

## **The Application of the Principles of Dominus Litis by the Prosecutor in the Narcotics Criminal Act**

Ardyansyah<sup>1</sup>, Dahlan<sup>2</sup>, Mahfud<sup>3</sup>

<sup>1</sup> Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

<sup>2</sup> Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

<sup>3</sup> Law Faculty, Syiah Kuala University, Banda Aceh, Indonesia

---

**Abstract:** This study will discuss what is the basis of the legal considerations of the basic application of Dominus litis by the public prosecutor in the narcotics criminal lawsuit. The purpose of this study is to know and analyze the fundamental application of the Dominus Litis by the Claimant General in the Narcotics Criminal Act. The usefulness of research provides theoretical benefits, at least can be useful as a donation of thought to the world of education. This type of research is normative research, The data analysis used in this study is the literature data or document study. The results of the research are known that the basic prosecution's consideration for the principle of a Dominus litis is due to the docket which goes back and forth from the Prosecutor to the investigator is contrary to suspected or conflicting interests. With the principle of justice that is fast, honest, simple, free and light cost, with the length of the process of the narcotic file that causes the absence of legal certainty..

**Keywords:** Application, Dominus Litis, Narcotics

---

Date of Submission: 11-03-2020

Date of Acceptance: 26-03-2020

---

### **I. INTRODUCTION**

Narcotics crime is not only local, but has spread to all parts of Indonesia and in particular ACEH is often used as transit area by the perpetrators before arriving to destinations in various other regions in Indonesia. So that the development of narcotic case from year to year is increasing especially in Aceh Besar jurisdiction.

Law enforcement against the Narcotics Criminal Act, has been carried out by the law enforcement officers and has received many judges. Thus, law enforcement is expected to be able to become an antidote to the spread of illegal trade and narcotics circulation. The provisions of the law governing narcotics have been drafted and enforced, but the crimes involving narcotics are not yet to be appeased, neither the circulation nor the misuse.

The criminal law enforcement system is essentially a system of power/authority to enforce the law that is embodied or implemented in 4 (four) sub systems, namely : (Arif, 2006)

1. Power of investigation (by the agency/investigator Agency)
2. Prosecution Power (by agency/Public Prosecutor)
3. Power adjudicate and impose the verdict/criminal (by the court body)
4. Execution power of the verdict/criminal (by agency/Apparatus implementation/execution)

The Indonesian judicial system authorizes prosecutors as public prosecutors. Prosecutors Republic of Indonesia is a government agency that carries out state power in the field of prosecution and other authorities under the law. Prosecutors as institutions in understanding processes known principles or doctrines *opportunity* and *Dominus Litis*. A.Z Abidin Farid Provide a formulation of the principle of opportunity As a legal principle that authorizes the public prosecutor to prosecute or do not demand with or without condition a person or corporation that has embodied a delic in the public interest. ‘*Dominus*’ comes from the Latin Which means the owner, Litis means a lawsuit.

The provisions contained in article 110 paragraph (2) of KUHAP assert the principle of *Dominus Litis* for prosecutors (Public prosecutor) as controlling matters in a positive sense. The importance of the principle of *Dominus Litis* for prosecutors is intended for criminal matters that enter the court is not origin (random or arbitrary) and must be qualified on a formyl or material. If a criminal case is bestowed on a court without regard to these requirements and eligibility, the allegation and demands are easily broken by the defendant's legal counsel, and the defendant is potentially freely disconnected by the judge.

The prosecutor was a *litis dominus* in the prosecution of the defendant. This principle confirms to the prosecutors free to determine which criminal rules are to be submitted or not to the defendant (Effendi,2005). Based on this principle, prosecutors act as criminal process controllers and have a central position in the law enforcement process. Based on the principle of the *Dominus Litis*, only the institution of the Prosecutor (prosecutor) can determine the feasibility of a criminal case, whether a criminal case can be submitted to a court or not based on a valid proof of evidence under the criminal program law.

