



# *Application of the Dominus Litis Principle by the Prosecutor's Office Through Restorative Justice at the Investigation Stage of General Criminal Cases*

**Barransyah Hendri Oktiawan Ramsi**

Faculty of Law, Universitas Sebelas Maret, Surakarta, Jawa Tengah, Indonesia  
Ir. Sutami Street, No. 36 Kentingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126  
[hendriramsi80@student.uns.ac.id](mailto:hendiramsi80@student.uns.ac.id)

**Hartiwiningsih Hartiwiningsih**

Faculty of Law, Universitas Sebelas Maret, Surakarta, Jawa Tengah, Indonesia  
Ir. Sutami Street, No. 36 Kentingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126  
[hartiwiningsih@staff.uns.ac.id](mailto:hartiwiningsih@staff.uns.ac.id)

**Ismunarno Ismunarno**

Faculty of Law, Universitas Sebelas Maret, Surakarta, Jawa Tengah, Indonesia  
Ir. Sutami Street, No. 36 Kentingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126  
[ismunarno@staff.uns.ac.id](mailto:ismunarno@staff.uns.ac.id)

**Abstract**—The principle of "dominus litis" in Indonesia grants prosecutors the ultimate authority to decide on prosecution, rooted in the concept of "ius curia novit." This principle, embedded in the Criminal Procedure Code (KUHP), allows prosecutors to discontinue cases under specific conditions. However, the implementation of restorative justice, governed by different regulations from the Police and the Attorney General, has led to differences in case handling, creating potential conflicts and overlaps in authority. This difference challenges the strategic role of the Prosecutor's Office, creates legal uncertainty, and reduces law enforcement effectiveness. Addressing these issues requires harmonizing regulations, training law enforcement personnel, establishing effective coordination mechanisms, and enhancing public understanding of restorative justice. Effective implementation necessitates clear roles, structured protocols, joint working teams, and public education to ensure consistency, fairness, and efficiency in the criminal justice system.

**Keywords**—Prosecutor Authority; Dominus Litis; Restorative Justice

## I. INTRODUCTION

Several implications are attached to the use of Dominus Litis principle by the Prosecutor's Office at an early stage of general criminal cases through restorative justice. Dominus Litis is a universal principle that all prosecutors inherently have as they are key actors in the criminal justice system because criminals, in turn, have rights. When we talk about enforcement of criminal law, the prosecutor — acting as Dominus Litis — takes a unique place to ensure restoration justice which tends to reform offenders and return back what has been taken unlawfully. There is some sort of balance or equilibrium that should be met through restorative justice at this stage of case handling. Numerous studies show that this type of 'prosecutorial dominance' is helpful, reducing crime: it also renders social justice in the political arena greater.

Meanwhile, the path towards its fulfilment also brings to the fore some practical obstacles, such as the fields of legal substances, legal organisation and legal customs. At the same time, one of the productive alternatives that can be pursued is framing prosecutors as Dominus Litis in criminal law enforcement with a perspective towards restorative justice by incorporating restorative justice into the Criminal Procedure Code (KUHP). Similarly, some Research findings also show that among others, cooperation between Police and Prosecutor's Office forms one of the productive streams for practising Dominus Litis in criminal law enforcement with a perspective towards restorative justice.

Several researches in Indonesia have revealed that prosecutors who use restorative justice as Dominus Litis can have a great influence on reducing crime rates and promoting social justice. Take, as an instance, a study at the Islamic University of Malang which noted that when restorative justice is applied in this manner, it can promote social justice in society as well as reduce crime rates. Another research carried out at the University of Merdeka Pasuruan has proven that adopting restorative justice as Dominus Litis means not only to get social justice, but also to lessen the crime rate as well as to give the rights of the prosecutor during this procedure. This is a move away from the traditional criminal justice in favor of more restorative justice-oriented measures that can potentially reinforce other elements. For example, research from the Islamic University of Indonesia found that the partnership between police and prosecutors can enhance prosecutors' effectiveness in implementing the principle of restorative

justice as the core of restorative prosecution.

