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The Prosecutor as Dominus Litis in Controlling Case Under the Draft of Criminal Procedure Code (RKUHAP)

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ABSTRACT

The application of The Dominus Litis principle in the Criminal Procedure Code (KUHP) is not yet optimal, resulting in the role of prosecutors as public prosecutors being less than maximal. This study discusses the application of the Dominus Litis principle in the Indonesian criminal justice system, where prosecutors as public prosecutors have a crucial role in controlling the criminal case process. The Dominus Litis principle grants authority to prosecutors to control the criminal case process from investigation to prosecution. This study recommends revising the Criminal Procedure Code (RKUHAP) to fully and comprehensively apply the Dominus Litis principle to the Prosecution. Thus, the ultimate goal of criminal procedure law can be achieved, namely justice and legal certainty for all parties. This study uses a normative juridical research method with a statutory approach and a conceptual approach. The results show that the application of the Dominus Litis principle by the Prosecution in law enforcement in Indonesia is not yet fully effective. Therefore, it is necessary to strengthen the institutional capacity of the Prosecution and the role of prosecutors as Dominus Litis to ensure the validity of evidence and justice for defendants and victims.

INTRODUCTION

The Indonesian Constitution has firmly emphasized that the State of Indonesia is a state of law (*rechtsstaat*), as stated in Article 1 Paragraph 3 of the 1945 Constitution (UUD 1945) which states that the State of Indonesia is a state of law. Therefore, it is appropriate to uphold the applicable law and position it as a tool to regulate national and state life, so that law enforcement is the main and central thing in Indonesia, where the state places law in its function as a regulatory tool for community life.¹ The application of law in a social order called society, was referred to by the Romans as *ubi societas ibi ius*, which illustrates how close the relationship is between law and community.²

Norms or laws are determining factors in the implementation of authority. Legal norms are rules about certain things, such as things that are obligatory or prohibited (*verbod*). Legal interests can be divided into three categories based on their nature:³

¹ Tiar Adi Riyanto, "Fungsionalisasi Prinsip *Dominus Litis* Dalam Penegakan Hukum Pidana di Indonesia," *Lex Renaisan* 6, no. 3 (2021): 481-492, <https://doi.org/10.20885/JLR.vol6.iss3.art4>.

² Mochtar Kusumaatmadja, *Konsep-Konsep Hukum Dalam Pembangunan* (PT. Alumni, Bandung, 2006), 3.

³ Satochid Kartanegara, *Hukum Pidana: Kumpulan Kuliah Bagian Satu* (Balai Lektur Mahasiswa, Jakarta, 2001), 80.

1. Individual pursuits, such as: body, soul, honor, and wealth;
2. Safety and tranquility are the public's priorities; and
3. State interests include: State security.

The objective definition of criminal law or *ius poenale* is that criminal law is understood from the perspective of prohibitions on actions, especially rules that are accompanied by criminal risks for anyone who violates these rules.⁴ Meanwhile, a regulation that contains or concerns the rights or authority of the state is the subject of the subjective understanding of criminal law, which is called *ius poeniendi*.⁵

1. To determine restrictions in order to maintain public order;
2. Imposing penalties on people who violate prohibitions to enforce criminal law; and
3. Implement criminal sanctions imposed by the state on lawbreakers.

Referring to the definition of criminal law above, the law is useful for protecting society from abuse of rights and obligations, because the absence of law can result in chaos and crime. Protection against crime can be pursued through the criminal justice system. The criminal justice system is a network of justice that uses criminal law as its primary means, including substantive criminal law, formal criminal law, and criminal execution law.⁶ This system is considered successful if most of the reports and complaints from the community as victims are resolved, by bringing the perpetrators to trial and being found guilty and sentenced.⁷ The objectives of the criminal justice system can be formulated as:⁸

1. preventing the community from becoming victims of crime;
2. resolving crime cases that occur so that the community is satisfied that justice has been upheld and the guilty are punished; and
3. striving to ensure that those who have committed crimes do not repeat their offenses.

The criminal justice system comprises four parts (subsystems) that work together to realize an integrated criminal justice system.⁹ These four parts are the Police, the Prosecutor's Office, the Courts, and the Correctional Institution.¹⁰ As a part of the criminal justice system, these four agencies are united in a unified process of criminal justice that cannot be separated from one another in the enforcement of criminal law.¹¹

The Criminal Procedure Code (KUHP) as the rule of the game follows the integrated criminal justice system, which includes:¹²

1. The Police as the investigator;

⁴ Nafi' Mubarak, *Buku Ajar Hukum Pidana*, ed. Imam Ibnu Hajar (Kanzun Books, Sidoarjo, 2020), 21.

⁵ *Ibid.*

⁶ Muladi, *Kapita Selekta Sistem Peradilan Pidana* (Badan Penerbit Universitas Diponegoro, Semarang, 2002), 4.