The prosecution if after researching the investigation and deemed to be sufficient, but the results of the investigation, such as not stating the appropriate article of criminal law is to be bought, the public Prosecutor is authorized to amend article With the more appropriate article. It can be done by the public prosecutor directly, because they are responsible for the prosecution policy.

In the meantime, in fact, the public prosecutor is often ignored by investigators on the grounds that the alleged elements that have been drafted by investigators have been in accordance with the fact of the suspect/defendant's deed. Therefore, in order to realize the legal certainty for justice seekers.

The prosecutor may add to the article that is more in accordance with the sequence of the fact that the defendant had done, if the prosecutor did not use the principle of the *Dominus litis* in the narcotics allegations then both indictment and Prosecution was easily broken by the defendant's legal counsel, so that the defendant could potentially be freely disconnected by the judge. Based on the background description above, it can be formulated in this research which is what is the basis of the legal considerations of the basic application of *Dominus litis* by the public prosecutor in the Narcotics Criminal Act

## II. LITERATURE REVIEW

The type of research in the preparation of this writing is a type of normative research, normative legal research is also called doctrinal law research, often in the research of this law in the conceptualized as what is written in the Regulation Legal in books or law in the concept of a rule or norm which is a human-behaved benchmark that is deemed appropriate. The legal materials and data collection methods are by literature study or document study. The approach used in this research is a statutory approach as well as a concept analysis approach.

## III. THE APPLICATION OF THE PRINCIPLES OF DOMINUS LITIS BY THE PROSECUTOR IN THE NARCOTICS CRIMINAL ACT

### A. Authority of the prosecution in Indonesian criminal law

The establishment of this stand-alone public prosecutor according to Subekti in his book, is a gift from the Dutch government to the people of the Earth son in relation to the shock (New World War II) in the Netherlands (Subekti,1982). Before the reform of the term prosecutor has actually existed for a long time in Indonesia. In the time of the Hindu-Javanese kingdom in East Java, namely during the Majapahit period, the term Dhyaksa, Adhyaksa, and Dharmadhyaksa already referred to a certain position and office in the kingdom. These terms are derived from the ancient language, i.e. of the same words in Sanskrit.

Law No. 16 year 2004 concerning the attorney of the Republic of Indonesia, article 2 paragraph (1) affirmed that "the attorney of the Republic of Indonesia, is a government agency that carries out the state power in the field of prosecution and other authorities based on Law ". Prosecutors as process controllers (*Dominus Litis*), have a central position in law enforcement, because only the institution of the prosecutor can determine whether a case can be submitted to the Court or not based on a valid evidence According to criminal law. In addition to being the one with *Dominus Litis*, prosecutors are the only criminal award institution (executive Ambtenaar). Therefore, the new Prosecutors act is seen to be stronger in establishing the position and role of the prosecutor as a government state institution implementing State power in the field of prosecution.

The provisions of UU No. 16 year 2004 concerning the R.I. prosecutor has also set up the duties and authority of the Prosecutor as stipulated in article 30, i.e. in the criminal field, the Prosecutor has duties and authorities:

1. Prosecution;
2. Implementing the determination of judges and court judgments that have acquired the legal force remains;
3. Supervise the implementation of conditional criminal ruling, supervisory Criminal award, and conditional decision;
4. Conducting investigations into certain criminal acts under law;
5. Completing a particular case file and therefore can perform additional checks before being bestowed on the court in which the implementation is coordinated with investigators.

The existence of the Attorney General of the Republic of Indonesia is currently law number 16 of 2004 concerning prosecutors. According to the provisions of article 2 paragraph (1) of the Attorney's Act, mentioned

that the Republic of Indonesia attorney is a government agency The authority of the State in the field of prosecution and other authorities under the la (Effendi,2005).

