

The Problematics of the Implementation of the Dominus Litis Principles in the Perspective of the Jurisdiction

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Abstract

Public prosecutors have the authority to control criminal cases, examine the results of investigators' examinations, or filter case files regarding the completeness of requirements and eligibility standards to be delegated to court. This principle is called dominus litis. Etymologically dominus (Latin), which means owner, litis means case or lawsuit. In this context, the public prosecutor as dominus litis is the owner of a criminal case submitted to the court for trial. The problem of applying the dominus litis principle from the perspective of the prosecutor's office raises many problems, which can hinder a simple, fast, and low cost judicial process. The back and forth of criminal case files between public prosecutors and investigators is not a strange thing in this context, the slow process of criminal justice is protracted, tiring, and even unclear, and creates injustice for justice seekers, and so on.

Keywords

Dominus Litis, kejaksaan



I. Introduction

Based on the problematic application of the dominus litis principle from the perspective of the prosecutor's office, it causes many problems. From this investigation, it is necessary to develop and construct a pattern of criminal justice process mechanisms to support simple, fast, and low cost judicial principles. By restructuring the criminal procedural law system and continuing to emphasize the principle of prosecutorial dominance as an important and fundamental principle in order to uphold human rights and justice through the idea of establishing an IT-based integrated criminal justice system (information and technology).

The legal basis for the dominus litis prosecutor's office is implied explicitly in Article 110 of the Criminal Procedure Code, which states:

1. In the event that the investigator has finished carrying out the investigation, the investigator is obliged to immediately submit the case file to the public prosecutor.
2. In the case that the public prosecutor believes that the results of the investigation are still incomplete, the public prosecutor immediately returns the case file to the investigator, along with instructions for completion.
3. In the event that the public prosecutor returns the results of the investigation to be completed, the investigator is obliged to immediately carry out additional investigations in accordance with the instructions of the public prosecutor.
4. An investigation is deemed to have been completed if within fourteen days the public prosecutor does not return the results of the investigation or if before the time limit has expired there has been a notification regarding this matter from the public prosecutor to the investigator.

The provisions contained in Article 110 paragraph (2) of the Criminal Procedure Code emphasize the dominus litis principle for the prosecutor (public prosecutor) to control the case in a positive sense. The importance of the dominus litis principle for the prosecutor's office is intended so that criminal cases that come to court are not arbitrary (carelessly or arbitrarily) and must be of formal and material quality. If a criminal case is submitted to court without paying attention to the requirements and eligibility, the indictments and charges can be easily dismissed by the defendant's lawyer, and the defendant has the potential to be acquitted by the judge.

The legal basis for the dominus litis prosecutor's office is implied explicitly in Article 138 of the Criminal Procedure Code, which states:

1. The public prosecutor after receiving the results of the investigation and the investigator shall immediately study and examine them and within seven days are obliged to inform the investigator whether the results of the investigation are complete or not.
2. In the event that the results of the investigation are incomplete, the public prosecutor returns the case files to the investigators along with instructions on what to do to be completed and within fourteen days from the date of receipt of the files, the investigator must have submitted the case files back to the public prosecutor.

The provisions contained in Article 138 paragraph (2) of the Criminal Procedure Code explicitly emphasize the dominus litis principle for the prosecutor (public prosecutor). This provision vaguely affirms to the public prosecutor the authority of dominus litis, namely the public prosecutor returns the case file to the investigator if the results of the investigation are not complete, accompanied by instructions on what to do to be completed and within 14 (fourteen) days from the receiving the files, the investigator must have submitted the case files back to the public prosecutor.

The legal basis for the attorney general's dominus litis is also explicitly implied in Article 30 paragraph (1) of the Republic of Indonesia Law No. 16/2004, which states:

In the criminal field, the prosecutor's office has the duties and authorities:

- a. Carry out a prosecution;
- b. Implementing judges and court decisions that have permanent legal force;
- c. To supervise the implementation of conditional criminal decisions, supervisory criminal decisions and conditional release decisions;
- d. Investigate certain crimes based on law;
- e. Completing certain case files and for that purpose, additional examinations can be carried out before they are transferred to the court, which in its implementation is coordinated with the investigator.

The principle of dominus litis is contained in Article 30 paragraph (1) letter a, letter b, and letter e RI Law No.16 / 2004. The prosecutor can monitor the progress of the investigation after receiving notification of the commencement of the investigation from the investigator, study or examine the completeness of the case files received from the investigators and provide instructions to be completed by the investigator in order to determine whether the case files can be transferred or not to the prosecution stage.

Additional examinations are carried out to complete the case files, with due observance of: (i) not being carried out on suspects; (ii) only for cases which are difficult to prove, and / or can disturb the public, and / or which can endanger the safety of the state; (iii) must be completed within 14 (fourteen) days after the implementation of the provisions of Article 110 and 138 paragraph (2) of the Criminal Procedure Code; (iv) the principle of coordination and cooperation with investigators.

