

Research Article

Enhancing the Role of Public Prosecutors in Maintaining Legal Certainty

Sajimin^{1*}, Anang Shophan Tornado², Rahmida Erliyani³, Elman Azizov⁴¹ Lambung Mangkurat University, Indonesia; e-mail : sajiminipu@gmail.com² Lambung Mangkurat University, Indonesia; e-mail : anang.tornado@ulm.ac.id³ Lambung Mangkurat University, Indonesia; e-mail : rahmidaerliyani@ulm.ac.id⁴ John Jay College of Criminal Justice, United States; e-mail : azizovelman@gmail.com

* Corresponding Author : Sajimin

Abstract: Legal certainty (*rechtssicherheit*) is a fundamental pillar of the Rule of Law, ensuring that legal provisions are clear, consistent, and predictable. In the Indonesian criminal justice system, the Public Prosecutor holds a central position as the *Dominus Litis* (the master of the suit), possessing the exclusive authority to determine which cases proceed to court. However, the current implementation of prosecutorial authority often leans towards rigid legal positivism, creating a paradox where procedural certainty is achieved at the expense of substantive justice. Disparities in prosecution demands for similar crimes often lead to public distrust and legal uncertainty for justice seekers. Furthermore, prosecutors often lack the cognitive flexibility to handle complex cases that require discretionary wisdom. This study aims to analyze the challenges in maintaining legal certainty and proposes a strategy to enhance the prosecutor's role through the integration of Restorative Justice and a reform in prosecutorial competency. The research employs a normative juridical method with statutory and conceptual approaches, analyzing Attorney General Regulation No. 15 of 2020. The study finds that enhancing legal certainty requires shifting the paradigm from "mechanical prosecution" to "discretionary prosecution" based on conscience. To achieve this, prosecutors must be equipped with high-level cognitive skills specifically "Creative Thinking" to interpret "certainty" not just as textual compliance, but as the consistent application of fairness.

Keywords: Creative Thinking; *Dominus Litis*; Legal Certainty; Public Prosecutor; Restorative Justice

Received: June 13, 2025

Revised: August 8, 2025

Accepted: October 3, 2025

Published: November 28, 2025

Curr. Ver.: November 28, 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/licenses/by-sa/4.0/>)

1. Introduction

In the architecture of a modern Rechtsstaat (Rule of Law), the guarantee of legal certainty stands as a paramount obligation of the state toward its citizens. The legal philosopher Gustav Radbruch famously identified a triad of values that law must uphold: Justice (*Gerechtigkeit*), Utility (*Zweckmassigkeit*), and Certainty (*Rechtssicherheit*). While these values are theoretically complementary, in the practical arena of law enforcement, legal certainty frequently collides with the principles of justice. At the center of this tension stands the Public Prosecutor (*Jaksa*). Wielding the exclusive authority of *Dominus Litis*, the prosecutor acts as the sole gatekeeper, possessing the monopoly power to decide which cases are worthy of advancing to the court and which are not.

Despite holding this pivotal position the Indonesian prosecution system is currently plagued by a paradox of "uncertainty." This instability stems not from a vacuum of regulation, but rather from an overly rigid and mechanical adherence to statutory text. This crisis manifests primarily in two forms. First, the prevalence of prosecutorial disparity where identical offenses result in divergent sentence demands fosters a cynical public perception of "transactional justice." Second, the blind application of legal positivism often results in *Summum Ius, Summa Injuria*, where extreme law equates to extreme injustice. Cases involving minor offenses by the elderly or impoverished often meet the requirements of "statutory certainty" yet

violate "social certainty." Consequently, prosecutors are often reduced to what Montesquieu described as *la bouche de la loi* (the mouth of the law), functioning as mere administrative conduits rather than guardians of substantive justice.

