



Reconstruction of the Prosecutor's Dominus Litis Authority over the Termination of Investigations Based on Restorative

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Abstract : Restorative justice has emerged as a pivotal approach in contemporary criminal justice systems. This study examines the application of the prosecutor's dominus litis authority in terminating investigations through restorative justice within Indonesia's criminal justice framework. Employing a socio-legal research methodology with a constructivist paradigm, this research analyzes the tension between prosecutorial authority and investigative practices in the implementation of restorative justice. Primary data were collected through structured interviews with prosecutors and investigators, while secondary data comprised relevant legal materials including statutory regulations, academic literature, and comparative legal analyses. The research identifies three critical findings: (1) the current application of the prosecutor's dominus litis authority in terminating investigations through restorative justice fails to uphold justice values, creating procedural uncertainty and institutional conflicts; (2) significant weaknesses exist in both legal substance and structure, particularly the absence of explicit restorative justice provisions in Indonesia's Criminal Procedure Code (KUHP) and inadequate coordination between law enforcement agencies; and (3) reconstruction is necessary to strengthen the prosecutor's authority as dominus litis in restorative justice implementation. This study proposes specific amendments to Article 109 of KUHP, requiring investigators to obtain prosecutorial approval before terminating investigations based on restorative justice, thereby enhancing legal certainty, improving institutional coordination, and better protecting victims' rights in alignment with Pancasila values.

IndexTerms - Dominus Litis, Prosecutor Authority, Restorative Justice, Criminal Procedure, Legal Reconstruction.

I. INTRODUCTION

The criminal justice system serves as the cornerstone of legal order in society, balancing the imperatives of justice, legal certainty, and social benefit. Within this framework, the prosecutor's role as dominus litis—the controller of criminal cases—represents a fundamental principle that ensures the integrity and coherence of criminal proceedings. In Indonesia, this principle faces significant challenges in its application, particularly in the context of restorative justice approaches to criminal case resolution [1].

Restorative justice has gained prominence globally as an alternative approach to criminal justice that emphasizes healing relationships between offenders, victims, and communities rather than focusing solely on punishment. This approach aligns with Indonesia's Pancasila ideology, which emphasizes harmony, deliberation, and social justice. However, the implementation of restorative justice within Indonesia's criminal justice framework has revealed significant procedural and institutional tensions, particularly regarding the authority to terminate investigations.

The Indonesian Criminal Procedure Code (KUHP) established a system of functional differentiation that clearly demarcates the roles of investigators (primarily the police) and prosecutors. As Andi Hamzah (2019) notes, the prosecutor as dominus litis has the freedom to determine which criminal regulations will be applied in a case. This principle gives prosecutors the authority to exclude prosecution based on prosecutorial discretion or the principle of opportunity, which forms the legal basis for resolving criminal cases through restorative justice [2].

However, problematic practices have emerged wherein investigators unilaterally terminate investigations based on restorative justice after case files have been transferred to prosecutors. This creates procedural inconsistencies at various stages:

1. When investigators submit two forms of Notice of Commencement of Investigation (SPDP)—one with and one without the suspect's name—creating procedural confusion.
2. When files returned for additional investigation are not resubmitted to prosecutors before termination.
3. When investigations are terminated after files have been declared complete (P-21).

These practices significantly undermine the prosecutor's dominus litis authority and create substantial legal uncertainty. They contradict the values of Pancasila justice by introducing procedural ambiguity, causing institutional conflicts, and violating established criminal procedures. The Police Regulation Number 8 of 2021 and Attorney General Regulation Number 15 of 2020, which separately govern restorative justice procedures, further fragment the criminal case handling process.

This research addresses a critical question: How should the prosecutor's *dominus litis* authority be regulated in the context of criminal procedure law, particularly regarding case termination through restorative justice after police investigators transfer case files to prosecutors? This question encompasses concerns about authority delineation, coordination mechanisms, and the need to strengthen the prosecutor's role as *dominus litis* to reduce overlapping authority and increase justice, benefit, and legal certainty in Indonesia's criminal justice system.

