

# The Role of the Public Prosecutor as Dominus Litis in Filing a Demand for Acquittal (Comparison of the Old and The New KUHAP Criminal Procedure Code)

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DOI:

<https://doi.org/10.47134/jcl.v3i3.1.5832>

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Received: 23/05/2026

Accepted: 27/06/2026

Published: 27/06/2026



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**Abstract:** *The enactment of Law Number 20 of 2025 concerning the criminal procedure code marks a new milestone in the criminal justice system. It not only strengthens criminal justice as a whole but also has a significant impact on the role of the public prosecutor as dominus litis. The existence of the public prosecutor as dominus litis can be observed in one of their authorities, namely the power to bring cases before the court. Various legal literatures define dominus litis in different ways; however, it can be concluded that scholars generally agree that dominus litis refers to the role of the public prosecutor as the controller of the case. The implementation of the new criminal procedure code reinforces the status of the public prosecutor as the controller of the case, including granting the authority to submit an acquittal demand. This research employs a normative juridical method by linking statutory regulations to analyze legal norms related to the authority of the public prosecutor. In addition, this study utilizes various legal literatures as well as internal prosecutorial regulations to examine the implementation of the dominus litis principle in submitting acquittal charges. The results of the study indicate that the public prosecutor possesses full rights and authority in filing criminal charges, including acquittal charges, derived from the principle of dominus litis. This strengthened role is emphasized in the new criminal procedure code and its implementing regulations, where the public prosecutor functions not only to present indictments but also as the*

*controller of the case who must prioritize objectivity based on facts revealed during trial. As the owner of the case, the public prosecutor bears full responsibility to ensure that the judicial process does not impose punishment on individuals who are not proven guilty. This underscores that the success of prosecution is not measured by the severity of punishment, but by the realization of justice and material truth in line with the spirit of reform in the national criminal procedure law.*

**Keywords:** *Prosecutor, Dominus Litis, Criminal Procedure, Acquittal Charges*

## Introduction

Changes in a judicial system are natural phenomena. As time goes by, societal circumstances inevitably change. This is in line with one of the legal theories proposed by Roscoe Pound. According to Roscoe Pound, the function of law is “a tool of social engineering.” In other words, law serves as a means of shaping and adapting societal life to meet changing social needs (Damodiharjo, D., 2008). With this understanding of legal theory, it becomes clear that the dynamics of law are closely tied to the developments within

society. Social needs are one of the factors that drive legal change, especially when it comes to the criminal justice system.

Roscoe Pound was one of the legal scholars who supported the concept of Social Jurisprudence. According to the principles of philosophy, Social Jurisprudence holds that law serves as a tool for guiding society toward desired goals (Damodiharjo, D., 2008). Soerjono Soekanto, an Indonesian legal scholar, expressed similar views in his book “Pokok-Pokok Sosiologi Hukum”. According to Soerjono Soekanto, law as a tool of social engineering can be seen as a means of influencing societal behavior in order to align it with predetermined goals (Soekanto, 2009). In this view, law isn't merely a passive regulatory tool; it also plays an active role in shaping social behavior and guiding society toward desired outcomes. Therefore, law must be able to adapt to societal developments. Thus, changes in the legal system, including the criminal justice system, are necessary in order to meet the ever-changing social needs.

Looking at the legal practices in Indonesia, it can be seen that several laws and regulations have been updated. This reflects the developments in society, in line with the opinions of experts mentioned above. In the near future, Indonesia's criminal law will have new legal provisions that will come into effect in 2026. On January 2, 2023, Law No. 1 of 2023 regarding the Criminal Code (hereinafter referred to as 2023 Criminal Code) was enacted. This represents an important update to Indonesia's criminal law.

The introduction of the new Criminal Code represents a significant milestone in the field of criminal law. As explained in the General Provisions of the 2023 Criminal Code, the purpose of this law is to support national development (Mulyana, 2023). The explanatory notes state that there are several objectives behind the creation of the 2023 Criminal Code. One of these objectives is decolonization. This is in line with the provisions of the 2023 Criminal Code, which state that these changes are part of efforts to adapt to societal dynamics. In addition, these changes reflect a spirit of decolonization. This spirit represents an effort to get rid of the remnants of the past colonial era.

