



## Strengthening the Authority of the Public Prosecutor as *Dominus Litis* an Integrated and Accountable Indonesian Criminal Justice System



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### Abstract

In Indonesia's criminal justice system, the Prosecutor's Office holds the primary function as the *Dominus Litis* (Case Controller), which means the authority to determine whether a case should proceed to the prosecution stage lies entirely with the public prosecutor. As such, the Prosecutor's Office is a key factor in ensuring the criminal justice process operates effectively, objectively, and in accordance with the principles of due process of law under the Integrated Criminal Justice System (ICJS). The objectives of this research are: (1) to analyse the concept of *Dominus Litis* in Indonesia's criminal justice system and compare it with those of other countries, such as France and the Netherlands; and (2) to evaluate the effectiveness of the Prosecutor's Office as *Dominus Litis* in Indonesian law enforcement practices, particularly in its relationship with police investigators under the Integrated Criminal Justice System. This research is a literature-based study employing a normative juridical approach with analytical descriptive characteristics. The conclusions of this research are: the Prosecutor's Office is a key actor ensuring that the criminal justice process operates effectively, objectively, and in accordance with due process of law under the ICJS, and 4 (four) strategies to strengthen the Prosecutor's role as *Dominus Litis* such as: enhancing the competency of human resources within the Prosecutor's Office, strengthening the integrity and independence of the Prosecutor's Office, strengthening transparency and accountability in the prosecution process and strengthening coordination with other law enforcement agencies.

**Keywords:** *Dominus Litis*; Prosecutor; Integrated Criminal Justice System

## I. Introduction

The concept of *Dominus Litis* etymologically derives from Latin, in which *dominus* means "owner" and *litis* means "case" or "lawsuit." Therefore, *dominus litis* refers to "master of the suit".<sup>1</sup> In the context of criminal law enforcement, this principle is universally inherent in prosecutors as the public prosecutors, positioning them as the main controllers of the criminal

<sup>1</sup> Aminuddin, et.al. *Reformasi Sistem Peradilan Pidana di Indonesia*. (Bandung: Alfabeta, 2020).

prosecution process.<sup>2</sup> This central position makes the Prosecutor's Office a key actor that ensures the legal process runs effectively, objectively, and in accordance with the principles of due process of law. This principle functions as a guideline for prosecutors in handling cases professionally and transparently, while maintaining a balance between public interests and the rights of the accused.

Although this ideal concept is normatively recognized, its implementation within the Indonesian criminal justice system faces significant gaps. The Indonesian Criminal Procedure Code (KUHAP) adheres to the principle of functional differentiation (*differentiationem functionum*), which sharply separates the investigative authority, held as the exclusive monopoly of the Police (*monopolium investigationis*), from the prosecutorial authority yang which is the exclusive monopoly of the Public Prosecution Service (*monopolium accusationis*).<sup>3</sup> This condition creates structural problems that weaken the essence of *dominus litis*. In practice, the relationship between the Prosecutor's Office and the Police is merely functional in nature, whereby the Prosecutor's Office only monitors investigation and provides guidance without having the direct authority to conduct supervision or further investigation (*nasporing*).<sup>4</sup>

This manifested in the practice known as "back-and-forth of case files" between investigators and public prosecutors, which illustrates the need for deep thinking about the functional relationship of both institutions.<sup>5</sup> This problem is not just an administrative obstacle, but a fundamental problem that impedes the realization of the principle of quick, simple, and affordable. Research report shows that the role of the prosecutor on the pre-prosecution stage has not been optimal, being limited to receiving the Notice of Commencement of Investigation (SPDP) and research files, which potentially would cause file manipulation by investigators.<sup>6</sup> This shows that the Prosecutor lacks substantial control over the evidence-gathering process in the field, fundamentally weakening their role as the controller of the case.

To deeply understand about Prosecutor's Office position in Indonesia, it is important to analyze the comparison of the concept of *dominus litis* in other countries with different legal traditions. In France, which also adheres to a *civil law system*, *le Ministère Public* (Prosecutor's Office) has significant authority to control the prosecution process and interacts closely with investigators.<sup>7</sup> This function emerged alongside the establishment of *Code d'Instruction Criminelle* in the early 19<sup>th</sup> century, which became the basis for criminal procedure there. Even though prosecutors have a central role, their authority remains limited by the role of the court.

Similarly, in the Netherlands, the role of the Public Prosecutor (*Openbaar Ministerie*) as *dominus litis* is strengthened by the enactment of the *Wetboek van Strafvordering* in 1886. Prosecutor's Office in the Netherlands has significant authority to start and control an investigation, as well as to decide whether a criminal case will be brought to the court or stopped. They can direct investigators and stop the investigation if there is insufficient evidence.