II. RESEARCH METHODS

This research employs a constructivist paradigm with a socio-legal research approach to examine both normative legal frameworks and their social implementation. The socio-legal approach was selected because it facilitates analysis of not only formal legal provisions but also how these provisions function in practice through institutional interactions between prosecutors and investigators.

The research is descriptive-analytical in nature, combining legal normative analysis with empirical observations to develop a comprehensive understanding of the prosecutor's *dominus litis* authority in restorative justice implementation. This approach allows for examination of the gap between legal ideals and practical realities in Indonesia's criminal justice system.

2.1 Research Objectives

This research aims to:

1. Discover and analyze the application of the prosecutor's *dominus litis* authority in terminating investigations through restorative justice and its alignment with justice values.
2. Identify and analyze weaknesses in current regulations governing the prosecutor's *dominus litis* authority over investigation termination through restorative justice.
3. Reconstruct regulations on the prosecutor's *dominus litis* authority over investigation termination based on restorative justice to enhance justice, legal certainty, and institutional coordination.

2.2 Data Collection

Primary data were obtained through semi-structured interviews with law enforcement officials, including:

1. Prosecutors from various jurisdictional levels who have experience handling cases involving restorative justice approaches
2. Police investigators who have implemented restorative justice mechanisms in criminal cases

Interview questions focused on procedural practices, institutional coordination challenges, authority conflicts, and perspectives on the effectiveness of current restorative justice implementation frameworks.

Secondary data was collected through comprehensive literature studies of:

1. Primary legal materials: Criminal Procedure Code (KUHP), Police Regulation Number 8 of 2021, Attorney General Regulation Number 15 of 2020, and other relevant statutory regulations
2. Secondary legal materials: Academic books, journal articles, research reports, and comparative studies on prosecutorial authority and restorative justice in various jurisdictions
3. Tertiary legal materials: Legal dictionaries and encyclopedias providing definitional clarity on key concepts.

2.3 Data Analysis

The data collected were analyzed using qualitative methods with the following steps:

1. Organizing and categorizing data based on research objectives
2. Identifying patterns and relationships between legal provisions and practical implementation
3. Comparative analysis of *dominus litis* principles across different jurisdictions
4. Evaluating the alignment of current practices with Pancasila justice values
5. Developing reconstructive proposals based on identified weaknesses and comparative best practices

This methodological framework enables a comprehensive examination of the legal, institutional, and cultural dimensions affecting the prosecutor's *dominus litis* authority in the context of restorative justice implementation in Indonesia.

III. RESULTS AND DISCUSSION

3.1 The Concept of Prosecutor's *Dominus Litis* Authority in Restorative Justice

Restorative justice represents a paradigm shift in criminal justice systems worldwide, emphasizing the restoration of relationships between perpetrators, victims, and communities rather than focusing exclusively on retributive punishment. This approach prioritizes dialogue, mediation, and constructive conflict resolution strategies to minimize the negative consequences associated with formal judicial proceedings [3].

The implementation of restorative justice by prosecutors constitutes a significant functionalization of the *dominus litis* principle—the prosecutor's role as controller of criminal cases. Through this principle, prosecutors can employ restorative approaches as alternatives to traditional prosecution, thereby achieving substantive and social justice outcomes that may not be attainable through conventional court proceedings. As Andi Hamzah notes, the prosecutor's position as *dominus litis* grants considerable discretionary authority in determining which criminal regulations to apply in specific cases, including the authority to modify charges after reviewing investigative findings.

In Continental European jurisdictions adhering to Civil Law traditions, this prosecutorial discretion manifests as the "principle of opportunity," allowing prosecutors to decline prosecution when public interest considerations justify such decisions. This discretionary authority has been formalized in Indonesia through the Attorney General's Regulation Number 15 of 2020, which explicitly recognizes case resolution outside court proceedings, including through restorative justice approaches.

Article 3 of this regulation delineates the prosecutor's authority to close cases for legal purposes under specific conditions, including when:

1. The defendant has died
2. Criminal prosecution has reached statutory limitations
3. A court decision with permanent legal force exists for the same case (*nebis in idem*)

4. A complaint for a crime requiring one has been withdrawn
5. Settlement has occurred outside court proceedings (afdoening buiten process)

The regulation further specifies that out-of-court settlements may be justified when maximum fines are paid or when "restoration of the original condition" occurs through restorative justice approaches (Article 3, paragraphs 3-5). This legal framework establishes the prosecutor's authority to terminate prosecutions based on restorative justice principles.

