

## Implementation of the Principle of Dominus Litis in Positive Law in Indonesia



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**ABSTRACT:** Prosecutors are central figures in the administration of criminal justice because they have the authority to determine cases (dominus litis) to be forwarded to the courts. However, in fact, the application of the Dominus Litis principle is not optimal, such as the implementation of horizontal supervision and the termination of cases. examines the application of the principle of dominus litis to positive law in Indonesia. Normative legal research with the Approach of the Act; futuristic and comparative. The application of the Dominus litis Principle in the Criminal Procedure Code is contained in Article 1 Number (6) letters a and b; 139, as the principle of functional differentiation in Articles 14 and 137, based on the position and function of the prosecutor in the criminal justice system is regulated in Article 140 paragraph (2); Law No. 11 of 2021 Amendment to Law No. 16 of 2004 and Constitutional Court Decision No. 55/PUU-XI/2013 and No. 29/PUU-XIV/2016. Draft Criminal Procedure Law (RUU-KUHAP) Article 8 paragraph (1); 12 Subsections (8); 42 Subsections (1) Letters (b) and 46 Subsections (3) and (4). Prosecutors in Indonesia are in the Executive Institution, have several principles, do not have investigative authority; the scope of criminal, civil and administrative prosecutions of the State and not being double nature of the prosecutors and the macau in the Judiciary, focused on the principle of legality, has the authority to investigate, prosecuting criminal and civil prosecutors and is double nature of the prosecutors. Draft Criminal Procedure Law (RUU-KUHAP) Article 8 paragraph (1); 12 Subsections (8); 42 Subsections (1) Letters (b) and 46 Subsections (3) and (4). Prosecutors in Indonesia are in the Executive Institution, have several principles, do not have investigative authority; the scope of criminal, civil and administrative prosecutions of the State and not being double nature of the prosecutors and the macau in the Judiciary, focused on the principle of legality, has the authority to investigate, prosecuting criminal and civil prosecutors and is double nature of the prosecutors. Draft Criminal Procedure Law (RUU-KUHAP) Article 8 paragraph (1); 12 Subsections (8); 42 Subsections (1) Letters (b) and 46 Subsections (3) and (4). Prosecutors in Indonesia are in the Executive Institution, have several principles, do not have investigative authority; the scope of criminal, civil and administrative prosecutions of the State and not being double nature of the prosecutors and the macau in the Judiciary, focused on the principle of legality, has the authority to investigate, prosecuting criminal and civil prosecutors and is double nature of the prosecutors.

**KEYWORDS:** Dominus litis, law, criminal justice system

### I. INTRODUCTION

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In general, the criminal justice system can be interpreted as a process of working several law enforcement agencies through a mechanism that includes gradual activities starting from investigations, investigations, prosecutions, examinations in court trials, and the implementation of judge decisions carried out by correctional institutions.<sup>1</sup>

The criminal justice system in Indonesia consists of material and formal criminal law. The Indonesian criminal justice system adheres to the concept that criminal cases are disputes between individuals and society (the public) and will be resolved by the state as representatives of the public.<sup>2</sup> meaning that the state plays a role in representing the victims. After Indonesia became independent based on the provisions of Article II of the transitional rules, the provisions of the Criminal Procedure Code

<sup>1</sup>Supriyanta, KUHAP and INTEGRATED CRIMINAL JUSTICE SYSTEM, Journal of Legal Discourse, VOL. VIII, NO.1, APRIL 2009, p. 1

<sup>2</sup>Luhut M. Pangaribuan, Criminal Procedure Law: Official Letter of Advocate in Court. Papasa Sinar Sinanti, Jakarta, 2014, page 18

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regulated in the Het Herziene Inlandsche Reglement (HIR) remained in effect, but since 1981 Indonesia has not used HIR, Indonesia already has Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHAP).

KUHAP is a derivative of Pancasila as the highest norm, Hans Kelsen calls it Grundnorm, while Nawaisky as Staatfundamentalnorm.<sup>3</sup>The Criminal Procedure Code is the legal basis for law enforcement officers such as the Police, Prosecutors, Courts and Correctional Institutions to carry out their respective duties and authorities. This book regulates the investigation, investigation, prosecution, trial, as well as the implementation of court decisions which are the procedures for the settlement of a criminal act.