Referring to the history of criminal law in Indonesia, the *Wetboek van Strafrecht (WvS)* was a legal framework inherited from the Dutch colonial government (Andi Hamzah, 2018). This law was applied in the Dutch East Indies during the colonial period. This shows that Indonesia's criminal law system was initially greatly influenced by Dutch law, through the principle of concordance. The principle of concordance states that the laws of the colonial power should also apply in the colonies, with the aim of unifying the legal systems between the colonial power and its territories (Kansil, 1989). Thus, the existence of the *WvS* in Indonesia represents a concrete application of this principle. This had a significant impact on the development of Indonesian criminal law even after independence. This can be seen as an example of legal reform aimed at adapting to societal changes.

This reform of criminal law also involves discussions regarding procedural law. As part of substantive law, any changes to the Criminal Code are related to its procedural aspects, that is, criminal procedure law. The decolonization process can be seen in the enactment of Law No. 8 of 1981 regarding the Criminal Procedure Code (hereinafter referred to as 1981 Criminal Procedure Code). Prior to this, Indonesia's criminal procedure law was based on the *Herziene Inlandsch Reglement* (hereinafter referred to as “HIR”). The

enactment of 1981 Criminal Procedure Code marked a renewal of criminal procedure law, thereby eliminating the colonial elements inherent in the HIR.

Nevertheless, the relevance of the 1981 Code of Criminal Procedure needs to be further examined today. The effectiveness of its implementation must be reassessed, considering the dynamics of society and technological advancements, which represent significant social challenges. For over 40 years, the 1981 Code of Criminal Procedure has served as the framework for criminal proceedings. This code forms the basis for the legal reforms enacted in 2025. The reforms are outlined in Law No. 20 of 2025 regarding the Code of Criminal Procedure (hereinafter referred to as 2025 1981 Criminal Procedure Code). 2025 Criminal Procedure Code represents an effort to adapt to societal developments. It aims to achieve this by regulating the functions, duties, and powers of law enforcement officials (Republic of Indonesia, 2025).

Law enforcement officers each have their own roles and responsibilities, especially within the criminal justice system. However, among these roles, there's one that's particularly important: the role of acting as a bridge between the criminal justice process and the actual trial. This role is played by prosecutors. This role is described by a Latin term that's well known in the criminal justice system: "dominus litis". This term reflects the central position that prosecutors hold within the Indonesian criminal justice system (Jatna, 2022).

The concept of "dominus litis" places the prosecutor, as the public prosecutor, in a key position in determining the course of a legal case. The prosecutor decides whether a case is worthy of proceeding to trial or not. Understanding this concept becomes even more important in the context of criminal procedure reforms, especially regarding the prosecutor's authority to determine the direction of the prosecution. One of the prosecutor's powers as "dominus litis" that will be discussed in this study is their role in filing charges.

Criminal procedure law grants the prosecutor the authority to file charges against defendants. There are several types of charges that can be filed by the prosecutor. Not all of these charges result in a criminal conviction. This aspect can be seen in cases where the defendant is acquitted. This authority is part of the prosecutor's discretion in carrying out their role as the "dominus litis". However, there are differences between the old and new versions of the criminal procedure code regarding this authority. Therefore, it's necessary to conduct a comparative analysis to understand these differences and their implications for the practice of criminal law enforcement in Indonesia. This research is expected to provide a deeper understanding of the changes in the prosecutor's authority and their impact on Indonesia's criminal justice system.

### **Research Problems**

1. How is the principle of "dominus litis" applied in the 2025 Criminal Procedure Code?
2. What are the differences in the powers of prosecutors to grant bail, as stipulated in the 1981 Criminal Procedure Code and the 2025 Criminal Procedure Code?

### **Methodology**

This research employs a normative legal methodology. It is based on various laws and regulations. In addition, the research draws upon several books and expert opinions to

support its findings. After gathering these sources, an analysis of the data and information used in the research is conducted. The normative legal method is used to examine the legal norms that govern the role of prosecutors as the initiators of criminal proceedings. This is done by comparing the provisions of Law No. 8 of 1981 on Criminal Procedure with those of Law No. 20 of 2025 on Criminal Procedure. The research adopts both a legal and a comparative approach, with the aim of analyzing the differences in regulations and the legal implications of changes in prosecutors' authority proceedings.

