

Legal Analysis of The Position of The Prosecutor as Dominus Litis and The Limits of Prosecution Discretion Within The Framework of Due Process of Law

Hafid Maulana Satria Wisnu Hakim

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: hafidmaulanasatriawisnuhakim.std@unissula.ac.id

Abstract. *The prosecutor's position as Dominus Litis places the Indonesian Attorney General's Office as an institution with central authority in determining the continuation of the prosecution process of a criminal case. The strengthening of this authority is in line with the development of the criminal justice system and regulations regarding prosecutorial discretion that provide space for prosecutors to determine case handling policies based on legal considerations and the public interest. On the other hand, the use of prosecutorial discretion has the potential to lead to abuse of authority if not limited by the principle of Due Process of Law. The problems in this study include the position of the prosecutor as dominus litis, the implementation of prosecutorial discretion, and the limits of prosecutorial discretion within the framework of Due Process of Law. This research is a normative legal study using statutory, conceptual, and comparative approaches. The research data consists of primary, secondary, and tertiary legal materials analyzed qualitatively. The research results show that prosecutors, as dominus litis, have the authority to determine the direction and continuation of the prosecution process in the Indonesian criminal justice system. The exercise of prosecutorial discretion is a consequence of this authority to realize effective law enforcement and justice. However, the use of prosecutorial discretion is not absolute and must be implemented based on the principles of legality, equality before the law, the presumption of innocence, proportionality, accountability, transparency, and protection of human rights as a manifestation of Due Process of Law. Therefore, an effective oversight and accountability mechanism is needed to prevent abuse of authority and ensure the realization of justice, legal certainty, and legal benefits in the Indonesian criminal justice system.*

Keywords: *Criminal Justice System; Due Process of Law; Dominus Litis; Prosecutorial Discretion; Prosecutor.*

1. Introduction

Indonesia is a state based on law. In the modern concept of a state based on law, the implementation of state power must be based on law and uphold the protection of human rights. Indonesia as a state based on law is expressly affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that "Indonesia is a state based on law." This provision indicates that all actions of state administrators, including law enforcement officers, must be carried out based on the principles of legality, justice, and respect for human rights.

The concept of the rule of law (*rechtstaat*) essentially developed within the Continental European legal tradition, which places law as supreme in state governance. The concept of *rechtstaat* subsequently influenced the Indonesian legal system, a country that adheres to the civil law tradition. From this perspective, law functions not only as a tool of power but also as an instrument limiting state power to protect citizens' rights from arbitrary action.

The principle of the rule of law is also reflected in the provisions of Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that all citizens have equal standing before the law and government and are obliged to uphold the law and government without exception. In addition, the protection of human rights in the law enforcement process is also guaranteed in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that everyone has the right to recognition, guarantees, protection and certainty of fair law and equal treatment before the law.

Furthermore, Article 28G paragraph (1) of the 1945 Constitution of the Republic of Indonesia guarantees protection of the personal life, honor, dignity, and sense of security of every citizen. Meanwhile, Article 28I paragraph (4) emphasizes that the protection, advancement, enforcement, and fulfillment of human rights are the responsibility of the state, especially the government. These constitutional provisions serve as a philosophical and normative basis that every exercise of law enforcement authority, including the authority to prosecute by prosecutors, must be carried out professionally, proportionally, and not in conflict with the principle of due process of law.

Thus, the position of the prosecutor as *dominus litis* in the criminal justice system cannot be understood solely as a form of state authority in carrying out prosecution, but must also be placed within the framework of a state based on law that upholds the supremacy of law, protection of human rights, and the principle of justice.

The criminal justice system is an integral mechanism designed to combat crime while ensuring the protection of human rights. Within the framework of a state based on the rule of law (*rechtstaat*), the criminal justice system functions not

only as a repressive instrument but also as a means to achieve justice, legal certainty, and benefit.¹Therefore, the implementation of the criminal justice system must be carried out in an integrated, accountable manner, and oriented towards protecting individual rights.

From a theoretical perspective, the modern criminal justice system cannot be separated from two main models, namely the crime control model and the due process model as put forward by Herbert L Packer.²The crime control model emphasizes efficiency and effectiveness in crime prevention, while the due process model emphasizes the importance of protecting human rights through fair legal procedures. In practice, these two models often find themselves in a competitive position.

In the Indonesian context, the criminal justice system consists of several subsystems: the police, the prosecution, the courts, and correctional institutions. Among these subsystems, the prosecution plays a strategic role as a liaison between the investigation and the trial phase.³This position places the prosecutor as a central actor in determining the direction and continuation of a criminal case.

Conceptually, this position is known as *dominus litis*, meaning the party with the authority to control a criminal case. In this capacity, the prosecutor has the authority to determine whether a case is worthy of prosecution.⁴This concept emphasizes that prosecutors not only function as enforcers of laws, but also as strategic decision makers in the criminal justice system.

