

## **Harmonizing Prosecution Agencies in Indonesia: Implementing the Dominus Litis Principle Policy**

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### **Abstract**

This research examines the harmonization of prosecution institutions in Indonesia with a focus on the policy implementation of the dominus litis principle. The Corruption Eradication Commission (KPK) and the Ombudsman have limited authority compared to the Public Prosecutor's Office, creating an imbalance in law enforcement. Understanding the historical background of each institution lays the foundation for comprehending the differences in authority. Challenges arise in handling criminal acts involving military personnel, requiring effective coordination and allocation of authority. The reconstruction of legal, structural, and cultural substance is necessary to enhance law enforcement effectiveness, especially in addressing corruption and military-related crimes. Inter-institutional coordination becomes a key factor in overcoming obstacles due to the limitations of authority. Thus, this research aims to contribute to the improvement of the prosecution system in Indonesia.

**Keywords:** Prosecution Institutions, Dominus Litis Principle, Legal Culture, Single Persecutor System.

### **Introduction**

The authority in the field of prosecution held by the Corruption Eradication Commission (KPK) and the Military Prosecutor's Office (Oditurat) can be considered more limited compared to the authority held by the Public Prosecutor's Office (Kejaksaan). The background that causes this limitation can be traced based on the history of the birth of each institution. Chronologically, the birth of prosecution institutions in Indonesia began with the Public Prosecutor's Office-Oditurat-KPK. The establishment of prosecution institutions other than the

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Public Prosecutor's Office represents a form of specialization driven by the needs of the time (Yamin et al., 2023).

For example, the birth of Oditurat is based on the need for a specialized prosecution institution to handle soldiers or individuals treated similarly to soldiers. There are several reasons why such an institution is needed. First, soldiers are individuals who have undergone military training. Their attitudes often differ from civilians, and they are trained in the use of weapons. Given these considerations, a prosecution institution with internal military ranks is needed to ensure law enforcement within the military does not face resistance. Furthermore, the unity and cohesion among military members are generally strong. If law enforcement is carried out by someone outside the military, there is a risk of resistance between law enforcement and the military group (Pramono, 2020).

Second, it is related to the need for special treatment for crimes committed by soldiers or similar individuals after independence. Post-1945 Proclamation, Indonesia faced internal and external attacks. If soldiers committing crimes are punished similarly to civilians, it can weaken the country's defense. Allowing this risk jeopardizes the integrity and freedom achieved by Indonesia. Considering this, the current security conditions must also be taken into account. Indonesia is no longer at war or under threat from external or internal attacks. Additionally, military recruitment occurs every year. Therefore, the application of *lex specialis* to a soldier committing a crime is no longer urgent (Putra, 2013).

Similar considerations led to the birth of the KPK. The establishment of the KPK was driven by corruption among officials in the executive, legislative, and judicial branches. Law enforcement by existing institutions was prone to interference. Therefore, the KPK was formed, with personnel not only from legal practitioners within the executive branch but also from non-civil servants and legal academics. The selection and appointment of such personnel were necessary to ensure independent and comprehensive law enforcement against corruption (Kurniawan, 2011). Over time, KPK employees were appointed as civil servants, contradicting the original reasons for the KPK's establishment. The presence of permanent employees poses a risk of making the KPK susceptible to interference, similar to prosecution institutions (Rosok et al., 2022).

The Public Prosecutor's Office has broader authority because it is the earliest institution to be established, and some of its authority is delegated to other institutions. Based on this, the authority held by the KPK and Oditurat is more limited compared to the Public Prosecutor's Office. This limitation has practical implications for the performance of each institution. For example, if a crime is committed by more than one person, where one falls under the jurisdiction of the military court and the other under the jurisdiction of the civilian court, law

enforcement requires collaboration between institutions. However, internal roles, such as the Case Submission Officer, play a role in determining the process for a case (Latifah, 2012).

The same obstacles are faced by the KPK, as it only has authority to prosecute corruption offenses. However, in a case where multiple offenses are committed, relying solely on the KPK may result in suboptimal law enforcement (Waani, 2015). The Public Prosecutor's Office also faces limitations when dealing with military personnel accused of committing crimes. The Prosecutor's Office does not have the authority to prosecute military members, which has been transferred to the Military Prosecutor's Office since its establishment. In cases where a crime involves a military member, cooperation with the Military Prosecutor's Office is necessary (Dwipayana, 2021).

On the other hand, the KPK also lacks authority to prosecute corruption offenses committed by military personnel. In such cases, the KPK needs to collaborate with the Military Prosecutor's Office, which also conducts investigations and prosecutions. The KPK does not have the authority to independently conduct investigations and prosecutions. Additionally, for such cases, the KPK cannot receive case transfers (Indrayana, 2017).