3.2 Dual Functions of the Prosecutor in Criminal Justice

The prosecutorial function in Indonesia encompasses dual aspects: repressive law enforcement (prosecution) and preventive law enforcement. Within repressive enforcement, prosecutors exercise their primary prosecutorial function, with policy determination and control centralized through the *dominus litis* principle. Alternatively, in fast-track law enforcement, alternative conflict resolution methods are prioritized over formal legal proceedings [4].

This duality reflects global prosecutorial practices, where prosecutors frequently function both as administrators (regulators) and quasi-judicial officers. In their administrative capacity, prosecutors pursue maximum punishment, while in their quasi-judicial role, they protect innocent parties, consider suspects' rights, and prevent vindictive prosecution. As Marwan Effendy observes, prosecutors in many jurisdictions operate as "semi-judges" with significant discretionary authority, including powers to withdraw charges, implement conditional prosecution, dismiss cases, and even impose sentences with or without judicial approval.

The Attorney General's Office thus occupies a crucial position in criminal case management, functioning as the centralized filter between investigation and court examination—the essence of *dominus litis*. This authority enables prosecutors to exclude criminal cases from prosecution based on discretionary principles, particularly through restorative justice approaches aligned with Indonesia's Pancasila-based culture and ideology [5].

3.3 Problematic Implementation of Restorative Justice by Investigators

Despite the legal framework establishing prosecutors as *dominus litis*, significant implementation problems have emerged when investigators (primarily police) unilaterally terminate investigations citing restorative justice after transferring case files to prosecutors. These problematic practices manifest at several procedural junctures:

a. Submission of Dual Notice of Commencement of Investigation (SPDP) Forms

Investigators sometimes submit two different SPDPs to the Attorney General's Office—one identifying suspects and another without such identification—creating procedural confusion and legal uncertainty. This practice contradicts Article 109(1) of the Criminal Procedure Code (KUHP), which mandates SPDP submission to prosecutors, reported parties, and victims/complainants within seven days of investigation commencement. The submission of contradictory documents creates opportunities for authority abuse and undermines due process principles fundamental to Indonesia's integrated criminal justice system [6].

b. Non-Compliance with Additional Investigation Requirements

When prosecutors identify deficiencies in case files and return them for completion per Article 110(3) of KUHP, investigators are obligated to conduct additional investigations and resubmit completed files within 14 days as stipulated in Article 138(2). However, investigators frequently terminate investigations without returning completed files to prosecutors, violating procedural requirements and creating legal uncertainty for all parties involved.

c. Post-Completion Termination of Investigation

Perhaps most problematically, investigators sometimes terminate investigations after prosecutors have declared files complete (P-21 status). This unilateral action creates significant procedural inconsistencies and authority conflicts between investigators and prosecutors, undermining legal certainty and diminishing public confidence in the criminal justice system. These practices directly contradict the *dominus litis* principle by allowing investigators to make unilateral decisions without prosecutorial approval or coordination. Such actions not only interfere with prosecutorial authority but also compromise the integrity of law enforcement processes, potentially creating institutional conflicts and reducing public trust in judicial proceedings [7].

3.4 Contradiction with Pancasila Justice Values

The unilateral application of restorative justice by investigators without prosecutorial coordination fundamentally contradicts Indonesia's Pancasila justice values in multiple dimensions:

a. Procedural Uncertainty

Abrupt or unilateral investigation terminations after prosecutorial engagement creates legal uncertainty, contradicting the Second Principle of Pancasila emphasizing Just and Civilized Humanity. Procedural inconsistency damages the interests of victims, perpetrators, and public confidence in legal institutions.

b. Authority Overlaps

Ambiguous delineation of authority between investigators and prosecutors creates systemic confusion that contradicts the Fourth Principle of Pancasila, which emphasizes People's Sovereignty Led by Wisdom in Deliberation/Representation. Overlapping authority reflects insufficient coordination and collaboration between law enforcement institutions.

