



## Effectiveness of the Principle of Dominus Litis in Enforcement of Criminal Procedure with Legal Certainty

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### ABSTRACT

*Study This to study effectiveness implementation the principle of dominus litis in system enforcement criminal procedure law in Indonesia which emphasizes importance certainty law. The principle of dominus litis as principle that prosecutor's office own control main in the investigation and prosecution process, plays a role important in system justice criminal. However, its implementation must balanced with strengthening harmonization regulation legislation related For avoid overlap overlap authority between institution enforcer law, in particular between police and prosecutors. Findings study show that implementation the principle of dominus litis which is not notice principle differentiation functional and provisions of the Criminal Procedure Code can cause conflict authority and inhibit achievement effective and efficient justice. Therefore that, recommendation given so that the government in formulate policy more notice protection law for public seeker justice, with to uphold principle certainty law as guidelines main judicial process criminal . Research This give contribution important in understanding and development system justice just and based on criminal law certainty law.*

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### 1. Introduction

The Republic of Indonesia is a country based on law, This confirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states: that "Indonesia is a country of law ". As a country of law, it highly upholds tall applicable law as tool For arrange life nation and state (Ananda, 2021). Enforcement law occupy central position with put law in its function as tool regulator for life public with society and community with government (Prasedyomukti & Suharto, 2018). Law and society like two side currency that is not Can separated One each other. The validity law of course is at in something order the so - called social society (Praptini et al., 2019). In tradition nation Roman, revealed with the expression of ubi societates ibi ius which describes how closely connection between law and society (Kusumaatmadja, 2006). Enforcement law in meaning macro covering all over aspect life society , nation and state , while in understanding micro limited to the litigation process in court . In case criminal,

enforcement law started from the process of investigation , inquiry , prosecution , examination in court until implementation decision the court that has have strength law remain (Effendy, 2012). In system justice Indonesian criminal law, prosecutor's office hold role central as dominus litis, which means own authority full in prosecution and control case criminal. However, in in practice, the role prosecutor's office in stage investigation become material debate, especially about coordination with investigator police.

Disharmony between the Criminal Procedure Code (KUHAP) and other technical regulations significantly hampers the effectiveness of law enforcement based on the principle of dominus litis, as inconsistencies in sectoral norms and authorities lead to overlapping duties and confusion over coordination between law enforcement agencies. This directly impacts legal uncertainty and weakens the prosecutor's control in managing the prosecution process in an integrated manner (Praptini et al., 2019; Soehartono et al., 2021). The principle of dominus litis as fundamental principles in criminal procedure law hold role central in arrange authority and control prosecutor general on the enforcement process law. Yusni (2020) revealed various problems that arise in implementation principle this, especially related challenge substantive and procedural which can hinder its effectiveness in practice enforcement law. Understanding deep to the principle of dominus litis becomes key to the legal process No only walk smooth, but also fulfills principle certainty expected law.

Principle certainty law very much important in system justice criminal law to provide fair treatment, fast, and not take sides. According to Acar & Sudrajat (2018), integration the principle of dominus litis with principle certainty law must guard balance between authority claimants and rights defendant so that No happen abuse power during the investigation and prosecution process. In context protection right basic defendant, (Gutnyk, 2022) asserted importance respect to right defend self in criminal proceedings international, so that the implementation of dominus litis is not may ignore rights the as the part that is not inseparable from justice procedural. Paraschiv (2023) added that principle equality and search truth is prerequisite absolute so that the principle of dominus litis remains effective and fair in handling case criminal.

System justice crime in Indonesia is depicted in provision Constitution Number 8 of 1981 concerning Criminal Procedure Law, which regulates institutions enforcement law start from investigation and inquiry by the police, prosecution by the prosecutor's office, examination by the judge, guidance by the institution correctional facilities, up to mentoring by an advisor law for holders rights before law criminal law. Each institution own clear roles and tasks (Ardiyanto et al., 2020; Soehartono et al., 2021). Tasks investigation as an important process in justice criminal need supported by the implementation principle dominus litis which is clear, so that between prosecutors and police can know duties and responsibilities the answer according to provision applicable law. This is important For avoid handling case neglected crime or eat time too long, so that No only justice seeker justice is achieved, but also certainty law can realized (Effendy, 2012).