To overcome the obstacles arising from the limited authority of the KPK, Oditurat, and the Public Prosecutor's Office, coordination among these prosecution institutions is crucial. Without effective coordination, law enforcement may not be optimal, and the worst-case scenario is the release of certain perpetrators because the prosecuting institution lacks the authority to prosecute. Sectoral ego must be avoided by each prosecution institution (Indrayana, 2017).

The division of prosecutorial authority is intended for the effectiveness and efficiency of law enforcement, where the existence of three prosecution institutions is expected to make law enforcement more effective and efficient. However, this division also results in a "pull and push" dynamic among institutions. Lack of coordination and collaboration not only makes law enforcement ineffective and inefficient but also becomes a major obstacle to prosecuting a case (Sulistiyono & Isharyanto, 2018).

The division of prosecutorial authority is not only a means to enhance effectiveness and efficiency but also to avoid resistance in law enforcement. The resistance primarily relates to law enforcement against perpetrators who are military members. If law enforcement against military members is carried out by civilians, there can be significant resistance. If the law enforcers are also military personnel, especially with higher ranks, such resistance can be avoided (Syafari & Rae, 2023).

In the end, the goal of dividing prosecutorial authority is to achieve effectiveness, efficiency, and avoid resistance. The *dominus litis* of prosecution is never intended to protect specific individuals but rather to ensure that no one is treated differently before the law. It would be inappropriate if the division of prosecutorial authority makes it difficult to prosecute someone who has violated the law. Therefore, any possibility preventing the prosecution of an individual due to the division of prosecutorial authority should be addressed rather than left unresolved (Perbawa, 2014).

### **Research Methods**

This type of research is a normative legal research, which is a literature study, specifically a study of secondary data in the form of legal materials. In legal literature, the use of the problem approach is determined and limited by the scholarly tradition developed. Therefore, this research employs a Historical Approach to understand the history of prosecution in Indonesia. The Statute Approach is used to examine and analyze the legislation in the Criminal Justice System in Indonesia. The Conceptual Approach is employed to study concepts related to the idealism of the *dominus litis* principle (Marzuki, 2017).

### **Results and Discussion**

The existence of the authority of state institutions arises due to the provisions of legislation that regulate it. As is commonly known, the Public Prosecutor, as the *dominus litis*, plays an independent role in carrying out the prosecution system, as regulated in Article 2 of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Attorney General of the Republic of Indonesia. With several institutions having prosecutorial roles (Public Prosecutor's Office, KPK, and Military Prosecutor) in the criminal justice system in Indonesia, there is a need for structural harmonization among each law enforcement institution. Additionally, effective cooperation is required to achieve a common goal in line with the tasks/functions/authorities of each law enforcement agency (Perbawa, 2014).

In institutional corruption cases, there are two authorized institutions for prosecuting corruption: the Public Prosecutor's Office and the KPK. In terms of the judiciary, two institutions, namely the General Court and the Special Corruption Court, have the authority to adjudicate cases investigated and prosecuted by the KPK (Akbar, 2016).

In military criminal cases, the Military Prosecutor is responsible for prosecuting military criminal offenses in Indonesia, in accordance with Law Number 31 of 1997. There are two prosecuting institutions in handling military

criminal cases: the Military Prosecutor and the Public Prosecutor, as indicated by the explanations of Article 57 paragraph (1) of Law Number 31 of 1997 and Article 18 paragraph (1) of Law Number 16 of 2004. The Deputy Attorney General for Military Affairs assists in coordinating technical prosecution tasks performed by the military prosecutors and handling cases with connections, reporting to the Attorney General (Ahmad, 2022).

This reality, on one hand, facilitates the handling of corruption cases by providing multiple institutions, but on the other hand, from a systemic approach, the integrated criminal justice system may lead to overlapping authorities, fragmented handling, and possible rivalries among law enforcement agencies, resulting in the dysfunctionality of the criminal justice system for corruption offenses. To implement reconstruction, three aspects need to be reconstructed as the foundation for legal theory. Friedman suggests that the legal system consists of three components: substance, structure, and culture. If these components are reconstructed, there must be a reconstruction concept in each aspect (Friedman, 1975).

