

Research Article

The Dominus Litis Principle and the Public Prosecutor's Interest in Case Control

Achmad Yani ^{1*}, Mispansyah ², and Ahmad Syaufi ³

¹⁻³ Fakultas Hukum, Universitas Lambung Mangkurat, Indonesia

* Corresponding Author: akhmadyanithamrin@gmail.com ¹

Abstract: The Public Prosecutor holds a central role in the criminal justice system as the primary controller of the prosecution process. This authority is based on the fundamental principle of *Dominus Litis*, which literally translates to "master of the case." This paper aims to deeply analyze the implementation of the *Dominus Litis* principle and to examine the various interests underlying the Public Prosecutor's authority in controlling a criminal case. Using a normative juridical research method with a literature and conceptual approach, this study investigates how the principle legitimizes the prosecutor's power to determine whether a case is suitable for trial, to terminate it, or to resolve it through alternative mechanisms. The analysis reveals that the prosecutor's interest in case control is not merely limited to technical-judicial aspects but also encompasses broader considerations such as the public interest, law enforcement efficiency, and the achievement of restorative justice. While granting significant discretion, this absolute authority also raises discourse on the importance of effective oversight mechanisms to prevent potential abuse of power and ensure accountability. It is concluded that the implementation of the *Dominus Litis* principle must always be balanced with transparency and objectivity to ensure that case control by the prosecutor genuinely aims to achieve substantive justice

Keywords: Case Control; Criminal Justice System; Dominus Litis; Public Prosecutor; Prosecutorial Authority.

1. Introduction

The criminal justice system in various countries places the prosecutorial institution in a central and strategic position. The Public Prosecutor not only acts as the state's representative tasked with proving charges in court but also as the primary "gatekeeper" in the criminal law enforcement process. This position grants significant authority to the Public Prosecutor to screen and determine which cases are suitable for progression to the judicial stage (Sklansky, 2012). This authority ensures that limited judicial resources can be focused on the most pressing cases with strong evidence, thereby supporting the overall efficiency of the justice system.

The fundamental basis that legitimizes this exclusive authority of the prosecutor is known as the *Dominus Litis* principle, a Latin adage meaning "the master or owner of the case" (*master of the suit*). Conceptually, this principle asserts that the prosecutor is the sole party with full control over the prosecution process of a criminal case (Garner, 2019). In Indonesia, the manifestation of the *Dominus Litis* principle is clearly visible in various legislative provisions, particularly in Law No. 11 of 2021 concerning the Public Prosecutor's Office of the Republic of Indonesia and the Criminal Procedure Code (KUHAP). This principle grants the prosecutor discretionary power to initiate, continue, or even terminate a prosecution in the interest of the law (Prasetyo, 2018).

The implementation of the *Dominus Litis* principle provides the prosecutor with a wide range of powers, from the pre-prosecution stage to the execution of court decisions. The prosecutor is authorized to decide whether the evidence presented by investigators is sufficient (P-21) or needs to be supplemented (P-19), to formulate the indictment, to bring the case to court, and to exercise the right to file legal remedies such as an appeal or cassation

Received: April 26, 2025

Revised: May 12, 2025

Accepted: May 28, 2025

Published: May 31, 2025

Curr. Ver.: May 31, 2025



Copyright: © 2025 by the authors.

Submitted for possible open

access publication under the

terms and conditions of the

Creative Commons Attribution

(CC BY SA) license

([https://creativecommons.org/li](https://creativecommons.org/licenses/by-sa/4.0/)

[censes/by-sa/4.0/](https://creativecommons.org/licenses/by-sa/4.0/))

(Harahap, 2015).. The authority to set aside a case for the public interest through the mechanism of *deponering* (prosecutorial waiver) is also one of the strongest reflections of this power, where the prosecutor can prioritize the public interest over formal law enforcement (Situmorang, 2020).

