



Legal politics against Dominus Litis at the Attorney General's Office in Exercising the Power of Prosecution

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<http://dx.doi.org/10.18415/ijmmu.v9i6.3722>

Abstract

This study examines the existence of the prosecution authority in Indonesia which is closely related to the principle of dominus litis. In accordance with the dominus litis principle, the determination and control of prosecution policy is only in one hand, namely the Prosecutor's Office. Prosecutors carry out investigations only in relation to specific crimes. The problem that will be in this research is how is the legal politics of the prosecutor's dominus litis in carrying out the prosecution's power and how is the independence of the prosecutor's office in carrying out the prosecution. The research method used is a normative research method with a statute approach and analyzed using content analysis.

Keywords: *Legal Politics; Dominus Litis; Power of Prosecution*

Introduction

In the Integrated Criminal Justice System, which is regulated in the Criminal Procedure Code, it has provided limits on the authority and working relationship between Law Enforcement Officials. One of the important components in law enforcement is the Indonesian Prosecutor's Office, the Attorney General's Office of the Republic of Indonesia. is a state institution that exercises state power, especially in the field of prosecution. [1] As an authorized body in law enforcement and justice, [2] the Prosecutor's Office of the Republic of Indonesia R.I. led by the Attorney General who is elected by and responsible to the President. Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (Law on the Attorney General's Office) indicates that the Prosecutor's Office is in a central position with a strategic role in strengthening the nation's resilience.[3] Because the Prosecutor's Office is on the axis and becomes the filter between the investigation process and the examination process at the trial as well as being the executor of court decisions and decisions.[4] Thus, the Prosecutor's Office is the controller of the case process (dominus litis),[5] because only the Prosecutor's Office can determine whether a case can be brought to court or not based on valid evidence according to the criminal procedure law.[6]

The authority to carry out prosecutions is held by the Prosecutor's Office which in this case is carried out by the Prosecutor as the Public Prosecutor, namely in terms of receiving and examining case files resulting from investigations from Investigators and subsequently delegated to the Judge for examination before the trial.[7] The authority to prosecute is only held and becomes the monopoly of this

'Public Prosecutor' which is commonly called the *Dominus Litis* principle which comes from the Latin word *Dominus* which means owner and *Litis* means case or lawsuit.[8] The *Dominus Litis* principle means that the Prosecutor's Office is the only institution that exercises state power in the field of "Prosecution", in which the control of the prosecution policy is in one hand, namely the Attorney General.[9] The *dominus litis* principle emphasizes that no other body has the right to prosecute other than the Public Prosecutor which is absolute and monopoly, because the Public Prosecutor is the only institution that owns and has a monopoly on the prosecution and settlement of criminal cases, this is explained in Article 1 paragraph (1) According to the Prosecutor's Law, it is stated that the Prosecutor is a functional official who is authorized by law to act as a Public Prosecutor and implementer of court decisions who have obtained permanent legal force and other powers based on the law.[10] The prosecutor also has an important role in the trial and it is the prosecutor who acts as the public prosecutor in the trial, in carrying out his duties and authorities the prosecutor also acts on behalf of the state. As explained in Article 35 of the Prosecutor's Law. [11]

In this case, it means that the Prosecutor cannot arbitrarily carry out his duties and authorities, because the duties and authorities of the Prosecutor have been regulated in Article 35 of the Prosecutor's Law, so the Prosecutor must act in accordance with the contents of Article 35 above.[12] The Prosecutor's Office, in carrying out its duties, should be independent and free from the influence of government power and other powers in its efforts to realize legal certainty, legal order, justice and truth by avoiding religious norms, decency, and morality, and must explore human values, law, and ethics. and justice in society. [13] The prosecutor who plays the role of the public prosecutor must be free from the influence of any power because to achieve a goal in enforcing the law and is required to carry out his duties and powers in accordance with the law. As well as upholding the rule of law, protecting the public interest, upholding human rights, and eradicating corruption, collusion and nepotism.[14] Based on the prevailing legal doctrine, there is a principle that the Public Prosecutor has a monopoly of prosecution, meaning that every person can only be tried if there is a criminal charge from the Public Prosecutor, namely the prosecutor's office because only the Public Prosecutor has the authority to bring a person suspected of committing a crime before a court session.[15]