In implementing the dominus litis principle, it is not immunity, meaning that it must also pay attention to the values that live in society and the sense of humanity based on

Pancasila without neglecting its assertiveness in attitude and action. Although the law determines the existence of dominant authority on the public prosecutor in the Criminal Procedure Code and the Republic of Indonesia Law No.16 / 2004, it is always linked to the principle of coordination and cooperation with investigators. It is through this coordination that communication must be established in order to support simple, fast, and low cost, effective and efficient justice through an IT-based integrated criminal justice system.

II. Review of Literatures

2.1 Principle of Dominus Litis

The prosecutor is dominus litis in the prosecution of the accused. This principle emphasizes that the public prosecutor is free to determine which criminal rules will be indicted or not against the defendant. Based on this principle, the Attorney General's Office plays a role in controlling the criminal case process and has a central position in the law enforcement process. Based on the dominus litis principle, only the Attorney General's Office (public prosecutor) can determine the appropriateness of a criminal case, whether a criminal case can be submitted to court or not based on valid evidence according to the Criminal Procedure Code (Hamzah, 1996: 169).

Scientists believe that the main task at the determination of a subject of the philosophy of the law consists in the parting philosophical and scientific discourses in the directions stated above: in a subject, methodology and research purposes of the law. The basic value has also understanding that the philosophy of the law is always derivative of the all-philosophical theory (Chukin, Salnikov, Balakhonsky, 2002 in Kozhevnikov 2019).

Investigators have the role of searching for and finding an event that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out in a manner regulated by law. Investigators have the role of looking for and gathering evidence that with this evidence sheds light on the criminal act that occurred and in order to find the suspect (Effendy, 2005: 105).

Within the scope of the law, if someone commits a crime, then that person must comply with the positive legal procedures. Anticipation of these crimes include functioning of legal instruments effectively through law enforcement. Through the instrument, efforts to break unlawful behavior are prevented or repressive, propose before the court and subsequently criminal prosecution for community members proven to have committed a criminal act, is a repressive act (Tumanngor, 2019).

Prosecution is carried out by the public prosecutor to delegate a criminal case to the competent district court in matters and according to the manner regulated in law, by requesting that the criminal case delegated to him be examined and decided by a judge at a court session. The suspect and the evidence submitted by the investigator to the public prosecutor must of course meet the requirements, eligibility standards, and the norms of a case to be submitted or submitted to the court (Nasrudin, Agustina, Akrim, Ahmar, & Rahim, 2018).

Based on the respective division of tasks, investigators in principle also have dominus litis in terms of investigations to find and collect evidence in order to make clear a criminal act that has occurred and to find suspects. However, the case files submitted by the investigator to the public prosecutor are not immediately transferred to the court, because the public prosecutor has dominant authority, controls the case, filters the terms and standards of eligibility of a criminal case file to be submitted to court. Of course, the public prosecutor must first examine the results of the investigators' examination.

If the public prosecutor has examined the results of the investigation by the investigator and he thinks it is sufficient, but the results of the investigation, for example, do not accurately include the articles of the criminal law being charged, the public prosecutor has the authority to amend the article with a more appropriate article. This can be done by the public prosecutor directly, because they are responsible for the prosecution policy. The public prosecutor as *dominus litis* in terms of prosecution, is free to determine which criminal rules will be charged or not to the defendant (Hamzah, 1965:161).

This does not preclude the possibility for the public prosecutor to return the case file to the investigator to be corrected immediately according to the recommended instructions, conditions and suitability of a criminal case file in accordance with the law and the customary standards in court proceedings (Mr Akrim, 2018). In this case, based on the fact that many cases have been turned upside down, and some cases have even been returned to be repaired immediately, it turns out to have settled until it is unclear.

The public prosecutor only has the authority to prosecute, meaning that no other body has the right to do so. This is called the principle of *dominus litis* in the hands of the public prosecutor or prosecutor. *Dominus* comes from Latin, which means owner. Meanwhile, *litis* means a case or lawsuit. Thus, a court judge cannot request that a criminal case be filed against him, but the judge only waits for the prosecution to be filed by and from the public prosecutor.

2.2 The strengths of *Dominus Litis*

With the principle of *dominus litis*, public prosecutors can screen criminal cases that are feasible or inappropriate to be delegated to court proceedings. If the investigator only looks for and fulfills two pieces of evidence in accordance with Article 183 KUHAP, namely "at least two pieces of evidence", it is unlikely that the defendant's guilt in the case submitted by the public prosecutor is found guilty. Therefore, it is necessary to add evidence or other evidence to convince the court judge.