In Indonesia, it has been found that the application of a restorative justice model by prosecutors as *Dominus Litis* has resulted in positive outcomes for society in the form of decreased crime rates and increased social justice. For example, a study at Malang Islamic University demonstrated that practitioners of this model led to an increase in social justice and a decrease in crime rates. Similarly, research at Pasuruan Merdeka University found that implementing restorative justice as *Dominus Litis* for prosecutors has resulted in more social justice, reduced crime, and elevated the power of prosecutors in a restorative justice-oriented law enforcement ecosystem. Furthermore, evidence has suggested that combining the partnership of the Police and the Prosecutors' Office is advantageous for practicing the *Dominus Litis* principle in the context of restorative justice-oriented criminal law enforcement. For instance, a study at University of Indonesia Islamic University determined that this kind of collaboration increases the likelihood of the application of a restorative justice model by prosecutors exercising the authority of *Dominus Litis* in criminal law enforcement that is restorative-justice-based.

Throughout the year 2023, the Indonesian National Police successfully resolved 18,175 cases through restorative justice mechanisms or Restorative Justice (RJ). This figure indicates an increase compared to the previous year, which was 15,809 cases. National Police Chief General Listyo Sigit Prabowo, in the end-of-year release of the National Police at the National Police Headquarters on Wednesday, December 27, 2023, stated that the RJ mechanism will continue to be improved to resolve issues through peace. "Restorative justice will continue to be improved so that issues can be resolved through peace to fulfill the sense of justice for all parties and emphasize restoration to the original state," said General Listyo Sigit Prabowo. During 2023, the National Police recorded a total of 288,472 criminal acts, indicating an increase in crime cases by 4.3 percent or an increase of 11,965 cases compared to 2022. Listyo also revealed that the rate of case disclosure by the National Police increased by 1.6 percent this year.

## II. LITERATUR REVIEW

The rule of law in Indonesia is regulated by law number 16 the year 2004 and Criminal Procedural Code (KUHAP). According to article 1 paragraph (1) of Law Number 16 Year 2004, a public prosecutor is a state official authorized by law empowered as Public Prosecutor and executor decision that already has permanent legal power in the court verdict and executes other duties based on laws. Article 1 Point 2, so called law as a whole says: Public prosecutor - an official who is competent to conduct investigation and perform court decisions. Andi Hamzah states, "In Indonesia, public prosecutors are also known as prosecutors, and prosecution is exclusively carried out by public prosecutors, meaning no other body can undertake this role. Judges do not have the authority to request cases to be brought before them; they only wait for prosecutions from public prosecutors."

Public prosecutors conduct prosecutions as outlined in Article 1, point 3 of Law No. 16 of 2004, which involves bringing a case to the relevant district court for examination and judgment by a judge. According to Article 1, point 7 of the Criminal Procedure Code (KUHAP), prosecution is the act of submitting a criminal case to the competent district court to be examined and decided by a judge. Regarding criminal acts, Moeljatno describes them as "actions prohibited by legal regulations, where violations of such prohibitions are subject to certain sanctions or punishments." The prosecutor's office plays a crucial role in the criminal justice system, linking the investigation phase to the court trial phase. According to prevailing legal doctrine, the public prosecutor has the exclusive right to prosecute, meaning a person can only be tried if a criminal charge is filed by the public prosecutor, which in this case, is the prosecutor's office. The duties and authority of public prosecutors are detailed in Article 35 of Law No. 16 of 2004, which states that the Attorney General has the following tasks and powers: a. Establish and control law enforcement and justice policies within the scope of the prosecutor's duties and authority; b. Effectively enforce the law as provided by law; c. Dismiss cases for the public interest; d. File classification appeals for the sake of legal interests to the Supreme Court in criminal, civil, and administrative cases; e. Provide legal technical considerations to the Supreme Court in criminal classification reviews; f. Prevent or deter certain individuals from entering or leaving the territory of the Republic of Indonesia due to their involvement in criminal cases as per regulations. Law enforcement means that the law must be implemented and upheld, with the expectation that the law will be enforced when actual events occur. According to Sudikno Mertokusumo, the principle is that the law must be upheld and should not be violated, even if the world collapses, the law must stand firm.