⁷ Mardjono Reksodiputro, *Sistem Peradilan Pidana* (Java Kurnia, Depok, 2020), 343-344.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Mahmud Mulyadi, "Pendekatan Integratif dalam Penanggulangan Tindak Pidana Korupsi," *Jurnal Hukum Samudra Keadilan* 13, no. 1 (2018): 1-19, <https://doi.org/10.33059/jhsk.v13i1.690>.

¹² Mardjono Reksodiputro, *Sistem Peradilan Pidana Indonesia (Peran Penegak Hukum Melawan Kejahatan) dalam Hak Asasi Manusia dalam Sistem Peradilan Pidana* (PPKPH Universitas Indonesia, Jakarta, 1994), 85.

2. The Prosecutor's Office as the prosecutor;
3. The Court as the trial examiner, and
4. The Prosecutor's Office and the Correctional Institution as the executor of the decisions made by the court.

Referring to the above function, the importance of the position of the Prosecutor's Office is evident, namely the institution that functions to prosecute. This position as a public prosecutor is inherent with the principle of Dominus Litis.¹³ Dominus Litis is reflected in Article 1 number 1 jo. Article 2 of Law Number 11 of 2021 concerning amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, which reveals that the Prosecutor's Office is a government institution that exercises state power in the field of prosecution and other powers according to the law which is carried out independently.¹⁴ In this context, the prosecutor's has a responsibility as the embodiment of state power in law enforcement by controlling the course of cases in order to achieve substantive justice (*justitia substantialis*).

The growth of crime is one of the main threats that is the focus of attention and needs to be anticipated, and efforts to overcome it are the joint responsibility of all components of the state, both government and society. In this case, the government through its agencies has formed a law enforcement institution that has the authority to carry out the duties and responsibilities of preventing crime and enforcing the law. Thus, if every crime is resolved, society will be satisfied as a result where justice has been upheld and the guilty have been sentenced according to the applicable punishment.

According to the opinion of the former Deputy Attorney General for Supervision, Prof. Dr. Marwan Effendy, S.H., M.H. in a national seminar organized by Brawijaya University, Malang on June 11, 2012, law enforcement in the macro sense covers all aspects of the lives of society, the nation and the state, while in the micro sense, law enforcement is limited to the litigation process in court, in criminal cases including the investigation process, inquiry, prosecution (examination before the trial) to the implementation of court decisions that has legally binding.¹⁵ In the event of an incident that is reasonably suspected to be a criminal act, it is mandatory to immediately take the necessary steps to resolve it, by conducting an investigation, inquiry, prosecution and examination in court.¹⁶

Law enforcement can be understood by referring to formal criminal law (Law Number 8 of 1981 concerning Criminal Procedure Law) or also known as the Criminal Procedure Code (KUHAP), in addition to the provisions of material criminal law in the context of criminal law. Formal law known as the KUHAP determines the procedures that must be followed when enforcing criminal law (also

¹³ Marjudin Djafar, et al., "Kewenangan Penuntut Umum Selaku Dominus Litis Dalam Penghentian Penuntutan Berdasarkan Keadilan Restoratif," *SALAM: Jurnal Sosial dan Budaya Syar-i* 9, no. 4 (2022): 1075-1086, <https://doi.org/10.15408/sjsbs.v9i4.26640>.

¹⁴ Tiar Adi Riyanto, "Fungsionalisasi Prinsip *Dominus Litis* dalam Penegakan Hukum Pidana di Indonesia," *Lex Renaisan* 6, no. 3 (2021): 481-492, <https://doi.org/10.20885/JLR.vol6.iss3.art4>.

¹⁵ Marwan Effendy, "Deskresi dalam Penegakan Hukum Tindak Pidana Korupsi," *Paper presented at the National Seminar organized by Brawijaya University, Malang*, June 11, 2012, 2-3.

¹⁶ Erni Widhayanti, *Hak-Hak Tersangka/Terdakwa di dalam KUHAP* (Liberty, Yogyakarta, 1996), 48.

known as material law). The two institutions that are the gateway to the law enforcement process in the criminal justice system are the police and the prosecutors. The police as investigators and the prosecutor as public prosecutor. The public sees that the police and prosecutors are inseparable partners, but in practice, internal conflicts often occurred between the police and prosecutors in carrying out their respective duties.

Coordination between government agencies, especially law enforcement agencies, is still the government's biggest homework in terms of legal reform. The relationship between investigators and prosecutors is frequently strained due to investigators perception of having equal authority with prosecutors. On the other hand, the public prosecutor holds a fairly central position as one of the gatekeepers of the criminal justice process, where based on their duties and authorities, the public prosecutor studies and examines a case file submitted by the Investigator. Subsequently, the public prosecutor concludes that if the evidence in a case is sufficient and in accordance with the regulations in the Criminal Procedure Code (KUHAP), they will file an indictment with the District Court, thus the public prosecutor is deemed to hold a central position in proving a case in court.¹⁷