In international literature, the position of the prosecutor as *dominus litis* is often equated with the concept of "gatekeeper of the criminal justice system," namely the party who has the authority to filter cases that enter the court.⁵This shows that the prosecutor's authority has very broad implications, both for individuals who come into conflict with the law and for the effectiveness of the criminal justice system as a whole.

This authority is basically manifested in the form of prosecutorial discretion, namely the freedom that prosecutors have to make decisions based on legal considerations, public interest, and justice.⁶This discretion covers various aspects, from determining the continuation of the case, choosing the type of

¹Mardjono Reksodiputro, *Indonesian Criminal Justice System*, UI Press, Jakarta, 1993, p. 15.

²Herbert L. Packer, *The Limits of the Criminal Sanction*, Stanford University Press, California, 1968, p. 163.

³Andi Hamzah, *Indonesian Criminal Procedure Law*, Sinar Grafika, Jakarta, 2016, p. 45.

⁴Adami Chazawi, *Criminal Law Lessons*, RajaGrafindo Persada, Jakarta, 2014, p. 102

⁵Angela J. Davis, "The American Prosecutor: Independence, Power, and the Threat of Tyranny," *Iowa Law Review*, Vol. 86, no. 2, 2001, p. 393–465.

⁶Wayne R. LaFave, Jerold H. Israel, Nancy J. King, and Orin S. Kerr, *Criminal Procedure*, 6th Edition, West Academic Publishing, St. Paul, 2017, p. 94.

charge, to stopping the prosecution.

In the development of modern legal systems, prosecutorial discretion is inevitable. This is due to the limitations of written law in regulating all possible concrete events, as well as the need for flexibility in law enforcement.⁷In addition, discretion also serves to optimize the use of limited resources in the criminal justice system.

However, this broad discretionary authority is not without its share of problems. One major issue is the potential for abuse of power, which can lead to injustice and human rights violations.⁸In practice, uncontrolled discretion can lead to disparities in the handling of cases with similar characteristics.

Empirical research shows that prosecutorial decisions are influenced not only by legal aspects but also by non-legal factors, such as social considerations, institutional pressures, and perceptions of the case's chances of success in court. This situation suggests that prosecutorial discretion has a significant degree of subjectivity, requiring clear limiting mechanisms.

2. Research Methods

Legal research is basically a scientific activity based on certain methods, systematics and thinking which aims to study one or several specific legal phenomena by analyzing them, apart from that, an in-depth examination of the legal facts is also carried out to then try to find a solution to the problems that arise in the phenomenon in question.⁹Research is a (scientific) suggestion for the development of science and technology, so the research methodology applied must always be adapted to the science that is its parent.¹⁰

3. Results and Discussion

3.1. The Position of the Prosecutor as Dominus Litis in the Indonesian Criminal Justice System

1. The Position of Prosecutors in the Indonesian Criminal Justice System

The criminal justice system is a mechanism involving various interconnected law enforcement institutions to combat crime and enforce criminal law. Within this system, the police, prosecutors, courts, and correctional institutions have distinct but interrelated functions to achieve the goals of law enforcement, namely, legal

⁷Muladi, *Selected Chapters on the Criminal Justice System*, Diponegoro University Publishing Agency, Semarang, 1995, p. 78.

⁸Barda Nawawi Arief, *Criminal Law Policy*, Kencana, Jakarta, 2010, p. 56.

⁹Bambang Sunggono, *Legal Research Methodology*, Rajawali Pers, Jakarta, 2010, p. 38.

¹⁰Soerjono Soekanto and Sri Mamudji, *Normative Legal Research: A Brief Review*, RajaGrafindo Persada, Jakarta, 2007, p. 1.

certainty, justice, and legal benefit.¹¹Therefore, the effectiveness of the criminal justice system is largely determined by the ability of each subsystem to carry out its duties and authorities in a coordinated manner.

Within the Indonesian criminal justice system, the Prosecutor's Office (Public Prosecutor's Office) occupies a strategic position, serving as the link between the investigation and the court proceedings. This position gives the Prosecutor a crucial role in determining whether a criminal case meets the requirements for trial or requires other legal action in accordance with statutory provisions.¹²Thus, the Prosecutor not only functions as a prosecutor, but also plays a role in controlling the direction of the resolution of criminal cases.

The Prosecutor's Office's position as a law enforcement agency is affirmed in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. This law affirms that the Prosecutor's Office is a government institution that exercises state power in the field of prosecution and other authorities under the law.¹³These provisions indicate that the prosecution function is the main authority granted by the state to the Prosecutor's Office in the criminal justice system.