Restorative Justice is an approach focused on repairing relationships and addressing wrongdoing through reconciliation between the offender (or their family) and the victim (or their family) outside of court. This approach aims to resolve legal issues arising from criminal acts through agreements and consensus among the parties involved. Unlike the traditional retributive justice system in Indonesia, which emphasizes punishment, restorative justice seeks solutions involving all parties to address the consequences of the offense and prevent future harm. It emphasizes active participation from victims and offenders and community involvement as facilitators, ensuring the offender does not disrupt societal harmony. Tony F. Marshall describes it as a process where stakeholders in an offense collectively resolve how to deal with its aftermath and future implications. Adrianus Meliala notes that restorative justice addresses issues in the current punitive system, which focuses on deterrence and retribution. Restorative justice measures justice by healing the harm caused, supporting victims, and holding offenders accountable, with family and community support. The core principles include restoring harm to victims, involving offenders in the restoration process, and ensuring courts maintain public order while the community preserves just peace. Restorative justice, used for over twenty years as an alternative for juvenile cases, involves informal resolutions through discretion and diversion, reflecting Indonesia's high regard for social values and customary law traditions that do not distinguish between criminal and civil case resolutions.

The Criminal Procedure Code (KUHAP) grants the Public Prosecutor exclusive authority to file criminal cases

in court, known as Dominus Litis. This means only the Public Prosecutor can file charges, leaving judges to wait for cases to be presented to them. Dominus Litis underscores the central role of the Prosecutor's Office in law enforcement, holding full control over the case process. The primary duty of the Prosecutor is to ensure sufficient evidence to bring the defendant to trial, with all actions referring to Law No. 16 of 2004. As for the Prosecutor's Office, his role is to enforce law enforcement proactively, protect state interests and respect human rights as well as prevent corruption crimes.

In order to establish a welfare society in the Indonesia Pancasila as one of them is with an active judicial role performed by the Public Prosecutor's Office. When public prosecutors process cases, they adhere to the principle of Dominus Litis by taking into account legal and prosecutorial considerations in accordance with their position. The active participation of the Prosecutor's Office in legal development is essential to create a just society based on Pancasila. Prosecutors follow the Dominus Litis principle when pursuing legal cases, considering the aspects of legality and opportunity in prosecution.

KUHAP also outlines the authority of the Public Prosecutor, including drafting indictments, prosecuting cases, dismissing cases on legal grounds, and other duties according to the constitution. According to Article 140 paragraph 2 letter a of KUHAP, the Prosecutor can discontinue prosecution if the evidence is insufficient, the event is not a criminal offense, or the case is legally closed. However, this is rarely used because Article 109 of KUHAP more often stops cases at the investigation stage. Dominus Litis faces obstacles because the Prosecutor does not have full control over the investigation of general criminal offenses from the beginning. Article 2 of Law No. 16 of 2004 emphasizes that the Prosecutor's Office is a government institution responsible for prosecution and other authorities according to the law, affirming the exclusivity of the Prosecutor's power in prosecution.

### III. METHOD

This research employs normative legal research methods. Using qualitative data analysis techniques, it analyzes relevant legislation, such as the Indonesian Criminal Procedure Code (KUHP), the Regulation of the Attorney General of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice, and other related regulations. Data collection techniques involve a literature study conducted by searching for, inventorying, and studying laws and regulations, as well as other secondary data related to dominus litis and restorative justice. For instance, data is collected from books, scientific journals or news articles related to the research and indirectly data that are created as a result of how you shape your literature review, result in obtaining primary information.

### IV. RESULT & DISCUSSION

The discrepancy in practices of RJ handling for case conflict resolution that are able to be implemented within the normal criminal justice process, plays some roles on how Police and Prosecutor's Office undertake their dominus litis. Along with this differences in the first place question, appear challenges against authority and strategic role of Prosecutor's Office as controller of cases in criminal justice system. Meanwhile, in the RJ process, after submitting SPDP to prosecutors, police are authorized to stop investigations and reach a non-court agreement with potential suspects. This undermines the principle of Dominus Litis according to which the Prosecution should be totally in charge after completion of an investigation. Additionally, this differences also alienated criminal offenders as the consequence they may have face would be different due to whether their cases tried by using conventional system and RJ. The Police: The above-mentioned points imply that the role of police in screening cases for RJ, or typical judicial processing has become central to implementation. Such an observation clearly requires a correct set of rules to better manage RJ cases by Indonesian authorities, in order that consistency, fairness and effectiveness can be achieved by Indonesia Criminal Justice