One of the principles recognized in the prosecution process is *Dominus Litis*, which means “the prosecutors” or “the controller of the proceedings”, thereby in the criminal justice process, the prosecutor has the authority to determine whether a case can be prosecuted in court or not.¹⁸ The principle of *Dominus Litis* originates from Latin, meaning “the master of the case” or “the party controlling the proceedings”. In the criminal justice system, this term refers to the party that has primary authority to determine whether a case can proceed to trial or not.¹⁹ In Indonesia, this principle serves as the basis for the authority of prosecutors to conduct prosecutions.²⁰ The principle of *Dominus Litis* has been universally recognized as reflected in Article 11 Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba, 27 August to 7 September 1990 which states Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.²¹ The principle of *Dominus Litis* in Indonesia reflected in Article 1 paragraph 1 in conjunction with Article 2 of Law No. 11 of 2021 concerning Amendment to Law No. 16 of 2004 concerning the Prosecution Service of the Republic of Indonesia and Ruling of the Constitutional Court Number 55/PUU-XI/2013, which stipulates that the

¹⁷ Tiar Adi Riyanto, “Fungsionalisasi Prinsip *Dominus Litis* dalam Penegakan Hukum Pidana di Indonesia,” *Lex Renaissance* 6, no. 3 (2021): 481-492, <https://doi.org/10.20885/JLR.vol6.iss3.art4>.

¹⁸ R.M. Surachman, *Mozaik Hukum I: 30 Bahasa Terpilih* (Sumber Ilmu Jaya, Jakarta, 1996), 83.

¹⁹ Handar Subhandi Bakhtiar, “Jaksa sebagai *Dominus Litis*: Pelengkap atau Pengendali Perkara?,” *Hukum Online*, February 14, 2025, <https://www.hukumonline.com/berita/a/jaksa-sebagai-dominus-litis--pelengkap-atau-pengendali-perkara-lt67ae2a19a56bc/>.

²⁰ Kejari Bone, “Problematika Penerapan Prinsip *Dominus Litis* dalam Perspektif Kejaksanaan,” *Kejari Bone*, August 2, 2023, <https://www.kejari-bone.go.id/artikel/detail/3/problematika-penerapan-prinsip-dominus-litis-dalam-perspektifkejaksanaan.html>.

²¹ Guidelines on the Role of Prosecutors, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, (1990), 3.

Prosecution Service is a government institution that exercises state power in the field of prosecution and other authorities based on law, which is carried out independently.²²

The main issue in the application of the principle of Dominus Litis in Indonesia lies in the regulation, specifically in the Criminal Procedure Code (KUHAP). Article 138 paragraph 1 of the Criminal Procedure Code (KUHAP) states that the public prosecutor, upon receiving the investigation results from the investigator, shall immediately examine and review them, and within seven days, shall notify the investigator whether the investigation results are complete or not. This provision suggests that the communication or coordination process between the investigator and the public prosecutor is limited to correspondence based on the case file submitted by the investigator.²³

The Criminal Procedure Code (KUHAP) does not fully implement the principle of Dominus Litis or grant absolute authority to the Prosecution Service of the Republic of Indonesia in handling criminal cases. This results in the position of the prosecutor as public prosecutor being perceived as limited, as they only conduct a formal review of the case file, without knowledge of the investigation process, including the preparation of the case file and the manner of obtaining evidence.

Brief communication based solely on case files often encounters obstacles that hinder the effective handling of cases. This is a serious constraint, as prosecutors often lack real knowledge of the cases brought before them, relying solely on the case files submitted by investigators and having to make decisions within a short timeframe. This situation places a significant burden on the Prosecution Service in exercising its authority, particularly given its responsibility for proving cases in court.²⁴ Weak prosecution evidence can lead to numerous acquittals due to the lack of ammunition, namely evidence that can be presented by the prosecutor in court, thereby creating a negative stigma that the prosecutor has failed to handle a case.

The issues described above are not merely theoretical assumptions. This study examines the regulatory framework governing the principle of Dominus Litis in Indonesian criminal code and the implementation of this principle by the Prosecutors to guarantee the attainment of legal objective in the administration of criminal justice in Indonesia. Therefore, it is necessary to revise the Criminal Procedure Code (KUHAP) by applying the principle of Dominus Litis to create a synergistic relationship, particularly between investigators and prosecutors. The government needs to play a role in reforming the law to ensure the full application of the Dominus Litis principle, guaranteeing the achievement of legal objectives. However, the government's seriousness in reforming the law remains to be seen, as the revision of the Criminal Procedure Code (RKUHAP), which governs the relationship between investigators and prosecutors, has been stagnant for decades. To anticipate any loopholes for prosecutors in carrying out their duties and authorities, it is necessary to discuss the application of the Dominus Litis principle to the Prosecution Service of the Republic of Indonesia

²² Pasal 1 angka 1 jo. Pasal 2 Undang – Undang Nomor 11 tahun 2021 tentang Perubahan atas Undang – Undang Nomor 16 Tahun 2004, (2021), 2 – 3.

²³ M. Arief Amrullah, "Penguatan Dominus Litis Dalam RUU Kejaksaan," *Suara Karya*, September 26, 2020, <https://www.suarakarya.id/metro/pr-2601688317/Penguatan-Prinsip-Dominus-Litis-Dalam-RUU-Kejaksaan>.