From the perspective of the criminal justice system, prosecution is not simply an administrative step after the investigator has completed an investigation. It is the process that determines whether the investigation's findings meet the formal and material requirements for submission to the court. Therefore, prosecutors have the authority to assess the completeness of case files, provide guidance to investigators, and determine whether a case is fit to proceed to trial.¹⁴This authority shows that the position of the Prosecutor has a central role in determining the effectiveness of the criminal law enforcement process.

The role of prosecutors in the criminal justice system is also related to the principle of integration (integrated criminal justice system). This principle requires all law enforcement agencies to work in a unified manner to achieve common goals in law enforcement. According to Mardjono Reksodiputro, the criminal justice system must be understood as a system consisting of interdependent subsystems, so that the success or failure of one subsystem will

¹¹Romli Atmasasmita, *Contemporary Criminal Justice System*, Kencana, Jakarta, 2011, p. 23.

¹²Andi Hamzah, *Indonesian Criminal Procedure Law*, Sinar Grafika, Jakarta, 2016, p. 161.

¹³Republic of Indonesia, Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, State Gazette of the Republic of Indonesia 2021 Number 298, Supplement to the State Gazette of the Republic of Indonesia Number 6755.

¹⁴M. Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code: Investigation and Prosecution*, Sinar Grafika, Jakarta, 2016, p. 365.

affect the entire system.¹⁵In this context, the Prosecutor's Office has a strategic function as an institution that bridges the investigation process and the examination process in court.

Following the enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code, the position of prosecutors in the criminal justice system has significantly strengthened. This strengthening is evident in the increasing role of public prosecutors in determining the direction of criminal case resolution through various authorities related to prosecution and case management. This development demonstrates a tendency to position prosecutors as central actors in the criminal law enforcement process, which is oriented not only toward punishment but also toward achieving substantive justice and effective case resolution.¹⁶

Based on the perspective of Criminal Justice System Theory, strengthening the position of prosecutors can be understood as an effort to improve the coordination and effectiveness of law enforcement. As a subsystem directly linked to the investigation and examination process in court, the Prosecutor's Office plays a crucial role in ensuring that the objectives of the criminal justice system are optimally achieved. Therefore, the stronger the position of prosecutors in the prosecution process, the greater the responsibility they must shoulder to maintain a balance between the interests of law enforcement and the protection of the rights of individuals in conflict with the law.¹⁷

Thus, the position of prosecutors in the Indonesian criminal justice system cannot be viewed solely as carrying out the prosecutorial function. This position demonstrates the strategic role of the Prosecutor's Office as an institution that connects all stages of the criminal justice process and determines the direction of criminal case resolution. This position has become even more important following the enactment of Law Number 20 of 2025 concerning the Criminal Procedure Code, which strengthens the role of prosecutors in the Indonesian criminal justice system.

2. The Authority of the Prosecutor Based on Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia

The position of the Prosecutor in the criminal justice system is inextricably linked to the authority granted by statutory regulations. This authority serves as the

¹⁵Mardjono Reksodiputro, *The Indonesian Criminal Justice System: Viewing Crime and Law Enforcement within the Boundaries of Tolerance*, UI Center for Justice and Legal Services, Jakarta, 2007, p. 84.

¹⁶Republic of Indonesia, Law Number 20 of 2025 concerning the Criminal Procedure Code, State Gazette of the Republic of Indonesia 2025 Number 188, Supplement to the State Gazette of the Republic of Indonesia Number 7149.

¹⁷Romli Atmasasmita, *Contemporary Criminal Justice System*, Kencana, Jakarta, 2011, p. 29.

basis for the Prosecutor's Office's legitimacy in carrying out its law enforcement functions, particularly in the area of prosecution. In the Indonesian legal system, the Prosecutor's Office's authority is comprehensively regulated through Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. This law strengthens the Prosecutor's Office's position as an institution that exercises state prosecutorial power while granting it various other authorities related to law enforcement.¹⁸

Article 2 paragraph (1) of Law Number 11 of 2021 states that the Attorney General's Office of the Republic of Indonesia is a government institution that exercises state power in the field of prosecution and other authorities based on law.¹⁹ These provisions indicate that the prosecution function is the main authority (core authority) which is the institutional identity of the Prosecutor's Office in the Indonesian criminal justice system.

In the criminal field, the Prosecutor's Office's authority encompasses various functions directly related to the law enforcement process. These authorities include:

- a. Conducting prosecution;
- b. Implementing judges' decisions and court decisions that have obtained permanent legal force;
- c. Supervise the implementation of conditional criminal sentences, supervised criminal sentences and conditional release decisions;
- d. Carrying out investigations into certain criminal acts based on the law;
- e. Complete certain case files and conduct additional examinations before being submitted to the court.²⁰

This authority demonstrates that the prosecutor's role extends beyond drafting the indictment and presenting evidence in court, but encompasses nearly the entire criminal law enforcement process. Therefore, the prosecutor holds a highly strategic position in determining the direction of a criminal case's resolution.

