

Position of the Prosecutor as Dominus Litis in the Settlement of Customary Criminal Cases Based on Justice

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Abstract. *Indonesia, as a state based on the rule of law, recognizes the existence of national criminal law as an instrument of law enforcement. In its development, the state also recognizes living law within society, including customary criminal law. This recognition is reflected in Law Number 1 of 2023 concerning the Criminal Code and Government Regulation Number 55 of 2025 concerning Procedures and Criteria for Determining Living Law in Society. In this context, the Prosecutor, as dominus litis, has a very strategic position in determining whether the resolution of customary criminal cases can be integrated into the national criminal justice system. The role of the Prosecutor is crucial because the resolution of customary criminal cases concerns not only legal certainty but also the realization of substantive justice, the restoration of social relations, and the protection of human rights in customary communities. Based on this background, this study formulates several problems, namely: what is the position of the Prosecutor as dominus litis in the current resolution of customary criminal cases, what are the weaknesses of the Prosecutor's position as dominus litis in the resolution of customary criminal cases, and what is the concept of the Prosecutor's position as dominus litis in the justice-based resolution of customary criminal cases. This study uses a normative juridical approach method with analytical descriptive research specifications. The data used are secondary data obtained through literature studies and analyzed qualitatively using the theory of authority, Lawrence Meir Friedman's legal system theory, and the theory of justice. The results of the study indicate that: (1) the position of the Prosecutor as dominus litis in the resolution of customary criminal cases remains attached through the authority to conduct research, control, and assessment of the results of customary deliberations before the case is forwarded to the court as regulated in Article 19 of Government Regulation Number 55 of 2025; (2) the weakness of the Prosecutor's position lies in the absence of clear national parameters regarding the limits, mechanisms, and measures of justice in the resolution of customary criminal acts so that it has the potential to cause differences in interpretation and application of the law; and (3) the position of the Prosecutor based on justice places the Prosecutor as the party that assesses the procedural validity, the substance of customary*

decisions, as well as aspects of recovery and peace so that the resolution of customary criminal acts remains in line with the principles of due process of law, human rights, and the values of justice in the national legal system.

Keywords: *Crime; Dominus; Justice; Living; Prosecutor.*

1. Introduction

Indonesia, as a country based on the rule of law, recognizes national criminal law as the primary instrument of law enforcement. However, the development of the Indonesian legal system has also led to the recognition of existing laws within society, including customary criminal law. This recognition is reflected in Law Number 1 of 2023 concerning the Criminal Code, which provides legal space for customary law as part of the national legal system. The existence of this provision demonstrates a shift in the paradigm of Indonesian criminal law, which is no longer solely oriented towards written law but also accommodates social and cultural values that continue to exist within society.¹

Recognition of customary criminal law is further strengthened through Government Regulation No. 55 of 2025 concerning Procedures and Criteria for Determining Living Law in Society. This regulation establishes guidelines regarding the mechanisms, limitations, and requirements for recognizing customary law to ensure consistency with the principles of the rule of law, Pancasila, the 1945 Constitution of the Republic of Indonesia, and the protection of human rights. Through this framework, the government seeks to integrate customary law into the national criminal justice system in a measured and controlled manner.

In this context, the Public Prosecutor occupies a crucial position as *dominus litis*, or controller of criminal cases. This position stems from the prosecutorial authority granted to the Prosecutor's Office under Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia.² As *dominus litis*, the Public Prosecutor not only acts as a public prosecutor, but also has the authority to determine whether a criminal case should proceed to court or can be resolved through alternative mechanisms recognized by law.

The role of the Public Prosecutor is becoming increasingly important in resolving customary criminal cases. This is because customary dispute resolution through customary deliberations still requires examination and oversight by the Prosecutor's Office before a court decision is issued. This provision is stipulated in Article 19 of Government Regulation Number 55 of 2025, which stipulates that

¹Kansil, Introduction to Indonesian Law and Legal System, Balai Pustaka, Jakarta, 1989, p. 38.

²Sudarto, Criminal Law 1, Sudarto Foundation, Semarang 2009, p. 18.

customary institutions must submit an application to the District Court through the Head of the District Prosecutor's Office to obtain legal recognition for customary settlements.

Despite this, regulations regarding the role of the Public Prosecutor in resolving customary criminal cases continue to raise various legal issues. There are still no clear national parameters regarding the scope of the prosecutor's authority in determining whether customary criminal cases should be terminated or continued through the formal criminal justice process.³ This condition creates the potential for differences in interpretation and disparity in the application of the law, particularly regarding the relationship between the principle of legality and legal recognition that applies in society.