As one of the law enforcement officers, the Prosecutor is mandated to exercise state power in the field of prosecution carried out by the Public Prosecutor which, if interpreted etymologically, comes from the word "prosecution" which comes from the Latin *prosecutus*, which consists of the words "pro" (before) and "sequi" (to follow). Referring to the etymological meaning of the word "Public Prosecutor" and associated with the role of the Prosecutor's Office in a criminal justice system, the Prosecutor's Office should be viewed as *Dominus Litis* (*procuruer die de procesvoering vastselat*), namely controlling the case process from the initial stages of the investigation to the execution of a decision. .

In almost every country in the world, prosecutors are central figures in the administration of criminal justice, because prosecutors play an important role in the decision-making process. Even in countries where prosecutors do not carry out their own investigations, for example in Indonesia, prosecutors still have broad prosecution discretion. In other words, the prosecutor has the power to decide whether or not to prosecute almost any criminal case. Therefore, it is not surprising that the High Judge of the German Federation, Harmuth Horstkotte gave the nickname to the prosecutor as "the boss of the litigation process" (master of the procedure).<sup>4</sup>Because of the magnitude of this authority, Hamzah stated that the prosecutor was free to determine the regulations that would be used to indict the perpetrators.<sup>5</sup>

However, in fact the problem in the application of the *Dominus Litis* principle in the Criminal Procedure Code is the division of the investigation and prosecution subsystem so that its application is not optimal, such as horizontal supervision and case termination. Supervision in pre-prosecution institutions. But in fact, the pre-prosecution institution has proven to be ineffective in achieving its goal of being a means of functional coordination, as well as supervision of the public prosecutor on the performance of investigators. As a result, the investigation process only becomes the investigator's domain and there are no checks and balances so that it tends to lead to a blurring of norms which then often proves cases at trial weak as stated by Stephen C. Thaman about prosecutors in various countries.<sup>6</sup>

Regarding the authority of the prosecutor to stop or continue the prosecution (See Article 140 paragraph (2) of the Criminal Procedure Code) which in practice this authority is rarely used by public prosecutors, because the termination of cases turns out to be more common at the investigation stage. Besides that, in general crimes, prosecutors do not have the authority to intervene in the termination of investigations carried out by investigators (See Article 109 Paragraph (2) of the Criminal Procedure Code). Given such a fact, is it still said that the prosecutor is the owner of the case (the *Dominus Litis* principle)?

## II. METHOD

Normative legal research with an Act approach; futuristic and comparison. The laws used are Law No. 8 of 1981; Law No. 15 of 1961; UUNo. 5 1991; Law No. 11 of 2021 is an amendment to Law No. 16 of 2004. A futuristic approach by utilizing the *Kuhap Design* while the comparison is its application in Indonesia and the PRC, especially Macau. The analysis used includes extensive, anticipatory and teleological interpretations.

## III. DISCUSSION

The authority to make prosecutions is actually the absolute monopoly of the public prosecutor, which is commonly known as the *dominus litis* principle. The *dominus litis* principle emphasizes that no other body has the right to prosecute other than the public prosecutor, which is absolute and monopoly. The Public Prosecutor is the only institution that owns and has a monopoly on the prosecution and settlement of criminal cases. The judge cannot request that the criminal case that has occurred be

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<sup>3</sup>Oetojo Oesman and Alfian book *Pancasila as an ideology in various fields of life in society, nation and state*, BP 7 Pusat, Jakarta, 1991, p. 67-75

<sup>4</sup>RM, Surachman and Andi Hamzah, *Prosecutors in various countries, roles and positions*, Sinar Graphic, Jakarta, 1996, p. 7

<sup>5</sup>Andi Hamzah, *Indonesian Criminal Procedure Code Revised Edition*, Sinar Graphic, Jakarta, 2001, p. 161

<sup>6</sup>Ichsan Zikry et al, *Pre-prosecution now, Hundreds of thousands of cases are kept, Hundreds of thousands of cases are missing: Research on the implementation of the Pre-prosecution mechanism in Indonesia in 2012-2014*, LBH Jakarta & MaPPI FHUI, Jakarta, 2016, p. 3

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submitted to him, because the judge in the settlement of the case is only passive and waits for demands from the public prosecutor.<sup>7</sup>