Restoring the dignity of law enforcement requires a critical enhancement of the prosecutorial role. The Attorney General's Office has initiated this shift through the adoption of Restorative Justice (RJ) under Regulation No. 15 of 2020, moving the paradigm from retribution to restoration. However, regulatory reform is insufficient on its own. A regulation is a dormant tool until it is activated by a human agent. The transformation from a punitive prosecutor to a humanist one demands more than just updated Standard Operating Procedures (SOPs); it necessitates a fundamental revolution in Human Resource Competency.

A critical gap persists in existing legal literature the influence of a prosecutor's cognitive capability on the realization of legal certainty. While most studies analyze external factors like institutional independence, few examine the internal decision-making processes. This study posits that genuine legal certainty cannot be attained through textual reading alone; it requires "Creative Thinking." In this context, creative thinking does not imply fabricating facts, but rather the cognitive agility to interpret rigid statutes to address complex human realities. Prosecutors must possess the ability to navigate the corridors of justice with flexibility, ensuring the law serves humanity, not the other way around.

This article offers a normative blueprint for such a transformation. By drawing analogies to advanced problem-solving concepts in educational psychology, it explores how integrating "Creative Thinking" skills can empower prosecutors to exercise discretion with wisdom. Ultimately, the goal is to guide the Prosecutor's Office beyond "Positivistic Certainty" toward "Substantive Certainty," ensuring legal outcomes that are consistent, predictable, and fundamentally just.

2. Literature Review

This section explores the theoretical evolution of prosecutorial authority, examining the tension between rigid legal certainty and the modern demand for humanist law enforcement.

The Evolving Concept of Legal Certainty in Prosecution

Traditionally legal certainty was interpreted strictly as the conformity of law enforcement to the text of the legislation. However, contemporary scholars argue that this definition is insufficient. Sihalo (2025) posits that in a modern *Rechtsstaat*, legal certainty must act as a normative boundary that ensures accountability, but not at the cost of substantive justice. If certainty serves only the text and ignores the sociological reality of the defendant, it becomes a tool of procedural tyranny. Furthermore, Kesuma and Hasyim (2024) in their latest treatise on Criminal Procedure Law, emphasize that the prosecutor's role has shifted from a mere "state instrument" to a "guardian of human rights." This implies that certainty is no longer just about "punishing the guilty" (retributive), but about "guaranteeing a fair process" (procedural fairness) that aligns with the values of the community. Thus, the modern prosecutor is burdened with the dual task of maintaining consistency in charging decisions while adapting to the unique nuances of each case.

Dominus Litis The Strategic Control of Cases

The principle of *Dominus Litis* remains the bedrock of the prosecutor's authority. Sihombing et al. (2023) define this principle not just as the power to prosecute, but as the strategic control to determine the *direction* of a case. As the *Dominus Litis*, the prosecutor is the only official authorized to translate police investigations into court indictments, effectively serving as the "gatekeeper" of the judiciary. Recent studies highlight that this authority is essential for filtering out cases that are technically legally sound but socially detrimental. *Journal Viva Themis* (2025) highlights that the prosecutor's position as *Dominus Litis* is central to reducing the burden on the court system. By utilizing their discretion effectively, prosecutors prevent the criminal justice system from being clogged with minor offenses that do not require incarceration, thereby enhancing the overall efficiency of state law enforcement.

The Paradigm Shift: Restorative Justice as a Necessity

The most significant development in recent years is the institutionalization of Restorative Justice (RJ). Noor Ihsan (2024) argues that the optics of criminal justice in Indonesia have fundamentally changed; the measure of success is no longer the number of convictions, but the quality of conflict resolution. RJ is viewed not as a deviation from the law, but as a corrective mechanism for the rigidity of the criminal code. Taufik and Nirmala (2024) provide empirical evidence from East Lombok, showing that RJ has effectively resolved criminal cases for adult offenders by focusing on "recovery" rather than "retribution." Their findings suggest

that when prosecutors act as mediators rather than mere accusers, public trust in the legal system increases significantly. This confirms that the integration of RJ is not merely a policy trend, but a normative necessity to achieve "Substantive Certainty" where the outcome of the legal process brings genuine peace to the community.