In addition, the implementation of customary criminal law in the national criminal justice system faces several challenges, including the diversity of customary laws across regions, potential conflicts with human rights principles, and the need for harmonization with the formal criminal justice system.⁴ Not all criminal cases with social and cultural dimensions can be appropriately resolved through formal litigation. In certain circumstances, customary resolution is considered more effective in restoring social harmony and achieving substantive justice in society.

A concrete example is the case of a comedian identified by the initials "PG," whose performance material was deemed offensive to traditional Torajan funeral customs. The case was ultimately resolved through customary mechanisms, imposing traditional sanctions in accordance with local customary law. This case illustrates that customary dispute resolution continues to have strong social legitimacy and is often viewed as more effective in restoring social relations than formal criminal penalties. In such situations, the role of the Public Prosecutor as *dominus litis* becomes crucial in determining the most appropriate approach to achieving justice.

Based on the explanation above, it can be concluded that there are still normative gaps and legal uncertainty regarding the position of the Public Prosecutor as *dominus litis* in resolving criminal cases based on customary law. Therefore, a comprehensive legal study is needed to examine the authority of the Public Prosecutor, the limits of the application of customary law, and the standards of justice that must be applied in integrating customary criminal dispute resolution into the national criminal justice system.

2. Research Methods

This research is normative juridical legal research with a descriptive-analytical

³Barda Narawi Arief, *Several Aspects of Criminal Law Enforcement and Development Policy Revised Edition*, Citra Aditya Bakti, Bandung, 2005, p. 136.

⁴Hamzah, A. *Indonesian Criminal Procedure Law*, Sinar Grafika, Jakarta, 2010, p. 78.

approach. Normative juridical research is a legal research method conducted by examining legal norms, legal principles, statutory regulations, legal doctrines, and other secondary legal materials relevant to the problem being studied. According to Peter Mahmud Marzuki, normative legal research is a process aimed at discovering legal rules, legal principles, and legal doctrines to address existing legal problems.⁵ A descriptive-analytical approach is used to provide a systematic description and analysis of the position of the Public Prosecutor as *dominus litis* in the resolution of customary criminal cases within the national criminal justice system. This approach is intended to analyze the implementation of customary criminal law (applicable law), the authority of the Public Prosecutor in reviewing customary resolutions, and the legal weaknesses and aspects of justice in the application of customary criminal dispute resolution in Indonesia.

The approaches applied in this research are the statutory and conceptual approaches. The statutory approach is carried out by examining laws and regulations related to the research topic, including Law Number 1 of 2023 concerning the Criminal Code, Law Number 20 of 2025 concerning the Criminal Code, Government Regulation Number 55 of 2025 concerning Procedures and Criteria for Determining Law Applicable in Society, and Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. Meanwhile, the conceptual approach is carried out by analyzing legal concepts, doctrines, and theories related to *dominus litis*, the authority of the public prosecutor, customary criminal law, restorative justice, and theories of justice.

The data used in this study is secondary data obtained through library research. Secondary legal materials consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include laws and regulations, official records, and legal documents related to the research object. Secondary legal materials consist of books, legal journals, scientific papers, and the opinions of legal experts relevant to the research. Meanwhile, tertiary legal materials include legal dictionaries, encyclopedias, and the Indonesian Language Dictionary (KBBI), which are used to support understanding of legal terminology and concepts.

The data collection method used in this study is library research conducted by examining, reviewing, and studying legal materials related to the research issue. The collected legal materials are then analyzed qualitatively through several stages, namely data collection, classification of legal materials, data reduction, data presentation, and drawing conclusions. Qualitative analysis techniques are used to interpret legal norms systematically and comprehensively in order to obtain legal arguments regarding the position of the Public Prosecutor as *dominus*

⁵Ani Purwati, "Legal Research Methods: Theory and Practice", CV. Jakad Media Publishing, Surabaya, 2020, p. 3.

litis in resolving customary criminal cases based on justice. The analysis in this study is further supported by the theory of authority, the theory of the legal system of Lawrence Meir Friedman, and the theory of justice.

3. Results and Discussion

3.1. The Position of the Prosecutor as Dominus Litis in Resolving Customary Crime Cases

The recognition of customary law in Law Number 1 of 2023 concerning the Criminal Code has brought significant changes to the Indonesian criminal justice system. National criminal law is no longer solely oriented towards written law but also provides space for customary norms that are alive and adhered to within society. This recognition reflects the development of a criminal justice system that is more responsive to Indonesia's social and cultural diversity.