²⁴ Dedy Chandra Sihombing et al., "Penguatan Kewenangan Jaksa Selaku Dominus Litis Sebagai Upaya Optimalisasi Penegakan Hukum Pidana Berorientasi Keadilan Restoratif," *Locus: Jurnal Konsep Ilmu Hukum* 3, no. 2 (2023): 63-75, <https://doi.org/10.56128/jkih.v3i2.42>.

in the law enforcement process, which can be accommodated in the RKUHAP, as part of efforts to strengthen the role of prosecutors as controllers of criminal cases.

METHODS

The research method used is a normative juridical research method, specifically library law research. This research is descriptive-analytical, examining regulations and laws related to the legal theories that are the object of research. This research uses a statute approach and a conceptual approach. The statute approach is conducted by examining all laws and regulations related to the legal issue being discussed. Therefore, the primary data source for this research is library-based data.

The data collection technique used in this study is through library research to obtain theoretical or doctrinal concepts, as well as previous research in the form of laws and regulations, books, and other scientific works. Data collection was carried out by studying documents collected through literature studies conducted offline (including libraries and catalog searches) and online (via websites) to obtain answers to the main problems to be studied and analyzed so that they can be described scientifically. Furthermore, the legal materials analyzed qualitatively and presented in a systematic description by explaining the relationship between various types of materials, then all materials are selected and processed and then presented descriptively, aiming not only to describe and reveal but also to provide solutions to the main issues in this research.

DISCUSSION

Governing of the Dominus Litis Principle in Indonesian Criminal Law Regulations

Law Number 11 of 2021 concerning Amendment to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia ("Law 11/2021"), Article 1 paragraph 1 states that the Prosecutor's Office of the Republic of Indonesia is a government institution whose function is related to judicial power, exercising state power in the field of prosecution and other authorities based on the Law. Therefore, the Prosecutor's Office has a central role in the law enforcement process and is the only institution that can determine whether a case can be brought to court based on valid evidence according to the Criminal Procedure Code (KUHP).²⁵

Normatively, it can be proven that the public prosecutor is the Dominus Litis in the enforcement of criminal law, commencing from the pre-prosecution stage, prosecution, as well as in legal remedies and execution.²⁶ The duties and authorities of the prosecutor as public prosecutor play a crucial role in every stage of the criminal justice system, as stipulated in Article 109 of the Criminal Procedure Code (KUHP), which states:

- (1) *If an investigator has commenced an investigation into an event that constitutes a criminal offense, the investigator shall notify the public prosecutor thereof.*
- (2) *If the investigator terminates the investigation due to insufficient evidence or it turns out that the event is not a criminal offense or the investigation is terminated by law, the investigator*

²⁵ Sihombing et al., "Penguatan Kewenangan," 66.

²⁶ *Ibid.*

shall notify the public prosecutor, the suspect, or their family thereof.”

The notification of the commencement of investigation through the issuance of a Notification of Commencement of Investigation (SPDP) and the termination of investigation through the Order to Terminate Investigation (SP3) to the public prosecutor, indicates that the Prosecutor as the public prosecutor is the Dominus Litis, the Prosecutor as the controller/owner of the case.²⁷ Furthermore, the case file must still be submitted by the investigator to the public prosecutor after the investigation is completed. This is as stipulated in Article 110 of the Criminal Procedure Code (KUHAP), which states:

- (1) If the investigator has completed the investigation, the investigator shall immediately submit the case file to the public prosecutor.*
- (2) If the public prosecutor considers that the investigation results are still incomplete, the public prosecutor shall immediately return the case file to the investigator along with instructions for completion.*
- (3) If the public prosecutor returns the investigation results for completion, the investigator shall immediately conduct additional investigation in accordance with the instructions from the public prosecutor.*
- (4) The investigation shall be deemed complete if the public prosecutor fails to return the investigation results within fourteen days or if, prior to the expiration of the said period, the public prosecutor notifies the investigator to that effect.”*

The provision of Article 110 of the Criminal Procedure Code (KUHAP) clearly establishes the Prosecutor as the Dominus Litis in the investigation stage. The Prosecutor has the authority to determine whether a case is worthy of being brought to the prosecution stage or not, based on the investigation file received from the investigator. If the file is incomplete or not yet complete, the investigation file is returned to the investigator for supplementation in accordance with the instructions of the public prosecutor.²⁸

Furthermore, the Prosecutor as the Dominus Litis, who is the authorized official to determine whether a case is worthy of being brought to prosecution or should be terminated, can also be found in the regulation of the authority to terminate prosecution held by the Prosecutor's Office, as stipulated in Article 140 paragraph (2) of the Criminal Procedure Code (KUHAP), which reads as follows:

“(2) If the public prosecutor decides to terminate the prosecution due to insufficient evidence or it turns out that the event is not a criminal offense, or the case is closed by law, the public prosecutor shall set forth such decision in a decree letter.”