The position of the Prosecutor should be an independent institution with a reference to a central role (pivotal position) in the criminal justice system (criminal justice system).[16] For this reason, the task of the prosecutor is to prosecute a suspect based on the legal guilt of the suspect, the prosecutor is a law enforcement officer who has a central position (pivotal position) so that the prosecutor can determine whether a suspect can be detained or continue with prosecution.[17] before the court or can only be released. Ideally, the types of demands made by the Public Prosecutor should refer to the main types of crimes that apply in Article 10 of the Criminal Code, namely capital punishment, imprisonment, imprisonment, and fines. [18] This means that in the positive law currently in force in Indonesia, the Public Prosecutor should sue the perpetrators of criminal acts with the death penalty, imprisonment, confinement and fines. However, in its development, in subsequent developments, the Public Prosecutor may demand that the perpetrators of criminal acts be freed on the basis of the Attorney General's Circular Letter Number: SE-006/A/JA/08/2003, as follows: [19]

1. That basically the Prosecutor is not allowed to demand acquittal of a case in accordance with his duties and authority to carry out prosecutions in criminal cases.
2. That because the testimony of the witness as evidence is what the witness stated in court (Article 185 of the Criminal Procedure Code), then if there is a withdrawal of testimony in the trial and there is no other evidence, so that a case that was previously considered sufficient evidence becomes not proven at all, the Public Prosecutor is only allowed to apply an acquittal.

Executive power does pose a threat to the power of prosecution. [20] According to some expert opinions, the prosecutor's office cannot be subordinated to the executive power, the Attorney General is

responsible for the demands made without the intervention of other parties. In the provisions of "Article 2 of the Prosecutor's Law. In accordance with the circular letter, it is known that the acquittal by the Public Prosecutor in a criminal case is basically not in accordance with the provisions regarding the main types of crimes as regulated in Article 10 of the Criminal Code. [21] Acquittal in the event that testimony is withdrawn at trial and there is no other evidence, so that a case that was previously considered to have sufficient evidence becomes not proven at all. The Public Prosecutor in such a context is allowed to apply an acquittal. Apart from that, in the development of the legal politics of *Dominus Litis*, the Prosecutor's Office in exercising its prosecutorial power, there has been a shift in the Prosecutor as a single prosecution system, namely *een en ondeelbaar*" (prosecutors are one and inseparable), at the level of practice this principle is increasingly divided with the existence of public prosecutors at the Corruption Eradication Commission This condition has caused the Corruption Eradication Commission to have ruled out the *dominus litis* of the Prosecutor's Office, in addition, the lack of the role of the Prosecutor in the investigation process has so far been a serious obstacle in the pre-prosecution process. Based on the description above, the problem in this research is how is the legal politics of the prosecutor's *dominus litis* in carrying out prosecution powers and how is the independence of the prosecutor's office in carrying out prosecutions.

Methods

The research method used is a normative research method, using a statute approach related to legal politics against the prosecutor's *dominus litis* in carrying out prosecution powers.[22] The statute approach is to examine matters relating to legal principles, legal views and doctrines, and laws and regulations related to sustainable agricultural land, and accurate and accountable data.[23] In addition, an in-depth examination of the legal facts is also held to then seek solutions to the problems that arise in the symptoms in question.[24]

Results and Discussion

1. Legal Politics Against *Dominus Litis* of the Prosecutor's Office in Carrying Out Prosecutors

Legal Politics is basically a government policy regarding which laws will be maintained, which laws will be replaced, which laws will be revised and which laws will be abolished.[25] The elaboration of legal politics is as a tool or means and steps that can be used by the government to create the desired national legal system and with this national legal system the ideals of the Indonesian nation will be realized.[26] Mahfud MD also gave a definition of legal politics as a policy regarding law that will be or has been implemented nationally by the government. It also includes an understanding of how politics influences the law by looking at the configuration of power behind the making and enforcing of the law. [27] Laws cannot only be seen as imperative articles, but must be viewed as a subsystem which in reality is not impossible to be determined by politics, both in the formulation of the material (articles), as well as in their enforcement.