In the criminal justice process in Indonesia, the prosecutor is one part of the criminal justice system that controls the case handling process or dominus litis, because the prosecutor can determine whether a case can be brought to court or not based on valid evidence according to criminal procedural law.<sup>8</sup>This means that the prosecutor is the official authorized to determine whether a case is appropriate to be submitted to the prosecution or the prosecution must be terminated. The prosecutor's authority to stop or continue the prosecution process is also free to apply which criminal regulations will be indicted and which are not in accordance with the conscience and professionalism of the prosecutor himself, because in public prosecution there is a dominus litis principle (the ruler/controller of the case), so he is free to determine which criminal regulations will be indicted and which will not.<sup>9</sup>

An event that is reasonably suspected to be a criminal act must immediately take the necessary actions to resolve it by conducting an investigation, investigation, prosecution and examination in court.<sup>10</sup>Two components that are the gateway to the law enforcement process in the criminal justice system are the police and prosecutors. Police as investigators and prosecutors as public prosecutors. These two institutions determine the fate of a citizen who becomes a suspect, then a defendant and then a convict. The relationship between the Prosecutors and the Police is a complex one. The community sees that the police and prosecutors are inseparable partners but in practice internally there are often conflicts between the police and the prosecutor's office in carrying out their respective duties.

The prosecutor's authority over the application of the dominus litis principle in positive law in Indonesia is to stop or continue the prosecution. However, in practice, this authority is rarely used by public prosecutors, because the termination of cases turns out to be more common at the investigation stage where for cases handled by investigators, especially general criminal cases, prosecutors do not have the authority to interfere in the termination of investigations carried out. by investigators in accordance with Article 109 of the Criminal Procedure Code. Given such facts, can it still be said that the prosecutor is the master of the case (dominus litis)?

### A. Application of the Dominus litis Principle Based on Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHAP)

In Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) adheres to the principle of functional differentiation. This principle states that every law enforcement officer in the criminal justice system has its own duties and functions that are separate from one another. The Criminal Procedure Code that adheres to the principle of functional differentiation will raise a question about the position of the dominus litis principle in the Criminal Procedure Code if it is combined with the criminal justice process which contains the principle of functional differentiation.

KUHAP which adheres to the principle of functional differentiation not only differentiate and dividing the duties and authorities, but also providing a bulkhead of accountability for the scope of duties of investigation, investigation, prosecution and examination in an integrated court. The criminal justice system (Integrated justice system) is defined as a criminal process which is an integration of an investigation sub-system, a prosecution sub-system to an examination sub-system at trial and ends with a sub-system of implementing court decisions.

The Prosecutor's Office in criminal law acts as a functional institution authorized by law to act as a public prosecutor and implement court decisions that have permanent legal force and other powers based on the law.

The Prosecutor has been placed in a position as a "Prosecutor" agency with the authority to prosecute each case, including:<sup>11</sup>

- 1) On the one hand, receiving the case file as the result of the investigation from the investigator;
- 2) On the other hand, the case files he receives are transferred to the judge to be prosecuted and examined in court proceedings.

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<sup>7</sup>Application of the Dominus Litis Principle in the KPK Law <https://www.Hukumonline.com/berita/a/penerapan-asas-dominus-litis-dalam-uu-kpk-lt5ddf8ba3bb064> Retrieved October 4, 2022.

<sup>8</sup>Marwan Effendy, RI Attorney General's Office: Position and Functions from a Legal Perspective, Jakarta: PT. Gramedia Pustaka Utama, 2005, p. 105.

<sup>9</sup>Andi Hamzah, Indonesian Criminal Procedure Code Revised Edition, Jakarta: Sinar Graphic, 2001, p. 161.

<sup>10</sup>Erni Widhayanti, The Rights of the Suspect/Defendant in the Criminal Procedure Code, Yogyakarta: Liberty, 1996, p. 48.

<sup>11</sup>M. Yahya Harahap, Discussion of Problems and Application of the Criminal Procedure Code (Second Edition) series: investigation and prosecution, Jakarta: Sinar Graphic, 2000, page 26.

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The task of the prosecutor as a public prosecutor is regulated in article 14 of the Criminal Procedure Code and reaffirmed in article 137 of the Criminal Procedure Code which states that:

Article 14 KUHAP:<sup>12</sup>The public prosecutor has the authority to:

- a. Receive and examine investigation case files from investigators or assistant investigators;
- b. Conduct pre-prosecution if there are deficiencies in the investigation by taking into account the provisions of Article 110 paragraph (3) and paragraph (4), by providing instructions in the context of completing the investigation from the investigator;
- c. Provide an extension of detention, carry out further detention or detention and or change the status of the detainee after the case has been delegated by the investigator;
- d. Make an indictment;
- e. Delegating the case to court;
- f. Delivering notification to the defendant regarding the provisions on the day and time the case will be heard accompanied by a summons, both to the defendant and to witnesses, to come at the hearing that has been determined;
- g. Carry out prosecutions;
- h. Closing the case for the sake of law;
- i. Carry out other actions within the scope of duties and responsibilities as a public prosecutor according to the provisions of this law;
- j. Carry out the judge's decision.