The recognition of customary law was further strengthened through Government Regulation No. 55 of 2025 concerning Procedures and Criteria for Determining Living Customary Law in Society. This regulation establishes a mechanism for resolving customary criminal offenses as part of the national legal system. This regulation demonstrates that the state has begun to integrate customary dispute resolution into the criminal justice system, provided it does not conflict with national law and human rights principles.

Within this mechanism, the Prosecutor's Office holds a crucial position because the resolution of customary criminal cases must be submitted to the District Court through the Head of the District Prosecutor's Office. This provision demonstrates that the Prosecutor's Office functions as a bridge between customary institutions and the national criminal justice system. Therefore, the resolution of customary criminal cases is not entirely outside the state legal system but remains under the supervision of law enforcement agencies.

The prosecutor's role in resolving customary crimes is not merely administrative but also reflects their role as dominus litis, or controller of criminal cases. Under Law Number 11 of 2021 concerning the Indonesian Prosecutor's Office, prosecutors have the authority to determine whether a criminal case should proceed within the criminal justice system. This authority remains even when the case is resolved through customary mechanisms.

The strengthening of the prosecutor's role is clearly evident in the Decree of the Deputy Attorney General for Serious Crimes No. B-624/E/Ejp/02/2026 concerning the Settlement of Customary Crimes. Under this regulation, the Chief Prosecutor is required to conduct research and examination of customary settlement results before submitting them to the court. This demonstrates that public prosecutors not only perform administrative functions but also conduct legal assessments of customary settlements.

The public prosecutor's examination covers several important aspects, such as ensuring that the customary violation actually exists and is recognized within the local customary community. The public prosecutor must also ensure that the violation does not violate the provisions of Law Number 1 of 2023 concerning the Criminal Code. This assessment is crucial to ensuring that customary resolutions remain aligned with national criminal law.

In addition to examining the legal basis for customary violations, the public prosecutor also verifies the identities of the perpetrators and victims and ensures that the customary deliberation process involves all relevant parties. The involvement of customary institutions, perpetrators, victims, customary communities, and relevant authorities is necessary to ensure that the resolution process is conducted openly, fairly, and with social legitimacy within the customary community.⁶

Prosecutors also have the authority to ensure that customary sanctions do not contain elements of violence, discrimination, or degradation of human dignity. Furthermore, prosecutors must ensure that customary sanctions are fully implemented and are able to restore social harmony within the community. This demonstrates that the role of prosecutors is not solely focused on punishment but also directed at restoring social balance through a restorative justice approach.

From the perspective of Lawrence Meir Friedman's legal systems theory, the position of the prosecutor can be analyzed through three elements: legal structure, legal substance, and legal culture. Structurally, the Prosecutor's Office functions as an institution that receives, examines, and forwards customary resolutions to the court.⁷ From a legal substantive perspective, the public prosecutor's authority is based on various legal regulations that recognize customary law within the national legal system. Meanwhile, from a legal cultural perspective, customary resolution reflects the community's continued belief in deliberation-based dispute resolution as a means of establishing peace and restoring social relations.⁸

Based on the theory of justice, the prosecutor's position as *dominus litis* aims to maintain a balance between legal certainty and the community's sense of justice. Prosecutors must ensure that customary settlements are carried out voluntarily, do not violate human rights, and provide justice for victims, perpetrators, and indigenous communities. Thus, the prosecutor's role in resolving customary

⁶Yobel Kore, "The Influence of Legal Culture on the Effectiveness of Corruption Eradication in Indonesia: A Review of the Legal System," *Al-Zayn: Journal of Social Sciences & Law* 3, No. 5 (2025): p. 6401.

⁷Lawrence M. Friedman, *Legal Systems: A Social Science Perspective* (Bandung: Nusamedia, 2019), p. 17.