The public prosecutor who submits the criminal case file to the court session certainly all hopes that the defendant will be found guilty by the court judge. With regard to professionalism and improving the quality of the prosecutor's office, the public prosecutor, as dominant in the case delegated to him, must first consider it from various aspects and professionally through in-depth research so that the accused in the case is right on target and found guilty by the judge.

The use of the *dominus litis* principle, if applied properly and on target, can further increase the professionalism and integrity of the prosecutors in the eyes of the public in prosecuting a criminal case against someone. By filtering all criminal cases transferred to him from investigators in a professional, appropriate or improper manner, without violating the principle of legality. Not only there, but also to ensure that the criminal justice process is in accordance with the spirit of the RI Law No.48 / 2009 concerning Judicial Power.

The attorney general's principle of *dominus litis* is also in line with the principle of opportunity. The principle of *opportunitias* (*opportuneitsbeginsele*), gives the public prosecutor the power not to prosecute someone who violates criminal law regulations by setting aside the clear criminal case in the public interest (*algemeen striped*). With this *opportunitias* principle, the public prosecutor has the authority to prosecute or not sue with or without conditions against a person or corporation that has manifested an offense in the public interest.

An example of the implementation of the opportunity principle is deponering (waiver of cases in the public interest). The principle of opportunity is contrary to the principle of legality (Yahya, 2006:36). The principle of *opportunitias* does not apply to the termination

of case prosecution, meaning that the principle of opportunity only applies to deponering cases (M. Akrim & Harfiani, 2019). Regarding the provisions on the termination of prosecution in Article 160 paragraph (2) of the Criminal Procedure Code, or what is often referred to as SP3, it is not intended for deponering. Thus, the prosecutor as dominus litis in carrying out the principle of opportunity to protect and protect the state from highly confidential matters must be put aside in the public interest.

III. Discussion

3.1 Dominus Litis Problems

On the one hand, the principle of domination by the public prosecutor can create a simple, fast, and low cost judicial process if this principle is well understood, professional and right on target. On the other hand, the dominus litis principle also has implications for negative views (negative issues) of the criminal justice system, including:

1. The delay in the criminal justice process is protracted and unclear.
2. The back and forth of criminal case files between public prosecutors and investigators, causing injustice to justice seekers.
3. Experiencing a clash with the principles of exercising judicial power, namely a simple, fast, and low cost trial (RI Law No.48 / 2009).
4. The conflict with the idea of forming preliminary examining judges (commissioner judges) as in the Draft Criminal Procedure Code.

The principle of simple, fast and low cost must not be implemented by ignoring thoroughness and thoroughness as well as professionalism in seeking formal and material truths, and with justice . Simple is the examination and settlement of cases in an efficient and effective way, while low is the cost of a case that can be reached by the community. RI Law No.48 / 2009 does not explain what is meant by speedy trial, but even so, it can be understood that the meaning of the word "simple" in this law is efficient and effective.

The fluctuation of criminal cases cannot be denied as a result of the application of the dominus litis principle. The sectoral ego appears to be a negative issue that cannot be denied. Dominus litis is only owned by the public prosecutor in terms of carrying out the process of prosecuting a criminal case, in addition, the investigator also actually has a dominus litis in terms of investigation and investigation (Hartanto & Hidayat, 2019). Each of these two institutions may not interfere with each other's duties, functions and authorities stipulated in the law. The sectoral ego sometimes also has its own negative effects, so that those who are disadvantaged are people seeking justice (Sulasmi, 2019) .

This is related to the clash of the prosecutor's domination principle with the idea of establishing Commissioner Judges or Preliminary Examining Judges (HPP) as in the Draft Criminal Procedure Code. Whereas, the Draft Criminal Procedure Code has regulated new things, namely the active and passive nature of HPP. In contrast to the existing KUHAP, it only regulates judges to be passive, meaning that court judges are only waiting for criminal cases to be submitted to them first by the public prosecutor. A court judge cannot request or force a criminal case to be brought to him immediately.

Pre-trial institutions should have the authority for investigating judges and administrative judges, through the concept of commissioner judge. The concept of commissioner judge is an idea to change the mind set towards the supervision (control) of forced efforts from just a crime control model to a due process model. The judge presiding over the preliminary examination in the commissioner judge's institution appears as a manifestation of the judge's activeness. For example in Central Europe, judges have active

authority to deal with coercive measures (dwang middelen), including detention, confiscation, body and house searches, and examination of documents (Adji, 1980: 88).

3.2 Solutions for Dominus Litis in the Perspective of the Prosecutor's Office

Article 4 paragraph (2) of Law RI No.48 / 2009 stipulates: "Courts assist justice seekers and try to overcome all obstacles and obstacles in order to achieve a simple, fast, and low cost trial". The problem is how the court solution will achieve this alone, while dominus litis is in the area of each preliminary examining institution, namely the public prosecutor and investigator. Therefore, this solution must be sought to support the mandate of Law No.48 / 2009, namely a simple, fast, and low cost trial.