Article 137 of the Criminal Procedure Code:<sup>13</sup>

"The public prosecutor has the authority to prosecute anyone who is accused of committing a criminal act within his jurisdiction by delegating the case to a court that is competent to hear".

Based on the explanation that the compiler has described above, if you look back at the definition of the functional differentiation principle contained in the KUHAP where every law enforcement officer in the criminal justice system has its own duties and functions that are separate from one another, so according to the compiler's perspective, the prosecutor's office in Indonesia is no longer dominus litis in a criminal case because the relationship between the Police as investigators and the authority of the Prosecutor's Office as a public prosecutor must be seen in terms of division of powers, not viewed as separation of powers. authority). The purpose of this division is to monitor each other so that it will create a synergy in the law enforcement process in Indonesia.

### **B. Application of the Dominus Litis Principle based on Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia**

The existence of the Prosecutor's Office as a law enforcement institution has a central position and a strategic role in a legal state because it functions as a filter between the investigation process and the examination process in court, so that its presence in people's lives must be able to carry out law enforcement duties.<sup>14</sup>

To be able to understand the application of the dominus litis principle in positive law in Indonesia at the prosecution stage, it would be possible to examine the arrangements contained in Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. If we look closely at the law regarding the position of the Indonesian Attorney General's Office in law enforcement in Indonesia, it becomes clearer and clearer that in a limited manner it has formulated the existence of an absolute prosecutorial authority, thus confirming that the dominus litis principle exists in carrying out its duties and authorities. prosecution of the occurrence of criminal acts by the Prosecutor as the public prosecutor.

Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia in a general explanation states that the enactment of this Law is to reform the Prosecutor's Office so that its position and role as a government institution can carry out more State power in the field of prosecution. free from the influence of any party's power.

In the provisions contained in Article 1 Point 2 of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it is determined that:<sup>15</sup>

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<sup>12</sup>Law Number 8 of 1981 concerning Criminal Procedure Code (KUHAP), Article 14.

<sup>13</sup>Ibid., Article 137 of the Criminal Procedure Code.

<sup>14</sup>Gita Santika, "The Role of the Prosecutor's Office in Realizing Restorative Justice as an Effort to Combat Crime" (Progressive: Jurnal Hukum Vol. XVI/No.1/June 2021), p. 79.

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"Prosecutors are civil servants with functional positions that have specificity and carry out their duties, functions and authorities based on the law".

The provisions relating to the application of the dominus litis principle for the Prosecutor are rules (laws) that must be guided in carrying out the inherent duties and authorities, which are absolute and independent, making prosecution the main task so that this principle will strengthen and strengthen the Prosecutor. as a public prosecutor in carrying out prosecutions of criminal cases that occur, and only prosecutors who are proportional and professional can determine whether or not the criminal cases that occur are resolved.

Article 8 Paragraph (2) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia states that in carrying out their duties and authorities, the Prosecutor acts for and on behalf of the state and is responsible according to hierarchical channels. This gives an understanding in carrying out tasks on behalf of the state. The prosecutor as a public prosecutor is responsible according to a hierarchical channel, namely to officials who assign tasks and responsibilities which are in stages the Head of the District Attorney, the Head of the High Prosecutor's Office and the Attorney General.

The actions of the Prosecutor before carrying out the prosecution of a criminal case to the court are as follows:<sup>16</sup>

- 1) Studying and researching criminal case files received from investigators. Is it strong enough and there is sufficient evidence that the defendant has committed a crime. If in his opinion, the case file is incomplete, immediately return the case file to the investigator for completion.
- 2) After obtaining a clear and definite picture of the existence of a criminal act committed by the defendant, on that basis the Prosecutor makes an indictment. The prosecutor must prove his indictment in court. If the indictment is proven, then the Prosecutor will draw up his charges. The basis for compiling a claim is from the indictment.

