional coordination, such as case discussion forums and joint legal clinics, should also be encouraged within reasonable limits to foster a cooperative relationship in case handling.

From the above explanation, the *ius constituendum* affirms functional differentiation through a "separate yet cooperative" approach. The National Police remains responsible for investigation and the Prosecutor's Office for prosecution, while procedures are designed to ensure coordination from the outset. The Criminal Procedure Code provides the legal basis, supported by implementing regulations and institutional policies. This framework aims to make pre-prosecution more effective, efficient, and accountable while protecting the rights of suspects and interests of victims. Ultimately, functional differentiation remains relevant within an integrated criminal justice system based on harmonious coordination and a proportional division of functions.

4. Conclusion

Based on the analysis, the affirmation of the functional differentiation of police investigators at the pre-prosecution stage requires clear boundaries between the functions of investigators and public prosecutors, supported by effective coordination. Investigators remain responsible

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for the technical aspects of investigation and evidence gathering, while public prosecutors assess the juridical sufficiency of the investigation results and their feasibility for prosecution. The prosecutor, as *dominus litis*, may provide instructions for completing the investigation but should not take over the investigator's authority. Conversely, investigators are required to follow up on prosecutorial instructions while retaining independence regarding investigative methods. Therefore, functional differentiation should not create rigid institutional separation but should establish a clear and accountable division of functions that prevents overlapping authority and a *vacuum of responsibility*. Clear criteria for complete case files, measurable deadlines, and effective coordination mechanisms are necessary to prevent repeated P-19 returns and prolonged case handling.

From the perspective of the *ius constituendum*, the functional differentiation of investigators is maintained while the pre-prosecution mechanism is strengthened through clearer and more measurable arrangements. These include earlier and more intensive coordination between investigators and prosecutors, clear time limits and procedures, integrated information systems, supervision mechanisms, and safeguards for the rights of suspects and victims. The framework therefore adopts a "separate yet cooperative" approach, in which institutional functions remain distinct but are coordinated from the beginning of the investigation. To support its implementation, the National Police and the Prosecutor's Office should establish integrated SOPs, strengthen joint education and training, develop electronic case-file integration, conduct periodic coordination forums, and reinforce internal supervision. These measures are expected to create a pre-prosecution process that is effective, efficient, transparent, and accountable while maintaining functional differentiation as a pillar of the rule of law.

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