Nevertheless, such immense authority is not without its challenges and potential risks. Its discretionary nature opens the door to subjectivity and the potential for abuse of power. Absolute power that is not balanced by strong oversight mechanisms can lead to discriminatory or inconsistent prosecution practices (Davis, 2007). Therefore, a crucial question arises: what interests should guide the prosecutor in exercising the authority of *Dominus Litis*? Is it purely for the interest of procedural law enforcement, institutional interests, or to achieve a more noble legal goal, namely substantive justice?

Based on this background, this paper will critically analyze the implementation of the *Dominus Litis* principle and the various "interests" inherent in its use by the Public Prosecutor. The analysis will not only focus on the juridical foundation of this authority but also on how the public interest, efficiency, and restorative justice should serve as the primary compass in every decision made by the prosecutor (Goldstein, 1982). Thus, this research aims to examine the ideal balance between effective prosecutorial power and the need for accountability to realize a fair and trustworthy criminal justice system.

2. Preliminaries

2.1 The Position of the Public Prosecutor in the Criminal Justice System

The modern criminal justice system positions the prosecutor as a central figure connecting the investigation stage with the trial stage. This position is often referred to as *dominus litis*, which literally means the controller or master of the case (Prasetyo, 2018). The prosecutor is not merely a "courier" who delivers case files from investigators to judges, but an active law enforcer who performs a screening function based on the principle of opportunity. According to Sklansky (2012), this prosecutorial power is one of the most significant forms of executive authority in the legal sphere, as the decision to prosecute or not directly affects individual liberty and the allocation of judicial resources. In Indonesia, this authority is affirmed in Article 14 of the Criminal Procedure Code (KUHAP), which grants the prosecutor the power to conduct prosecutions and execute judicial orders (Harahap, 2015).

2.2 The Conceptual Framework of the *Dominus Litis* Principle

The *Dominus Litis* principle originates from the civil law tradition of Continental Europe, which grants a monopoly on prosecution to the state, represented by the prosecutor. This principle asserts that no other party, including the victim or the judge, can initiate criminal proceedings (LaFave, *et al.*, 2017). Conceptually, this principle has two main implications. First, the prosecutor has full control over the case from the pre-prosecution stage, including providing guidance to investigators. Second, the prosecutor has the autonomy to terminate a prosecution if it is deemed to have insufficient evidence or is not in the public interest (Garner, 2019). This authority forms the basis for mechanisms such as the Decree to Terminate Prosecution (SKPP) or *deponering* (prosecutorial waiver) in the Indonesian legal system.

2.3 Prosecutorial Discretion and Its Boundaries

Prosecutorial discretion is the authority of a prosecutor to make choices based on their own judgment about how best to handle a case. These choices are not limited to prosecuting or not prosecuting but also include selecting the charges to be filed, engaging in plea bargaining, and making sentencing recommendations (Goldstein, 1982). While this discretion is essential for the flexibility and efficiency of the justice system, it is also a primary source of criticism. Davis (2007). argues that unchecked discretion can lead to inconsistency, disparity, and even discrimination in law enforcement. Therefore, establishing boundaries for this discretion is crucial. These boundaries can be internal, such as prosecution guidelines from the Attorney General's Office, or external, such as pre-trial mechanisms that allow for judicial oversight (Maulana, 2019).

2.4 The Concept of "Public Interest" as a Prosecutorial Guide

One of the main justifications behind prosecutorial discretion is serving the "public interest." However, "public interest" is a fluid concept that can be interpreted in various ways. It is not simply about punishing every offender but also involves considering other factors such as the impact of the prosecution on the victim and the offender, the costs incurred by

the state, and efforts to restore social harmony (Barton, 2011). In the context of restorative justice, for example, the public interest might be better served by resolving cases outside of court through mediation, especially for minor offenses. Thus, the prosecutor's interest in controlling a case must shift from merely fulfilling legal formalities to achieving broader substantive justice.