1. Title fights, like method- Authorities The Police is authorized to resolve cases with RJ as stated in the Regulation of Chief of Police Number 8 Year 2021 concerning Diversions for Case Settlements Criminal Acts. Nevertheless, there is arguably an overlapping authority of the Prosecutor's Office in handling RJ cases with respect to Attorney General Regulation Number 15 Year 2020 on Guidelines for Restorative Justice Execution. In other words, this creates a situation where both authorities have the same kind of power in order to resolve any cases they may receive by not using their approach. Accordingly, these provisions may have the effect of creating confusion within case management and divergence in legal decisions. The overlap in authority between the Police and the Prosecutor's Office can lead to coordination issues, delays in law enforcement, and inefficient decision-making. To hinder overlaps and facilitate better management of Restorative Justice (RJ) cases, there must be strenuous cooperation between the two agencies to carefully work out roles and responsibilities. According to the Attorney General's Regulation, the Authority of the Prosecutor's Office to apply RJ is in contrast with the Authority of the Police to use diversion to manage cases. Each has the Authority to address a case using RJ, which creates potential role ambiguity and possible challenges in coordinating law enforcement policies. Effective coordination between the Prosecutor's Office and the Police is essential to managing RJ consistently and intentionally in coordination with ongoing practice by preventing conflicting overlaps in the criminal justice system. Creating redundancy in the system, by defining and refining roles, will likely reduce confusion, maintain alignment in case management, and better streamline the overall system.
2. Legal ambiguity arises out of the question, if criminal cases should be adjudicated through formal court process or Restorative Justice (RJ). This leads to confusion for offenders, victims and the public. Institutions often end up causing uncertainty in the minds of offenders by not playing it straight with legal processes and possible outcomes. Thus the choice for victims either an RJ resolution or traditional is another source of stress and

uncertainty. This uncertainty attacks public confidence in the justice system, when people do not know what to expect or whether they will be treated fairly. It is this legal insecurity which not only obstructs the resolution of cases but also breeds a sense of injustice and increasingly frustration. In order to address this challenge, the roles, responsibilities and processes for resolving cases must be clearly defined in a way that allows all those involved access to justice that is transparent - meaning processual steps can be followed by any of them without deviating from rules or unjust biases.

3. This overlap of jurisdiction can be highly inefficient and reduces the quality of service which would otherwise come from specialisation. When it is unclear who's responsible for doing what or when processes overlap because of the blurred division and separation between institutions, your team inefficiency reaches new heights wasting precious time & resources. This nebulosity is also what drags the cases on, befuddling and then deferring a conclusion. But also, the quality of impugment practices and measures to be taken can show immense variation in case everyone is doing their own policing and prosecution without real standardization or coordination between Police department/Prosecutor's Office with results coming inconsistent on larger scale which would be less impactful. Decreasing the effectiveness of law enforcement can result in lost trust within victims, witnesses and eventually the public as they will see it as an institution not that has been incapacitated to deliver justice. For these reasons, it is necessary for the stakeholders to delineate the roles and jurisdiction of each institution along with setting an effective coordination system in resolving cases, especially concerning Restorative Justice (RJ) as well as traditional justice systems which often remain unclear. Better definition of these different roles will result in the reduction of unintended redundancies and ultimately make law enforcement more effective.

The Implementation of Restorative Justice (RJ) in Indonesia is now facing an impasse by the difficulty to harmonizing the legislation on RJ practices due to variance - particularly about The Role between Police and Public Prosecutor's Office before judge popped out. Law and regulations of both institutions need to be in harmony for RN OC intent not run into overlapping authorities and roles. Such harmonization necessitates to properly revise and combine RJ rules applicable for Police as well as Prosecutor's Office, define clearly which cases will be allowed resolve through the RJ process providing clear guidelines and set specific roles and authorities that need to be undertaken in handling of the case under rigid procedures fitting with all potential constitutional regulations. This exercise of harmonising the rules across both institutions reduces conflicts and streamlines case management, boosts productivity & ensures transparency to all participants in criminal justice system. On the other hand, improving how RJ cases are handled requires training Police and Prosecutors as outlined earlier. This training should encompass RJ concepts, principles, and practices to ensure a comprehensive understanding of RJ operations, core principles, and the respective roles in the resolution process.