Meanwhile, according to Mahfud.MD, legal politics is a legal policy that has been or will be implemented nationally by the Indonesian government which includes:

- a. Legal development with the core of making and updating legal materials so that they can be adapted to the needs
- b. Implementation of existing legal provisions, including affirmation of institutional functions and guidance of law enforcers.

Basically, criminal policy or politics is part of social policy or politics. This social policy aims to achieve social welfare and protect the community (social defense). [28] So in this case it can be said that criminal policy is an integral part of social policy that aims to protect society. From the description above, it can be concluded that legal politics is a basic policy of state administrators in the field of law that will, is currently and has been in effect, which is sourced from the prevailing values, which are sourced from the values that apply in society to achieve the desired state goals. [29] Aspire to achieve state goals based on the basis and ideals of state law contained in the Preamble and the articles of the 1945 Constitution. In formulating and stipulating laws that have been and will be implemented, legal politics delegates legislative authority to state administrators, but with due regard to values values that apply in society, all of which are directed in order to achieve the aspired state goals. [30]

One of the reasons why the prosecutor is made the main character or central figure (case controller) in the administration of criminal justice is to prevent the occurrence of problems in the implementation of the prosecution authority by the prosecutor's office,[31] problems often arise between other law enforcement agencies in terms of coordinating case files between the prosecutor and police investigators at the pre-prosecution, accountability for control of detention between the prosecutor and the court on the status of the transfer of detention during examination at trial and transfer at the time of transferring files, and the dualism of prosecution authority between the prosecutor and the Corruption Eradication Commission in cases of Corruption Crimes.[32] These problems occur, because there are still overlapping conceptions related to the duties and authorities of the prosecutor's office. The integrated criminal justice system adopted in the Criminal Procedure Code creates problems in relation to the prosecution authority of the Prosecutor's Office and other law enforcement sub-systems, namely the police in terms of investigations and courts in the judicial process. The position of the Prosecutor's Office in the context of national law based on the Law on the Prosecutor's Office places this institution in the executive sphere, which causes the AGO is not independent and independent. [33]

The criminal justice system as a system is basically an open system, namely a system that in its movement achieves goals, both short-term (resocialization),[34] medium-term (crime prevention) and long-term (social welfare) goals are strongly influenced by the community environment and the field of In the field of human life, the criminal justice system in its movement will always experience interfaces (interaction, interconnection, interdependence) with its environment in ranks, society, economy, politics, education and technology, as well as the subsystems of the criminal justice system itself (subsystem of criminal justice system). After the promulgation of Law Number 8 of 1981 concerning the Criminal Procedure Code, the *Het Herziene Regement* (Stbl. 1941 No. 44) as the basis for the Indonesian criminal justice system, the basis for the process of resolving criminal cases in Indonesia has been revoked. [35] The components of the criminal justice system that are commonly recognized, both in knowledge of criminal policy and in law enforcement practice, consist of elements of the police, prosecutors, courts, and correctional institutions.

Based on the above description, related to the legal politics of the prosecutor's *dominus litis* in carrying out prosecutions, the position of the Prosecutor's Office of the Republic of Indonesia in the government system according to the Prosecutor's Law is clearly regulated that; [36]

- a. Prosecutors as a government agency.
- b. The Prosecutor's Office exercises powers in the field of prosecution and other powers based on the law.
- c. Such power or authority is exercised independently.
- d. Prosecutors are one and inseparable.

There are also obstacles faced by the Prosecutor's Office of the Republic of Indonesia when carrying out its functions, duties and authorities in the government system, including the emergence of problems between other law enforcement agencies due to dualism in prosecution. Apart from that, the

principle of *dominus litis* has not been fully implemented in law. As a result, the relationship between institutions (investigators and public prosecutors) is often colored by disputes because investigators feel they have an equal position with public prosecutors. In addition, by not applying the internal *dominus litis* principle, the position of the Prosecutor as a public prosecutor is lacking because he only formally examines case files, does not know the process of preparing files and procedures for obtaining evidence. Therefore, the real reason why *dominus litis* in prosecuting really needs to be applied as ideally as possible is so that the Prosecutor in giving demands does not get pressure from other institutions or parties so as not to cause injustice to the law.