Article 140 paragraph (2) of the Criminal Procedure Code (KUHAP) above clearly stipulates that the Prosecutor as the public prosecutor has the right to decide to terminate the prosecution. The Prosecutor's authority to terminate or continue the prosecution process also means that the Prosecutor has the discretion to apply which criminal regulations will be charged and which will not,

²⁷ *Ibid.*

²⁸ *Ibid.*

in accordance with their conscience and professionalism.²⁹

Referring to the etymological meaning of the word "Public Prosecutor" and its relation to the role of the Prosecutors in a criminal justice system, the Prosecutors should be viewed as the *Dominus Litis* (*procuruer die de procesvoering vastselat*), namely the controller of the case process from the initial stage of investigation to the execution of a court decision. The principle of *Dominus Litis* is a universal concept, as reflected in Article 11 of the Guidelines on the Role of Prosecutors, which was also adopted by the Eighth United Nations Congress on the Prevention of Crime in Havana, Cuba in 1990. In Indonesia, this principle has also been explicitly recognized in the Ruling of the Constitutional Court Number 55/PUU-XI/2013.³⁰

In addition, there is another Ruling of the Constitutional Court that strengthens the Prosecutor's position as *Dominus Litis*. This is reflected in the Ruling of the Constitutional Court Number 130/PUU-XIII/2015 dated January 11, 2017, which requires investigators to submit a Notification Letter of the Commencement of Investigation (SPDP) to the Public Prosecutor within 7 (seven) days after the issuance of the SPDP. This decision confirms that the principle of *Dominus Litis* is exclusively held by the Prosecutor.³¹

However, in reality, the principle of *Dominus Litis* has been reduced in its meaning and function by the Criminal Procedure Code (KUHAP) itself through the principle of functional differentiation, which has resulted in the separation between the investigation and prosecution subsystems. Although the Criminal Procedure Code (KUHAP) does not fully implement the function of the public prosecutor as *Dominus Litis*, the Prosecutor's Office is still given a limited role to conduct horizontal oversight of the investigation process, with the aim of preventing abuse of authority by law enforcement officials that could potentially violate human rights.³²

The implementation of horizontal oversight is currently manifested in the pre-prosecution institution, which serves as a means of coordination between the public prosecutor and the investigator. However, the pre-prosecution institution has proven to be ineffective in achieving its purpose as a means of functional coordination and oversight by the public prosecutor over the performance of investigators. This is partly due to the inadequate regulation of pre-prosecution in the positive norms of the Criminal Procedure Code (KUHAP).

The limitations on the Prosecutor's direct involvement in investigations have prevented the essence of *Dominus Litis* from being fully and comprehensively realized. As the *Dominus Litis*, the Prosecutor should be involved as early as possible in the direct handling of criminal cases, rather than merely reviewing case files at the pre-prosecution stage. This would also be useful in implementing a positive and directed criminal justice system.³³

²⁹ Sihombing et al., "Penguatan Kewenangan," 67.

³⁰ Farid Achmad, "Urgensi Penguatan Peran Penuntut Umum Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Pasca Sarjana Hukum UNS* VII, no. 1 (2019), <https://jurnal.uns.ac.id/hpe/article/view/29168>.

³¹ M. Arief Amrullah, "Pengutaaan Dominus Litis Dalam RUU Kejaksaan," *Suara Karya*, September 26, 2020, <https://www.suarakarya.id/metro/pr-2601688317/Penguatan-Prinsip-Dominus-Litis-Dalam-RUU-Kejaksaan>.

³² Sihombing et al., *supra* note 19, 67.

³³ Sihombing et al., "Penguatan Kewenangan," 68.

The Application of the Principle of Dominus Litis by the Prosecutor's to Ensure the Achievement of Legal Objectives in the Indonesian Criminal Law Enforcement.

1. The Application of the Dominus Litis Principle by the Prosecutor's in the Indonesian Criminal Law Enforcement.

Based on information in the media, it is stated that the Draft Criminal Procedure Code (RKUHAP) contains provisions regarding certain investigators with the following definition:³⁴

*"The term **"Specific Investigators"** refers to investigators from the Corruption Eradication Commission, Indonesian National Armed Forces officers who have the authority to conduct investigations in accordance with the provisions of laws and regulations in the field of fisheries, marine affairs, and shipping in the exclusive economic zone, and Prosecutors in cases of serious human rights violations."*

However, the information is based on the Draft Criminal Procedure Code (RKUHAP) which is not the final version. The regulation regarding **"specific investigators"** based on the final version of the RKUHAP is as follows:

*"The term **"Specific Investigators"** refers to Specific Investigators of the Corruption Eradication Commission (KPK), **Specific Investigators of the Prosecutor's Office**, and Specific Investigators of the Indonesian Financial Services Authority (OJK)."*

In relation to the regulation of the role of the Prosecutor's in the Draft Criminal Procedure Code (RKUHAP), it is necessary to refer back to the principles and doctrines of law, because legal norms should be based on legal principles and doctrines. According to Paul Scholten, a principle is a fundamental idea that lies within and behind each legal system, which is formulated in statutory regulations and court decisions.³⁵

In the context of substantive law enforcement, the Criminal Procedure Code (KUHAP) provides a framework for law enforcement officials to carry out their duties. The public prosecutor, also known as the prosecutor, is the agency authorized by the Criminal Procedure Code (KUHAP) to bring criminal charges before the court.