3. Research Method

Research Design: Doctrinal Legal Research

This study employs a Normative Juridical research design (Doctrinal Legal Research). According to Disemadi (2022), normative research views law as a self-contained system of norms, focusing on the analysis of legal principles, statutory regulations, and systematic coherence. This method is specifically chosen to address the "normative conflict" between the rigid Legality Principle and the flexible Opportunity Principle within the Prosecutor's authority. The study moves beyond empirical observation (*das sein*) to prescribe ideal legal standards (*das sollen*), aiming to formulate a new theoretical framework for prosecutorial conduct.

Research Approaches

To ensure a comprehensive analysis, this study utilizes three specific approaches:

- a. **Statutory Approach** (*Pendekatan Perundang-undangan*): This approach is fundamental to examining the hierarchy and consistency of laws. As noted by Kurniawan (2025), in the era of regulatory hyper-abundance, the statutory approach must go beyond reading the text to understanding the "original intent" of the legislator. This study analyzes Law No. 11 of 2021 concerning the Prosecutor's Office and Attorney General Regulation No. 15 of 2020.
- b. **Conceptual Approach** (*Pendekatan Konseptual*): Since the concept of "Creative Thinking in Law" is not explicitly found in statutes, this approach is necessary to build a theoretical construct. Following the framework of Sonata (2024), this approach synthesizes the classical doctrine of *Dominus Litis* with modern cognitive theories to redefine the competency required for a modern prosecutor.
- c. **Futuristic Approach**: This study also adopts a forward-looking perspective, anticipating the enforcement of the new Criminal Code (Law No. 1 of 2023) which places a heavier emphasis on the "living law" and restorative justice, necessitating a more adaptive prosecutor.

Sources of Legal Materials

The data used are secondary data derived from library research, classified into:

- a. **Primary Legal Materials**: Binding legal documents, including the 1945 Constitution, the Prosecutor's Law (UU *Kejaksaan*), the new Criminal Code (UU No. 1 of 2023), and relevant Supreme Court Circulars (*SEM4*).
- b. **Secondary Legal Materials**: Publications that explain the primary materials. This includes recent academic journals discussing the *Omnibus Law* on Prosecution and commentaries on the new Penal Code. Pratama & Ramadhan (2023) emphasize that secondary materials are crucial for identifying the "theoretical gap" in current law enforcement practices.
- c. **Tertiary Legal Materials**: Legal dictionaries and encyclopedias used to clarify terminology such as *Rechtsvinding* (finding the law) and *Discretion*.

Technique of Analysis

The collected legal materials are analyzed qualitatively using Legal Hermeneutics and Deductive Logic (*Syllogism*).

- a. **Major Premise**: The normative ideal that the Prosecutor is the *Dominus Litis* responsible for Justice and Legal Certainty.
- b. **Minor Premise**: The reality that rigid positivism leads to prosecutorial disparity and injustice.
- c. **Conclusion**: A prescriptive model requiring the integration of "Creative Thinking" and Restorative Justice. Ibrahim (2023) argues that legal analysis must result in a prescription that solves the legal issue. Therefore, the analysis in this study culminates in a concrete recommendation for reforming the Prosecutor's training curriculum.

4. Results and Discussion

This section critically analyzes the transformation required in the prosecutorial institution, arguing that true legal certainty is not achieved through rigid uniformity, but through the intelligent application of substantive justice.