2. Independence of the Prosecutor's Office in Carrying Out Prosecutors

Article 2 paragraph (1) of the Prosecutor's Law describes that the Prosecutor's Office of the Republic of Indonesia as a government institution that exercises state power in the field of prosecution must carry out its functions, duties and authorities independently, regardless of the influence of government power and the influence of other powers. The article clearly states that the Attorney General's Office in carrying out its functions, duties and authorities is independent from the influence of government power and the influence of other powers. [37] But in reality the independence of the prosecutor is still not running in accordance with the law. Independence is a mental attitude that is free from influence, not controlled by other parties, not dependent on others. Independence also means honesty in considering facts and impartial objective considerations. [38] Apart from that, it can be seen from what is formulated in the General Elucidation, Article 19 paragraph (2), and Article 22 of the Prosecutor's Law, namely that the Prosecutor's Office is a government institution that exercises state power in the field of law enforcement by adhering to statutory regulations and policies. set by the government. Thus, the Attorney General is appointed and dismissed by the President and is responsible to the President. [39]

Independence is understood as the absence of threats or interference from the power of other state institutions (external institution independence). In the case of prosecution powers, such threats are derived from direct intervention of the executive power. [40] Therefore, the prosecution agency should not be subordinated to the executive power. Not placing the prosecution agency in the executive power will provide an objective possibility to carry out an independent prosecution. [41] However, the fact is that there are several countries that put their prosecution power as part of the executive power, but still can realize the independence of the prosecution power. The independence of the Prosecutor's Office should also be interpreted as "independent prosecution power in the sense that it is not related or influenced by any party and has the ability to decide its actions in the field of prosecution in a fair and objective manner. [42] The position of the Prosecutor's Office as the sole prosecution power holder and as the controller of the case so as to create a single prosecution system. In addition, uniformity of prosecution, balance of prosecution, and the creation of justice in law enforcement are also fostered. If the prosecution power can be accommodated in the constitutional structure and becomes a separate state institution that is guaranteed constitutionally in the Constitution of the Republic of Indonesia, then the prosecution system in Indonesia applies a single prosecution system or (single public prosecution system). The characteristics of a single prosecution system include:

- a. The Prosecutor's Office is an independent institution, led by the Attorney General;
- b. The appointment of the Attorney General is not political in nature so it is not affected by cabinet changes. In carrying out its day-to-day functions, the Attorney General is not under political control or executive power. The Attorney General also has independence guaranteed by the constitution;
- c. The police do not carry out the prosecution function, the role of the police is limited only to the investigative function. However, the Prosecutor's Office has the authority to carry out additional investigations, whether carried out on the basis of the results of Police investigations or at the initiative of the Prosecutor's Office itself;

- d. The Prosecutor's Office has the discretionary authority not to prosecute a case even though there is strong evidence;
- e. The Prosecutor's Office is also authorized to stop the judicial process at any level before it is decided by the court.

The independence of the prosecutor's office in the law has not been fully realized. This is because there are still arrangements that result in the intervention of executive power on the power of the prosecutor's office. [43]

Conclusion

Based on the results of research related to legal politics towards the "dominus litis" of the prosecutor's office in carrying out prosecution powers, it is to avoid problems between other law enforcement agencies. The legal politics of the prosecutor's dominus litis in carrying out prosecutions other than the position of the Prosecutor's Office of the Republic of Indonesia in the government system according to the Prosecutor's Law, it is clearly regulated that the Prosecutor's Office as a government institution, the Prosecutor's Office exercises power in the field of prosecution and other authorities based on the law, such power or authority is exercised. Independently, and the Prosecutor's Office is one and inseparable. There are also obstacles faced by the Prosecutor's Office of the Republic of Indonesia when carrying out its functions, duties and authorities in the government system, including the emergence of problems between other law enforcement agencies. Therefore, the real reason why dominus litis in prosecuting really needs to be applied as ideally as possible is so that the Prosecutor in giving demands does not get pressure from other institutions or parties so as not to cause injustice to the law.