c. Institutional Conflict Potential

Limited prosecutorial involvement in restorative justice processes can generate institutional conflicts, contradicting the Third Principle of Pancasila promoting Indonesian Unity. Effective law enforcement requires synergistic relationships between agencies pursuing shared justice objectives [8].

d. Procedural and Legal Inconsistencies

Investigation termination after prosecutorial file completion (P-21) represents serious legal inconsistency that contradicts legality principles foundational to Pancasila justice. Such inconsistency creates uncertainty for all parties and erodes public trust in judicial systems.

e. Violation of KUHP Procedures

Investigators who bypass procedural requirements, such as file return obligations after additional investigations, violate KUHP provisions and potentially infringe on victims' and perpetrators' rights to fair and transparent justice—contradicting both the Second and Fifth Principles of Pancasila.

3.5 Comparative Analysis of Dominus Litis Across Jurisdictions

Examination of dominus litis implementation across various legal systems provides valuable comparative insights for strengthening prosecutorial authority in Indonesia's restorative justice framework [9].

Civil Law Jurisdictions

In the Netherlands, prosecutors (Officier van Justitie) maintain comprehensive dominus litis authority, including full responsibility for investigation supervision, prosecution decisions, and criminal process oversight. This model grants prosecutors substantial control throughout criminal proceedings [10].

The Japanese system similarly empowers prosecutors (kensatsukan) with extensive authority to supervise investigations and make prosecution decisions, including case termination when evidence is insufficient. This model establishes prosecutors as effective dominus litis controllers of criminal processes.

Germany, South Korea, and Russia likewise position prosecutors as dominus litis with broad authority and prosecutorial monopoly, reinforcing the centrality of prosecutorial discretion in criminal case management [11].

Mixed Systems

France presents an interesting variation, maintaining civil law traditions but limiting prosecutorial authority through the Investigating Judge (Juge d'instruction), who exercises independent investigative authority. This arrangement restricts prosecutorial dominus litis primarily to prosecution phases rather than investigation. Egypt employs a mixed civil law and Islamic law system that grants prosecutors comprehensive authority to initiate, supervise, and terminate investigations while maintaining prosecutorial monopoly, with Islamic legal principles reinforcing the prosecutor's dominus litis position.

Common Law Jurisdictions

England's common law system divides authority between police investigators and prosecutors (Crown Prosecution Service), with police conducting independent investigations while prosecutors determine case continuation. This arrangement limits prosecutorial dominus litis by granting police substantial investigative autonomy [12].

Malaysia's hybrid common law and civil law system similarly divides responsibilities between police investigators and prosecutors, though prosecutors maintain control over prosecution decisions and case continuation.

This comparative analysis reveals that civil law jurisdictions generally grant prosecutors more comprehensive dominus litis authority throughout criminal proceedings, while common law and mixed systems typically distribute authority between investigators and prosecutors. Indonesia's current system more closely resembles common law divisions of authority despite its civil law foundations, potentially explaining some coordination challenges in restorative justice implementation [13].

3.6 Historical Context: Transformation from HIR to KUHAP System

The transition from the Herziene Inlandsch Reglement (HIR) system to the current KUHAP framework represents a significant shift in prosecutorial authority in Indonesia. Under the HIR/RBG system, prosecutors maintained substantially stronger dominus litis positioning, controlling the entire preliminary examination process from investigation through prosecution, with police functioning essentially as prosecutorial assistants.

As Marwan Effendy observes, this system positioned prosecutors as central figures in preliminary examinations with comprehensive authority over investigations and prosecutions. The HIR framework did not recognize "pre-prosecution" as a distinct phase; this concept emerged only with KUHAP implementation in December 1981 [14].

The KUHAP system introduced functional differentiation, explicitly separating investigative authority (assigned to police and other investigators) from prosecutorial functions. This transformation aimed to prevent authority concentration and potential power abuses but inadvertently created coordination challenges and authority fragmentation that continue to impact restorative justice implementation.