In the civil law system adopted by many countries, including Indonesia, the role of Dominus Litis is typically held by the public prosecutor because they have the authority to prosecute and bring cases to court. Additionally, the prosecution is given broad authority to oversee the investigation process based on the principle of *opportunit  de poursuites* or principle of opportunity, which is the discretion to determine whether a case is worthy of being brought to court or not. The history of this concept can be traced back to the Roman law system, which adhered to the principle of *accusatio directa*, where the prosecutor or public prosecutor plays a primary role in bringing and controlling the legal process against a defendant.

The regulation regarding the principle of dominus litis or case control held by the Prosecutor's in handling criminal cases is not clearly stipulated in the Criminal Procedure Code

³⁴ Eva Safitri, "Ketua Komisi III DPR Luruskan Isu soal Kewenangan Jaksa di RUU KUHAP," *Detik News*, Maret 15, 2025, <https://news.detik.com/berita/d-7824859/ketua-komisi-iii-dpr-luruskan-isu-soal-kewenangan-jaksa-di-ruu-kuhap>.

³⁵ J.J.H. Bruggink, *Refleksi Tentang Hukum*, trans. B. Arief Sidharta (Citra Aditya Bakti, Bandung, 1999), 119.

(KUHAP). However, in practice, in many countries, prosecutors are often involved in handling cases from the investigation stage. This is because prosecutors function as controllers and supervisors of investigators' work (case controllers).³⁶

In Indonesia, this concept has undergone a change from the inquisitorial system, which gave a dominant role to the prosecution in the *Herziene Indonesisch Reglement* (HIR), to the accusatorial system, which limits the authority of the prosecution in the current Criminal Procedure Code (KUHAP). The position and function of the prosecution as *Dominus Litis* were actually very clear in the provisions of the HIR. During the period when the HIR was in force, investigation was an integral part of the prosecution process (*unité de poursuite et d'instruction*). This made the public prosecutor the coordinator of investigations (*coordinator investigationis*) and also had the authority to conduct investigations themselves (*opspring*). Therefore, the prosecution occupies a position as a key figure in the entire criminal justice process from the beginning to the end (*ab initio ad finem*).

However, with the repeal of the HIR and its replacement by the Criminal Procedure Code (KUHAP), the role of the prosecution in investigation has undergone a fundamental change. The Criminal Procedure Code (KUHAP) adheres to the principle of functional differentiation (*differentiationem functionum*), which limits the authority of the prosecution only to the prosecution stage, while the authority to conduct investigations is exclusively granted to the police (*monopolium investigationis*). As a result, the authority of the prosecution to conduct investigations itself or direct the investigation process directly has been indirectly delegitimized (*delegitimatio*) by the Criminal Procedure Code (KUHAP). As stipulated in Articles 110 and Articles 138 of the Criminal Procedure Code (KUHAP) as follows:

Articles 110 of the Criminal Procedure Code (KUHAP) which states:

- (1) *If the investigator has completed the investigation, the investigator shall immediately submit the case file to the public prosecutor.*
- (2) *If the public prosecutor considers that the investigation results are still incomplete, the public prosecutor shall immediately return the case file to the investigator along with instructions for completion.*
- (3) *If the public prosecutor returns the investigation results for completion, the investigator shall immediately conduct additional investigation in accordance with the instructions from the public prosecutor.*
- (4) *The investigation shall be deemed complete if the public prosecutor fails to return the investigation results within fourteen days or if, prior to the expiration of the said period, the public prosecutor notifies the investigator to that effect."*

Articles 138 of the Criminal Procedure Code (KUHAP) which states:

- (1) *After receiving the investigation results from the investigator, the public prosecutor shall immediately examine and review them, and within a period of seven days, shall inform*

³⁶ Rofiq Hidayat, "Mendorong Pengaturan Asas Dominus Litis dalam RKUHAP," *Hukum Online*, December 21, 2022, <https://www.hukumonline.com/berita/a/mendorong-pengaturan-asas-dominus-litis-dalam-rkuhap-lt63a2df457374f/>.

the investigator whether the investigation results are complete or incomplete.

(2) *In the event that the investigation results are incomplete, the public prosecutor shall return the case file to the investigator accompanied by specific directions on the necessary supplementary actions, and the investigator shall resubmit the case file to the public prosecutor within fourteen days from the date of receipt of the file.”*

Referring to the provisions in Articles 110 and Articles 138 of the Criminal Procedure Code (KUHAP) as mentioned above, it reflects that the Criminal Procedure Code (KUHAP) does not fully implement the Dominus Litis principle in criminal proceedings, but rather is limited to the coordination process between investigators and prosecutors through written communication based on the submitted case files.³⁷ This causes the Prosecutor's role in the investigation to be less than optimal, as they only conduct a formal review of the case files, without being informed about the investigation process, including the preparation of case files and the procedures for gathering evidence.³⁸ As a consequence, the handling of cases becomes ineffective and inefficient, with case files being repeatedly examined and returned to the investigator for supplementation, and prosecutors often being required to make decisions based solely on the case files, without a thorough understanding of the case, and within a limited timeframe.³⁹

With the change from the HIR to the Criminal Procedure Code (KUHAP), although the prosecutor is still considered as Dominus Litis, their role in determining the direction and quality of the investigation becomes more limited compared to the previous legal system. This raises a dilemma in law enforcement practice, particularly in ensuring that investigations are conducted in accordance with the principle of due process of law and do not create obstacles in the prosecution stage.