In addition to criminal jurisdiction, the Prosecutor's Office Law also grants civil

¹⁸Marwan Effendy, *Indonesian Attorney General's Office: Its Position and Function from a Legal Perspective*, Gramedia Pustaka Utama, Jakarta, 2005, p. 112.

¹⁹Republic of Indonesia, Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, State Gazette of the Republic of Indonesia 2021 Number 298, Supplement to the State Gazette of the Republic of Indonesia Number 6755.

²⁰*Ibid.*

and state administrative jurisdiction. In these jurisdictions, prosecutors can act for and on behalf of the state or government, both inside and outside of court, based on a special power of attorney.²¹ This authority shows that the function of the Prosecutor's Office is not limited to enforcing criminal law, but also includes protecting the legal interests of the state in various other legal fields.

An interesting development following the amendment to the Prosecutor's Office Law is the expanded authority of the Prosecutor's Office to support law enforcement policies oriented toward substantive justice. This is evident in the strengthening of authorities related to restorative justice approaches and the optimization of the prosecution function as an effective instrument for case resolution.²² Thus, the Prosecutor is no longer positioned solely as a "prosecutor", but also as a party who has the responsibility to ensure the achievement of legal objectives as a whole.

When analyzed using Criminal Justice System Theory, the broad authority of the Prosecutor's Office indicates that this institution functions as the central node connecting the investigation process with the court hearings. This position empowers the Prosecutor's Office to monitor the quality of cases brought to trial while ensuring that law enforcement is conducted in accordance with the objectives of the criminal justice system.²³

From the perspective of the *dominus litis* theory, this authority further emphasizes that prosecutors are not merely actors in the criminal justice system, but rather those with control over the prosecution process. This control is evident in their authority to assess the results of investigations, determine the suitability of a case for prosecution, and make various decisions related to the continuation of the law enforcement process.²⁴

3.2. Scope and Implementation of Prosecutorial Discretion by Prosecutors in the Indonesian Criminal Justice System

1. Prosecution Discretion Regulations in Indonesian Legislation

Prosecutorial discretion is a form of authority granted to the Public Prosecutor to make certain decisions in the prosecution process based on legal considerations, the public interest, justice, and the objectives of law enforcement. In the modern criminal justice system, prosecutorial discretion is seen as a necessary instrument to avoid the rigid application of law and to provide space for

²¹*Ibid.*

²²Attorney General of the Republic of Indonesia, Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

²³Romli Atmasasmita, *Contemporary Criminal Justice System*, Kencana, Jakarta, 2011, p. 31.

²⁴Andi Hamzah, *Indonesian Criminal Procedure Law*, Sinar Grafika, Jakarta, 2016, p. 167.

achieving substantive justice in the resolution of criminal cases.²⁵

Although the term "prosecutorial discretion" is not always explicitly stated in legislation, the substance of this authority can be found in various legal provisions that provide the Public Prosecutor with the freedom to determine the most appropriate steps in handling criminal cases. Therefore, the regulation of prosecutorial discretion in Indonesia is essentially scattered throughout various regulations governing the authority of the Prosecutor's Office and the criminal law enforcement process.²⁶

One of the primary legal bases for prosecutorial discretion is Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Indonesian Prosecutor's Office. This law grants the Prosecutor's Office the authority to conduct prosecutions and exercise various other powers related to the law enforcement process.²⁷In its implementation, this authority is not always mechanical, but requires legal assessment and consideration by the Public Prosecutor based on the characteristics of each case.

In addition to the Prosecutor's Office Law, provisions regarding the use of prosecutorial discretion can also be found in the Criminal Procedure Code. During the prosecution process, the Public Prosecutor is authorized to assess the completeness of case files, determine the sufficiency of evidence, draft indictments, and make decisions regarding the continuation of the case process.²⁸These various authorities show that the prosecution process is not only administrative in nature, but also contains elements of legal assessment which are the main characteristics of prosecutorial discretion.

Significant developments occurred following the issuance of Republic of Indonesia Attorney General's Regulation Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. This regulation allows Public Prosecutors to discontinue prosecution of certain cases if they meet specified requirements, and resolving cases through a restorative approach is deemed more effective in achieving justice than conventional judicial processes.²⁹The presence of these regulations shows that prosecutorial discretion is no longer understood solely as technical authority in the

²⁵Barda Nawawi Arief, *Anthology of Criminal Law Policy*, Citra Aditya Bakti, Bandung, 2013, p. 42.

²⁶Andi Hamzah, *Indonesian Criminal Procedure Law*, Sinar Grafika, Jakarta, 2016, p. 175.

²⁷Republic of Indonesia, Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, *State Gazette of the Republic of Indonesia* 2021 Number 298, Supplement to the *State Gazette of the Republic of Indonesia* Number 6755.