**B. Principles of the *Dominus Litis* and pre prosecution in criminal justice systems**

Provisions of Article 2 paragraph (1) of Law No. 16 of 2004 States that the next Republic of Indonesia prosecutors in this act called prosecutors are government agencies carrying out state power in prosecution and Authority under law. The prosecution itself is the act of the Prosecutor (PU) to delegate criminal matters to the District Court (PN), which is authorized in the case and in the manner stipulated in the LAW by request in order to be in check and in the end by the judge in the proceeding. According to article 137 the criminal CODE authorized to prosecute is the public prosecutor (PU) (Hariri,2012)

The provisions of the principles of the *Dominus Litis* found in section 110 paragraph (2) of KUHAP confirms the principle of *Dominus Litis* for the prosecution as controlling the case in a positive sense. The importance of the principle of *Dominus Litis* for prosecutors is intended for criminal matters that enter the court is not origin (random or arbitrary) and must be qualified in a formyl or Materil. If a criminal case is bestowed on a court without regard to these requirements and eligibility, the allegation and demands are easily broken by the defendant's legal counsel, and the defendant is potentially freely disconnected by the judge, The implementation of humane criminal justice and ensuring the legal certainty for the Seekers of justice in the state of law.

Police and prosecutors relations are very visible in the process of pre-prosecution in general criminal investigations. The process of pre-prosecution is the liaison between the investigation process conducted by investigators with the prosecution process conducted by the Prosecutor, so that the process of pre-prosecution is a very important part of the public Prosecutor for Study and research the legal facts in the formyl and materile that have been collected by investigators in the docket.

As for article 110 paragraph (3) KUHAP explained in the event that the public prosecutor returns the results of the investigation to be completed, investigators shall immediately conduct additional investigation in accordance with the instructions of the Prosecutor, then in paragraph (4) the investigation is deemed to have Completed if within fourteen days the prosecutor does not return the results of the investigation or if before the deadline expires there has been notice of it from the public prosecutor to the investigator. (Sumantri,2013).

The definition of pre-prosecution among others can be found in the explanation of article 30 sentence (1) Letter A of the Law of the Republic of Indonesia No. 16 of 2004 which reads "The pre-prosecution is the act of Attorney to monitor the development of investigations after receiving Notification in the start of an investigation received from the investigator as well as providing instructions to be completed by investigators to determine whether or not the file is able to be bestowed or not to the prosecution stage (Malamassam,2012).

As for article 110 paragraph (3) KUHAP explained in the event that the public prosecutor returns the results of the investigation to be completed, investigators shall immediately conduct additional investigation in accordance with the instructions of the Prosecutor, then in paragraph (4) the investigation is deemed to have Completed if within fourteen days the prosecutor does not return the results of the investigation or if before the deadline expires there has been notice of it from the public prosecutor to the investigator (Sumantri,2013).

The definition of pre-prosecution among others can be found in the explanation of article 30 sentence (1) Letter A of the Law of the Republic of Indonesia No. 16 of 2004 which reads "The pre-prosecution is the act of Attorney to monitor the development of investigations after receiving Notification in the start of an investigation received from investigators as well as providing instructions to be completed by investigators to determine whether or not the file can be delegated to the prosecution stage.

In addition, Harun M. Husein argues that the meaning of the pre-prosecution is the authority of the prosecution to prepare the prosecution that he will do in a case, by studying/researching the investigation of a file that the investigation submitted to him to determine whether the requirements required to make the prosecution have been fulfilled or not by the results of the investigation, if the results of the research turned out that has been fulfilled, it will inform investigators that the results of the investigation are complete. Conversely, if the investigation results have not fulfilled the requirements of the prosecution, then it will return the docket to investigators with instructions to complement it (Harun,1991)

Meanwhile, Osman Simanjuntak provides a definition related to the pre-prosecution, namely as the authority of the Public Prosecutor's instructions to investigators in order to improve the case, and according to Prof. Andi Hamzah, the pre-prosecution is Prosecution for members of the instructions in order to improve the investigation by investigators. With some reference to the pre-prosecution definition, it can be withdrawn that the pre-prosecution is all actions and activities undertaken by the Prosecutor in respect of its authority to improve the file The investigation before the public prosecutor commits the prosecution action (Hartanto,2017)

From the explanation above, in the process of pre-prosecution required prudence and professionalism of the Prosecutor in conducting research on the results of the investigation conducted by investigators both the completeness of the formil and completeness Material because the completeness of the investigation results is very successful prosecution, therefore the public prosecutor must be thoroughly thorough and observant in

studying and researching the docket. If the prosecutor is less careful in studying and researching the docket, then the less than the result of the investigation that escapes the research will be a weakness and is a "defect" that will be carried over the prosecution, so that with itself it is a weakness also in the prosecution of the matter concerned.