In comparison, in the *common law* system, the Prosecutor's role as *dominus litis* is initially analogous to the right of a party in a civil case to settle their claims. The function of persecution developed from personal discretion, and even when the Public Persecutor takes over, they

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<sup>2</sup> Arief, Barda Nawawi. *Politik Hukum Pidana: Pembaharuan Hukum Pidana dalam Sistem Hukum Nasional Indonesia*. (Jakarta, Kencana, 2017)

<sup>3</sup> John Bell, Sophie Boyron, and Simon Whittaker, *Principles of French Law* (Oxford, Oxford University Press, 2008), 154

<sup>4</sup> *Code d'Instruction Criminelle*, 1808

<sup>5</sup> *Ibid*

<sup>6</sup> *Op.Cit*, Barda Nawawi Arief, *Politik Hukum Pidana*

<sup>7</sup> *Op. Cit*, *Code d'Instruction Criminelle*, 1808

inherited this significant discretion.<sup>8</sup> This discretionary power allows for the possibility of defense negotiation (*plea bargaining*), which is a natural solution in the Anglo-American system but less customary in the more structured Continental Legal system.<sup>9</sup> This comparison shows that the concept *dominus litis* is not diverse, but is highly bound to the country's legal system configuration.

## II. Research Problems

Based on the explanation above, the problem formulation that the Authors intend to examine in this paper is:

1. How is the concept of *Dominus Litis* applied within the Indonesian criminal justice system, and how does it compare with those of other countries?
2. What strategies can be done to strengthen the role of the Prosecutor's Office as *Dominus Litis* to ensure the effectiveness and accountability within the criminal justice system?

## III. Research Methods

This study employs normative legal research, which is a library-based method focusing on written legal materials and secondary data. This methodological choice is based on the research's purpose of analyzing *dominus litis* as a legal principle, the norms contained in legislation, and the legal doctrines on which it is based.

To reach that purpose, this research uses several approaches:

1. Statute Approach, this approach is essential to deeply analyze the varieties of law that become the research's objective. The Author will critically analyze the provisions in Law No. 8 of 1981 on KUHP and Law No. 16 of 2004 concerning the Public Prosecution Service of Indonesia. This approach aims to identify ambiguities or inconsistencies of norms that regulate the authority of prosecutors and investigators.
2. Conceptual Approach: This approach draws upon views and doctrines that have developed within the study of law. The objective is to theoretically analyze relevant doctrines and law principles, like *Dominus Litis*, due process of law, dan the Integrated Criminal Justice System. This approach becomes the foundation to construct solid legal argumentation with clarifying ideas, concepts, and legal principles on which it is based.
3. Comparative Approach: This approach is used to compare concepts and implementations of *dominus litis* in Indonesia with other countries' legal systems, like France and the Netherlands. In comparison, this research can attract quality studies and practices that can be adopted or adjusted for the context of Indonesia.
4. The data collection technique used in this research is document study or library research. This technique involves collecting and examining documents and libraries relevant to the issues under research. The collected data were then analyzed with the qualitative descriptive method. This analysis process involves data classification and selection based on quality and relevance. Then, analysis is done by the deductive thinking method, whereby conclusions are drawn from general legal norms and doctrines towards more specific issues. This method aims to interpret legislation and identify the legal principles, both explicitly stated and implicitly implied. The results were then presented descriptively to give a broader

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<sup>8</sup> Didik Kurniawan, *Reformulasi Keewenangan Penyidikan oleh Kejaksaan Sebagai Pengendali Perkara Dominus Litis* (Dissertation, University of Lampung, Bandar Lampung, 2023)

<sup>9</sup> *Ibid*

description as a whole and systematically, also analytically to substantiate the issues presented in the problem formulation.

## IV. Result and Discussion

### 1. *Dominus Litis* concept within the criminal justice system of Indonesia & other countries

#### a. The Concept of *Dominus Litis* within the Indonesian Criminal Justice System.

The Public Prosecution Service of Indonesia is a government agency that carries out the state's authority in the field of prosecution and other authorities based on law as well as master of the case (*Dominus Litis*). The Prosecutor's Office holds a central position within the law enforcement process and will be the only institution that is able to decide if a case in criminal case can be brought to Court based on the legal evidence according to Criminal Procedure Law.<sup>10</sup>

As a systematic process, criminal law enforcement manifests as the application of criminal law involving various structural subsystems, including the police, the prosecutor's office, the courts, correctional institutions, and legal advisors. In this context, the criminal law application must be seen from 3 (three) dimension, that is:<sup>11</sup>

- 1) First Dimension, criminal law application as a normative system, as a depiction of every legal rules that describes social values, which is supported by criminal sanctions;
- 2) Second Dimension, criminal law application is viewed as an administrative system that includes interaction among various law enforcement authorities which is the sub-system of the criminal justice system;
- 3) Third Dimension, criminal law application is a social system; meaning that the way criminal acts are defined and responded to is considered as a thinking perspective that lives within society.