²⁸M. Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code: Investigation and Prosecution*, Sinar Grafika, Jakarta, 2016, p. 401.

²⁹Attorney General of the Republic of Indonesia, *Regulation of the Attorney General of the Republic of Indonesia* Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

prosecution process, but also as a legal policy instrument aimed at realizing substantive justice.

Strengthening prosecutorial discretion is also evident in Law Number 20 of 2025 concerning the Criminal Procedure Code. This update to the criminal procedure code demonstrates a tendency to provide greater latitude to public prosecutors in determining the direction of criminal case resolution. This strengthening is part of an effort to build a more flexible, responsive criminal justice system that is able to adapt to societal needs and modern legal developments.³⁰

Based on the research results, the regulation of prosecution discretion in Indonesian legislation has at least three main objectives, namely:

- a. Realizing the effectiveness of law enforcement, by providing space for the Public Prosecutor to determine the priority of handling cases and choose the most appropriate resolution mechanism;
- b. Realizing substantive justice, by providing the Public Prosecutor with the opportunity to consider social and humanitarian aspects and the interests of the parties in a case;
- c. Optimizing the use of law enforcement resources, so that the criminal justice process can run more efficiently and proportionally.³¹

However, the existence of prosecutorial discretion also presents its own challenges. The broader the discretion granted to the Public Prosecutor, the greater the need for clear regulations regarding the limits of the use of that authority. Without adequate limits, discretion has the potential to create legal uncertainty and open up opportunities for abuse of power. Therefore, the regulation of prosecutorial discretion must always be balanced with the principles of legality, accountability, transparency, and effective oversight.³²

Based on this description, it can be understood that the provisions on prosecutorial discretion in Indonesian law demonstrate recognition of the important role of the Public Prosecutor in determining the direction of criminal case resolution. These provisions continue to evolve in line with the need to create a more effective criminal justice system oriented toward substantive justice. Thus, prosecutorial discretion has become a crucial instrument in the implementation of the prosecutorial function in Indonesia.

³⁰Republic of Indonesia, Law Number 20 of 2025 concerning the Criminal Procedure Code, State Gazette of the Republic of Indonesia 2025 Number 188, Supplement to the State Gazette of the Republic of Indonesia Number 7149.

³¹Romli Atmasasmita, *Contemporary Criminal Justice System*, Kencana, Jakarta, 2011, p. 58.

³²Philipus M. Hadjon, *Legal Protection for the People in Indonesia*, Bina Ilmu, Surabaya, 1987, p. 87.

2. Forms of Prosecutorial Discretion by the Prosecutor

Prosecutorial discretion is essentially an authority that allows the Public Prosecutor to determine the most appropriate legal action in handling a criminal case. This authority is not always manifested in the form of terminating prosecution, but is also reflected in various decisions made by the Public Prosecutor throughout the case process. Therefore, prosecutorial discretion has a broad scope and encompasses various aspects related to the implementation of the prosecutorial function.³³

Based on the results of research into laws and regulations and law enforcement practices in Indonesia, the forms of prosecutorial discretion held by prosecutors can be identified as follows.

a. Discretion in Determining the Eligibility of Prosecution

The most fundamental form of discretion is the Public Prosecutor's authority to determine whether a case meets the requirements for prosecution. In exercising this authority, the Public Prosecutor examines the results of the investigation to assess whether a case meets both formal and material requirements.³⁴

This assessment is not merely administrative in nature, but involves legal considerations regarding the sufficiency of the evidence, the appropriateness of the application of the alleged article, and the likelihood of proving it in court. Therefore, the decision to proceed with or discontinue a case at the prosecution stage is a concrete example of the exercise of prosecutorial discretion.

b. Discretion in Drafting an Indictment

The Public Prosecutor has the authority to determine the form and structure of the indictment to be used in a criminal case. In practice, the Prosecutor can choose from various forms of indictment, including:

- 1) single charge;
- 2) alternative charges;
- 3) subsidiary charges;
- 4) cumulative charges;
- 5) combination charges.³⁵

The selection of the form of the indictment is part of the prosecution strategy,

³³Barda Nawawi Arief, *Anthology of Criminal Law Policy*, Citra Aditya Bakti, Bandung, 2013, p. 45.

³⁴M. Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code: Investigation and Prosecution*, Sinar Grafika, Jakarta, 2016, p. 402.