The training should cover several key areas:

1. RJ Concepts and Principles: Police/ Prosecutor staff need to have sensitized about the different concepts of Restorative Justice (RJ), which sets RJ apart from traditional criminal justice, including core principles of practice.
2. RJ Roles and Responsibilities: All team members need to be leveled up on the various roles in RJ process. This involves determining which cases are suitable for RJ; improving mediatory and negotiational skills, as well as encouraging proper cooperation with the other parties involved.
3. Mediation and facilitation skills: Training should include how to mediate between offenders, victims and the community/ Empathetic listening, skilled questioning and helping parties come to a mutual understanding/ agreement are some examples of these skills.
4. Dealing with Edge Cases: Training must also see to address these exception handling instances, like when dealing minors and victims of sexual violence or in fact any confounded scenario. This ensures that personnel are attuned to the specific needs of each case and the individuals involved.

To improve the handling of RJ cases, effective coordination between the Police and the Prosecutor's Office is crucial. This collaboration ensures seamless cooperation and better outcomes in promoting peace and justice. Here are steps to establish this coordination:

1. Establishment of Joint Working Teams: Form joint teams as permutation and combination Police-Prosecutor at all levels for coordination, supervising, implementing policies on handling RJ cases.
2. Development of Joint Work Protocols: Put in place work guidelines for dealing with RJ cases on a combined institutional basis. The protocols should identify what to do, who is responsible for doing it and how effective communication should be done along with the reporting mechanism.
3. Clear Roles: Who should do what in Handling RJ Cases - The Police and the Prosecutor's Office. This involves case screening, conducting mediation and assisting in crafting agreements among the parties involved with follow-up to ensure agreement compliance.
4. Train and Capacity Build: Provide members with training in RJ principles, mediation skills to support transitional efforts between agencies. It will build their capacity to handle RJ and cases well.
5. Regular Meetings: Regular meetings between the joint teams to review progress of cases that have RJ and discuss, agree on needed improvements. Our successful effort aims at creating synergy between the police and prosecution in handling cases of RJ so that justice, peace, and reconciliation may be promoted in the society.

Socializing and educating communities on RJ is therefore necessary to even have the public comprehend its rationale. The Police and the Prosecution can conduct Seminars/Workshops/Public Debates/lectures with legal luminaries, RJ practitioners drawing community leaders to clear away clouds on what is Restorative Justice (RJ) its concepts/principle/benefits etc. Also important is the dissemination of education material (brochures, leaflets

and guide-books) stipulating RJ principles; process of case resolution and rights & duties to its participants. If attractive content like quick videos, infographics and write ups are shared on social media platforms about the RJ it could also be influential. Working in partnership with educational institutions and community-based organizations, NGOs can use RJ education and conduct training sessions on the implementation of such practices at all levels from village to neighborhood that could contribute to building understanding as well acceptability for a criminal case handling by using an alternative approach. All of these efforts are centered around raising awareness for the value RJ provides, and working to get more people behind its integration into law enforcement practices.

#### IV. CONCLUSION

The discussion above shows several implications for the transaction rules on social media, especially on the role of Police and Prosecutor's Office in handling RJ cases. The different ways of handling RJ in Indonesia cause the Police and Prosecutor's Office as a dominus litis to have blurred borders regarding their legal authority and responsibilities, causing inconsistency, overlap and conflict. This matter can be resolved through regulation, personnel capability improvement, coordination between Police and Prosecutor's Office and public awareness program. Such differences greatly impede roles of Police and Prosecutor's Office as dominus litis. Therefore, following measures should be taken to effectively overcome such obstacles; harmonising laws and regulations on RJ within Police and Prosecutor's Office and personnel capability improvement, the coordination between Police and Prosecutor's Office, and public awareness program on advantage and procedure of RJ.

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