From a normative juridical standpoint, it can be proven that the public prosecutor is *Dominus Litis* in criminal law enforcement, starting from the pre-prosecution stage, prosecution, as well as during the legal remedies and execution. According to the Law of the Republic of Indonesia No. 8 of 1981 on Criminal Procedure (KUHAP), the duties and authorities of the prosecutor as the public prosecutor plays an important role in every stage of the criminal justice system, among others:

- 1) Receiving notice regarding the commencement or termination of an investigation of Criminal Offence, as regulated in Article 109 KUHAP;

Article 109 KUHAP, states as follows:

*"1. In case an investigator has already started the investigation of an event which constitutes a criminal act, he shall inform the public prosecutor about the matter."*

*2. In case an investigator has ended an investigation because of the absence of sufficient proof or the event does not constitute a criminal act or the investigation has been stopped for the sake of law, the investigator shall inform the public prosecutor, the suspect or his family about the matter."*

- 2) Determining whether the investigation conducted by the Investigator has been carried out optimally including the sufficient evidence, to prove that a suspect committed the alleged criminal offense, as provided in Article 110 KUHAP *jo.* Article 138 KUHAP;

<sup>10</sup> Dedy Chandra Sihombin dkk. *Penguatan Kewenangan Jaksa Selaku Dominus Litis Sebagai Upaya Optimalisasi Penegakan Hukum Pidana Berorientasi Keadilan Restoratif*, Locus Jurnal Ilmu Hukum, vol.3 2023. p. 66

<sup>11</sup> Muladi, *Kapita Selekta Sistem Peradilan Pidana*. (Semarang: Badan Penerbit Universitas Diponegoro, 2002), p. 40

Article 110 KUHAP, states as follows:

- “1. In case an investigator has completed conducting an investigation, the investigator is obliged to immediately hand over the dossier of the case concerned to the public prosecutor.
2. In case the public prosecutor believes that the result of the investigation is still incomplete, he shall immediately return the dossier of the case to the investigator with directives for its completion.
3. In case the public prosecutor returns the result of the investigation for completion, the investigator is obliged to immediately carry out additional investigation in line with the directives of the public prosecutor.
4. An investigation shall be considered complete if within fourteen days the public prosecutor does not return the result of the investigation or if before the end of said time limit the investigator has already been notified about the matter by the public prosecutor.”

Article 138 KUHAP, states as follows:

- “1. A public prosecutor after receiving the result of an investigation from an investigator I shall immediately study and examine it carefully and within seven days is obliged to inform the investigator whether the result of the investigation is already or not yet complete.
  2. In case the result of the investigation has proved to be not yet complete, the public prosecutor shall return the dossier of the case to the investigator accompanied by directives on what must be done to make it complete and within fourteen days after the receiving date of the dossier, the investigator must have returned the dossier of the case to the public prosecutor.”
- 3) The case that can be brought to the Court or put aside for the sake of law (Opportunity principle) as provided in Article 35(c) of Law of Republic of Indonesia No. 16 of 2004 on The Public Prosecution Service Republic of Indonesia, as amended by Law of the Republic of Indonesia No. 11 of 2021 concerning Amendment of Law No. 16 of 2004 on The Prosecution Service of the Republic of Indonesia.

Article 35(c) Law of the Republic of Indonesia No. 16 of 2004 on The Prosecution Service Republic of Indonesia as amended by Law of the Republic of Indonesia No. 11 of 2021 concerning Amendment of Law of the Republic of Indonesia No. 16 of 2004 on The Prosecution Service of the Republic of Indonesia, stated as follows:

“Attorney General has duties and authorities:

c. putting aside cases for the sake of public interest;”