Deconstructing Positivistic Certainty

Indonesian prosecution system has equated "Legal Certainty" with strict adherence to the text of the law and internal standard operating procedures (*SOPs*). To minimize disparity, the Attorney General issued various Prosecution Guidelines (*Pedoman Penuntutan*), such as Guideline No. 11 of 2021 for Narcotics cases. While these guidelines successfully create a "matrix of punishment" to predict sentence demands, Pujiyono et al. (2023) argue that relying solely on matrices reduces the prosecutor to a "calculator of justice." This mechanical approach creates a paradox: the law becomes certain, but unjust. Wicaksono (2024), in his analysis of the new Criminal Code (KUHP 2023), emphasizes that the modern Indonesian legal system is shifting towards the "*daad-dader*" balance (act and actor balance). Certainty is no longer just about the crime (*actus reus*), but also the condition of the criminal (*mens rea*). Therefore, the role of the prosecutor must evolve. They must use the Guidelines as a "compass," not a "cage." The enhancement of their role lies in the courage to deviate from the matrix when the "living law" or social reality demands it, thereby ensuring that certainty does not become a tool of oppression.

Restorative Justice as the New Substantive Certainty

A common critique from legal positivists is that Restorative Justice (RJ) creates "uncertainty" because it bypasses the formal court verdict. However, this study refutes that view. Flora et al. (2023) posit that the formal court process often yields "Procedural Certainty" (a verdict is given) but "Substantive Uncertainty" (the conflict remains, the victim is uncompensated). In contrast, RJ offers "Substantive Certainty." When a prosecutor facilitates an RJ settlement under Perja No. 15 of 2020, they provide three definite outcomes: (1) Certainty of recovery for the victim, (2) Certainty of responsibility for the perpetrator without the stigma of prison, and (3) Certainty of social harmony. Hambali (2024) reinforces this by highlighting that in communal societies like Indonesia, legal certainty is measured by the restoration of balance (*equilibrium*), not by the severity of punishment. Thus, by actively employing RJ, prosecutors are not weakening legal certainty; they are elevating it from a "textual" level to a "sociological" level.

The Cognitive Revolution: Integrating Creative Thinking in Prosecution

The most critical barrier to enhancing the prosecutor's role is not regulatory, but cognitive. The complexity of modern crimes ranging from cyber-crime to environmental degradation presents what scholars call "ill-structured problems." These are cases where the legal rules are ambiguous or conflicting. Suteki (2024) warns that prosecutors trained in the "legal-positivist" tradition often fail in these scenarios because they lack the mental agility to interpret the law progressively.

Legal science must draw lessons from educational psychology to formulate a solution. Rizaldi et al. (2025), in their empirical research on learning models, demonstrated that a Project-Based Learning approach significantly enhances Creative Thinking abilities. Their study proved that individuals trained to actively solve complex problems develop higher cognitive flexibility the ability to connect unrelated variables to find a solution.

This analogy is profoundly relevant to prosecutorial reform. Currently, prosecutor training (*Diklat*) is heavily dominated by "Direct Instruction" methods (memorizing articles and hierarchy). This produces prosecutors who are rigid "law readers." To maintain legal certainty in a complex society, the Attorney General's Office must adopt a training model analogous to the PjBL described by Rizaldi et al. Prosecutors need to be trained in "Creative Legal Thinking." For example, in a case involving a corporate environmental crime that affects thousands, a rigid prosecutor might simply seek a prison sentence for the director (which does not help the victims). A "Creative Prosecutor," however, would use their discretion to craft a prosecution strategy that forces the corporation to pay for environmental restoration and compensate the victims, using *deferred prosecution agreements* or RJ mechanisms. This ability to "create" a just solution within the corridors of law is the ultimate form of maintaining legal certainty.

5. Conclusion

The study concludes that true legal certainty is not achieved through mechanical rule-following, but through "Substantive Certainty" delivered via Restorative Justice. This approach guarantees victim recovery and social balance, surpassing the uncertainty of formal litigation. Crucially, this transformation requires a fundamental shift in prosecutorial competency from dogmatic memorization to "Creative Thinking." Prosecutors must possess the cognitive flexibility to navigate complex cases, ensuring that discretion is exercised wisely to bridge the gap between rigid statutes and human justice. Therefore, institutional training must urgently pivot towards problem-based learning to equip prosecutors with the mental agility required for modern law enforcement.