The solution to support the simple, fast, and low-cost principle of justice related to its various conflicts with the dominant political problem is to seek IT system-based (information and technology) control of criminal cases. An IT system must be built online, integrated and coordinated between investigators (police) and public prosecutors (prosecutors), including investigators and public prosecutors at the KPK. Each authority can easily change, add, or correct deficiencies in case files to conform to the standards applicable in court hearings according to the instructions of the public prosecutor.

The criminal justice system in the framework of an IT-based integrated criminal justice system, is more efficient and effective for communicating with each other online, to test, analyze and correct the standard of eligibility of criminal case files between the police and the prosecutor's office, then pre-prosecutions are carried out so that they can be delegated to court proceedings for prosecution carried out. The problem of going back and forth and being protracted of cases will be resolved quickly, simply, in low cost, efficiently and effectively.

Even seekers of justice can feel the advantages of this system, the sooner, the better, no longer conventional, it is enough for investigators to deal with suspects to fulfill any requirements that must be needed again. In addition, the benefits can also be felt where the prosecutor can monitor the progress of the investigation online in fulfilling the requirements requested and continue to communicate quickly, so as to minimize criminal cases that settle or cases that "catch a cold".

Practical constraints related to the application of Article 110 paragraph (3) of the Criminal Procedure Code, which stipulates, "In the event that the public prosecutor returns the results of the investigation to be completed, the investigator is obliged to immediately carry out additional investigations in accordance with the instructions of the public prosecutor", will be easily resolved by the two institutions. this is if using an IT system. The conventional system has so far been too tiring and draining a lot of energy, time, money, and thoughts, because investigators have to come face to face with the prosecutor's institution (public prosecutor) (Agussani & Bahri, 2019).

The scope of the IT system includes all law enforcement officers in criminal justice systems. The idea of an IT system requires a user name and password to log in from each institution, so that it can be accessed easily, efficiently and effectively to communicate with each other about what needs to be fulfilled and requires advice and instructions from the prosecutor's office in order to improve investigations from investigators .

Each law enforcement apparatus must be integrated (integrated) able to monitor and monitor the progress (progress) of criminal cases being investigated or being prosecuted. Especially for the prosecutor as a dominus litis, it can easily provide suggestions, input and directions to investigators, to be immediately repaired and completed, without having to be long and tiring.

As it is known that each stage of investigation, investigation, and prosecution in criminal justice systems requires a short time. If the investigator cannot reach the deadline,

for example because of the lack of formal requirements, as well as the public prosecutor, the investigation and prosecution of the case can be legally canceled and the suspect must be released, even the investigator including the prosecutor (public prosecutor) has the potential to face pretrial proceedings.

Even though the Draft Criminal Procedure Code (KUHAP) is promulgated, it will not hamper the prosecutor's *dominus litis* principle. The IT-based integrated criminal justice system opens up the principle of transparency in criminal cases among fellow law enforcement officers within the framework of an IT-based integrated criminal justice system. It's just that this idea must be supported by the political will of all law enforcement officials, without having to ignore the dominant principle of the public prosecutor, and also not neglecting the authority of each institution, including the role, duties and functions of the police as investigators of criminal cases.

It is hoped that with the active nature of the HPP in accordance with the Draft Criminal Procedure Code, if the court judge has known that there is an irregularity in a criminal case where the investigation and prosecution is suspected to be unclear, the HPP can be active to act in an act of force (Initial examination at the investigator and public prosecutor stage). Thus, the solution is through an IT-based integrated criminal justice system, making it easier for judges (HPP) to build online communication with prosecutors and investigators regarding the progress of the case.

IV. Conclusion

Integrated criminal justice system based on IT is an efficient and effective alternative to support the mandate of RI Law No.48 / 2009, simple, fast and low cost judiciary, as well as answering negative issues on the performance of law enforcement officers as a whole, while providing a sense of justice. for the people of justice seekers, especially the suspects and defendants. Reorganizing the criminal procedural law system while still emphasizing the prosecutor's *dominus litis* principle as the most important and fundamental principle in filtering the feasibility of criminal cases to be delegated to court proceedings.

It is hoped that a solution in the future, so that the idea of an IT-based integrated criminal justice system is used as an alternative policy (policy) for the Indonesian government to be realized immediately. Although this idea still needs to be studied in depth in a panel so that this policy is not missed and right on target according to common expectations, without having to dictate to each other and override the authority of each law enforcement authority in an integrated criminal justice system, but for the sake of consideration of a sense of justice, rights human rights, simple, fast and low cost, effective and efficient justice.

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