In Indonesia, this concept experienced changes from the inquisitoire system, which provides dominant role to prosecutor's office within *Herziene Indonesisch Reglement* (HIR), becoming the *accusatoir* system which limits the prosecutor's office authority in the currently applied Criminal Procedure Code (KUHAP). The function and position of the prosecutor's Office as *Dominus Litis* is actually very clear on HIR terms. During the period of HIR come in force, investigation were an integral part of the prosecution process (*unité de poursuite et d'instruction*). This positioned the public prosecutor as the coordinator investigationis as well a shaving the authority to conduct an investigation themselves (*opsporing*). For this reason, the prosecutor's office occupied a key position in the entire criminal justice process from the early stages until the end (*ab initio ad finem*). However, with the revocation of HIR and replaced with the Criminal Procedure Code (KUHAP), the role of the prosecutor's office on investigations experienced fundamental changes. The KUHAP adheres to the principle of functional differentiation (*differentiationem functionum*), which limits the authority of the prosecutor's office only in prosecution stage, while the investigation authority collectively

given to the Police (*monopolium investigationis*). In result, the authority of the prosecutor's office to conduct its own or directly direct the investigation process has been indirectly deligitimated (*delegitimatio*) by KUHAP. This is as stipulated in Article 110 and Article 138 KUHAP (Law No. 8 of 1981 on Criminal Procedure Law). The functionalization of the *Dominus Litis* concept is reflected on the prosecutor's office authority to terminate the prosecution, as stipulated in Article 140 paragraph (2) KUHAP. This article regulates the three main components that forms the basis for the termination of prosecution, namely:

- a) Insufficient Evidence;
- b) An event that occurred was not a criminal act because it was committed by a mentally-ill person (Article 44 KUHP), forced (Article 48 KUHP), self-defense (Article 49 KUHP), In the execution of the Law (article 50 KUHP) and due to a valid official order (Article 51 KUHP), Suspect/ Evicted passed away, the case has expired (Article 78 KUHP), become the existing reason to justify or to forgive;
- c) Case Closed for the Sake of the Law, Due to the application of the *ne bis in idem* principle (Article 76 KUHP), the payment of the maximum fine (*Afdoening buiten process*) (Article 82 KUHP), or the complainant has withdrawn the complaint (Article 75 and Article 284 paragraph (4) KUHP) based on Article 26.

In carrying out the functions, duty, and its authorities, the prosecutor's office as a government agency that exercises state power in the prosecution field must be able to realize legal certainty, legal order, justice, and truth based on law and apply religious, decency, and morality norms, as well as explore the human and law values, and provide a sense of justice to for the community. The prosecutor's Office also must have the ability to be involved entirely in the process of building a just and prosperous society based on Pancasila, and has the obligation to participate in maintaining and upholding the dignity of the government and state as well as protecting the public interest.<sup>12</sup>

#### b. The Concept of *Dominus Litis* in Other Countries.

##### 1) France

- a) History. In the French legal system, *Dominus Litis* refers more to the role of the Public Prosecutor's Office (*Le Ministère Public*) as the party responsible controlling the prosecution process and leading criminal cases in court. France adopted a *Civil Law* system that was heavily influenced by Roman legal traditions, in which the function of prosecutor's office as *Dominus Litis* emerged with the foundation of *Code d'Instruction Criminelle* in the early 19th century, which became the basis in regulating criminal court procedure in France.<sup>13</sup>
- b) Application. In France, *Dominus Litis* held by the prosecutor's office is called *Ministère Public*. The prosecutor's office has the authority to initiate criminal investigations and prosecute cases before the court. However, in the french legal system, the role of the prosecutor's office as *Dominus Litis* stays limited to the court's authority.<sup>14</sup>

<sup>12</sup> Gede Putera Perbawa, "Kebijakan Hukum Pidana Terhadap Eksistensi Asas *Dominus Litis*," *Arena Hukum* 7, no. 1 (2014): 303-471. Accessed 24 February 2025

<sup>13</sup> Baker, J. *The French Legal System: A Guide to Law and Practice*. (London, Routledge, 2014)

<sup>14</sup> *Loi Organique* 1958.

Investigation. The prosecutor's office has the authority to initiate an investigation interacts with the investigator (police or gendarmerie) to gather evidence in a criminal cases.

Prosecution Decision. The prosecutor's office has the right to decide if a case will be brought to court or to be terminated based on legal consideration, justice, and existing evidence.

Court's Role. Although the prosecutor's office has significant authority in controlling cases, the final decision regarding the judicial process remains on the hand of the court.<sup>15</sup>

- c) Legal Basis. *Dominus Litis* in France is regulated on several key legal aspects, which includes law that regulates the authority of the prosecutor's office in the criminal justice system. Some of the important legal basis that regulates the *Dominus Litis* in France include:

(1) *Code d'Instruction Criminelle* (Criminal Instruction Code)<sup>16</sup>

History: This code was published in 1808 under the rule of Napoleon Bonaparte and becomes the legal basis for the investigation and prosecution system on criminal cases in France. This code states that the prosecutor's office (*le Ministère Public*) has the authority to initiate investigation, controls the course of the investigation process, and decide whether the case will be brought to court or not.