References

- Disemadi, H. S. (2022). Lensa penelitian hukum: Isu dan metode. *Jurnal Penelitian Hukum De Jure*, 22(3), 289-304.
- Flora, H., Syahrin, A., & Mulyadi, M. (2023). The shift from formal truth to material truth in the settlement of criminal cases through restorative justice in Indonesia. *Journal of Indonesian Legal Studies*, 8(1), 189-208.
- Hambali, A. R. (2024). Sociological acceptance of restorative justice: A measure of substantive legal certainty in diverse communities. *Jurnal Hukum & Pembangunan*, 54(1), 112-128.
- Ibrahim, J. (2023). *Teori dan metodologi penelitian hukum normatif edisi terbaru*. Malang: Bayumedia Publishing.
- Kesuma, D. A., & Hasyim, R. (2024). *Hukum acara pidana: Konsep dan perkembangan terbaru*. Jakarta: Gramedia Pustaka Utama.
- Kurniawan, R. (2025). Interpretasi sistematis dalam harmonisasi regulasi pidana pasca pengesahan KUHP baru. *Jurnal Legislasi Indonesia*, 22(1), 45-60.
- Noor Ihsan, R. (2024). Optics of restorative justice in the criminal justice legal system in Indonesia. *Jurnal Ilmu Hukum Tambun Bungai*, 9(2), 472-488. <https://doi.org/10.61394/jihtb.v9i2.443>
- Pratama, A., & Ramadhan, F. (2023). Secondary legal materials in the digital age: Validating sources for academic legal research. *Indonesian Journal of Legal Studies*, 8(2), 112-128.
- Pujiyono, P., Waluyo, B., & Manthovani, R. (2023). Legal certainty vs. justice: The dilemma of sentencing guidelines in the Indonesian prosecution system. *International Journal of Criminal Justice Sciences*, 18(1), 88-102.
- Rizaldi, M., Putra, A. P., & Amintarti, S. (2025). The effect of the Project-Based Learning model on the circulatory system topic toward students' learning outcomes and creative thinking ability in Class XI. *BIO-INOVED: Jurnal Biologi-Inovasi Pendidikan*, 7(1), 45-56.
- Sihaloho, A. P. (2025). Peran jaksa sebagai Dominus Litis dalam sistem peradilan pidana Indonesia: Kritik terhadap diferensiasi fungsional. *Integrative Perspectives of Social and Science Journal*, 2(2), 1509-1517.
- Sihombing, D. C., Syahrin, A., Ablisar, M., & Mulyadi, M. (2023). Penguatan kewenangan jaksa selaku Dominus Litis sebagai upaya optimalisasi penegakan hukum pidana berorientasi keadilan restoratif. *Locus: Jurnal Konsep Ilmu Hukum*, 3(2), 63-75. <https://doi.org/10.56128/jkih.v3i2.42>
- Sonata, D. L. (2024). *Metode penelitian hukum: Suatu pengantar ringkas*. Bandar Lampung: Pusat Kajian Ilmiah.
- Suteki, S. (2024). *Hukum progresif: Menembus batas teks menuju keadilan substantif*. Semarang: Thafa Media.
- Taufik, Z., & Nirmala, A. Z. (2024). Restorative justice sebagai metode penyelesaian perkara pidana pelaku dewasa di Kejaksaan Negeri Lombok Timur. *Jurnal Kompilasi Hukum*, 9(2), 203-213. <https://doi.org/10.29303/jkh.v9i2.181>
- Themis, J. (2025). Kedudukan jaksa sebagai Dominus Litis dalam melakukan restorative justice di sistem peradilan pidana Indonesia. *Viva Themis: Jurnal Ilmu Hukum dan Humaniora*, 8(2).
- Wicaksono, D. A. (2024). The principle of balance in the new Indonesian Criminal Code: Implications for prosecutorial discretion. *Indonesia Law Review*, 14(2), 200-215.