

Research Article

The Role of the Prosecutor as Dominus Litis in Assertive and Humanistic Law Enforcement

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Abstract: Law enforcement holds a central role in shaping social order and ensuring the effective implementation of legal functions in Indonesia. The law is not merely a normative reference but must be strategically positioned as the fundamental basis for resolving disputes and conflicts that emerge within society. In this regard, Law No. 16 of 2004 concerning the Indonesian Prosecutor's Office, particularly Article 2 paragraph (1), clearly stipulates that the Prosecutor's Office is a state institution entrusted with exercising governmental authority in the field of prosecution, along with other responsibilities mandated by law. Within the framework of criminal justice, the Prosecutor's Office assumes a pivotal role as Dominus Litis—the ultimate controller of criminal cases. This authority signifies that the Prosecutor's Office is the only institution empowered to decide whether a particular case, supported by sufficient evidence in line with the Criminal Procedure Code, is eligible to be brought before the court. The prosecutor's discretionary power in this context highlights its critical position in upholding justice and maintaining the integrity of legal proceedings. Beyond its prosecutorial function, the Prosecutor's Office also bears the exclusive responsibility for executing criminal judgments, ensuring that court decisions are implemented properly and consistently with the rule of law. This dual function—both as Dominus Litis and executor of judicial decisions—underlines the institutional indispensability of the Prosecutor's Office in the Indonesian legal system. The institution's authority is therefore not limited to initiating prosecutions but also extends to safeguarding the finality and enforcement of criminal verdicts, which makes it a cornerstone in the broader architecture of law enforcement. Consequently, strengthening the role and capacity of the Prosecutor's Office is essential for advancing justice, protecting the rights of citizens, and reinforcing the legitimacy of Indonesia's legal order.

Keywords: Criminal Justice; Dominus Litis; Law Enforcement; Legal System; Prosecution; The Role of the Prosecutor.

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1. Introduction

Law enforcement encompasses all aspects of life in a nation and state. In a narrower sense, law enforcement is limited to the litigation process in court, including in criminal cases which involve investigation, inquiry, to prosecution (examination before the court), and the execution of court decisions that have permanent legal force. Law must be placed in a crucial position and serve as a reference in resolving various disputes that arise in society. As a tool for resolving conflicts, law functions as a system consisting of several sub-systems (components) that influence each other. The good or bad performance of one component can directly impact the overall performance of the system. R. Subekti stated that the legal system is "an arrangement or orderly structure, a whole that consists of interrelated parts, designed according to a plan".

The relationship between the Prosecutor's Office and the Police can be said to be complex. Although the public views them as inseparable partners, in practice, there are often tensions between the two when carrying out their respective duties. Coordination between state agencies, particularly in law enforcement, remains a challenge for the government today in the efforts of legal reform. Often, disputes arise between investigators and public

prosecutors because investigators feel equal to public prosecutors. On the other hand, public prosecutors hold a very important position in the criminal justice process. Based on their duties and authorities, public prosecutors will study and examine the case files submitted by investigators. If all evidence has been met and complies with the provisions in the Criminal Procedure Code, they will proceed to file a prosecution in the District Court, where the role of public prosecutors is very central in proving the case.

One of the principles that plays a role in the prosecution stage is *Dominus Litis*, which means 'Prosecutor' or ruler of the case. In the context of criminal justice, the prosecutor has the authority to decide whether a case can be continued for prosecution in court. In Indonesia, this principle serves as the foundation of the authority of the public prosecutor in the prosecution process. *Dominus Litis* is universally recognized and is stated in Article 2 of Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia (hereafter referred to as the Attorney Law), which states that the Attorney General's Office is a government institution that exercises state power in the field of prosecution and other authorities based on the law, carried out independently. The provision that the attorney general's office is part of the criminal justice system is regulated in Article 24 of the 1945 Constitution jo. Article 38 of Law Number 48 of 2009 concerning Judicial Power. Article 24 of the amended 1945 Constitution states as follows:

- a. The judicial power is an independent power to conduct trials in order to uphold the law and justice.
- b. The judicial power is carried out by a Supreme Court and the judicial bodies beneath it within the general judicial environment, the religious judicial environment, the military judicial environment, the state administrative judicial environment, and by a Constitutional Court.
- c. Other bodies whose functions relate to judicial power are regulated by law.

As part of the criminal justice system, the prosecutor's office has the main task of prosecuting criminal cases, as well as carrying out other duties regulated by law. This is reflected in the provisions of Article 2 paragraph (1) of the Prosecutor's Act, which is explained in more detail in Article 30 regarding the duties and authorities of the prosecutor's office.

With a very important function, the prosecution plays a strategic role in law enforcement as well as in realizing public order and tranquility. However, in the Criminal Procedure Code (KUHAP), which is the main legal basis for law enforcement in Indonesia, there is no more specific regulation regarding the principle of *Dominus Litis* granted to the Indonesian Prosecutor's Office in handling criminal cases. This results in the position of the prosecutor as the Public Prosecutor, which is part of the Prosecutor's Office, often being looked down upon, as they only formally examine case files without understanding the process from the beginning of the investigation, including in the preparation of case files and the procedure for obtaining evidence.