Commissioner of the Prosecutorial Commission (Komjak) Bhatara Ibnu Reza explained that in law enforcement practice, prosecutors are no longer active as Dominus Litis. However, by being actively involved from the investigation stage at the police, prosecutors can easily prepare indictments and charges. This is because, in addition to fully understanding the investigation conditions on the ground, prosecutors also have an emotional connection in handling cases. Unfortunately, the Indonesian criminal justice system no longer refers to universal practices that position prosecutors as Dominus Litis as active case controllers from the beginning of case handling. According to him, the understanding of Dominus Litis based on the Criminal Procedure Code (KUHAP) limits prosecutors ability to supervise the investigation process.⁴⁰

In the legal theory of Rechtsstaat, every legal process must prioritize the principles of justice (*justitia*), legal certainty (*certitudo juris*), and legal utility (*utilitas juris*). If the Prosecution

³⁷ Sarimonang Beny Sinaga, “Meninjau Kembali penerapan diferensiasi fungsional dalam KUHAP,” *Antara News Jateng*, September 2, 2025, <https://jateng.antaranews.com/berita/598109/meninjau-kembali-penerapan-diferensiasi-fungsional-dalam-kuhap>.

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ Rofiq Hidayat, *Loc. Cit.*

does not have the authority to directly supervise investigations, there is a risk of irregularities in the process of gathering evidence and applying the law. The principle of fruit of the poisonous tree, which has developed in the common law system, indicates that if evidence is obtained illegally (illegal evidence), then all investigation results derived from that evidence become invalid. Therefore, the Prosecution as the case controller must have the authority to ensure that evidence is collected lawfully (*legitima probatio*).

As Dominus Litis, the Prosecution should have full control over the investigation process to prosecution to ensure the validity of evidence and justice for the defendant and the victim (*in dubio pro reo*). However, if the prosecutor is still considered as Dominus Litis but does not have authority in the investigation stage, then their role is limited to an administrative complement in the criminal justice system, rather than being the actual case controller.⁴¹

2. Strengthening the Authority of Prosecutors as Dominus Litis in Indonesian Criminal Law.

To position the Prosecution as a case controller with the authority to ensure the lawful collection of evidence (*legitima probatio*), institutional strengthening of the Prosecution is necessary, as well as strengthening the Prosecution as Dominus Litis. This strengthening can be undertaken through several measures, including:

- a. The enhancement of prosecutors' capabilities through structured and continuous training should be an integral part of the development of training programs designed to provide and improve prosecutors' expertise in handling cases. Structured and continuous training, as well as periodic evaluations, are necessary to maintain and ensure prosecutors' competence remains relevant to the evolving needs of society and the legal system; and/or
- b. Enhancing institutional aspects, such as strengthening coordination between investigators and prosecutors, can be done by involving the public prosecutor from the early stages of investigation for certain cases that are complex or have a broad impact. This involvement does not necessarily have to be in the form of taking over the investigation, but can be in the form of consultation or accompaniment that allows the public prosecutor to provide direction on legal aspects that need to be considered in the investigation, adopting the "instruction prosecutor" model as applied in the Netherlands, where the prosecutor has the authority to give binding instructions to investigators regarding the direction of the investigation, evidence collection, and other investigative measures.⁴² This model strengthens the prosecutor's role without having to take over the investigative function.⁴³

⁴¹ Handar Subhandi Bakhtiar, "Jaksa sebagai Dominus Litis: Pelengkap atau Pengendali Perkara?," *Hukum Online*, February 14, 2025, <https://www.hukumonline.com/berita/a/jaksa-sebagai-dominus-litis--pelengkap-atau-pengendali-perkara-lt67ae2a19a56bc/>.

⁴² Alasandar Polasio Sihalo, "Peran Jaksa Sebagai Dominus Litis dalam Sistem Peradilan Pidana Indonesia (Kritik Terhadap Diferensiasi Fungsional dalam RCUHAP)," *Integrative Perspectives of Social and Science Journal (IPSSJ)* 2, no. 2 (2025): 1509-1517. <https://ipssj.com/index.php/ojs/article/view/203>.

⁴³ *Ibid.*

However, these methods become less effective if not accompanied by amending a rule or system, which is expected to lead to a better system for the Prosecutor's Office in the context of implementing the criminal justice system in Indonesia.