## Result and Discussion

In the legal context, the concept of "dominus litis" refers to the party that has full control over the conduct of a legal proceeding. Dominus litis defined as "*procureur die de procesvoering vaststelt*". This concept can be understood as the person who determines the procedural aspects of the case. In other words, it relates to the authority of an individual to assess whether a defendant is eligible to stand trial and to decide whether the case should proceed to court or not (Effendy, 2010). Essentially, the principle of dominus litis emphasizes the role of the person who acts as the "ruler of the case" and makes decisions regarding which legal entities will be brought before the court.

The role that is consistent with the concept of "dominus litis" is clearly reflected in the functions and duties of prosecutors as public prosecutors. In the criminal justice system, one of the central roles of public prosecutors is to refer cases to the courts, as stipulated in Article 14 of the 1981 Criminal Procedure Code. However, the authority of public prosecutors isn't limited to merely referring cases to the courts. With the development and modernization of criminal procedure law, the scope of public prosecutors' authority has been expanded to ensure more effective law enforcement. This expansion of authority will be discussed in more detail below.

Efforts to modernize criminal procedure law are evident in the enactment of the 2025 Criminal Procedure Code on December 17, 2025. However, the 2025 Criminal Procedure Code will come into effect on January 2, 2026. With these reforms, law enforcement officials must be able to adapt their roles and functions within the new criminal justice system. In particular, prosecutors, as the key players in criminal proceedings, must be able to understand their role within this new system. Therefore, it's necessary to compare the existing criminal procedure law with the new one, to determine whether these reforms effectively reinforce the prosecutor's role as the dominant figure in criminal proceedings.

### **The Application of the Dominus Litis Principle in the 2025 Criminal Procedure Code**

Any discussion regarding the role and functions of law enforcement officers under the 2025 Criminal Procedure Code must begin with an examination of the provisions in the 1981 Criminal Procedure Code. As the earlier set of regulations governing criminal procedure, the 1981 Criminal Procedure Code has its own distinctive features, which are among the reasons why legal reforms are necessary. One of these distinctive features is the functional differentiation among various law enforcement officers.

The 1981 Criminal Procedure Code separates the duties and powers of the police and prosecutors. This is known as functional differentiation. As a legal reform over the previous

laws, 1981 Criminal Procedure Code ensures independence between the police and prosecutors in terms of their powers (Pangaribuan, A. M. A., Mufti, A., & Zikry, 2018). It can be said that the enactment of 1981 Criminal Procedure Code was an effort to bring about legal reforms that met the needs of society at that time. However, the effectiveness of 1981 Criminal Procedure Code needs to be re evaluated in light of societal developments, technological advancements, and changes in societal attitudes today. After all, 1981 Criminal Procedure Code has been used as a legal framework for criminal proceedings for over 40 years.

With the dynamics of the times, and in line with Roscoe Pound's view of law as a tool for social engineering, it can be understood that the introduction of the 2025 Criminal Procedure Code represents an effort to modernize the law in a way that adapts to societal developments. However, the urgency of these reforms raises important questions regarding the direction of legal transformation. Does this new legislation truly reflect the ideal goals of the legal system, or could it potentially undermine the powers of prosecutors as the key players in criminal proceedings? This raises fundamental questions about how the implementation of the 2025 Criminal Procedure Code will affect the effectiveness of prosecutors as the sole controllers of criminal cases within the judicial system.

Before delving further into the application of the principle of "dominus litis" in the 2025 Criminal Procedure Code, it is necessary to briefly understand the roles of prosecutors and public prosecutors. Both the 1981 Criminal Procedure Code and the 2025 Criminal Procedure Code define who prosecutors and public prosecutors are. According to Article 1, Paragraph 6, Subparagraphs a and b of the 1981 Criminal Procedure Code, prosecutors and public prosecutors are defined as follows:

*„Prosecutors are officials who, under the authority of this law, are empowered to act as public prosecutors and to enforce court judgments that have become legally binding.“*

*„The public prosecutors are officials who, under the authority of this law, are responsible for initiating prosecutions and enforcing the judgments of judges.“*