First, the reconstruction of substance involves legislative instruments. In this regard, there is a need for updates and harmonization of legislation related to the single prosecutor system. Article 12A of Law Number 19 of 2019 on the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission stipulates that the prosecutor at the Corruption Eradication Commission coordinates according to legal provisions (Alwi, 2022). Based on this article, the KPK has the authority to conduct investigations, prosecutions, and coordinate with the Attorney General as the highest public prosecutor and state attorney in the Republic of Indonesia. However, there is no legal clarity on whom this coordination is directed. If interpreted as internal coordination within the KPK, it may undermine the role of the Attorney General as the *dominus litis*, as mandated in Article 18 of Law Number 11 of 2021. Therefore, a revision of Article 12A is deemed necessary to ensure coordination with the Attorney General (Kemal, 2023).

The same need for harmonization applies to military criminal regulations. Article 57 of Law Number 31 of 1997 on Military Justice establishes the roles of the Military Prosecutor and the Military Prosecutor General in prosecution, emphasizing adherence to religious, humanitarian, and ethical norms. However, the explanations further clarify that the Military Prosecutor General is responsible to the Attorney General through the Commander, creating a potential overlap in prosecution authority. To strengthen the single prosecutor system, Article 57 should be revised to explicitly state that the Military Prosecutor and Military Prosecutor General are accountable to the Attorney General (Dwipayana, 2021).

Concerning the role of the Case Surrender Officer (PEPERA) in military criminal cases, their authority to decide whether a case proceeds or not is comparable to that of a prosecutor. Article 123 of Law Number 31 of 1997 grants PEPERA various powers, dominating the legal enforcement process in military cases. However, the researcher suggests that PEPERA's role should be limited to matters of enforcing the ethical code for military personnel, leaving the legal enforcement to the Military Prosecutor. This is essential to prevent potential abuse of authority and conflicts of interest (Mau et al., 2016).

The existence of Jampidmil within the Prosecutor's Office should not only involve the prosecution of connectivity cases. Instead, it should cover all cases involving TNI soldiers as sole perpetrators (military crimes). Therefore, there is a need to strengthen the tasks and functions of Jampidmil within the Prosecutor's Office. This can be achieved through amendments to Law Number 31 of 1997 concerning Military Judiciary. The explanation of Article 57 of Law Number 31 of 1997 concerning Military Judiciary does not yet reflect a single-door prosecution system, still involving the Commander's instructions in criminal prosecution. Article 57 of Law Number 31 of 1997 concerning Military Judiciary needs reformulation, as explained above (Prabandari et al., 2022).

Secondly, structural reconstruction. The structural aspect is the institution created by the legal system with various functions to support the operation of the system. In military criminal acts, there is a need to add a structure to Jampidmil that handles authorities other than connectivity cases (Dwipayana, 2021).

In this regard, the tasks and authorities of Jampidmil are regulated in Article 25A and Article 25B of Presidential Regulation Number 15 of 2021 concerning the Second Amendment to Presidential Regulation Number 38 of 2010 concerning the Organization and Working Procedures of the Republic of Indonesia Prosecutor's Office, as follows:

Article 25A

1. The Deputy Attorney General for Military Crime is an assisting element of the leadership in carrying out the tasks and authorities of the Prosecutor's Office in the technical coordination of prosecution carried out by military prosecutors and handling connectivity cases, responsible to the Attorney General.
2. The Deputy Attorney General for Military Crime is led by the Deputy Attorney General for Military Crime.

Article 25B

1. The Deputy Attorney General for Military Crime has the task and authority to carry out the tasks and authorities of the Prosecutor's Office in

the technical coordination of prosecution carried out by military prosecutors and handling connectivity cases.

2. The scope of the technical coordination of prosecution carried out by military prosecutors and handling connectivity cases as referred to in paragraph (1) includes the investigation of connectivity cases, examination of investigation results, additional examinations, providing legal opinions to the surrendering officers, case handovers, case closures, discontinuation of prosecution, prosecution, resistance, legal efforts, implementation of judge appointments and final court decisions, examinations, supervision of the implementation of conditional criminal decisions, criminal supervision decisions, and conditional release decisions, and other legal actions in the technical coordination of prosecution carried out by military prosecutors and handling connectivity cases (Mau et al., 2016).

Based on the above legal provisions, in military criminal cases involving soldiers, Jampidmil has only coordination authority. Therefore, in the researcher's opinion, there is a need for a specialized Jampidmil to handle connectivity cases involving TNI soldiers as sole perpetrators (military crimes). Thus, the Attorney General in military criminal acts becomes the highest public prosecutor. In practice, the Attorney General delegates some prosecution authority to the Chief Military Prosecutor to conduct prosecutions, as regulated in Article 35 paragraph 1 letter i of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office. In connection with this structural reconstruction, legal support is needed to strengthen the prosecutor's office as the sole prosecutor (Timang et al., 2022).