³⁵Andi Hamzah, *Indonesian Criminal Procedure Law*, Sinar Grafika, Jakarta, 2016, p. 183.

based on a legal assessment of the facts in the case. Therefore, drafting the indictment also represents a form of discretion held by the Public Prosecutor.

c. Discretion in Determining Criminal Charges

In addition to drafting the indictment, the Public Prosecutor also has the authority to determine the amount and form of criminal charges to be submitted to the judge. While criminal charges must be based on statutory provisions and the facts revealed at trial, the Public Prosecutor retains discretion in determining the severity of the charges, considering the level of culpability of the perpetrator and the purpose of the sentence.³⁶

This authority shows that prosecutorial discretion does not only occur before the case is brought to court, but also takes place during the trial process.

d. Discretion in Termination of Prosecution Under Restorative Justice

A significant development in law enforcement practices in Indonesia is the emergence of the authority to terminate prosecution based on restorative justice as regulated in the Republic of Indonesia Prosecutor's Office Regulation Number 15 of 2020. Through this mechanism, the Public Prosecutor can terminate prosecution of certain cases if they have met the specified requirements and the resolution of the case through peace is deemed more capable of realizing justice for the parties.³⁷

This authority is the most obvious form of discretion because it gives the Public Prosecutor the opportunity not to proceed with a case in court even though the elements of a crime have basically been fulfilled.

e. Discretion in Determining Case Handling Strategy

In prosecution practice, the Public Prosecutor also has the authority to determine case-handling strategies according to the characteristics of each case. These strategies can include consolidating cases, splitting them, or determining the order in which certain cases are handled based on their priority.³⁸

This authority aims to increase the effectiveness of the prosecution process while ensuring that law enforcement objectives can be achieved optimally.

f. Discretion in Settlement of Cases Based on Public Interest

³⁶*Ibid.*, p. 188.

³⁷Attorney General of the Republic of Indonesia, Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

³⁸M. Yahya Harahap, Discussion of Problems and Application of the Criminal Procedure Code: Investigation and Prosecution, Sinar Grafika, Jakarta, 2016, p. 416.

The Indonesian legal system also recognizes the authority to dismiss a case in the public interest (deponering), which is a form of prosecutorial discretion. This authority is granted to the Attorney General to set aside certain cases if the public interest is deemed more important than the prosecution of the case.³⁹

Although its use is very limited and must be exercised with caution, this authority demonstrates that the Indonesian legal system recognizes the need to provide policy space in the criminal law enforcement process.

Based on these various forms of authority, it is clear that prosecutorial discretion is not a standalone concept, but rather inherent in various stages of the prosecution function. From assessing investigation results, drafting indictments, determining criminal charges, to resolving cases through a restorative approach, all demonstrate the Public Prosecutor's discretion and discretion.

When analyzed using the Dominus Litis Theory, these various forms of discretion further strengthen the position of the Public Prosecutor as the controller of cases in the criminal justice system. The broader the discretion granted by laws and regulations, the stronger the Prosecutor's position in determining the direction and final outcome of a criminal law enforcement process. However, the use of such discretion must remain proportional, transparent, and accountable to avoid abuse of authority or violations of the principles of the rule of law.⁴⁰

4. Conclusion

Based on the results of research and discussion regarding prosecutorial discretion by prosecutors as dominus litis in the Indonesian criminal justice system, the following conclusions can be drawn: 1. The Position of the Prosecutor as Dominus Litis in the Indonesian Criminal Justice System: As dominus litis, the prosecutor occupies a central position in the Indonesian criminal justice system, having the authority to determine the continuation of the prosecution process in a criminal case. This position is reinforced by Law Number 11 of 2021 concerning the Attorney General's Office of the Republic of Indonesia and Law Number 20 of 2025 concerning the Criminal Procedure Code, which emphasize the role of the Public Prosecutor as the controller of cases in the criminal law enforcement process. 2. Scope and Implementation of Prosecutorial Discretion by Prosecutors in the Indonesian Criminal Justice System Prosecutorial discretion is a consequence of the prosecutor's position as dominus litis, granting him the authority to determine case-handling policies based on legal considerations, the public interest, and justice. This discretion is exercised

³⁹Republic of Indonesia, Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, State Gazette of the Republic of Indonesia 2021 Number 298, Supplement to the State Gazette of the Republic of Indonesia Number 6755.

⁴⁰Romli Atmasasmita, *Contemporary Criminal Justice System*, Kencana, Jakarta, 2011, p. 61.

through various authorities, including the termination of prosecution, the resolution of cases based on restorative justice, and other forms of prosecutorial policy aimed at improving the effectiveness of the criminal justice system. 3. Limits on Prosecutor's Discretion in Prosecution within the Framework of Due Process of Law and its Implications for the Principles of Justice, Legal Certainty, and Protection of Human Rights: Prosecutorial discretion is not absolute and must be limited by the principle of due process of law, a fundamental principle of the rule of law. These limitations include the principles of legality, equality before the law, the presumption of innocence, proportionality, accountability, transparency, and protection of human rights. Therefore, the use of prosecutorial discretion must be accompanied by effective oversight and accountability mechanisms to ensure justice, legal certainty, and legal benefit in the Indonesian criminal justice system.