Furthermore, in reality the implementation of the independence of the prosecutor is still not running according to the law in carrying out prosecutions. What is explained in Article 19 paragraph (2), as well as Article 22 of the Prosecutor's Law, namely that the Prosecutor's Office is a government institution that exercises state power in the field of law enforcement by adhering to the laws and regulations and policies set by the government. Thus, the Attorney General is appointed and dismissed by the President and is responsible to the President. This is contrary to the definition of independence itself which is understood as the absence of threats or interference from the power of other state institutions (external institution independence). It is possible that if the prosecution agency is not placed in the executive power, it will provide objectivity for prosecuting.

References

- [1] Ali, Mahrus. "Progressive Criminal Justice System; Alternatives in Criminal Law Enforcement." *Journal of Law Ius Quia Iustum* 14.2 (2007). 23-34
- [2] Adang & Anwar Yesmil, *Criminal Law Reform*, Jakarta: Kompas Gramedia, 2008, 202.
- [3] Mozin, N. The Role of the Prosecutor's Office in the Prosecution Stage of Children who commit criminal acts (Case Study of the Gorontalo Prosecutor's Office). *Journal of Socio-Economic and Humanities*, 5.2, 2019. 254.
- [4] Yesmil Anwar & Adang, 2011, *Criminal Justice System*, Widya Padjadjaran, Bandung, 204.
- [5] Sitinjak, Imman Yusuf. "The Role of the Prosecutor's Office and the Role of the Public Prosecutor in Law Enforcement." *Maksitek Scientific Journal* 3.3 (2018). 45-56

- [6] Polantalo, Ratna Sari D. Independence of the Prosecutor as a Public Prosecutor in Criminal Acts of Corruption According to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. *Lex Crimen*, 7.1, 2018. 35.
- [7] Sahputra, D. The independence of the prosecutor's office in the Constitutional System of the Republic of Indonesia is a critical study of Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia. *Student Online Journal*, 4.1, 2017, 1-9.
- [8] Ardilafiza. The Independence of the Prosecutor's Office as the Executor of Prosecution Power in the Indonesian Constitutional System. *Journal of the Constitution*, 3.2, 2010, 3.
- [9] Sulchan, Ahmad, and Muchamad Gibson Ghani. "Mechanism of Prosecution of the Public Prosecutor Against Child Crime." *Ulul Albab: Journal of Islamic Law Studies and Research* 1.1 (2017): 110-133.
- [10] Wicaksana, Dio A. (2013). The position of the Indonesian Prosecutor's Office in the Indonesian Constitutional Law System. *Indonesian Judicial Monitoring Society*, Vol. 2, (No.1), p 3-7
- [11] Djatmiati, Tatiek S. (2015). In a paper entitled "Position of the Prosecutor's Office in the system of government and state administration in Indonesia". Delivered in the framework of a scientific discussion organized by the Central Kalimantan High Court, 1.
- [12] Sinulingga, W. (2016). The Position of the Prosecutor's Office in the State Administration System in Indonesia (analysis of prosecution authority in the perspective of the rule of law and the division of power). Thesis. Indonesian Islamic University, 151-152.
- [13] Effendy, M. (2005). *RI Attorney General's Office: Position and Functions from a Legal Perspective*. Jakarta: Gramedia Pustaka Utama. 56
- [14] Rammelink, J. (2003). *Criminal Law (Comments on the Most Important Articles of the Dutch Criminal Code and their Equivalents in the Indonesian Criminal Code)*. Jakarta: PT Gramedia Pustaka.77
- [15] Reksodiputro, M. (1994). *Indonesian Criminal Justice System (Seeing Crime and Law Enforcement within the Limits of Tolerance)*. Jakarta: Center for Justice and Legal Service.3
- [16] Rendra, Persistence. "The Authority of the Public Prosecutor in Investigating Cases for the Prevention of Eradication of Forest Destruction (P3H)." *Juridical Journal* 6.2 (2019): 157.
- [17] M. Yahya Harahap, *Discussion of Problems and Application of the Criminal Procedure Code, Sarana Bakti Semesta*, Jakarta, 2005.45
- [18] Bambang Poernomo, *Principles of Indonesian Judicial Procedures*. Liberty, Yogyakarta, 2005.
- [19] Simamora, Janpatar. "Legal Certainty of the Application of Cassation by the Public Prosecutor Against the acquittal." *Judicial Journal* 7.1 (2014): 1-17.
- [20] Korua, Ryvaldo Vially. "Law of Free Judgment (Vrijspraak) in Criminal Cases." *Lex Crime* 9.4 (2020). 12-25
- [21] Alfitral, *Abolition of Right to Prosecute and Execute Criminal Law*, Publisher of Self-Help Group, Jakarta, 2012, 123
- [22] Pasaribu, Olan Laurance Hasiholan, Iman Jauhari, and Elvi Zahara. "Juridical Study of the Corruption Free Decision (Case Study at the Medan District Court)." *Journal of Mercatoria* 1.2 (2008): 130-140.