⁸Fahrizal Siagian, "Optimizing Lawrence Meir Friedman's Legal System Theory in the Authority to Investigate Corruption Crimes in Indonesia," *JUSTICES: Journal of Law* 2, No. 4 (2023): p. 193.

crimes demonstrates that customary law and state law can coexist in realizing substantive justice in society.⁹

3.2. Weaknesses of the Prosecutor's Position as Dominus Litis in Resolving Customary Crime Cases

The recognition of living law through Law No. 1 of 2023 concerning the Criminal Code and Government Regulation No. 55 of 2025 reflects a transformation in Indonesia's criminal justice system. The national legal system no longer relies solely on written law as the primary basis for criminal liability, but also begins to recognize the values of customary law that continue to exist and develop within society. This recognition represents the state's acknowledgment that indigenous communities have their own conflict resolution mechanisms that have been practiced for generations. In many regions, customary resolution is considered more capable of restoring social harmony, maintaining intercommunity relations, and creating lasting peace than formal criminal proceedings, which are often viewed as punitive and rigid.¹⁰

The existence of criminal justice systems based on customary law also demonstrates that Indonesian society still maintains a strong connection to local cultural values and a collective approach to justice. In customary communities, dispute resolution aims not only to punish perpetrators but also to restore balance between individuals, families, and society as a whole. Through deliberation and reconciliation, customary law seeks to repair damaged social relationships and prevent prolonged conflict within the community. Consequently, many indigenous communities continue to trust customary institutions, as they are perceived as more aligned with local traditions and social expectations than formal justice institutions.

Although customary law is recognized in the national legal system, the implementation of customary law-based criminal resolution still faces significant legal weaknesses. Government Regulation No. 55 of 2025 does provide the opportunity to resolve criminal cases through customary mechanisms, but it does not specify in detail the categories of crimes that can be resolved through customary law, the standards for successful reconciliation, or the objective criteria that public prosecutors must apply when assessing the validity of customary resolutions.¹¹ The absence of clear and comprehensive regulations creates

⁹Yamani Naufal and Dian May Syifa, "Responsive Reformulation of Consumer Protection Law in the Digital Era: A Perspective of Lawrence M. Friedman's Legal System Theory," *Jurisprudence: Journal of Sharia Science, Legislation and Islamic Economics* 18, No. 1 (2026): p. 244.

¹⁰Teguh Hariyono, "Penal Mediation as an Alternative Effort to Resolve Criminal Cases Outside the Court," *Journal of Law Enforcement and Justice* 2, No. 1 (2021): p. 10.

¹¹Yakub Biyagi Panjaitan and Dewi Ayu Rahayu, "Customary Law as an Alternative for Resolving Criminal Cases in a Restorative Justice Approach," *MLJ Merdeka Law Journal* 5, No. 2 (2024): p. 191.

uncertainty in practice because law enforcement officers often lack uniform guidance in evaluating customary dispute resolution processes.

The lack of clear national standards is further complicated by the fact that each indigenous community has distinct cultural values, social structures, and settlement traditions. Customary law in Indonesia is highly localized, meaning that each region may implement different procedures, sanctions, and deliberation mechanisms. Consequently, a settlement deemed legitimate and fair in one community may not be recognized in another. This diversity creates challenges for public prosecutors, as they must evaluate customary settlements within a highly diverse cultural context while adhering to national legal principles.

In this context, public prosecutors occupy a central position as *dominus litis* because they have authority over the continuation of criminal proceedings within the national criminal justice system. Public prosecutors are responsible not only for prosecuting criminal offenses but also for determining whether customary settlements are acceptable as legitimate resolutions of criminal disputes. Their role places them at the intersection of state law and customary law, requiring them to balance legal certainty with respect for indigenous traditions.¹² However, this authority is weakened by the absence of detailed national guidelines that clearly stipulate how public prosecutors should assess customary settlements.

Another weakness arises from the fact that Government Regulation No. 55 of 2025 largely delegates the regulation of customary criminal law to regional governments and indigenous communities. As a result, each region can establish different classifications of customary violations, different forms of sanctions, and different customary deliberation procedures. In some regions, certain violations may be deemed fully resolved through payment of customary fines and inter-family reconciliation, while in others the same acts may still be deemed to require formal criminal prosecution. These differences make it difficult to achieve consistency within the national criminal justice system.

The diversity of customary settlement mechanisms creates serious challenges for public prosecutors in carrying out their role as *dominus litis*. Public prosecutors are required to ensure that customary settlements do not conflict with the provisions of the National Criminal Code, constitutional values, human rights principles, or the rule of law. At the same time, they must also respect the autonomy of indigenous communities in resolving disputes in accordance with their own legal traditions.¹³ This situation often places public prosecutors in a difficult position because they must determine the right balance between

¹²Renhard Imanuel et al., "The Existence of Customary Sanctions in the Perspective of the Indonesian Criminal Justice System," *Al-Zayn: Journal of Social Sciences & Law* 4, No. 2 (2026): pp. 6027.