5. References

Journals:

Achmad Budi Waskito, "Implementasi Sistem Peradilan Pidana Dalam Perspektif Integrasi", *Jurnal Daulat Hukum*, Vol. 1, No. 1, 2018.

Andrew Ashworth, "Four Threats to the Presumption of Innocence", *International Journal of Evidence & Proof*, Vol. 10, No. 4, 2006.

Angela J. Davis, "The American Prosecutor: Independence, Power, and the Threat of Tyranny", *Iowa Law Review*, Vol. 86, No. 2, 2001.

Erlina Dwi Virgianti dan Andri Winjaya Laksana, "Analisis Yuridis Terhadap Penghentian Penuntutan Melalui Rehabilitasi Berdasarkan Keadilan Restoratif (Studi Kasus: Kejaksaan Tinggi Jawa Timur)", *Jurnal Ilmiah Sultan Agung*, 2026.

Maximo Langer, "Prosecutorial Discretion in Comparative Perspective", *Harvard International Law Journal*, Vol. 62, No. 1, 2021.

Rachel E. Barkow, "Prosecutorial Administration: Prosecutor Bias and the Department of Justice", *Virginia Law Review*, Vol. 99, No. 2, 2013.

Ronald F. Wright, "Trial Distortion and the End of Innocence in Federal Criminal Justice", *University of Pennsylvania Law Review*, Vol. 154, No. 1, 2005.

Books:

Abdul Qadir Audah, *At-Tasyri' al-Jina'i al-Islami Muqaranan bi al-Qanun al-Wadh'i*, Juz I, Muassasah al-Risalah, Beirut, 1992.

Abdul Wahhab Khallaf, *Al-Siyasah Al-Syar'iyah*, Dar Al-Qalam, Kuwait, 1988.

- Abdul Wahhab Khallaf, Ilmu Ushul Fiqh, Dar al-Qalam, Kuwait, 1978.
- Abu Ishaq Al-Syatibi, Al-Muwafaqat fi Ushul al-Syari'ah, Juz II, Dar al-Kutub al-Ilmiyyah, Beirut, 2004.
- Adami Chazawi, Pelajaran Hukum Pidana, RajaGrafindo Persada, Jakarta, 2014.
- Ahmad Al-Mursi Husain Jauhar, Maqashid Syariah, terj. Hikmawati, Amzah, Jakarta, 2009.
- Ahmad Wardi Muslich, Hukum Pidana Islam, Sinar Grafika, Jakarta, 2016.
- Andi Hamzah, Hukum Acara Pidana Indonesia, Sinar Grafika, Jakarta, 2016.
- Andrew Ashworth, Human Rights and Criminal Justice, Oxford University Press, Oxford, 2010.
- Angela J. Davis, Arbitrary Justice: The Power of the American Prosecutor, Oxford University Press, New York, 2007.
- Bagir Manan, Lembaga Kepresidenan, FH UII Press, Yogyakarta, 2003.
- Bambang Sunggono, Metodologi Penelitian Hukum, Rajawali Pers, Jakarta, 2010.
- Bambang Waluyo, Penegakan Hukum di Indonesia, Sinar Grafika, Jakarta, 2008.
- Barda Nawawi Arief, Bunga Rampai Kebijakan Hukum Pidana, Citra Aditya Bakti, Bandung, 2013.
- Barda Nawawi Arief, Kebijakan Hukum Pidana, Kencana, Jakarta, 2010.
- Barda Nawawi Arief, Kebijakan Hukum Pidana: Perkembangan Penyusunan Konsep KUHP Baru, Kencana, Jakarta, 2017.
- Barda Nawawi Arief, Masalah Penegakan Hukum dan Kebijakan Hukum Pidana dalam Penanggulangan Kejahatan, Kencana, Jakarta, 2010.
- Barda Nawawi Arief, Mediasi Penal: Penyelesaian Perkara di Luar Pengadilan, Pustaka Magister, Semarang, 2012.
- Barda Nawawi Arief, Pembaharuan Sistem Penegakan Hukum dengan Pendekatan Kebijakan, Kencana, Jakarta, 2018.
- Barda Nawawi Arief, Reformasi Sistem Peradilan Pidana di Indonesia, Kencana, Jakarta, 2022.
- E. Utrecht, Pengantar dalam Hukum Indonesia, Ichtiar Baru, Jakarta, 1983.

Eddy O.S. Hiariej dan Reda Manthovani, Anotasi Undang-Undang Nomor 20 Tahun 2025 tentang Kitab Undang-Undang Hukum Acara Pidana, Rajawali Pers, Jakarta, 2025.

Eddy O.S. Hiariej, Asas Legalitas dan Penemuan Hukum dalam Hukum Pidana, Erlangga, Jakarta, 2019.

Gustav Radbruch, Legal Philosophy, Harvard University Press, Cambridge, 1950.

Hans Kelsen, Pure Theory of Law, University of California Press, Berkeley, 1967.