The issue to be examined is How the Role of the Prosecutor as '*Dominus Litis*' in Strict and Humanistic Law Enforcement.

2. Research Methods

In this study, the author uses normative research, which is research to examine a prevailing norm or regulation. It can also be referred to as library research. This type of research is the main characteristic in legal research. This research is also often referred to as doctrinal research or library research.

3. Results and Discussion

The Role of the Prosecutor as "*Dominus Litis*" in the Enactment of Firm and Humanistic Law. Indonesian society always hopes for legal certainty, as such certainty enables social life to proceed more orderly. On the other hand, the public also desires benefits from the implementation or enforcement of the law, with justice being the main concern. In community life, it is very important to have a legal system that can create a harmonious and orderly atmosphere. However, in reality, many laws or regulations have not been able to cover all the issues that occur in society, which becomes an obstacle for law enforcement in resolving cases. According to Jimly Asshiddiqie, law enforcement is a process undertaken to uphold or ensure the effective functioning of legal norms in a concrete manner, serving as a guideline in social and legal relationships within community and state life.

From the perspective of its subject, law enforcement can be carried out by many parties and can be interpreted in two meanings: broad and narrow. In the broad sense, the law enforcement process involves all legal subjects in every legal relationship. This means that anyone who complies with normative rules, whether by acting or refraining from doing something dictated by applicable legal norms, essentially also participates in enforcing the law. Meanwhile, in the narrow sense, law enforcement is defined as the efforts made by certain law enforcement officers to ensure that a legal rule operates in accordance with existing provisions.

The main goal of law is to create an orderly society, which in turn can generate order and balance. With the establishment of order in society, it is hoped that each individual's interests will be protected. To achieve this goal, the law plays a role in dividing rights and obligations among individuals in society, establishing authority, as well as regulating the means of resolving legal issues while maintaining legal certainty.

The Integrated Criminal Justice System regulated in the Code of Criminal Procedure (hereinafter referred to as KUHAP) has established limitations regarding the authority and working relationships among Law Enforcement Officers. In this context, the authority to prosecute is held by the Prosecutor's Office, represented by the Public Prosecutor. Their duties include receiving and examining case files generated by Investigators before the files are submitted to the Judge for examination in court; the Public Prosecutor has a monopoly on this authority, known as the principle of *Dominus Litis*.

However, in the development of the legal system in Indonesia, the existence of the principle of *Dominus Litis* has begun to experience reduction along with the emergence of the principle of functional differentiation, which separates investigation from prosecution. In fact, these two matters should remain within the framework of an Integrated Criminal Justice System. The functional differentiation principle is not actually a legal principle, but rather relates to an administrative system that shows a difference and separation of functions between investigation and prosecution. However, from the perspective of an integrated criminal justice system, investigation and prosecution cannot actually be separated, as the party responsible for the results of the investigation before the trial is the Public Prosecutor, according to the principle of *actori incumbit onus probandi*, which indicates that the accusing party is the one who is obligated to prove their allegations.

Self-prosecution is defined as the action of the Public Prosecutor to submit a criminal case to the competent District Court, in accordance with the provisions regulated in this law, and to request that the case be examined and decided by a judge in a court session (Article 1 point 7 of the Criminal Procedure Code). This principle positions the Public Prosecutor as the controller of the case, meaning that the decision to continue or halt prosecution of a criminal case resulting from an investigation is entirely the authority of the Public Prosecutor. In this regard, the Public Prosecutor has the right to stop the prosecution for reasons such as insufficient evidence, events that do not meet the elements of a criminal act, or closing the case for legal reasons.

The Prosecutor's Office, in exercising the powers of the State in the field of prosecution, must carry out its duties independently, freely, and free from the influence of government powers or other powers. This is important to create legal certainty, legal order, as well as justice and truth in the criminal justice system in Indonesia. The Principle of *Dominus Litis* cannot be separated from the principle of opportunity regulated in Article 35 letter c of the Prosecutor's Law. This principle is a constitutional authority established based on the Constitutional Court Decision Number 29/PUU-XIV/2016. In the context of criminal cases, the Attorney General as *Dominus Litis* has the authority to set aside a case for the public interest at any time. This authority is exclusive, only granted to the Attorney General, and does not apply to other law enforcement officials. Unlike in the Netherlands, where the principle of opportunity is the authority of every prosecutor, not just the Attorney General. The application of the principle of opportunity further strengthens the position of the public prosecutor as *Dominus Litis* in criminal cases.

Researchers from the Van Vollenhoven Institute (VVI) and PhD candidate from Leiden University, Fachrizal Afandi, proposed that full authority or *Dominus Litis* be granted to the Indonesian Prosecutor's Office in handling criminal cases. According to him, by granting full authority to the Prosecutor's Office, the issue of case files going back and forth between prosecutors and police can be resolved. This absolute authority of the Prosecutor's Office is also expected to eliminate the problem of prolonged status of someone as a suspect in criminal cases. He emphasized that, so far, the police can designate someone as a suspect for a long time while the case files are not submitted to the prosecutor's office.