If the prosecutor has stated that the results of the investigation are complete, then it turns out that there are still incomplete things, then the deficiency can not be supplemented again because if the prosecutor has declared complete, or in Fourteen day deadline does not return the case file to investigators, then the investigation is considered complete.

**C. The basis of the law of Public Prosecutor General of Aceh Besar in the application of principles of *Dominus Litis* on narcotic criminal acts.**

The public prosecutor in Indonesia in accordance with the criminal KUHP only accepts the file or prosecution. As long as the docket has not been submitted to the public prosecutor, it cannot perform its functions. This is in accordance with Article 109 paragraph (1) of the criminal KUHP, which is stated that the investigator's obligation is (only) to report on what is happening, which will be in the start of the investigation and in the event of termination of investigation.

The Indonesian Criminal program Law describes a system that is Terkotak-kotak, where investigators and prosecutors are described as having different functions and monopolized by individual institutions (*differential functions*) (Pasaribu,2018)

The problem in the field related to the Terkotak-kotak system resulted in the relationship between the public prosecutor and the prosecution which is often colored by the dispute because investigators feel to have a financial equivalent to the public prosecutor. In addition, with the unprepared principles of the *Dominus litis* in KUHAP, the prosecutor's position as a public prosecutor is lacking because it only formally examines the case file, not knowing the process of drafting the file and the procedure of obtaining evidence. There needs to be a revision of the law of criminal proceedings by applying the principle of *dimunus litis* in order to occur synergies, especially between investigators and public prosecutors.

The basic application of the *Dominus Litis* has been reduced in its use and its function by the enforcement of the Criminal event law code through functional differentiation principles resulting in the box subsystem investigation by prosecution. Although KUHAP does not apply the function of the public prosecutor as the maximum *Dominus Litis*, the prosecutor is still given a limited portion to conduct supervision horizontally to the investigation process that aims to prevent abuse By law enforcement authorities potentially violating human rights. The biggest case handling of the Aceh Besar District prosecutors annually is the Narcotics Special Criminal Act, therefore, the narcotic crime is a special concern for general prosecution in the overall law enforcement So that it can provide legal certainty for the Seekers of justice communities and communities as victims of narcotic abuse (Achmad,2019)

In principle, the indictment is the crown of the public prosecutor, who has the notion that the indictment is a strong foundation in the examination of the case in court for the success of the Prosecutor's main task in the field of prosecution. The crown means something that must be high, therefore, it is supposed that the indictment can be held accountable at the court and to be able to compile the indictment which is accountable by the public prosecutor in the trial. Required for the completeness of both formil and material fittings and intensive coordination with investigators.

The file that goes back and forth from the Prosecutor to the investigator is very contrary to the interests of the suspect or contradicts the principle of justice, namely fast, honest, simple, free and light fees, with Lamnaya process alternating files The narcotics caused the absence of legal certainty.

Analysis related to the reality that the events that occurred in the investigation process is not necessarily the same as what happened in front of the trial in the sphere of proof, such as the witness and facts revealed very different from those found in BAP Investigation.

The use of a *Dominus litis* principle on narcotics is a result of the alternating file of cases that are from public prosecutor to investigators, where investigators do not follow the instructions as to the General Prosecutor's direction and advice with various arguments Law, so that the prosecution takes policy to apply the principle of the *Dominus litis*, with the aim of the prosecution in order to create legal certainty for suspects as citizens who are seeking justice.