Herbert L. Packer, The Limits of the Criminal Sanction, Stanford University Press, California, 1968.

Ibnu Qayyim Al-Jauziyyah, I'lam Al-Muwaqqi'in 'an Rabb al-'Alamin, Juz III, Dar al-Kutub al-Ilmiyyah, Beirut, 1991.

Jimly Asshiddiqie, Konstitusi dan Konstitusionalisme Indonesia, Sinar Grafika, Jakarta, 2018.

Jimly Asshiddiqie, Peradilan Etik dan Etika Konstitusi, Sinar Grafika, Jakarta, 2015.

Jimly Asshiddiqie, Perkembangan dan Konsolidasi Lembaga Negara Pasca Reformasi, Sinar Grafika, Jakarta, 2010.

John Rawls, A Theory of Justice, Harvard University Press, Cambridge, 1971.

Lon L. Fuller, The Morality of Law, Yale University Press, New Haven, 1964.

M. Yahya Harahap, Pembahasan Permasalahan dan Penerapan KUHAP: Penyidikan dan Penuntutan, Sinar Grafika, Jakarta, 2016.

Mardjono Reksodiputro, Sistem Peradilan Pidana Indonesia, UI Press, Jakarta, 1993.

Mardjono Reksodiputro, Sistem Peradilan Pidana Indonesia: Melihat Kejahatan dan Penegakan Hukum dalam Batas-Batas Toleransi, Pusat Pelayanan Keadilan dan Pengabdian Hukum Universitas Indonesia, Jakarta, 2007.

Marwan Effendy, Kejaksaan RI: Posisi dan Fungsinya dari Perspektif Hukum, Gramedia Pustaka Utama, Jakarta, 2005.

Moeljatno, Asas-Asas Hukum Pidana, Rineka Cipta, Jakarta, 2008.

Muladi dan Barda Nawawi Arief, Teori-Teori dan Kebijakan Pidana, Alumni, Bandung, 2010.

- Muladi, Kapita Selekta Sistem Peradilan Pidana, Badan Penerbit Universitas Diponegoro, Semarang, 1995.
- Philipus M. Hadjon, Pengantar Hukum Administrasi Indonesia, Gadjah Mada University Press, Yogyakarta, 2011.
- Philipus M. Hadjon, Perlindungan Hukum Bagi Rakyat di Indonesia, Bina Ilmu, Surabaya, 1987.
- Prajudi Atmosudirdjo, Hukum Administrasi Negara, Ghalia Indonesia, Jakarta, 1994.
- R. Soeprapto, Sejarah Perkembangan Kejaksaan Republik Indonesia, Kejaksaan Agung Republik Indonesia, Jakarta, 1987.
- Reda Manthovani, Diskresi Penuntutan dalam Sistem Peradilan Pidana Modern, Rajawali Pers, Jakarta, 2024.
- Ridwan HR, Hukum Administrasi Negara, RajaGrafindo Persada, Jakarta, 2020.
- Romli Atmasasmita, Sistem Peradilan Pidana Kontemporer, Kencana, Jakarta, 2011.
- Satjipto Rahardjo, Hukum Progresif: Sebuah Sintesa Hukum Indonesia, Genta Publishing, Yogyakarta, 2009.
- Satjipto Rahardjo, Ilmu Hukum, Citra Aditya Bakti, Bandung, 2014.
- Satjipto Rahardjo, Penegakan Hukum: Suatu Tinjauan Sosiologis, Genta Publishing, Yogyakarta, 2009.
- Soerjono Soekanto dan Sri Mamudji, Penelitian Hukum Normatif: Suatu Tinjauan Singkat, RajaGrafindo Persada, Jakarta, 2007.
- Soerjono Soekanto, Pengantar Penelitian Hukum, UI Press, Jakarta, 1986.
- Sudikno Mertokusumo, Mengenal Hukum Suatu Pengantar, Liberty, Yogyakarta, 2007.
- Tony F. Marshall, Restorative Justice: An Overview, Home Office Research Development and Statistics Directorate, London, 1999.
- Topo Santoso, Asas-Asas Hukum Pidana Islam, Rajawali Pers, Jakarta, 2016.
- Wahbah Az-Zuhaili, Ushul al-Fiqh al-Islami, Juz II, Dar al-Fikr, Damaskus, 1986.
- Wayne R. LaFave, Jerold H. Israel, Nancy J. King, dan Orin S. Kerr, Criminal Procedure, 6th Edition, West Academic Publishing, St. Paul, 2017.
- Yusuf Al-Qaradawi, Fiqh al-Daulah fi al-Islam, Maktabah Wahbah, Kairo, 1997.

Regulation:

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System.

Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia.

Law Number 20 of 2025 concerning the Criminal Procedure Code.

Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice.

The 1945 Constitution of the Republic of Indonesia.