This authority is reinforced by the statement of the Special Crimes Assistant (Aspidus) of the South Kalimantan High Prosecutor's Office, Dwianto Prihartono SH MH, who explained that the principle of *Dominus Litis* grants absolute rights to public prosecutors to initiate prosecutions. He stated, "No other body has the right to prosecute except the public prosecutor, which is absolute and monopolistic. In other words, the decision to prosecute a criminal case resulting from an investigation is entirely the authority of the public prosecutor. Likewise, the public prosecutor may terminate the prosecution if there is not sufficient evidence".

A similar opinion was expressed by criminal law expert and Professor at Jenderal Soedirman University, Hibnu Nugroho. He appreciated the Prosecutor's Office's success in handling legal cases by applying the principle of '*Dominus Litis*'. According to him, 'The Prosecutor's Office has shown very good progress. The handling is truly professional, emphasizing the principle of '*Dominus Litis*'. This principle serves as a controller of cases. Therefore, prosecutors can consider whether to proceed with a case or not.' The application of the principle of '*Dominus Litis*' in law enforcement indicates that control over prosecutorial policy in a country should be under one authority, namely the Attorney General as the highest public prosecutor.

4. Conclusion

The Attorney General's Office of the Republic of Indonesia plays a crucial role in law enforcement in the country, considering its position as an institution for law and justice enforcement. As one of the law enforcement institutions, the Attorney General's Office has various important duties and functions, including acting as an investigator in certain criminal cases, public prosecutor, and executor of court decisions. The Attorney General's Office also plays a role in supervising the implementation of conditional criminal sentences, as well as providing legal support as the State Attorney. In addition, this institution contributes to maintaining public order and security.

As the controller of the case (*Dominus Litis*), prosecutors are required to always act professionally and with integrity in carrying out their law enforcement duties, in order to achieve justice and welfare for all people in Indonesia. The principle of *Dominus Litis* allows for the achievement of professionalism and proportionality of Public Prosecutors, which is regulated in various provisions that must be used as guidelines in the implementation of their duties and powers. This principle emphasizes that prosecution is the primary task that cannot be separated, thus strengthening the position of the prosecutor as the public prosecutor in conducting prosecutions in criminal cases. Only prosecutors have the authority to determine whether a criminal case will be resolved or not. Even judges, as parties who will render a decision, cannot request or force prosecutors to resolve the case. Judges must remain passive and can only adjudicate at the request or after the case has been transferred to them.

References

- Andi, M. S., & Asis, A. (2014). *Criminal procedure law: An introduction* (2nd ed.). Jakarta, Indonesia: Kencana.
- Ardilafiza. (2016). Independence of the prosecutor's office as the executor of prosecutorial power in the Indonesian constitutional system. *Constitutional Journal*, 3(2).
- Cowdery, N. (2016). Prosecutorial independence in Australia: How much independence and how much accountability? *Criminal Law Journal*, 40(4), 197–214.
- Effendy, M. (2012). Discretion in the enforcement of criminal acts of corruption. Paper presented at the National Seminar, Brawijaya University, Malang, Indonesia.
- Field, S., & Davies, C. (2012). Human rights, victims and the prosecution of crime in the UK. *International Journal of Law, Crime and Justice*, 40(4), 248–262.
- Frase, R. (1980). The decision to file federal criminal charges: A quantitative study of prosecutorial discretion. *University of Chicago Law Review*, 47(2), 246–300. <https://doi.org/10.2307/1599360>
- Hamza, A. (2017). *Criminal procedure law* (2nd ed.). Jakarta, Indonesia: Sinar Grafika.
- Irwansyah. (2021). *Legal research: Choices of methods and practices in article writing* (Rev. ed.). Yogyakarta, Indonesia: Mirra Buana Media.
- Peay, G. L. (2021). *Prosecutorial discretion and accountability*. Oxford, UK: Hart Publishing.
- Republic of Indonesia. (1981). *Law Number 8 of 1981 concerning the Code of Criminal Procedure*.

- Republic of Indonesia. (2004). *Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia*.
- Republic of Indonesia. (2021). *Law Number 11 of 2021 concerning amendments to Law Number 16 of 2004 about the Attorney General's Office of the Republic of Indonesia*.
- Roach, K. (1999). Four models of the criminal process. *Journal of Criminal Law and Criminology*, 89(2), 671–716.
<https://doi.org/10.2307/1144140>
- Sprack, J. (2021). *A practical approach to criminal procedure* (19th ed.). Oxford, UK: Oxford University Press.
- Timur, A. (2021). *Proceedings series of Cepalo Journal*. Master's Degree in Law, University of Lampung.
- United Nations Office on Drugs and Crime. (2014). *The status and role of prosecutors: A United Nations Office on Drugs and Crime handbook*. Vienna, Austria: United Nations.