¹³Yuni Ginting, "Resolving Criminal Cases Outside the Court Based on the *Ultimum Remedium* Principle," *The Prosecutor Law Review* 2, No. 1 (2024): p. 44.

protecting customary values and upholding national legal standards.

The lack of uniform national parameters also creates legal uncertainty in the enforcement of customary criminal law. In some cases, customary agreements may be recognized as sufficient grounds for ending criminal proceedings, while in other similar cases, the same type of agreement may be rejected by prosecutors or the courts. This inconsistency creates the perception that the recognition of customary agreements relies heavily on the subjective interpretations of individual law enforcement officers rather than objective legal standards. This situation undermines public confidence in the consistency and fairness of the criminal justice system.

Legal uncertainty resulting from inconsistent recognition of customary agreements can also lead to injustice for perpetrators, victims, and indigenous communities. Indigenous communities may feel that their legal traditions are not consistently respected by the state, while perpetrators may experience unequal treatment depending on the region where the case occurs. Victims may also question whether customary agreements truly protect their rights or simply prioritize communal harmony over individual justice. Consequently, the lack of standardization can undermine legal certainty and substantive justice in the criminal justice system.

Another significant weakness concerns the potential for abuse of customary settlement mechanisms. Ideally, customary settlements are intended to restore social balance and foster reconciliation between the parties involved. However, in certain situations, customary mechanisms can be used as a means to avoid criminal liability for serious violations. This risk is exacerbated when there are no clear legal standards limiting the types of cases that can be resolved through customary law. Without proper oversight, customary settlements can be manipulated to protect perpetrators from formal legal consequences.

In many indigenous communities, strong social pressure can influence victims to accept reconciliation even when they do not truly agree with the settlement. Therefore, prosecutors face the difficult task of determining whether customary settlements truly reflect voluntary agreements or whether they are the result of coercion, intimidation, or unequal power relations within the community.¹⁴ This assessment is made even more difficult by the absence of detailed national guidelines that provide objective standards for evaluating the fairness and legitimacy of customary reconciliation agreements.

The weaknesses in prosecutors' authority are also influenced by differences in understanding of customary law and local culture among law enforcement officials. Not all prosecutors have adequate knowledge of indigenous traditions,

¹⁴ Khairul Riza et al., "Legal Certainty in Aceh Customary Court Decisions in the Settlement of Theft Crimes," *Scientific Journal of Law and Human Rights* 2, No. 1 (2022): p. 43.

social values, or customary dispute resolution mechanisms in each region. These limitations often create difficulties when prosecutors are required to assess whether customary sanctions comply with national legal principles and human rights standards. Consequently, decisions regarding customary resolution can vary widely between prosecutors and jurisdictions.

From the perspective of Lawrence Meir Friedman's legal systems theory, these weaknesses can be analyzed through the elements of legal structure, legal substance, and legal culture. From a legal structural perspective, coordination between prosecutors, customary institutions, local governments, and courts has not been effective due to the lack of a uniform technical mechanism for oversight, assessment standards, and implementation procedures. Weak institutional coordination undermines the consistency of customary criminal law enforcement within the national legal system.

From a legal substantive perspective, existing regulations regarding customary criminal resolution remain too general and open to wide interpretation. These regulations do not clearly define the limits of public prosecutors' authority, the categories of customary crimes eligible for resolution, or the indicators of restorative justice that must be met. Meanwhile, from a legal culture perspective, the distinction between state law and customary law continues to shape public perceptions of justice. Indigenous communities often prioritize harmony and reconciliation between communities, while the national legal system emphasizes legal certainty, procedural fairness, and the protection of human rights.

Therefore, the prosecutor's position as *dominus litis* in resolving customary criminal cases still requires substantial legal reform. More comprehensive national regulations are needed to establish clear standards regarding the categories of customary criminal cases, settlement procedures, indicators of restorative justice, and the limits of the public prosecutor's authority to accept or reject customary resolutions. Through clearer and more uniform legal guidelines, prosecutors will be better able to balance respect for customary law with the principles of legal certainty, justice, and human rights protection within Indonesia's national criminal justice system.