Besides that, study Soehartono et al. (2021) discusses paradigm formation the principle of dominus litis in law Indonesian administration that can enrich development law criminal with give legitimacy to the judicial process. Dimensions practical others, such as use discretion by investigators and resolution external matters litigation discussed by Latif (2023), becomes factor important things that influence effectiveness and certainty enforcement law criminal law in Indonesia.

Principle legality also becomes foundation that is not can avoided in implementation law criminal law. Tarsheva (2020) explains that implementation principle combined legality with mechanism mediation can increase effectiveness of the criminal process without sacrifice principle certainty law. Liakopoulos (2019) examines development and criticism to principle effectiveness in law private relevant European Union international as analogy to dynamics law criminal national and international.

Perspective international also provides outlook important related implementation the principle of dominus litis. A study by Zaytsev et al. (2021) highlights steps For ensure security participants in criminal proceedings based on law international For creating a fair and civilized process. Asp et al. (2006) studied the principle of double criminality and action investigation transnational as fundamental principles that also influence practice enforcement law criminal cross- country.

Task investigation is an important process in journey justice criminal , for That need clarity about implementation the principle of dominus litis, so that between prosecutors and police know duties and responsibilities answer each according to regulation applicable laws and regulations , to avoid neglected and too duration time required For handling something case criminal Where No just achievement justice for seekers justice , but principle certainty the law must also still be considered for the sake of realization values certainty of justice law . For That objective from this is the problem become reason For do assessment deep to the principle of dominus litis.

## 2. Method

Method research used is method law normative, namely approach research that examines ingredients relevant libraries with law. Method This normal also known as study bibliography, where research done with to examine ingredients law written available. Research This use method normative which focuses on the study implementation regulation legislation as well as study material law literature or secondary data. Therefore that, the data source used in the form of material secondary obtained through studies Document. Character study This is descriptive analytical, which aims describe regulation applicable law (law) positive ) and relate it with theory law as well as its implementation in life in society . Research descriptive give description as clear as Possible about condition object without do treatment special to object the (Disemadi, 2022).

As for legal data collected from books and regulations related legislation with the problem being studied. Materials law the Then classified in a way systematic and comparable For find connection between material law use make it easier analysis. Type material the law used consists of from : primary, secondary and tertiary materials . (a) Primary Legal Materials include 1945 Constitution, Law no. 1 of 1946 concerning Criminal Law Regulations, Law No. 8 of 1981 concerning Criminal Procedure Law, and Law No. 11 of 2021 concerning Change on Law no. 16 of 2004 concerning Prosecutor's Office Republic of Indonesia. (b) Secondary Legal Materials is literature like books , journals , and results research that provides information about material primary law. (c) Tertiary Legal Materials in the form of source Supporter like dictionary law and dictionary Indonesian language that explains terms used in writing .

Collection material law done through studies literature with to examine regulation relevant legislation and literature related to with Topic research . After the material primary, secondary

and tertiary law collected, materials classified in accordance with issue problems, arranged in a way systematic for answer formulation problem in research. Researcher analyze material law in a way qualitative with use approach statute approach, namely to study regulation legislation related for answer issue the law that has been formulated. Analysis done with method deductive going to inductive, from explanation general going to explanation special.

### **3. Analysis and Results**

The inconsistency of the dominus litis principle with the dominant authority of the police in investigative practice has implications for potential conflicts of authority that can hinder the smooth process of law enforcement. This is particularly impactful in cases where there is repeated back and forth between case files, thus prolonging the resolution of cases and creating legal uncertainty for the parties involved (Latif, 2023; Yusni, 2020). This condition also has the potential to reduce the effectiveness of the prosecutor's office's role as public prosecutor, which should control the entire prosecution process in an integrated manner in accordance with the dominus litis principle (Muladi, 1995).