3. Materials and Method

This study is designed as a normative legal research (or doctrinal research) employing a qualitative approach. The entire analytical process is based on library research to examine the legal norms, principles, and doctrines relevant to the *Dominus Litis* principle and prosecutorial authority. To address the research questions in-depth, this study applies several integrated approaches. The statute approach is used to examine the regulatory framework, such as the Criminal Procedure Code (KUHAP) and the Law on the Prosecutor's Office. This is complemented by the conceptual approach to analyze the meaning of key concepts like prosecutorial discretion and public interest. Furthermore, the case approach is utilized to observe the practical application of norms through the analysis of relevant court decisions or prosecutorial policies. The legal materials used were collected through a documentation study and are classified into three types: primary legal materials (legislation), secondary legal materials (books, scientific journals, and doctrines), and tertiary legal materials (legal dictionaries and encyclopedias). All collected data are then analyzed qualitatively and prescriptively, which involves systematic interpretation to construct a legal argument. Conclusions are drawn using deductive reasoning, moving from general premises (theories and norms) to specific conclusions.

4. Results and Discussion

4.1 Implementation of the *Dominus Litis* Principle in the Indonesian Legal System

The analysis of statutory regulations indicates that the **Dominus Litis** principle is firmly entrenched in the Indonesian legal system, granting exclusive authority over prosecution to the Public Prosecutor's Office. This doctrine embodies the notion that the prosecutor acts as the "master of the case," possessing the ultimate discretion to determine whether and how a criminal matter proceeds to court. Law No. 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia, particularly Article 1(1), explicitly affirms that the Prosecutor's Office is the government institution vested with state power in the field of prosecution. This authority is singular and centralized, ensuring that the conduct of prosecutions remains consistent, impartial, and immune from external interference. Such concentration of prosecutorial power represents the practical manifestation of the single prosecution system, which in turn constitutes an essential component of the broader *Dominus Litis* principle (Butt & Lindsey, 2018).

Furthermore, the Criminal Procedure Code (KUHAP) elaborates upon this absolute prosecutorial competence. Article 14 of the KUHAP authorizes the public prosecutor to initiate and conduct prosecutions, terminate proceedings in the interest of law, and execute judicial orders functions that collectively underscore the institutional autonomy of the prosecutor within Indonesia's criminal justice architecture. The provision in Article 140(2) of the KUHAP further amplifies this discretion by allowing the prosecutor to close a case for legal or policy considerations, even when the available evidence is technically sufficient for trial (Harahap, 2015). This arrangement reflects the deliberate policy choice of the Indonesian legal system to entrust the prosecutor with not only legal authority but also ethical and prudential judgment in balancing the demands of justice, efficiency, and public interest. Consequently, the prosecutor is not merely a passive "mouthpiece of the law" but rather an active interpreter, strategist, and gatekeeper who exercises reasoned discretion in determining the trajectory of a criminal case, thereby embodying both legal authority and moral responsibility within the prosecutorial function.

4.2 The Prosecutor's Interest: Between Law Enforcement Formalism and Public Interest

The discussion on the prosecutor's "interest" in case control reveals a complex spectrum between formal legalism and substantive justice. On one hand, the prosecutor's fundamental duty lies in the formal enforcement of law ensuring that every legally proven offense is brought before the court as an affirmation of the rule of law and legal certainty. This formalist perspective underscores the prosecutor's role as the guardian of legality, tasked with upholding statutory norms and procedural rigor without deviation. On the other hand,

the prosecutor is equally bound to act in the public interest, a concept that transcends the mechanical application of legal provisions and encompasses broader socio-political and moral considerations (Goldstein, 1982). This dual dimension illustrates the inherent tension between the principle of legality (*rechtmatigheid*) and the principle of expediency (*doelmatigheid*) in prosecutorial discretion, demanding a delicate balance between enforcing justice and preserving social order.