Effect: This code describes the significant role of *Dominus Litis* for the prosecutor's office in France, where the prosecutor's office acts as state representation in criminal law enforcement.

(2) *Code de Procédure Pénale* (Criminal Procedure Code)

Change: with the passage of time, *Code d'Instruction Criminelle* is replaced by *Code de Procédure Pénale* in 1958, which is a rule compilation on criminal law procedures applied in France. This code regulates on the detail concerning the role of prosecutor's office in criminal cases, including its authority on controlling and supervise the judicial process.<sup>17</sup>

(3) Law concerning Prosecutor's Office (*Loi Organique* 1958)

Prosecutor's Office Role: This law regulates the role of prosecutor's office in France, that gives authority for prosecutor's office to act as *Dominus Litis* in criminal proceedings. The prosecutor's office is responsible to monitor the investigation process and ensures that the identified criminal act is processed appropriately according to applied law.

2) The Netherlands

- a) History. In the 19th century, with the enactment of *Wetboek van Strafvordering* (The Dutch Code on Criminal Procedures) in 1886, the role of prosecutor's office as *Dominus Litis* was strengthened. The prosecutor's office was given significant authority in initiating and controlling investigation to regulate the course of the prosecution process in court. Since then, The Public Prosecutor was given the

<sup>15</sup> Pison, M. (2011). "The Evolution of Criminal Procedure in France: The Role of the Public Prosecutor". *Journal of Comparative Law*, 9(2), pg. 222-239.

<sup>16</sup> *Code d'Instruction Criminelle* (1808).

<sup>17</sup> *Code de Procédure Pénale* (1958).

authority to decide whether the criminal case will be brought to court or terminated, based on the existing evidence. In the Dutch legal system, the concept of *Dominus Litis* closely related to the role of The Public Prosecutor (*Openbaar Ministerie*) who acts as the authority in criminal prosecution process. *Dominus Litis* in the context of Dutch law also became important in the criminal law reformation era that took place in the late 20th century and early 21st century. Through the continuous changes of law, prosecution systems that prioritizes *Dominus Litis* has further strengthened the function of the prosecutor's office in upholding the law in The Netherlands.<sup>18</sup>

b) Application. The application of the *Dominus Litis* concept in The Netherlands is reflected in the significant role of the Public Prosecutor (*Openbaar Ministerie*) within the criminal justice process. Prosecutor's Office in The Netherlands have the authority to:

- (1) Initiate the Investigation Process: The Public Prosecutor has the authority to initiate investigation of a criminal act. The prosecutor's office can direct investigator to investigate a case, and have the power to terminate the investigation for insufficient evidence.
- (2) Deciding Prosecution: After investigation process, The Public Prosecutor decides whether a criminal case can be brought to court. The prosecutor's office has the authority to prosecute the case in court or even to terminate it if there is not enough supporting evidence to continue the case.
- (3) Controlling the Legal Process: The Public Prosecutor has significant control over the course of criminal proceedings, including regulates on how the case is processed in court. Although the judge still decides the case in court, The Public Prosecutor plays an important role in determining the direction of the legal process.<sup>19</sup>

c) Legal Basis. Some legal basis that regulates the authority of the Public Prosecutor as *Dominus Litis* in The Netherlands includes:

(1) *Wetboek van Strafvordering* (The Dutch Code of Criminal Procedure) 1886.

Main Legal Basis: *Wetboek van Strafvordering* is the primary legal basis governing the investigation procedure, prosecution, and criminal proceedings in The Netherlands. In this code, the prosecutor's office has a central role in monitoring and controlling the course of criminal proceedings, starting from investigation to prosecution in court.

Application of *Dominus Litis*: In the *Wetboek van Strafvordering*, The Public Prosecutor is given the authority to initiate investigation, directing investigator, and prosecute the criminal case. If a case is deemed to lack of evidence, the Public Prosecutor has the right to terminate investigation or prosecution.