Meanwhile, Article 1, paragraphs 9 and 10 of the 2025 Criminal Procedure Code define prosecutors and public prosecutors as follows:

*„Prosecutors are civil servants with specialized roles. They carry out their duties, functions, and powers in accordance with the law.“*

*„The public prosecutor is a lawyer who has been given the authority to initiate prosecutions and to enforce the judgments rendered by judges.“*

To help clarify the differences between prosecutors and public prosecutors, Andi Hamzah explained these differences in simple terms. According to Andi Hamzah, a prosecutor is essentially a title of a specific position, while a public prosecutor refers to the function that is carried out by someone holding that position (Andi Hamzah, 2018). Therefore, in this context, the term "public prosecutor" specifically refers to the role of prosecutors in initiating legal proceedings and enforcing the judgments of judges.

Regarding Andi Hamzah's opinion, it should be noted that it is based on the provisions of the 1981 Criminal Procedure Code. Based on the definitions of prosecutors and public prosecutors as outlined in that law, it can be understood that Andi Hamzah's opinion

remains relevant in light of the definitions provided by the 2025 Criminal Procedure Code. Therefore, it can be concluded that, according to the 2025 Criminal Procedure Code, the role of the public prosecutor is essentially a continuation of the prosecutor’s functions, namely to initiate prosecutions and carry out the judgments rendered by the courts.

So, what is the nature of prosecution itself? According to Article 1, Paragraph 11 of the 2025 Criminal Procedure Code, prosecution is defined as the action taken by the public prosecutor to bring a criminal case before the competent district court, so that it can be examined and decided upon by a judge through the trial process. As stated in the academic draft of the Law of the Republic of Indonesia No. 11 of 2021, amending Law No. 16 of 2004 regarding the Public Prosecution Service, this power of prosecution is exclusive, as it is vested solely in the Public Prosecution Service (Republic of Indonesia, 2021).

The public prosecutor is the only person who has the authority to decide whether a case should be brought before the court or not. However, Andi Hamzah raised a critical point: according to the 1981 Criminal Procedure Code, Indonesia is one of the few countries that operates under a closed-system approach in the investigation process (Andi Hamzah, 2018). This view is based on Article 14 of the 1981 Criminal Procedure Code, which states that prosecutors do not have the authority to conduct investigations into criminal offenses.

According to Andi Hamzah, the delineation of powers in Article 14 of the 1981 Criminal Procedure Code reflects a clear separation between the functions of investigation and prosecution (Andi Hamzah, 2018). This closed-system approach effectively prevents prosecutors from directly examining suspects during the pre prosecution phase. Furthermore, the strict separation between investigation and prosecution in the 1981 Criminal Procedure Code leads to a rigid division of responsibilities. In practice, this often creates coordination problems in the process of gathering evidence for the case. This is related to the prosecutor’s role in overseeing the police’s investigation during the pre-prosecution phase.

In order to address the various problems that arise in practice, and to adapt to the dynamic legal needs of society, it is necessary to have a thorough understanding of how existing regulations are being transformed. As a means of analyzing these changes, the following table provides a comparison of the scope of authority of prosecutors under the 1981 and 2025 Criminal Procedures Codes. This comparison aims to determine the extent to which the role of prosecutors has changed, particularly in their capacity as the holders of the principle of “dominus litis” in Indonesia.

Table 1. Comparison of the Powers of Public Prosecutors under the 1981 and 2025 Criminal Procedures Codes.

No	Article 65 of the 2025 Criminal Procedure Code	Article 14 of the 1981 Code of Criminal Procedure	Explanation of the Differences
1	Receiving reviewing investigation and files from investigators	Receiving and reviewing case files from investigators	Same
2	Coordinating investigators complete	Conducting preliminary investigations and	The substance is similar. The term “coordination”