The clearest institutional embodiment of this balance is reflected in the authority of deponering (prosecutorial waiver), as stipulated in Article 35(c) of the *Law on the Prosecutor's Office of the Republic of Indonesia*. Through this mechanism, the Attorney General may set aside a criminal case for the sake of the public interest, even in situations where sufficient evidence exists to pursue prosecution. As Hiariej (2016) explains, the concept of public interest in this context extends to multifaceted considerations such as maintaining national stability, preventing social unrest, avoiding disproportionate harm, or responding to humanitarian imperatives. Thus, deponering serves not as a negation of justice but as an instrument of higher prudence, reflecting the State's responsibility to align legal enforcement with societal well-being and ethical proportionality.

Moreover, the emergence of a restorative justice paradigm within the Prosecutor's Office formalized through Prosecutor's Regulation No. 15 of 2020 marks a transformative evolution in prosecutorial philosophy. This regulation institutionalizes restorative mechanisms, allowing cases to be resolved through reconciliation, restitution, and community restoration rather than punitive measures alone (Sapta, 2021). Such a paradigm shift redefines the prosecutor's interest: from a predominantly retributive orientation that focuses on punishment to a restorative orientation that emphasizes healing the harm suffered by victims, rebuilding social harmony, and preventing recidivism. In this sense, prosecutorial discretion becomes not only a tool of law enforcement but also a means of achieving substantive and humanistic justice, ensuring that the application of legal authority aligns with the moral and social conscience of the community.

4.3 The Double-Edged Sword: Discretion and the Urgency of Accountability

Although the discretion derived from the *Dominus Litis* principle is indispensable for ensuring flexibility and responsiveness within the justice system, this authority simultaneously constitutes a double-edged sword. On one side, it empowers prosecutors to adapt legal enforcement to the dynamic realities of society, enabling justice to be pursued not merely in form but in substance. On the other side, however, such vast discretionary power, when left unchecked, carries the inherent risk of abuse, arbitrariness, or politicization. The absence of robust control mechanisms may lead to selective prosecution, unequal treatment before the law, or even the misuse of legal instruments for purposes of criminalization and intimidation (Davis, 2007). Consequently, discretion must be understood not as unlimited authority but as a bounded competence that demands accountability, transparency, and ethical responsibility.

Within the Indonesian legal framework, an external mechanism designed to oversee prosecutorial discretion is embodied in the pre-trial hearing (*praperadilan*), regulated under Article 77 of the Criminal Procedure Code (KUHP). This institution empowers the judiciary to review the validity of decisions related to the termination of investigations or prosecutions, as well as other procedural actions by law enforcement authorities. In principle, pre-trial hearings serve as an essential check-and-balance mechanism, intended to prevent arbitrary exercise of authority and to safeguard the rights of suspects and defendants (Maulana, 2019). However, empirical observations and doctrinal critiques suggest that the effectiveness of pre-trial oversight remains limited. The narrow interpretive scope of pre-trial competence, coupled with judicial reluctance to engage substantively with prosecutorial reasoning, often results in a formality-driven process that lacks substantive scrutiny (Isra, 2019).

Given these constraints, the need for complementary internal oversight within the Prosecutor's Office becomes increasingly urgent. Internal control administered through bodies such as the Deputy Attorney General for Supervision (JAMWAS) should not be confined to administrative review but must also encompass ethical evaluation and performance assessment of prosecutorial decisions. Furthermore, the formulation of standardized, transparent, and measurable prosecutorial guidelines is imperative to ensure consistency, fairness, and legal predictability in decision-making. Strengthening these internal and external accountability frameworks would transform prosecutorial discretion from a potential instrument of arbitrariness into a mechanism of principled flexibility, ensuring that every exercise of discretion contributes to the realization of justice, not its distortion.