3.3. The Position of the Prosecutor as *Dominus Litis* in the Settlement of Customary Criminal Cases Based on Justice

The justice-based position of public prosecutors in resolving customary crimes reflects a significant expansion of the prosecutor's function within the Indonesian criminal justice system. Public prosecutors are no longer viewed solely as prosecutors whose role is limited to seeking punishment for perpetrators of crimes in court. Instead, public prosecutors are increasingly expected to act as legal actors who maintain a balance between legal certainty, social justice, and the protection of human rights. In the context of resolving customary crimes, public

prosecutors occupy a strategic position because they must ensure that the resolution process truly reflects justice for all parties involved while remaining consistent with the principles of the rule of law.¹⁵ This development indicates a shift in the orientation of criminal law enforcement from a purely punitive approach to a more restorative and socially responsive approach.

The recognition of living law through Law No. 1 of 2023 concerning the Criminal Code and Government Regulation No. 55 of 2025 demonstrates that the Indonesian criminal justice system has begun to provide greater space for customary dispute resolution mechanisms. The state recognizes that indigenous communities have legal systems and conflict resolution traditions that existed and functioned long before the establishment of the modern national legal system. This recognition is important because customary resolutions are often considered more capable of restoring social relations, maintaining communal harmony, and achieving peace within communities than formal criminal proceedings. Formal justice mechanisms are often viewed as rigid and primarily focused on punishment, while customary deliberation prioritizes reconciliation and collective balance within society.

In their position as *dominus litis*, prosecutors have the authority to evaluate the appropriateness of customary settlements before they can be recognized within the national legal framework. This authority is crucial because not all customary settlements automatically meet the standards of justice required by national law. Prosecutors must carefully assess whether customary dispute resolution processes genuinely protect the rights of victims, perpetrators, and communities, while ensuring compliance with constitutional principles and human rights standards.¹⁶ Therefore, the role of the public prosecutor goes beyond administrative oversight and enters the realm of assessing substantive justice. In this context, the public prosecutor acts as a guardian, ensuring that customary resolutions do not undermine legal certainty or create injustice under the guise of cultural recognition.

The justice-based position of public prosecutors is clearly evident in their authority to examine the procedural legitimacy of customary deliberations. Public prosecutors must ensure that customary dispute resolution processes are conducted by legitimate customary institutions that are truly recognized by the indigenous communities concerned. The legitimacy of these institutions is crucial because the validity of customary resolutions depends not only on formal agreements but also on trust and social recognition within the community itself. If

¹⁵Nabilla N. Afifah, "Comparison between the Restorative Justice Approach and the Customary Punishment Approach in Cases of Minor Crimes," *Syntax Idea* 6, No. 6 (2024): p. 2810.

¹⁶Fabrizio Richardo Marvil Wanggai et al., "The Implementation of Living Law in the New Criminal Code and Its Impact on the Principle of Legality and Legal Certainty in Indonesia," *Al-Zayn: Journal of Social Sciences & Law* 4, No. 1 (2026): p. 6996.

resolutions are conducted by individuals or institutions lacking customary authority, the results can lack legal legitimacy and social acceptance. Therefore, public prosecutors play a crucial role in verifying that customary mechanisms are conducted through appropriate and recognized institutions.

In addition to assessing the legitimacy of customary institutions, public prosecutors must also examine the fairness of the deliberation process itself. Prosecutors are responsible for ensuring that perpetrators, victims, family members, and other relevant parties participate voluntarily without pressure, intimidation, threats, or coercion from any party. Voluntary participation is a fundamental principle in achieving true restorative justice, as reconciliation that occurs under duress cannot truly reflect justice or mutual agreement.¹⁷ Therefore, the role of the public prosecutor goes beyond administrative oversight and enters the realm of assessing substantive justice. In this context, the public prosecutor acts as a guardian, ensuring that customary resolutions do not undermine legal certainty or create injustice under the guise of cultural recognition.

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In addition to assessing the legitimacy of customary institutions, public prosecutors must also examine the fairness of the deliberation process itself. Prosecutors are responsible for ensuring that perpetrators, victims, family members, and other relevant parties participate voluntarily without pressure, intimidation, threats, or coercion from any party. Voluntary participation is a fundamental principle in achieving true restorative justice, as reconciliation that occurs under duress cannot truly reflect justice or mutual agreement.¹⁸ Customary dispute resolution mechanisms generally prioritize deliberation, reconciliation, and collective balance over punishment alone. Therefore, prosecutors must ensure that the enforcement of justice in customary dispute resolution truly

¹⁷Bismar Siregar, "Living Law and Social Dynamics: Integration of Local Wisdom Values into National Law," *Lex Lectio Law Journal* 4, No. 1 (2025): p. 20.