	with to the investigation results	providing guidance for improving the investigation process	is given more emphasis in the 2025 Criminal Procedure Code.
3	Granting extensions to the detention period and changing the status of detainees	Granting extensions to the detention period and changing the status of detainees	Same
4	Preparing a complaint letter/Documenting the allegations	Preparing a complaint letter/Documenting the allegations	Same
5	To bring matters before the court and file lawsuits	Bring the matter before the court	Almost the same. 2025 Criminal Procedure Code also emphasizes the role of prosecutors this process
6	To discontinue the prosecution proceedings	Closing matters for legal purposes	Similar, but 2025 Criminal Procedure Code is more explicit
7	Announcing the time and place of the meeting	To notify the date and time of the hearing	Same
8	Implementing rulings the and decisions of judges	Carrying out the appointment of judges	Similarly, 2025 Criminal Procedure Code includes also the judges' rulings.
9	Settle the fine through amicable settlement	Not regulated	New authorities under the 2025 Criminal Procedure Code
10	Resolving disputes through restorative justice	Not explicitly regulated	New authorities under the 2025 Criminal Procedure Code
11	Entering into an agreement to defer prosecution	Not regulated	New authorities under the 2025 Criminal Procedure Code, Deferred Prosecution Agreement
12	Accepting a guilty plea	Not regulated	New authorities under the 2025 Criminal Procedure Code, Plea Bargaining
13	Closing matters for legal purposes	Closing matters for legal purposes	Same

14	-	Taking other actions within the scope of the prosecutor's duties	It only exists in the 1981 Criminal Procedure Code
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Based on the table above, it can be seen that there are several new powers granted to prosecutors under the 2025 Criminal Procedure Code. Some of these new powers include:

- restorative justice
- amicable settlement fine
- deferred prosecution agreement
- plea bargaining

The strengthening of these authorities is one of the main provisions of the 2025 Criminal Procedure Code. In other words, it involves improving the powers of law enforcement agencies. The aim of these changes is to ensure better coordination among various law enforcement agencies, thereby creating a more integrated and adaptable judicial system that can respond to societal dynamics (Republic of Indonesia, 2025). The 2025 Criminal Procedure Code significantly strengthens the role of prosecutors as the key players in legal proceedings. This enables more effective control over cases within a unified framework of prosecution authority. These changes reflect the legal principle that laws must be able to adapt and evolve alongside the changing needs and dynamics of society.

Not only that, but laws also need to adapt to the technological advancements of the digital age. In addition to this, efforts must be made to adjust laws to suit the needs of society. As a result, the criminal justice system must become more adaptable to the integration of information technology. This transformation is explicitly addressed in Article 360 of the 2025 Criminal Procedure Code, which legalizes the use of technology in law enforcement procedures. This provision serves not only as a tool to improve the efficiency of judicial procedures but also as a legal solution to the challenges related to evidence collection and case management in the digital age, where transparency and accountability are of utmost importance.

Article 360 of the 2025 Criminal Procedure Code provides a legal basis for prosecutors to integrate information technology into the execution of their duties, from the administrative aspects of case handling to the evidence collection process. This provision enables prosecutors to transfer case files more efficiently, coordinate with investigators, and make better use of electronic evidence (Republic of Indonesia, 2025). With the implementation of this article, prosecutors' role as case managers is strengthened through digital systems, ensuring that cases are handled more quickly and transparently.

The reforms in the 2025 Criminal Procedure Code strengthen the position of prosecutors as the key players in legal proceedings, while emphasizing professionalism and accountability. At the same time, the reforms introduce more transparent procedures for trials, thereby enhancing public trust in the legal system. In line with Herbert Packer's theory, the success of a criminal procedure system lies in achieving a balance between the efficiency of law enforcement and the protection of the constitutional rights of defendants (Mayasari, M., & Fernanda, 2026). This ensures that legal modernization doesn't merely

focus on procedural speed, but also respects the dignity and human rights of individuals at every stage of the judicial process.

### **Differences in the Powers of Prosecutors to Grant Bail under the 1981 and 2025 Criminal Procedures Codes**

In essence, Indonesia's criminal procedure laws, from the period before independence to the present day, do not explicitly provide for the possibility of granting a acquittal to a defendant. In reality, the public prosecutor is not allowed to request an acquittal for the defendant. This is evident in the regular procedures outlined in the criminal procedure law. Under Article 182(1) of the 1981 Criminal Procedure Code, the public prosecutor must file criminal charges after all the procedures in court have been completed. A similar provision can be found in Article 231 of the 2025 Criminal Procedure Code. This provision essentially relates to the role of the public prosecutor in proving the defendant's guilt before the judge with respect to the charged criminal offense (Suharto RM, 2004).