Thirdly, cultural reconstruction. Legal culture is closely related to legal awareness and is manifested in behavior as a reflection of legal compliance. Responding to this, based on Lawrence M. Friedman's (1975) opinion, the creators of legal culture categorize it as internal legal culture (developed by law enforcement officials) and external legal culture (demonstrated by the general public). Both categories of legal culture play a crucial role in the formation and application of law in society, reflecting the overall value system and attitudes that influence the law.

Legal culture is considered a determining component supporting the optimization of the single prosecutors system's reconstruction. Legal substance is only related to the substance of legal regulations or legal norms, while legal structure only deals with law enforcement. According to Friedman, legal culture is a reflection of the legal system, containing the potential to be used as a source of

information to explain the legal system. Therefore, an understanding of legal culture is necessary to comprehend how the legal system works in society. It can be concluded that improving legal culture can improve other subsystems, namely legal substance and legal structure. Ultimately, if reconstruction of substance and structure has occurred, legal culture will automatically be reconstructed (Friedman, 1975).

The mentioned reconstruction is a form of implementing the single prosecutors system. This can be a legal breakthrough to address and prevent issues between institutions with prosecution authority. Particularly in applying the *dominus litis* principle, it emphasizes that no other body has the right to prosecute other than the Prosecutor, who has absolute and exclusive authority. The Prosecutor becomes the sole institution with the monopoly on prosecution and criminal case resolution. In other words, as the controller of cases, the legal direction of an investigation process and whether or not to prosecute a criminal case resulting from an investigation is solely the Prosecutor's authority. Thus, prosecution authority should be with the Attorney General as the case owner, whether it's a general criminal case, corruption, or military (Paongan, 2013).

To solidify the *dominus litis* principle does not mean dissolving the current prosecuting authority. Instead, there needs to be coordination and strengthening of harmonious institutions. Power division, limitation of authority, and coordination patterns must be agreed upon in a shared perception. Therefore, law enforcement agencies with prosecution authority need to create a joint agreement or letter between three prosecuting agencies, including the Attorney General, the Corruption Eradication Commission (KPK), and the Military Prosecutor's Office (Yamin et al., 2023).

Although there is already *Jampidmil* within the prosecutor's office, harmonization is still needed, especially between the KPK and the Prosecutor's Office, as these two institutions have the same authority and are separate entities. The application of *dominus litis* is not an arrogance of the prosecutor's office but a mandate of the law to realize an effective and efficient prosecution system. Ideally, the Prosecutor should be an independent institution with a central role in the criminal justice system (Perbawa, 2014).

The independence of the Prosecutor's Office is essential for the interests of law enforcement, conducted honestly, fairly, responsibly, and transparently, upholding the principles of equality before the law. Furthermore, regarding the independence of the Prosecutor's Office in carrying out its tasks and functions, it is emphasized in Article 2 of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office, stating that the Prosecutor's Office, in carrying out its functions related to



judicial power, is conducted independently. Thus, the exercise of independent judicial power cannot be separated from the independence of the prosecution authority to ensure the fulfillment of citizens' rights to recognition, protection, and fair legal certainty, as well as equal treatment before the law in the criminal justice process.

### **Conclusion**

This research examines the authority in the prosecution field held by the Public Prosecutor's Office, the Corruption Eradication Commission (KPK), and the Military Prosecutor's Office (Oditurat) in the context of the historical development of each institution in Indonesia. The comparison reveals that the Public Prosecutor's Office has broader and earlier authority compared to the KPK and Oditurat. It is found that the establishment of Oditurat is related to the need for prosecution against military personnel or those equivalent to military personnel. Over time and changes in the country's security conditions, this reason becomes less relevant, especially with the absence of current war threats.

The KPK, born in response to corruption in various branches of power, started with personnel from various backgrounds, including non-civil servant legal practitioners. However, over time, KPK employees were appointed as civil servants, contrary to its original reason related to independence from intervention. The limitations of the authority of the KPK and Oditurat compared to the Public Prosecutor's Office pose obstacles in prosecution, especially when criminal acts involve more than one jurisdiction. Coordination among the three prosecution institutions is considered crucial for the optimal enforcement of the law.

The division of prosecution authority is directed at effectiveness, efficiency, and avoiding resistance, especially in the context of prosecuting military members. However, potential difficulties in prosecuting criminals due to the division of authority need to be overcome.

Research recommendations include revising the coordination of KPK prosecution, strengthening the role of the Attorney General as the highest public prosecutor, and adding structures in the Military Prosecutor's Office to handle more types of military cases. Additionally, understanding and strengthening legal culture are emphasized as integral parts of the legal system in society.

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