¹⁸Khaoeirun Nissa, "The Existence of Living Law as a Reason for Eliminating Illegal Nature in Court Decisions Post-National Criminal Code," *Al-Zayn: Journal of Social Sciences & Law* 4, No. 2 (2026): p. 6781.

reflects the broader social interests of the community while protecting individual rights.

The role of prosecutors is becoming increasingly important because they must ensure that customary resolutions truly reflect the community's sense of justice, not merely serve as administrative tools to close criminal cases. Prosecutors are required to assess whether the results of customary deliberations provide balanced protection for perpetrators, victims, and indigenous communities. This responsibility demonstrates that prosecutors carry out not only formal prosecutorial duties but also broader social functions in maintaining justice, stability, and harmony in society. Consequently, prosecutors play an active role in maintaining the legitimacy of state law and customary law within the broader legal system.

The justice-based authority of prosecutors is also reflected in their responsibility to ensure that customary deliberations are conducted legally and fairly. Prosecutors must verify that all parties participated voluntarily and that the customary institution conducting the resolution truly enjoys legitimacy within the customary community. This procedural assessment is crucial because resolutions conducted through illegitimate processes can lead to injustice and violate the principles of due process. In this context, prosecutors serve as guardians of procedural justice while ensuring that customary dispute resolution mechanisms maintain public trust and social legitimacy.

Hans Kelsen's theory of justice, which views law as a social order designed to create balance and stability in society, can be seen in the authority exercised by prosecutors in resolving customary crimes. Prosecutors ensure that customary law operates within the framework of national law and does not conflict with constitutional principles or human rights protections.¹⁹ Their authority to examine procedural legitimacy and substantive fairness reflects an effort to align customary law with the principles of a modern rule of law. Through this role, prosecutors help ensure that the recognition of customary law contributes to social order and justice, rather than creating legal inconsistencies or uncertainty.

From the perspective of authority theory, every action taken by state officials must be based on the legal authority granted by law. The involvement of prosecutors in customary criminal resolution stems from Law Number 11 of 2021 concerning the Prosecutor's Office, Law Number 1 of 2023 concerning the Criminal Code, and Government Regulation Number 55 of 2025. These regulations authorize prosecutors to monitor, examine, accept, revise, or reject customary resolutions before they are officially recognized in the national legal system. Therefore, although the state recognizes the existence of customary law, this recognition

¹⁹Orin Gusta Andini, "Dissecting Living Law in the 2023 Criminal Code from the Perspective of Criminalization and Types of Sanctions," *Jurnal Yuridis* 11, No. 2 (2024): p. 360.

does not eliminate state oversight of criminal law enforcement. Instead, public prosecutors remain central actors responsible for ensuring that customary resolutions are implemented consistently with justice, legal certainty, protection of human rights, and the principles of the rule of law within Indonesia's national criminal justice system.

4. Conclusion

Based on research and discussion, the prosecutor's position as *dominus litis* in resolving customary criminal cases still raises uncertainty regarding the limits of their authority in integrating customary resolutions into the national criminal justice system. Article 19 of Government Regulation Number 55 of 2025 stipulates that the results of customary deliberations must be submitted to the Head of the District Court through the Head of the District Attorney's Office. However, the regulation does not clearly explain whether prosecutor function solely as administrative intermediaries or continue to implement the *dominus litis* principle in determining whether customary resolutions should be accepted or rejected. In practice, prosecutors continue to exercise control over criminal cases because they are authorized to examine the results of customary deliberations before they are submitted to the court. However, the implementation of this authority still faces several weaknesses, including the absence of clear national standards regarding the mechanisms, limits, and parameters of justice in customary criminal resolutions, as well as differences in customary law regulations across regions that can lead to legal uncertainty and inconsistent interpretations among law enforcement officials. In addition to acting as the controller of criminal cases, prosecutors in justice-based customary criminal resolution also act as law enforcement officers responsible for maintaining a balance between legal certainty, human rights protection, and the values of justice within customary communities. In exercising their authority, prosecutors assess the procedural legitimacy of customary deliberations, ensure that all parties participate voluntarily, evaluate the substance of customary decisions to ensure they do not conflict with Pancasila, human rights principles, and the principle of due process, and ensure social recovery and reconciliation within customary communities. If a customary resolution meets procedural requirements, substantive justice, and the goals of social recovery, prosecutors may accept and forward the application for court approval. Conversely, if there are human rights violations, administrative deficiencies, or inconsistencies with national law, prosecutors have the authority to request revisions or reject customary resolutions and direct the case to be resolved through the formal criminal justice process.