Furthermore, in relation to the principle of Dominus Litis, the refinement of legal substance can be achieved by incorporating provisions on the active role of public prosecutors in investigative actions in the Criminal Procedure Code (KUHAP) and in the Prosecution Law. With the active role of public prosecutors in investigative actions, cases that are not pursued by investigators can be taken over by prosecutors, as was the case during the enforcement of the HIR and Law No. 15 of 1961. In fact, in many countries, prosecutors are also given the authority to conduct investigations, although in practice, prosecutors rarely conduct investigations themselves. The existence of further investigative authority can also be used as a means of control, to ensure that investigators are diligent in investigating a case, because if they are not, the investigation can be taken over by the prosecutor. The existence of further investigation by the prosecutor can also be a means for seekers of justice, particularly victims or complainants, if they are not satisfied with the performance of investigators who ignore or neglect cases reported to them.⁴⁴

In countries with a prosecution system that follows the Continental European tradition, the Criminal Procedure Code (KUHAP) typically lists prosecutors as one of the investigators. In fact, the Dutch Criminal Procedure Code (KUHAP) places prosecutors as the primary investigators, followed by other investigators. However, prosecutors rarely conduct investigations in their daily duties, but instead supervise the investigation process carried out by investigators. One of the purposes of designating prosecutors as investigators is to enable them to conduct investigations themselves if investigators fail to follow up on public reports.⁴⁵

With the authority to investigate held by prosecutors, investigators will be more diligent in conducting investigations because if they "playing around" with cases, it would be futile, as the cases can be taken over by prosecutors. The implication is that investigators become professional, and as a result, prosecutors in the Netherlands rarely conduct investigations. Expanding the authority for additional examination or reviving the role of prosecutors in investigations is necessary to prevent cases from being left unresolved or pending. This is because unclear or pending case resolutions contradict the principle of legal certainty and can lead to injustice, harming those seeking justice. All of this is necessary to ensure that the ultimate goal of criminal procedure law, as stated by Andi Hamzah, which is to achieve order, tranquility, peace, justice, and welfare in society, can be realized well. Thus, the ideals of the nation's founders, as outlined in the Preamble to the 1945 Constitution, can be fulfilled.⁴⁶

⁴⁴ Dedy Chandra Sihombing et al., "Penguatan Kewenangan Jaksa Selaku Dominus Litis Sebagai Upaya Optimalisasi Penegakan Hukum Pidana Berorientasi Keadilan Restoratif," *Locus: Jurnal Konsep Ilmu Hukum* 3, no. 2 (2023): 63-75, <https://doi.org/10.56128/jkih.v3i2.42>.

⁴⁵ Farid Achmad, "Urgensi Penguatan Peran Penuntut Umum Dalam Sistem Peradilan Pidana Indonesia," *Jurnal Pasca Sarjana Hukum UNS* VII, no. 1 (2019), <https://jurnal.uns.ac.id/hpe/article/view/29168>.

⁴⁶ Bambang Waluyo, *Desain Fungsi Kejaksaan Pada Restorative Justice* (Rajawali Pers, Depok, 2017).

CLOSING

The essence of the Dominus Litis principle is case control, which in this context lies with the Prosecutor, where the Prosecutor should be involved in the handling of criminal cases from pre-prosecution, prosecution, legal remedies, and execution. The application of the Dominus Litis principle or absolute authority granted to the Prosecution Service of the Republic of Indonesia in handling criminal cases through the Criminal Procedure Code (KUHP) has not been optimal, resulting in an incomplete and non-comprehensive process. This leads to the position of the Prosecutor as Public Prosecutor being perceived as less than optimal, as they only conduct a formal review of case files without knowledge of the investigation process, including the preparation of case files and the manner of obtaining evidence.

As Dominus Litis, the Prosecution Service should have full control over the case from the investigation stage to prosecution, ensuring the validity of evidence and justice for both the defendant and the victim (*in dubio pro reo*). However, if the Prosecutor is still considered as Dominus Litis but lacks authority during the investigation stage, their role would be limited to administrative formalities within the criminal justice system, rather than being the actual controller of the case as intended by the Dominus Litis principle itself.

To establish the Prosecution Service as a case controller with the authority to ensure the legitimate collection of evidence (*legitima probatio*), institutional strengthening of the Prosecution Service is necessary, as well as reinforcement of its role as Dominus Litis. This strengthening is related to reforming rules or systems, aiming to create a better system for the Prosecution Service in the context of implementing the criminal justice system in Indonesia.

By fully and comprehensively applying the Dominus Litis principle, the Prosecutor is given the authority to conduct investigations. This also has implications for investigators to be more professional and diligent in carrying out their duties, as the Prosecutor can take over the case if the investigator is deemed incompetent. Therefore, a revision of the Criminal Procedure Code (KUHP) is necessary to fully and comprehensively apply the Dominus Litis principle to the Prosecution Service, so that there are no more cases with unclear or ambiguous resolutions. Thus, the ultimate goal of criminal procedure law, as stated by Andi Hamzah, which is to achieve order, tranquility, peace, justice, and welfare in society, can be achieved.

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