The duties and authorities of the prosecutor's office in criminal justice based on Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia are as follows:<sup>17</sup>

- a. Carry out prosecutions;
- b. Carry out judges' decisions and court decisions that have permanent legal force;
- c. Supervise the implementation of conditional criminal decisions, supervisory criminal decisions, and parole decisions;
- d. Conduct investigations into certain criminal acts based on the law;
- e. Completing certain case files and for this purpose can carry out additional examinations before being transferred to the court which in its implementation is coordinated with investigators.

Based on the explanation that the compiler has described above, related to the application of the dominus litis principle based on Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, it is clear that in an application of the dominus litis principle (controller/case owner) ) at the prosecution stage, in this case, if it is related to the duties and authority of the prosecutor, it is to carry out prosecutions that are free from the influence of any party's power.

The Constitutional Court as the sole interpreter of the constitution (single interpreter of the constitution) and the guardian of the constitution (protector of the constitution) in various legal considerations, explicitly places the prosecutor as the public prosecutor as dominus litis in criminal cases. This is based on the decision of the Constitutional Court Number 55/PUU-XI/2013 which states that:<sup>18</sup>

"The function of the Prosecutor's Office and the prosecutor's profession as organizers and controllers of prosecutions or as dominus litis have an important role in the process of handling cases, which in essence aim to build a life system based on law and uphold human rights."

In addition to the Constitutional Court's decision above, there is also the Constitutional Court's decision Number 29/PUU-XIV/2016 which states:<sup>19</sup> "As the sole holder of the prosecution authority (dominus litis), the Prosecutor is obliged to delegate the case to the District Court with a request to immediately try the case accompanied by an indictment, but the

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<sup>15</sup>Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, Article 1 Point 2.

<sup>16</sup>Evi Hartanti, Corruption Crime, Jakarta: Sinar Graphic, 2009, p. 37.

<sup>17</sup>Djunaedi, "Juridical Review of Prosecutors' Duties and Authorities for the Achievement of Justice Values", Journal of Legal Reform, Volume I No.1 January –April 2014, p. 87.

<sup>18</sup>Constitutional Court Decision Number 55/PUU-XI/2013, p. 70.

<sup>19</sup>Constitutional Court Decision Number 29/PUU-XIV/2016, p. 99.

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Prosecutor can also stop the prosecution. criminal case, or the case is closed for the sake of law (vide Article 140 of the Criminal Procedure Code)".

According to the perspective of the compilers of the two Constitutional Court decisions that have been described above, the Constitutional Court explicitly mentions the dominus litis principle clearly and clearly considering the position of the prosecutor as a public prosecutor as dominus litis who has an important role in the criminal justice system. The public prosecutor is positioned as the owner of a case that has a real interest so that a case is prosecuted, examined, and tried in court. In addition, the Constitutional Court also considers that as a party with a real interest, the public prosecutor can also stop the prosecution so that a case is not prosecuted, examined, and tried in court.

Although so far there are only 2 (two) decisions of the Constitutional Court that explicitly consider the position of the public prosecutor as dominus litis in the criminal justice system, according to the authors, it is sufficient to acknowledge that the dominus litis principle is the position of the public prosecutor/prosecutor in the criminal justice system for create legal certainty in every decision and strengthen the criminal justice system that should be integrated.

### C. The Dominus Litis Principle in Indonesian Criminal Law Policy in the future in terms of the Draft Criminal Procedure Code (RUU-KUHAP)

Criminal law policy is basically a whole set of regulations that determine what actions are prohibited and are included in criminal acts and how sanctions are imposed on the perpetrators with the aim of preventing crime. In this case, Marc Ancel is of the opinion as quoted by Barda Nawawi Arief who stated:<sup>20</sup>

"Penal policy is a science that has a practical purpose to enable positive legal regulations to be formulated better and to provide guidance not only to legislators, but also to courts that apply laws and also to organizers or implementers. sentence."

The dominus litis principle in Indonesian criminal law policy in the future is intended to tackle criminal acts that occur through prosecution as a form of community protection to achieve community welfare, considering that crime prevention policies or efforts (criminal policy) are essentially an integral part of community protection efforts (social protection). defense) and efforts to achieve social welfare.<sup>21</sup>Therefore, the policy of having the authority to prosecute is also part of the effort to protect society (social defense) and to achieve social welfare.