5. References

Journals:

- Kornelius Benuf dan Muhamad Azhar, "Metode Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer", dalam *Jurnal Gema Keadilan*, Volume 7 Edisi I, Fakultas Hukum Universitas Diponegoro, 2020.
- Yobel Kore, "Pengaruh Budaya Hukum terhadap Efektivitas Pemberantasan Korupsi di Indonesia: Tinjauan dari Sistem Hukum", dalam *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, Vol. 3 No. 5, 2025.
- Fahrizal Siagian, "Optimizing Lawrence Meir Friedman's Legal System Theory in the Authority to Investigate Corruption Crimes in Indonesia", dalam *JUSTICES: Journal of Law*, Vol. 2 No. 4, 2023.
- Yamani Naufal dan Dian May Syifa, "Responsive Reformulation of Consumer Protection Law in the Digital Era: A Perspective of Lawrence M. Friedman's Legal System Theory", dalam *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan dan Ekonomi Islam*, Vol. 18 No. 1, 2026.
- Teguh Hariyono, "Mediasi Penal sebagai Alternatif Upaya Penyelesaian Perkara Pidana di Luar Pengadilan", dalam *Jurnal Penegakan Hukum dan Keadilan*, Vol. 2 No. 1, 2021.
- Yakub Biyagi Panjaitan dan Dewi Ayu Rahayu, "Hukum Adat sebagai Alternatif Penyelesaian Perkara Pidana dalam Pendekatan Restorative Justice", dalam *MLJ Merdeka Law Journal*, Vol. 5 No. 2, 2024.
- Renhard Imanuel et al., "Eksistensi Sanksi Adat dalam Perspektif Sistem Peradilan Pidana Indonesia", dalam *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, Vol. 4 No. 2, 2026.
- Yuni Ginting, "Penyelesaian Perkara Pidana di Luar Pengadilan Berdasarkan Asas Ultimum Remedium", dalam *The Prosecutor Law Review*, Vol. 2 No. 1, 2024.
- Khairul Riza et al., "Kepastian Hukum terhadap Putusan Peradilan Adat Aceh dalam Penyelesaian Tindak Pidana Pencurian", dalam *Jurnal Ilmiah Hukum dan Hak Asasi Manusia*, Vol. 2 No. 1, 2022.
- Nabilla N. Afifah, "Perbandingan antara Pendekatan Keadilan Restoratif dan Pendekatan Hukuman Adat dalam Kasus Tindak Pidana Ringan", dalam *Syntax Idea*, Vol. 6 No. 6, 2024.
- Fabrizio Richardo Marvil Wanggai et al., "Penerapan Living Law dalam KUHP Baru dan Pengaruhnya terhadap Asas Legalitas serta Kepastian Hukum di Indonesia", dalam *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, Vol. 4 No. 1, 2026.
- Bismar Siregar, "Living Law dan Dinamika Sosial: Integrasi Nilai-Nilai Kearifan Lokal ke dalam Hukum Nasional", dalam *Lex Lectio Law Journal*, Vol. 4 No. 1, 2025.
- Khaoeirun Nissa, "Eksistensi Hukum yang Hidup (Living Law) sebagai Alasan Penghapus Sifat Melawan Hukum dalam Putusan Pengadilan Pasca KUHP Nasional", dalam *Al-Zayn: Jurnal Ilmu Sosial & Hukum*, Vol. 4 No. 2, 2026.

Orin Gusta Andini, "Membedah Living Law dalam KUHP 2023 dari Perspektif Pidana dan Jenis Sanksi", dalam *Jurnal Yuridis*, Vol. 11 No. 2, 2024.

Books:

C.S.T. Kansil, 1989, *Pengantar Ilmu Hukum dan Tata Hukum Indonesia*, Jakarta, Balai Pustaka.

Sudarto, 2009, *Hukum Pidana 1*, Semarang, Yayasan Sudarto.

Barda Nawawi Arief, 2005, *Beberapa Aspek Kebijakan Penegakan dan Pengembangan Hukum Pidana Edisi Revisi*, Bandung, Citra Aditya Bakti.

Andi Hamzah, 2010, *Hukum Acara Pidana Indonesia*, Jakarta, Sinar Grafika.

Ani Purwati, 2020, *Metode Penelitian Hukum Teori dan Praktek*, Surabaya, CV. Jakad Media Publishing.

Lawrence M. Friedman, 2019, *Sistem Hukum: Perspektif Ilmu Sosial*, Bandung, Nusamedia.