#### **Legal Regulations on System Justice Crime in Indonesia**

The term "Criminal Justice System" or System Justice Criminal (SPP) at the moment This used for describe mechanism Work in countermeasures act crime with approach systemic. Ramington and Ohlin deep (Sriwidodo, 2020) state that the criminal justice system is implementation approach system to mechanism administration justice criminal; system justice criminal Alone is results interaction between law, practice administration, as well as attitudes and behavior social. Terms system contain the meaning of the designed interaction process in a way rational and efficient For reach results certain with all its limitations.

According to Reksodiputro (2007b), system justice criminal is system control crimes consisting of from institution police, prosecutors, courts and institutions socialization. Purpose system This includes: preventing public become a victim of crime, resolve case crime so that justice fulfilled with punish the perpetrator, and ensure that perpetrator crime No repeat his actions. From the purpose the Reksodiputro (2007a) expect fourth component in system justice criminal can Work The same to form an "integrated criminal justice system".

Raharjo (1991) explain system justice criminal as a unity with structure certain consisting of from a number of part. System This can interpreted as plan, method, or procedure in operate something. The term "stelsel" (from Dutch) is also used for describe system as the whole thing. Thomas Ford Hault give view that system is a gathering interrelated elements related and working together as a entity single (Soekanto, 1983). System This usually discuss elements system, division and consistency system, completeness system, as well as draft the fundamentals.

From various view mentioned, it is seen that study System Justice Criminal is field academic involving knowledge other laws besides Criminal Law, such as State Administrative Law, Constitutional Law, and Social Sciences. However, experts law criminal tend limit its depth and use other sciences as bridge for understand problem in justice criminal.

Face stagnation in the System Justice Criminal conventional, term new "System Justice Criminal Integrated Criminal Justice System" was introduced. Muladi to argue that the word integrated is very relevant in context system Because system must contain element integration

and coordination, goals clear, structured process (input-throughput-output and feedback), and control effective. According to Muladi, term This underline the need attention more to integration and coordination in system justice frequent crimes experience fragmentation in various countries.

More detailed, Muladi (1995) share the meaning of integrated criminal justice system is three form synchronization or alignment : (a) Synchronization Structural, namely harmony connection between institution enforcer law. (b) Synchronization Substantial, namely harmony vertical and horizontal are related with law positive. (c) Synchronization Cultural, namely harmony in understanding values, attitudes, and philosophy base system justice.

Atmasasmita (1996) define system justice criminal as mechanism Work countermeasures crime use approach system. There are three approach in system justice criminal: normative (placing apparatus enforcer law as executor regulations), administrative (see apparatus as organization management with structure work), and social (understanding apparatus enforcer law as part from system social all over public responsible on his success).

Reksodiputro (1993) also confirmed system justice criminal consists of on four component main police, prosecutors, courts and corrections which are ideal Work The same in A system integrated. Muladi (1995) return confirming the meaning of synchronization in system integrated the with three type synchronization that has been done explained above.

An appropriate regulatory strategy must prioritize an adaptive approach that takes into account the structural and cultural realities of law enforcement agencies, including strengthening inter-agency coordination through clear collaborative mechanisms and integrated work culture training. This approach aims to align the principle of dominus litis with the operational specifics of law enforcement to ensure consistency and effectiveness in law enforcement (Savchuk, 2022).

### **Effectiveness The Principle of Dominus Litis In Enforcement of Criminal Procedure Law with Legal Certainty**

Theory about certainty law is one of objective main in system law and can it is said that certainty law is part important in business reach justice. Certainty law realized through implementation and enforcement law without look at Who perpetrator his actions. With existence certainty law, every individual can estimate the consequences that will received if He do a actions regulated by law.