5. Conclusion

Based on an in-depth analysis, this study concludes that the *Dominus Litis* principle is firmly embedded in the Indonesian legal system, granting prosecutors full control over prosecution. However, the 'interest' underlying this authority is no longer rigid, but has shifted from legal formalism towards a broader interpretation of 'public interest,' which accommodates the values of restorative justice. Nevertheless, this vast discretionary power remains a double-edged sword, where existing oversight mechanisms like pre-trial hearings are deemed not yet effective enough to ensure optimal accountability. Therefore, this study recommends several concrete steps. Practically, it is recommended to strengthen external oversight mechanisms through an amendment to the Criminal Procedure Code (KUHAP) and for the Attorney General's Office to create transparent Public Prosecution Guidelines to standardize the application of discretion. Academically, further research is suggested to focus on empirical studies regarding policy implementation in the field and comparative studies with other countries to enrich insights for future legal reform.

References

- Barton, A. (2011). The prosecutor's role in a restorative justice model. *Journal of the Institute of Justice and International Studies*, 11, 95-107.
- Butt, S., & Lindsey, T. (2018). *The constitution of Indonesia: A contextual analysis*. Hart Publishing.
- Davis, A. J. (2007). *Arbitrary justice: The power of the American prosecutor*. Oxford University Press.
- Garner, B. A. (Ed.). (2019). *Black's law dictionary* (11th ed.). Thomson Reuters.
- Goldstein, A. S. (1982). The prosecutor's constitutional power. *The Yale Law Journal*, 91(7), 1498-1519. <https://doi.org/10.2307/796113>
- Harahap, M. Y. (2015). *Pembahasan permasalahan dan penerapan KUHAP: Penyidikan dan penuntutan* [Discussion of problems and application of the Criminal Procedure Code: Investigation and prosecution] (2nd ed.). Sinar Grafika.
- Hiariej, E. O. S. (2016). *Prinsip-prinsip hukum pidana* [Principles of criminal law]. Cahaya Atma Pustaka.
- Isra, S. (2019). Praperadilan dan prospeknya dalam sistem peradilan pidana Indonesia [Pre-trial hearings and their prospects in the Indonesian criminal justice system]. *Jurnal Konstitusi*, 16(3), 503-524. <https://doi.org/10.31078/jk1632>
- LaFave, W. R., Israel, J. H., King, N. J., & Kerr, O. S. (2017). *Criminal procedure* (6th ed.). West Academic Publishing.
- Maulana, Y. (2019). Pengawasan terhadap diskresi penuntutan oleh jaksa melalui mekanisme praperadilan [Oversight of prosecutorial discretion by prosecutors through pretrial mechanisms]. *Jurnal Yudisial*, 12(1), 19-36. <http://dx.doi.org/10.29123/jy.v12i1.234>
- Prasetyo, T. (2018). Kedudukan asas Dominus Litis dalam sistem peradilan pidana Indonesia [The position of the Dominus Litis principle in the Indonesian criminal justice system]. *Jurnal Hukum & Pembangunan*, 48(2), 275-290. <http://dx.doi.org/10.21143/jhp.vol48.no2.1641>
- Sapta, A. (2021). Penerapan keadilan restoratif oleh kejaksaan sebagai perwujudan asas dominus litis [The application of restorative justice by the prosecutor's office as an embodiment of the dominus litis principle]. *Jurnal Magister Hukum Udayana*, 10(1), 123-137. <https://doi.org/10.24843/JMHU.2021.v10.i01.p10>
- Situmorang, E. N. A. (2020). Deponering sebagai instrumen kebijakan penuntutan dalam perspektif asas dominus litis [Deponering as a prosecutorial policy instrument from the perspective of the dominus litis principle]. *Jurnal Kertha Wicaksana*, 14(2), 91-99. <https://doi.org/10.22225/kw.14.2.2223.91-99>
- Sklansky, D. A. (2012). The nature of the prosecutor's power. *Journal of Criminal Law and Criminology*, 102(3), 825-866.