(2) *Staatscourant* (The Official Gazette of The Dutch Government)

The Role of Prosecutor's Office: The prosecutor's office, as part of the Dutch government, is regulated by the *Staatscourant*, which governs the organizations

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<sup>18</sup> J.A. Jansen. *Het Nederlands Strafrecht*. (Den Haag: Boom Juridische Uitgevers, 2012)

<sup>19</sup> *Wet op de Rechterlijke Organisatie* (Undang-Undang Organisasi Peradilan). (Regulating the relationship between the prosecutor's office and the court).

and administrations of the prosecutor's office agency. This document underlines the role of prosecutor's office as *Dominus Litis* in criminal prosecution.<sup>20</sup>

(3) *Wet op de Rechterlijke Organisatie* (Judiciary Organization Act)<sup>21</sup>

Regulation of the Presecutorial Role: This law regulates the relationship between the prosecutor's office and the court in The Netherlands. This law also regulates on how prosecutor's office able to interact with court on criminal case prosecution, which strengthens the role of prosecutor's office in controlling legal process.

(4) *European Convention on Human Rights*<sup>22</sup>

Human Rights: Although it's not part of domestic law in The Netherlands, European Convention on Human Rights influences the Dutch judicial system, including the application of the role of prosecutor's office as *Dominus Litis*. The principle of the right of fair trials must always be taken into account by prosecutor's office in carrying out the role of *Dominus Litis*.<sup>23</sup>

## 2. Available Strategies to Strengthen the Role of Prosecutor's Office as *Dominus Litis* to ensure Effectiveness and Accountability within Criminal Justice System

The Constitutional Justices Panel's consideration on the contents of Article 109 paragraph (1) KUHAP in Constitutional Court Decicion Number: 130/PUU-XIII/2015 dated 11 Januari 2017, reminds us on the importance of the role of public prosecutor in handling of case. This is because according to The Constitutional Court, the delivery of the SPDP to the public prosecutor is an obligation of investigators from the start of the investigation, ensuring that the investigation process remains in the control of the public prosecutor monitored by both the complainant and the reported party. KUHAP serves a system known as the Criminal Justice System, which is a "system" formed by "elements that are regularly interrelated to form a totality" requiring each subsystem to play its role in the sequence of criminal proceedings. The SPDP is an important part of the criminal case process, particularly within the Pre-Prosecution stage. In exercising their investigative authority, investigators provide information to prosecutors about the commencement of the investigation stage, which is a manifestation of the criminal justice system between two law enforcement agencies, the Indonesian National Police and the Attorney General's Office of the Republic of Indonesia.

The nature of this notification, before it was amended by the Constitutional Court decision, was more of a guideline rather than something investigators were required to carry out. This situation allowed investigators to prepare the SPDP at the same time as submitting the case files to the Public Prosecutor. As a result, the public prosecutor only became aware of and monitored the criminal case files when the files were received. This condition further shows the sharp separation between investigators and public prosecutors in processing criminal cases, which leads to different views between them regarding whether the submitted case files are complete or not.

<sup>20</sup> *Wetboek van Strafoordering* (Kitab Undang-Undang Hukum Acara Pidana Belanda), 1886.

<sup>21</sup> Bovend'Eert, E. *The Role of the Prosecutor in Dutch Criminal Law*. (Amsterdam, J. W. Wolters, 2005)

<sup>22</sup> Van Dijk, P., et al. *European Human Rights: Handbook*. (The Hague, Springer, 2018)

<sup>23</sup> European Convention on Human Rights.

The SPDP is prepared based on the principles of criminal procedure law and the guarantee of human rights. The obligation to notify the suspect, the victim, and the public prosecutor shows a shift from the *Crime Control Model* to the *Due Process Model*. This obligation is also considered a legal breakthrough based on seven principles of criminal procedure law. The SPDP, which was originally submitted only by the investigator to the public prosecutor according to Article 109 paragraph (1) of the Criminal Procedure Code, has changed and has been considered insufficient in achieving justice because it did not provide information to the parties, especially the reporter and the reported party, regarding the SPDP. This lack of notification failed to provide legal certainty and justice in the criminal justice process.

The paradigm of criminal procedure law does not only emphasize legal certainty in proceedings but is also rooted in the fulfillment of human rights that belong not only to the reporter (victim) or society but also to the reported party. When an investigation is about to be carried out, the investigator will send a Notification Letter of the Commencement of Investigation (SPDP) to the public prosecutor. Before conducting the investigation stage, the existence of the SPDP sent to the public prosecutor shows that the investigator does not conduct the investigation solely on personal initiative but has already coordinated with the public prosecutor.