Regarding the application of the dominus litis principle in Indonesian criminal law policies for the future from the perspective of the compiler, it is necessary to explore the Draft Law (RUU) of the Criminal Procedure Code in depth. In the Draft Criminal Procedure Code, in fact there is no regulation from article to article which clearly states that the public prosecutor is the coordinator of the investigation. However, if we read the articles in the RUU KUHAP, there is an illustration that the investigation system in the RUU KUHAP is open with the role of the public prosecutor as supervisor of the actions taken by the Police as investigators.

#### 1. Article 8 paragraph (1) of the Draft Criminal Procedure Code

The provisions contained in Article 8 Paragraph (1) of the Draft Criminal Procedure Code states:<sup>22</sup>

"In conducting an investigation, the investigator coordinates with the public prosecutor"

Referring to the provisions of Article 8 Paragraph (1) of the Draft Criminal Procedure Code above according to the perspective of the compiler that, This article is the basis of the relationship between investigators and public prosecutors in an integrated criminal justice system. However, the provisions contained in this article have not been able to answer whether the relationship between investigators and prosecutors is institutional in law enforcement.

#### 2. Article 12 Paragraph (8) of the Draft Criminal Procedure Code

The provisions contained in Article 12 Paragraph (8) of the Draft Criminal Procedure Code states:<sup>23</sup>

"In the event that the investigator does not respond to the report or complaint within a period of (14) fourteen days, the reporter or complainant may submit the report or complaint to the local public prosecutor."

Then Article 12 Paragraph (9) of the Draft Criminal Procedure Code also states:<sup>24</sup>

"The public prosecutor is obliged to study the report or complaint as referred to in paragraph (8) and if there are sufficient reasons and initial evidence of a criminal act, within a period of 14 (fourteen) days the Public Prosecutor is obliged to ask the investigator to conduct an investigation and show what crime was committed. that can be suspected and certain articles in the law"

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<sup>20</sup>Barda Nawawi Arief, Anthology of Criminal Law Policy Development of the Concept of the New Criminal Code, 1st Edition, Jakarta: Kencana Prenadamedia Grub, 2008, p. 26.

<sup>21</sup>Barda Nawawi Arief, Anthology of Criminal Law Policy, Bandung: Citra Aditya Bakti, Bandung, 2002, p. 73.

<sup>22</sup>Draft Law of the Republic of Indonesia Number ... Year ... Regarding Criminal Procedure Code, Article 8 Paragraph (1).

<sup>23</sup>Draft Law of the Republic of Indonesia Number ... Year ... Regarding Criminal Procedure Code, Article 12 Paragraph (8).

<sup>24</sup>Ibid., Article 12 Paragraph (9).

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Based on the provisions contained in Article 12 Paragraph (8) and Article 12 Paragraph (9) of the Draft Criminal Procedure Code which has been described above according to the perspective of the compiler, the arrangement in this article changes a conception contained in the Criminal Procedure Code in the coordination relationship between the public prosecutor and the investigator. This provides an understanding that the Draft Criminal Procedure Code has an open system with no sharp gap between investigators and public prosecutors. Public prosecutors are expected to be able to monitor the performance of investigators in following up on the results of public reports/complaints, thereby minimizing "selective" prosecution in a case.

### 3. Article 46 Paragraphs (3) and (4) of the Draft Criminal Procedure Code

The provisions contained in Article 46 Paragraphs (3) and (4) of the Draft Criminal Procedure Code state:<sup>25</sup>

#### Article 46 Paragraph (3)

"If the public prosecutor still finds deficiencies in the case file, the public prosecutor may ask the investigator to carry out additional investigations by providing direct instructions or may carry out additional examinations before being delegated to the court which is coordinated with the investigators".

#### Article 46 Paragraph (4)

"In the next case examination, if certain legal actions are needed to facilitate the implementation of a trial in court or carry out a judge's determination, the public prosecutor can take legal action on his own or ask for assistance in carrying out an investigation".

From the explanation of the provisions of the article above, according to the perspective of the compiler, it is a grant of legitimacy for the Public Prosecutor to carry out a Nasporing (advanced investigation) in the Draft Criminal Procedure Code. For further investigation, it has also been regulated in the Prosecutor's Bill contained in Article 30. So the main reason for regulating the nasporing of public prosecutors is regulated in the KUHAP Bill. Whereas all parties should have the same perception and goal, namely resolving criminal cases.