Alternating the file itself does not reflect the *Integrated Criminal Justice System* or its alignment in the criminal justice system so that the use of the principle of *Dominus litis* is important in order to create certainty and legal benefit for Suspect. (Putra,2020)

The principle of a *Dominus litis* applied after the process of pre-prosecution to facilitate the proof of the court, where the *Dominus litis* principle is widely applied annually is the use of Article 127 Act number 35 year 2009 about narcotics is a consideration of the public Prosecutor on the basis of facts that have occurred as it is strengthened with BAP. The use of the principle of *Dominus litis* caused by investigators who tend to use

Article 112 Act number 35 year 2009 about narcotics on the grounds that at the time of arrest against the defendant/suspect there is found evidence of shabu.

The consideration of Aceh Besar District Prosecutor to apply the principle of the *Dominus litis* is an attempt to support the task of public prosecutor in carrying out the evidence in the trial. Article 127 of law number 35 year 2009 concerning narcotics becomes the application of the most principles of *dominus litis* compared to other things, it is due to the number of narcotics that dominate in the state attorney general of Aceh Besar

#### IV. CONCLUSION

The basis of consideration of the public Prosecutor applying the principle of *Dominus litis* is due to the docket of things that go back and forth from the prosecutor to investigators contrary to the interests of suspects or contrary to the principle of justice fast, Honest, simple, free and light-weight, with Lamnaya process back and forth narcotics docket caused the absence of legal certainty. The principle of a *Dominus litis* is applied after the pre-prosecution process to facilitate the proof of the court session, where the *Dominus principle of litis* applied by the general closing is the use of article 127 of law number 35 year 2009 concerning narcotics, which Consideration of the public Prosecutor on the basis of the fact that has occurred as it is strengthened with BAP.

#### REFERENCES

- [1]. Barda Nawawi Arif, *Kapita Selekta Hukum Pidana tentang Sistem Peradilan Pidana Terpadu (Integrated Criminal Justice System)*, (Semarang: Badan Penerbit UNDIP, 2006)
- [2]. Andi Hamzah, *Hukum Acara Pidana Indonesia, Edisi Kedua*. (Jakarta: Sinar Grafika, 2008)
- [3]. Marwan Effendy, *Kejaksaan RI: Posisi Dan Fungsinya Dari Perspektif Hukum*, (Jakarta: Gramedia Pustaka Utama, 2005)
- [4]. Wawan Muhwan Hariri, *Pengantar Ilmu Hukum*, (Bandung : Pustaka Setia, 2012)
- [5]. Jhon Ilef Malamassam, *Optimalisasi Prapenuntutan Dalam Sistem Peradilan Pidana*, *Universitas Indonesia*, Jakarta, Vol 1, No 2, Juni 2012
- [6]. Aman Sumantri. *Materi Pra Penuntutan Untuk PPPJ Tahun 2013*, (Jakarta Badan Diklat Kejaksaan RI, 2013)
- [7]. Husein, M. Harun, “*Penyidikan dan Penuntutan dalam Proses Pidana*”, (Jakarta:PT. Rineka Cipta, 1991)
- [8]. Cakra Nur Budi Hartanto, *Fungsi Pra Penuntutan Terhadap Keberhasilan Pelaksanaan Penuntutan Perkara Pidana Oleh Penuntut Umum*, *Jurnal Hukum Khaira Ummah* Vol. 12. No. 4 Desember 2017
- [9]. Johannes Pasaribu, *Peranan Jaksa Terkait Asas Dominus Litis Berdasarkan Sistem Peradilan Pidana Di Indonesia*, *Usu Law Journal*, Vol.6. No.2. April 2018
- [10]. Farid Achmad *Urgensi Penguatan Peran Penuntut Umum Dalam Sistem Peradilan Pidana Indonesia*, *Jurnal Pasca Sarjana Hukum UNS* Volume VII Nomor 1 Januari - Juni 2019
- [11]. Agus Kelana Putra, *Kasipidum Kejaksaan Negeri Aceh Besar*, hasil wawancara pada tanggal 9 Januari 2020.

Ardyansyah. “The Application of the Principles of Dominus Litis by the Prosecutor in the Narcotics Criminal Act.” *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 25(3), 2020, pp. 31-35.