Barda Nawawi Arief emphasizes that criminal law is not only intended to punish criminals, but also functions as a social control tool to maintain social order. The state uses a criminal law system to prevent crime and maintain national stability.<sup>24</sup> Besides that in the theory of criminal law politics, Barda Nawawi Arief explains how criminal law not only functions to enforce social law, but also influenced by the country's political law policies. This theory focuses on the relationship between criminal law system the state's political objective in maintaining social order, protecting the state from criminal threats, and realizing state goals according to applied political ideology.<sup>25</sup>

Barda Nawawi Arief argues that criminal law functions as an instrument in the state's legal policy, which is a state policy regulated by law to achieve certain social and political objectives. Therefore, criminal law cannot be viewed as a stand-alone law, but always within the broader context of legal policy. Criminal law in this theory is not only about regulating sanctions for criminals, but also reflects the state's policy patterns towards crime and how to deal with.<sup>26</sup> Criminal Law Politics as State Policy In this theory, criminal law politics is a policy formulated by the state to deal with crime in society. The state determines the types of crimes and criminal sanctions to be applied in accordance with the political, social, and ideological interests of the state. For example, in a country with an authoritarian government, criminal law policy tends to suppress individual freedom for the sake of political stability, while in a democratic country, the criminal law system emphasizes the protection of human rights and social justice. Criminal Law as a Tool for Social Control Barda Nawawi Arief emphasized that criminal law is not only intended to punish criminals, but also functions as a tool for social control to maintain public order. The state uses the criminal justice system to prevent crime and maintain social stability.<sup>27</sup>

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<sup>24</sup> Barda Nawawi Arief, *Teori Politik Hukum Pidana dalam Perspektif Keadilan Sosial*, dalam *Jurnal Hukum dan Pembangunan*, Volume 48, No. 2, 2018, pg. 234-245.

<sup>25</sup> Barda Nawawi Arief, *Politik Hukum Pidana: Pembaharuan Hukum Pidana dalam Sistem Hukum Nasional Indonesia*, (Jakarta: Kencana, 2017)

<sup>26</sup> R. S. N. Ginting, *Politik Hukum Pidana: Teori dan Praktik dalam Implementasi Hukum Pidana di Indonesia*, Bandung: Alfabeta, 2019.

<sup>27</sup> Barda Nawawi Arief, *Teori Politik Hukum Pidana dalam Perspektif Keadilan Sosial*, dalam *Jurnal Hukum dan Pembangunan*, Volume 48, No. 2, 2018, pg. 234-245.

Furthermore, Barda Nawawi Arief said that the integrated criminal justice system functions to ensure that every stage of criminal law process, starting from investigation to sentencing, runs harmoniously and not separated, and are based on the principle of comprehensive justice. Barda Nawawi Arief revealed that the integrated criminal justice system consists of several connected stages, including: Investigation and Case Resolution. The first stage starts from the investigation by the that searches for evidence to decide whether a case is a criminal offense or not. If there is sufficient evidence, the case will be brought to prosecution process. Prosecution by Prosecutor. The prosecutor as the prosecution authority, prepares indictment against the perpetrator *pelaku* based on the gathered evidence by the police and later brings the case to court. In court, the judge will examine and decide criminal case based on the existing evidence and applied law. In this case, integrated criminal justice system ensures that the court does not work separately from other institution, but rather based on inter-institutional cooperation. Furthermore, after the court decision is handed down, the next stage is the implementation of the sentence, which can take the form of imprisonment, fines, rehabilitation, or other forms of punishment in accordance with the court's decision.<sup>28</sup>

The role of the prosecutor's office in an integrated criminal justice system as the *dominus litis* is highly significant because it is the institution that controls the course of a criminal case, files charges, and ensures that justice is upheld. Therefore, the prosecutorial role as *dominus litis* plays a crucial role in ensuring effectiveness and accountability within a criminal justice system. Several strategies can be done to strengthen the role of the prosecutor's office, including:

1. Improvement of the Human Resource (SDM), the Prosecutor's Office<sup>29</sup>
  - 1) Continuous Training and Education: The public prosecutor needs to receive quality and continuous training on prosecution techniques, handling of cases, and also deep comprehension of the latest criminal law.
  - 2) Enhancement of Investigative Skills: In addition to legal skills, a prosecutor must also have the ability to manage an investigation, which is very important in determining the direction and strategies of filing charges. Improving these investigation skills can be achieved through cooperation with other law enforcement institutions.
  - 3) Development of Expertise in Drafting Indictments: Proper drafting of indictments is very important to ensure that a case proceeds according to legal provisions and results in a fair outcome. Therefore, strengthening the prosecutor's skill in formulating a proper and effective indictment is key to strengthening the role of the prosecutor's office. Taverne ever stated: "Give me an honest and clever prosecutor, give me an honest and clever judge, then even with the worst law, I will produce the fairest decision."<sup>30</sup>
2. Strengthening the Integrity and Independence of the Prosecutor's Office<sup>31</sup>
  - 1) Strict Internal Watch: Prosecutor's Office must have an effective internal monitoring system to ensure that every prosecutor behaves according ethical code and the applied law. This supervision may also include periodic reviews of the public prosecutors in handling cases.