## D. Comparison of Prosecution of Criminal Cases in Indonesia with China (Macao)

The prosecution of criminal cases conducted by the People's Republic of China (Macao) is led directly by the Attorney General (Prosecutor General) whose main authority is in the field of criminal justice. But it also covers civil matters (including family law and employment). In the field of criminal justice, the prosecutor's office of the People's Republic of China (Macao) has the authority to:<sup>26</sup>

- a. Receive accusations and complaints.
- b. Carry out an investigation
- c. Carry out prosecution (prosecution)
- d. Make an appeal
- e. Execute and take security measures.

The power to carry out investigations is the exclusive power of the prosecutor's office of the People's Republic of China (Macao). However, despite having full investigative powers, the People's Republic of China (Macao) should not conduct direct investigations. In daily life, this power is delegated to the police of the People's Republic of China (Macao), so that the prosecutor's office of the People's Republic of China (Macao) has never been technically involved in police investigations. However, the investigative powers granted entirely by law to the impartial and independent Macau prosecutor, are a guarantee of protection for the citizens of the People's Republic of China (Macao).<sup>27</sup>

In addition to full investigative powers, the public prosecutor's office of the People's Republic of China (Macao) is given full powers to carry out prosecutions. After that the Macau prosecutor will analyze and determine whether the case in question is brought to court or not. Because the Prosecutor's Office of the People's Republic of China (Macao) adheres to the principle of legality, not the principle of opportunity, then as long as the evidence is sufficient and as long as the prosecutor is competent (legitimacy), the case will be brought to court.

The Procuratorate of the People's Republic of China (Macao) in carrying out the prosecution considers two things, namely:<sup>28</sup>

- a. Is the evidence for the case at hand sufficient (sufficient evidence) or not.

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<sup>25</sup>Ibid., Article 46 Paragraphs (3) and (4).

<sup>26</sup>Moh. Andika Surya Lebang and Rendi Kastru, "Comparison between the Role of the Prosecutor in Indonesia and the Role of the Prosecutor in the Macao Special Administration in the Criminal Justice System", Jurnal Cahaya Keadilan, Vol. 9 No. October 2, 2021, Law Studies Program at Putera Batam University, p. 8.

<sup>27</sup>Ibid., p. 11.

<sup>28</sup>Ibid., p. 13.

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- b. Whether for that case the prosecutor's authority (legitimacy) to sue or not. The differences in the roles of Indonesian prosecutors and the PRC (Macao) are as follows:

Table Comparison of the Roles of Indonesian and Macau Prosecutors

No	INDONESIA	MACAU
1	Government agencies	Judiciary
2	Have some basics	Focused on the principle of legality
3	Does not have the authority to conduct investigations	Has the authority to conduct investigations
4	The scope of prosecution consists of criminal, civil and state administration.	The scope of prosecution is only in criminal and civil cases.
5	Not double nature of the prosecutors	Double nature of the prosecutors.

### IV. CONCLUSION

The application of the dominus litis principle in positive law in Indonesia is divided into two (2), namely: 1) Based on Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP), and 2) Based on Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. In the Criminal Procedure Code there are the principle of functional differentiation which means: "Every law enforcement officer in the criminal justice system has its own duties and functions that are separate from one another". So based on the principle functional differentiation The Prosecutor's Office is no longer the dominus litis in a criminal case. But if based on the position and function of the prosecutor's office in the criminal justice system, the prosecutor's office occupies the dominus litis principle. Because the public prosecutor has a strategic position as the owner cases that must be actively involved from the beginning of the investigation, prosecution, examination at trial until the implementation of court decisions.

The dominus litis principle in Indonesia's future criminal law policy in terms of the Draft Criminal Procedure Code (RUU-KUHP) can be seen in several articles, including: Article 8 Paragraph (1), Article 12 Paragraph (8) and (9), Article 46 Paragraphs (3) and (4) as well as in Article 42 Paragraph (1) Letter (b) of the Draft Criminal Procedure Code.

Prosecutors in Indonesia are in the Executive Agency, have several principles, do not have investigative authority; the scope of criminal, civil and administrative prosecutions of the State and is not double nature of the prosecutors compared to Macau in the Judiciary, focused on the principle of legality, has the authority to investigate, prosecute criminal and civil as well as double nature of the prosecutors.

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## Implementation of the Principle of Dominus Litis in Positive Law in Indonesia

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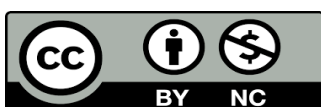
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