Certainty law is also needed For realize principle equation in front law without discrimination. Concept certainty related close with principle truth, meaning certainty law referring to the rules law that is formal legal and can confirmed in a way tight. Through certainty law, everyone is guaranteed can operate appropriate behavior with applicable regulations, and vice versa. Without certainty law, individual No own clear guidelines For act.

Gustav Radbruch explain that certainty law is one of objective main from law That myself. According to Radbruch, certainty law is results from product law, in particular from regulation applicable laws and regulations. Enforcement law own role crucial in system justice criminal, where all elements and stages in system must walk in accordance with provision legislation.

Strengthening rule law This become foundation for realization justice that reaches out all parties, both victims, perpetrators, and public general.

Protection law for suspect and defendant is very important thing in carry out the enforcement process law, so that certainty law become element main in mechanism this. Birth criminal procedure law through Constitution Number 8 of 1981 is step government in remove harmful practices interest suspect or the accused, which is reflected in HIR/ RBg. Although existence revision of the RKUHAP provides authority more on the prosecution For take transfer of investigation process from police, thing This need reviewed return whether the principle of dominus litis applied can ensure protection law for suspect or precisely cause problem new related authority apparatus enforcer law, in particular between police and prosecutors.

Next, it is important For to observe harmonization regulation legislation, considering implementation technical from The provisions of the Criminal Procedure Code are spread across various regulation. Absence harmonization Can result in conflict rule in enforcement law investigation, which ultimately harm community. Protection law to right public is authority the highest in the country, so that matter This must get attention Serious.

Principle differentiation functional in the Criminal Procedure Code it becomes root from friction between institution investigation. With principle this, appears question about dominus litis position in the context of the Criminal Procedure Code which adopts system justice criminal integrated criminal justice system. In particular, it is necessary under consideration to what extent is the Attorney General's dominus litis in stages investigation that only coordinate functional with police.

In system enforcement law criminal acts subject to procedural law (KUHAP) and criminal law material, the authority of each subsystem like Police, Prosecutor's Office, Courts and Correctional Institutions set up with principle compartmentalization and differentiation functional. If every subsystem operate his authority in accordance rules, sectoral ego issues Can appear because each one does not want to his authority intervened. Although in a way law authority the clear, sectoral ego This can hinder achievement mark justice and utility for society, so that enforcement law in a way total enforcement is threatened fail.

Criminal Procedure Code in general firm put investigation under authority police, meanwhile Prosecutor's Office on duty do prosecution. However, in practice often happen back and forth file case between investigators and prosecutors before trial, even though the criminal process should walk effective, efficient, brief, simple, and with affordable cost. This is must responded with more regulation clear For arrange mechanism system justice criminal so that the process the more Good.

#### **4. Conclusion**

Implementation the principle of dominus litis in system justice criminal should accompanied by with strengthening other related regulations with criminal procedure law. Important For ensure harmonization between regulation legislation so as not to cause overlap overlap authority in system justice criminal law in Indonesia. The existence of proposal implementation the principle of dominus litis in the prosecution is also considered not enough in accordance with principle differentiation functional, because the Criminal Procedure Code has set with clear the authority of each institution enforcer law. The concept of regulatory harmonization must be designed with the principle of cross-sector collaboration based on clear coordination

mechanisms and clearly defined roles, thereby avoiding overlapping authority and conflicts between institutions that could potentially lead to sectoral egos. This approach needs to be supported by a regulatory framework that is adaptive and flexible, yet also firm in the division of tasks and responsibilities to ensure role clarity and effective law enforcement. Then the model for strengthening the role of the prosecutor's office within the framework of *dominus litis* must integrate a strict and transparent internal oversight mechanism to ensure compliance with the principle of legality while ensuring consistent protection of the rights of suspects.

Suggestion, In determine implementation principle of *dominus litis*, government recommended still stick to the terms procedural law in Indonesia. Protection law for public seeker justice must always awake. Principle certainty law is very important as guidelines in the judicial process criminal law so that society truly feel justice through enforcement law.

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