<sup>28</sup> Aminuddin, dkk., *Reformasi Sistem Peradilan Pidana di Indonesia*, (Bandung: Alfabeta, 2020), pg. 90-105.

<sup>29</sup> Education and Training Center Attorney General's Office of Indonesia. (2021). *Performance Report Attorney General's Office of the Republic of Indonesia*

<sup>30</sup> Kelik Pramudya dan Ananto Widiatmoko. *Pedoman Etika Profesi Aparat Hukum Hakim, Jaksa, Polisi, Notaris, dan Advokat*. (Jakarta. PT. Suka Buku, 2010), pg. 34

<sup>31</sup> Law No. 16 of 2004 on the Public Prosecution Service of Republic of Indonesia.

- 2) Eradication of Corruption and Abuse of Power: One of the greatest challenges in strengthening the role of the Prosecutor's Office is ensuring that prosecutors are not involved in corruption or abuse of power. Therefore, the implementation of intensive anti-corruption programs and the development of a clean and ethical working culture are essential.
  - 3) Ethics and Law Compliance Education: The Prosecutor's Office needs to foster an institutional culture that emphasizes ethics and legal compliance.
  - 4) Strengthening Transparency and Accountability in the Prosecution Process.
3. Strengthening Transparency and Accountability in the Prosecution Process<sup>32</sup>
- a. Public Watch and Evaluation of the Prosecution Process: The prosecutor's office must be able to take responsibility for their acts and decisions on the prosecution process, both to the public and the supervision agency. Supervision by an independent agency or civil organizations can help improve the accountability of prosecutors.
  - b. Preparation of Performance Report: Prosecutor's office needs to prepare a transparent performance report, including statistics on the number of cases handled, the success rate of prosecution, also obstacles encountered. This report can be audited by an external supervision agency.
  - c. Public Information Accessibility: The Prosecutor's office can utilize information technologies to give greater access to the public regarding the ongoing judicial process. For example, by providing online information access on a case status.
4. Strengthening Coordination with Other Law Enforcement Institute
- 1) Inter-Agency Coordination Forum: The prosecutor's office, the police, and the court need to have a regular coordination forum to discuss and resolve issues that arise in handling the case. This will speed up the issue resolution and reduce overlaps in the legal process.
  - 2) Improving Cooperation in Case Preparations: During the investigation and inquiry process, better coordination between the prosecutor's office and the police can speed up evidence gathering and memastikan bahwa ensure that cases brought to the court have a strong legal basis.
  - 3) Improvement in Investigation Supervision: The prosecutor's office has to be more active in monitoring the course of the investigation by the police, ensuring that investigations are conducted properly and in accordance with the law, so that the cases brought to the court are accountable.<sup>33</sup>

## V. Conclusion

Based on the presented explanation, it can be concluded that the concept of *dominus litis* in the criminal justice of Indonesia places the Prosecutor's Office as master of the case, which decides if a case is suitable to advance to the prosecution stage. Although it is normatively supported by KUHP and the Law concerning Prosecutor's Office its implementation is obstructed by the ambiguous functional differentiation between prosecutors and investigators. This situation is fundamentally different from the civil law system in France and the Netherlands,

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<sup>32</sup> Law No. 8 of 1981 on Criminal Procedure Law

<sup>33</sup> Education and Training Center Attorney General's Office of Indonesia (2021). Performance Report Attorney General's Office of the Republic of Indonesia.

whereby prosecutors have a stronger role and proactive in investigation supervision, resulting in a more efficient system. This obstacle creates inefficiency, like the back-and-forth file process, which is contrary to the principles of fast, simple, and affordable judicial proceedings.

To strengthen the role of the Prosecutor's Office as *dominus litis*, it is necessary to have an integrated strategy that goes beyond simple legislative reforms. This strategy must include competency improvement and Integrity of human resources of the Prosecutor's Office, digital transformation to overcome practical obstacles and enhance transparency, as well as reinforcing coordination among law enforcement agencies. This strengthening aims to establish an integrated and accountable criminal justice system in which the Prosecutor's Office can effectively perform its role as the guardian of substantive justice.

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