- [23] Soetrisno, *Research Methodology*, (Yogyakarta, UGM, 1978), 49.
- [24] Peter Mahmud Marzuki, *Legal Research*, (Jakarta Kencana Prenada Media Group, 2011), 35
- [25] Mukti Fajar and Yulianto Achmad, *Normative & Empirical Legal Research Dualism*, (Yogyakarta, Student Library, 2010), 34
- [26] Abdulkadir Muhammad, *Law and Legal Research*, (Bandung: Citra Aditya Bakti, 2004), 32
- [27] Marbun, Rocky. "Grand Design of the Politics of Criminal Law and the Indonesian Criminal Law System Based on Pancasila and the 1945 Constitution of the Republic of Indonesia." *Padjadjaran Journal of Law* 1.3 (2014). 34-4
- [28] Imron, Ali. "Political Philosophy of Criminal Law." *Tribakti: Journal of Islamic Thought* 25.2 (2014): 119-230.
- [29] Irsan, Koesparmono. "Political Direction of Criminal Law in the Draft Criminal Law Act." *Journal of National Security* 1.1 (2015): 79-104.
- [30] Silaen, Febriyanti, and Syawal Amry Siregar. "Criminal Policy Relationship With Criminal Law Policy." *Darma Agung Journal* 28.1 (2020): 8-16
- [31] Fedryansyah, Muhammad. "Social Policy in Development." *Share: Social Work Journal* 6.1 (2016).23-34
- [32] Soemarsono, Maleha. "Indonesian rule of law in terms of the theory of state goals." *Journal of Law & Development* 37.2 (2007): 300-322.
- [33] Sumakul, Anastasia. "Relationship and Authority of the Corruption Eradication Commission (Kpk) and the Prosecutor's Office in Handling Corruption Crimes." *Lex Crime* 1.4 (2013). 12-24
- [34] Sari, Nani Widya. "The Authority of the Prosecutor's Office in Law Enforcement of Criminal Acts of Corruption
- [35] Hatta, Mohammad. *Integrated Criminal Justice System*. Galangpress Group, 2008. 67-78
- [36] Ali, Mahrus. "Progressive Criminal Justice System; Alternatives in Criminal Law Enforcement." *Journal of Law Ius Quia Iustum* 14.2 (2007). 34-45
- [37] Barama, Michael. "A Model of the Criminal Justice System in Development." *Journal of Legal Studies* 3.8 (2016): 8-17.
- [38] Rahardjo, Satjipto. *Progressive law enforcement*. Kompas Book Publisher, 2010.56-65
- [39] Variza, Melta, Mohd Din, and Riza Nizarli. "Independence of the Prosecutor in Carrying Out His Duties and Authorities Based on Law Number 16 Year 2004." *Journal of Legal Studies* 1.4 (2013).12-24
- [40] Mufrohim, Ook, and Ratna Herawati. "Independence of the Prosecutor's Office as a Legal Structure in the Criminal Justice System in Indonesia." *Indonesian Journal of Legal Development* 2.3 (2020): 373-386.
- [41] Polontalo, Ratna Sari Dewi. "Independence of the Prosecutor as a Public Prosecutor in Criminal Acts of Corruption according to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia." *Lex Crimen* 7.6 (2018).33-43

- [42] Ilyas, Adam. "Independence of the Public Prosecutor in the Policy of the Staged Prosecution Plan for Determining Criminal Claims." *Pandecta Research Law Journal* 16.1 (2021): 120-129.

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