Several substantive advantages would accompany a return to stronger prosecutorial dominus litis authority similar to the HIR model:

1. Enhanced prosecutorial control over investigations would improve evidence quality and comprehensiveness for court proceedings
2. More efficient case management through faster, more responsive decision-making
3. Reduced conflict potential through clarified authority delineation
4. Improved accountability through centralized decision-making responsibility

In restorative justice contexts specifically, strengthened prosecutorial dominus litis would facilitate more comprehensive case evaluation considering perpetrator intentions, victim impacts, and resolution possibilities. Enhanced coordination between investigators and prosecutors would improve mediation potential, with prosecutors potentially functioning as effective mediators directing investigators toward restorative options [15].

IV. CONCLUSIONS

1. **Misalignment with Justice Values:** The current application of the prosecutor's dominus litis authority in terminating investigations through restorative justice fundamentally contradicts Pancasila justice values. The unilateral termination of investigations by investigators creates procedural uncertainty (contradicting the Second Principle), overlapping authority with insufficient coordination (contradicting the Fourth Principle), institutional conflict potential (contradicting the Third Principle), procedural inconsistencies (contradicting legality principles), and KUHAP violations (contradicting the Second and Fifth Principles). These contradictions collectively undermine legal certainty, institutional harmony, and public confidence in the criminal justice system.
2. **Regulatory Weaknesses:** The current regulatory framework exhibits substantial weaknesses in both legal substance and structure:
 - a) **Legal Substance Deficiencies:**
 - Absence of restorative justice provisions within KUHAP
 - Lack of comprehensive legislative foundation for restorative justice implementation

- Reliance on institutional regulations (Police Regulation Number 8/2021 and Attorney General Regulation Number 15/2020) rather than statutory authority
 - Inconsistent procedural guidelines across institutions
- b) Legal Structure Limitations:
- Insufficient coordination mechanisms between police investigators and prosecutors
 - Institutional sectoral ego manifestations when each agency claims restorative justice implementation authority
 - Absence of clear supervisory frameworks for restorative justice decisions
 - Inadequate delineation of authority boundaries in restorative justice implementation
3. Reconstructive Solution: To address these weaknesses, this research proposes regulatory reconstruction through amendment of Article 109 of KUHAP to include a new paragraph 4 requiring investigators to obtain prosecutorial instructions before terminating investigations based on restorative justice. This reconstruction would establish enhanced supervisory mechanisms ensuring that investigation terminations incorporate both investigative considerations and broader legal perspectives represented by prosecutors. This amendment would strengthen the prosecutor's dominus litis authority in restorative justice implementation while maintaining institutional coordination.

V. RECOMMENDATIONS

1. Legislative Reform: The Indonesian legislature should prioritize immediate reconstruction of KUHAP to incorporate comprehensive restorative justice provisions that explicitly strengthen the prosecutor's dominus litis authority in criminal law enforcement. This reform should include clear procedural guidelines, authority delineation, and coordination mechanisms between investigators and prosecutors.
2. Institutional Coordination Enhancement: Law enforcement agencies should establish effective coordination, synergy, and mutual understanding frameworks for restorative justice implementation. These frameworks should include joint training programs, regular coordination meetings, standardized protocols, and shared information systems to ensure consistent, just application of restorative justice principles.
3. Comparative Implementation: Indonesia should adapt successful elements from civil law jurisdictions like the Netherlands and Japan that grant prosecutors comprehensive dominus litis authority throughout criminal proceedings, while contextualizing these elements within Indonesia's Pancasila-based legal framework.
4. Capacity Building: Law enforcement institutions should invest in specialized training for prosecutors to enhance their restorative justice facilitation capabilities, including mediation skills, victim-centered approaches, and assessment frameworks for appropriate case selection.
5. Public Awareness: Comprehensive public education campaigns should inform citizens about restorative justice principles, procedures, and benefits to enhance community participation and understanding of this alternative approach to criminal justice.

Through these integrated recommendations, Indonesia's criminal justice system can develop more effective, just implementation of restorative justice approaches that respect prosecutorial dominus litis authority while achieving better outcomes for victims, perpetrators, and communities.

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