

The Prosecutor's Authority as "Dominus Litis" in the Draft Criminal Procedure Code in Indonesia

Dedy Wahyudi

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,

E-mail: Dedywahyudi.std@unissula.ac.id

Abstract. *The Indonesian criminal justice system consists of four pillars of law enforcement: the National Police (Polri), Prosecutors, Judges, and Legal Counsel. All four share the common goal of achieving justice, benefit, and legal certainty. Each of these pillars, including the Prosecutor as public prosecutor, is expected to carry out its duties and authorities with high professionalism and integrity. He highlighted the problem of overload or overcapacity of prisoners in detention centers and correctional facilities, which is increasing along with the increase in criminal cases. This is influenced by developments in science and technology, changes in social situations, and shifts in human mindsets. He also highlighted the importance of the Prosecutor's role in anticipating new types of crimes such as legal crimes, factual crimes, and undetected crimes, which arise due to changing times and human intelligence. In practice, Prosecutors are often in a tight position with Legal Counsel and the Panel of Judges, although not all criminal cases face this situation. He noted that dissenting opinions from the Public Prosecutor's team during the legal process are unheard of. To strengthen the performance of Prosecutors, there must be closer collaboration between Polri/PPNS investigators and Public Prosecutors, as regulated in the Draft Criminal Procedure Code.*

Keywords: *Counsel; Judges; Legal; Prosecutors.*

1. Introduction

The principle of Dominus Litis in the Criminal Procedure Code (KUHP) refers to the authority of law enforcement to coordinate with other law enforcement agencies in realizing an integrated justice system in accordance with the duties, functions, and authorities of each institution. This principle has been universally used in various countries, such as Japan, the Netherlands, and France, with an emphasis on prosecutorial authority that rests entirely with the prosecutor. The prosecutor, as the party responsible for the evidentiary process, must face the judge and legal counsel in court. In this case, the prosecutor plays a role in controlling the case from beginning to end, to ensure that the legal process is not

hampered or there is no back and forth between investigators and the public prosecutor (JPU), known as Active Dominus Litis. The Indonesian Attorney General's Office falls under the judicial authority. Currently, the Attorney General's Office is under the executive branch, although it is expected to have independence. According to him, by entering the judicial branch, the Attorney General's Office can carry out its duties more independently in carrying out its prosecutorial function.

The Criminal Procedure Code (KUHAP) plays a crucial role in ensuring that the rights of suspects, defendants, victims, and other parties involved in the legal process are respected. It provides clear guidelines on how criminal proceedings are conducted, from investigation, inquiry, prosecution, to the implementation of court decisions. According to Prof. Dr. Aswanto, the KUHAP must ensure that every stage of the criminal justice system is carried out systematically and in accordance with the law. One of the main objectives of the KUHAP is to prevent abuse of power by law enforcement, such as arbitrary arrest or detention. The KUHAP also regulates detention time limits and certain conditions that must be met in making an arrest. The principle of Dominus Litis in the KUHAP affirms the prosecutor's full authority in controlling criminal cases, from prosecution to execution of the verdict. In the Indonesian criminal justice system, the Prosecutor's Office plays a dominant role in determining the continuation of a case, including stopping or continuing prosecution based on the principles of legality and opportunity. The application of Dominus Litis has several important implications, namely ensuring consistency in law enforcement, with the Prosecutor ensuring that the law is enforced fairly. Furthermore, preventing external intervention by maintaining the independence of the Prosecutor's Office and promoting restorative justice allows Prosecutors to resolve cases in a more humane and efficient manner. As holders of Dominus Litis, Prosecutors have the right to determine whether a case is worthy of proceeding to trial. This gives Prosecutors room to use discretion, especially in cases containing elements of public interest or restorative justice. While this authority is important for achieving legal certainty and justice, the principle of *Dominus Litis* must be balanced with strict oversight mechanisms to ensure that decisions taken reflect the values of justice.

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human intelligence. In practice, Prosecutors are often in a tight position with Legal Counsel and the Panel of Judges, although not all criminal cases face this situation. He noted that dissenting opinions from the Public Prosecutor's team during the legal process are unheard of. To strengthen the performance of Prosecutors, there must be closer collaboration between Polri/PPNS investigators and Public Prosecutors, as regulated in the Draft Criminal Procedure Code. This aims to avoid the process of going back and forth between the Police investigators and the Prosecutor for the Investigation Report (BAP), which often hinders the smooth running of the judicial process.

The Dominus Litis principle has a strong legal basis, including the 1945 Constitution of the Republic of Indonesia (Article 24 paragraph 2), Law No. 16 of 2004 concerning the Prosecutor's Office, Law No. 11 of 2021 concerning Amendments to the Prosecutor's Office Law, Law No. 48 of 2009 concerning Judicial Power, and the Criminal Procedure Code (Law No. 8 of 1981). This principle is also part of the Draft Law on the Criminal Procedure Code (RUU KUHAP). In law enforcement practice, the Dominus Litis principle plays a role in controlling cases in the Integrated Justice System. In this system, all elements of law enforcement agencies work in accordance with their respective duties, functions, and authorities, as regulated in laws and regulations, to create solutions that provide certainty, benefit, and justice. The Integrated Justice System emphasizes the importance of coordination between law enforcement agencies at every stage of the legal process, from investigations, prosecutions, and court hearings. Under the Criminal Procedure Code (KUHP), investigators coordinate with the Public Prosecutor (Article 8 paragraphs 1 and 2) and have the authority to prosecute and enforce court decisions (Articles 137–144). The principle of Dominus Litis also regulates the authority to terminate prosecutions and transfer cases to the courts, as well as the execution of legally binding decisions (Article 270 of the KUHP). The Draft Criminal Procedure Code (RUU KUHAP) must align with the Criminal Code (Law No. 1 of 2023), particularly regarding supervision and coordination between investigations and prosecutions. This is crucial to avoid procedural errors, increase accountability, and ensure clear legal standards. With a more synchronized system, the judicial process is expected to be more efficient, transparent, and avoid overlapping authority between law enforcement agencies.

TOUCHSTONE

The prosecutor's authority in investigative matters has long existed since the enactment of the *Herziene Inlandsch Reglement* (HIR). During the HIR, investigations were part of prosecution. However, prosecutors' investigative authority during the HIR was limited to specific criminal cases, meaning they did not cover all crimes. Because of this limited authority, prosecutors in Indonesia are often considered couriers in handling criminal cases because their task is only to transfer cases to the courts. Even today, the practice of investigation by

prosecutors in Indonesia is still not implemented. This is different in the United States, where the prosecutor's office has the authority to conduct both investigations and prosecutions. Even in the United States, the FBI is under the Attorney General as the highest public prosecutor. Similarly, in Germany, prosecutors in Germany have the right to conduct any form of investigation, either alone or through the police. Prosecutors in Germany have broad investigative powers and authority. In the Netherlands, prosecutors are responsible for the investigative process, meaning prosecutors in the Netherlands also have investigative powers. Police in the Netherlands, in carrying out law enforcement duties, must be under the supervision of a public prosecutor, as regulated in Article 13 of the Dutch Police Act. The United Nations (UN) even declared prosecutors' authority to conduct investigations legal. This study employed legal research, employing comparative, legislative, and conceptual approaches. The results indicate that investigative practices by prosecutors in the United States, Germany, and the Netherlands serve the purpose of law enforcement, enabling prosecutors to be referred to as *Dominus Litis*, or case controllers.