According to Sudikno Mertokusumo, law enforcement must be implemented appropriately to avoid causing public unrest (Mertokusumo, 2013). It is precisely here that the importance of the prosecutor's role in the criminal justice process as the "dominus litis" becomes evident. It's not uncommon for there to be discrepancies between the facts established during the investigation and those presented during the trial. If there are circumstances that render it impossible to determine the defendant's guilt in a particular criminal offense, should the prosecutor still proceed with prosecuting the defendant?

The role of the public prosecutor as the controller of legal proceedings is not limited to their authority to refer cases to court. The public prosecutor also has the power to file charges against the defendant during the trial. There are several types of charges that can be filed by the public prosecutor, based on the findings of the trial. The Indonesian Public Prosecution Service has established guidelines for prosecutors in carrying out their duties as public prosecutors.

In essence, neither the 1981 Criminal Procedure Code nor the 2025 Criminal Procedure Code specifically stipulate the types of charges that prosecutors may file. However, the Indonesian Prosecution Service has internal regulations that govern how prosecutors carry out their duties within the criminal justice system. To date, the Indonesian Prosecution Service continues to refer to the Guidelines of the Attorney General No. 24 of 2021 regarding the handling of criminal cases (hereinafter referred to as "AG Guidelines 24/2021"). These guidelines outline how prosecutors should handle criminal cases. According to these guidelines, there are at least three types of charges that prosecutors may file in relation to a criminal offense:

1. Criminal charges/Prosecutions
2. Acquittal charges
3. Release from all charges

Each of these three types of prosecutions has its own set of criteria and requirements that must be met by the public prosecutor when filing a complaint. This is where the role of the public prosecutor as the "dominus litis" becomes crucial. Referring again to Article 231

of the 2025 Criminal Procedure Code, the public prosecutor files criminal charges after the trial is completed. However, if the facts uncovered during the trial do not sufficient to prove the defendant's guilt as alleged, the public prosecutor may decide to drop the charges (Republic of Indonesia, 2021).

AG Guidelines 24/2021 stipulates that prosecutors may request a dismissal of charges if the following criteria are met:

1. the defendant's guilt cannot be proven lawfully and convincingly;
2. the charged criminal offense cannot be proven lawfully and convincingly due to the failure to establish the elements of the offense; and/or
3. the requirement of two (2) lawful items of evidence is not satisfied because the evidence presented before the court lacks probative value or was obtained unlawfully.

The criteria for filing a request for acquittal, whether under the 1981 Criminal Procedure Code or the 2025 Criminal Procedure Code, are based on the principle of objectivity on the part of the public prosecutor, who is in charge of handling the case. According to the internal guidelines of the prosecution service, a public prosecutor may file a request for acquittal if the facts presented during the trial show that the defendant's guilt cannot be proven legally and convincingly, or if certain elements of the crime alleged in the indictment are not met. Additionally, a request for acquittal is legally required if the minimum requirement of two legitimate pieces of evidence is not met, either because the evidence lacks probative value or because it was obtained illegally. These provisions emphasize that the role of the public prosecutor is not merely to bring someone to court, but also to ensure that justice is served and to prevent any acts of arbitrariness in the courtroom.

## Conclusion

The existence of the Public Prosecutor as *dominus litis* under the 2025 Criminal Procedure Code has been significantly strengthened through the introduction of new authorities as well as the refinement of provisions derived from the 1981 Criminal Procedure Code in response to the evolving legal needs of society. This transformation is consistent with the theory of law as a tool of social engineering, whereby criminal procedural law functions as an instrument to direct social change toward a more modern and adaptive system of law enforcement. Although, normatively, both the 1981 Criminal Procedure Code and the 2025 Criminal Procedure Code do not regulate in detail the technical mechanism for submitting acquittal charges, in practice Public Prosecutors continue to refer to Guidelines of the Attorney General No. 24 of 2021 as the applicable operational standard. The guideline establishes strict requirements that must be fulfilled in submitting acquittal charges in order to ensure objectivity, accountability, and legal certainty in every judicial outcome, thereby preserving the integrity of the public prosecutor as the controller of the case in the interest of justice.

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