

Application of the Dominus litis Principle in Enforcement of Administrative Law as a Military Prosecutor in order to Achieve Legal Certainty in Settlement of Cases in the Military Judiciary Environment

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ABSTRACT

Military prosecutors are functional officials within the Indonesian National Armed Forces who are given authority in the process of prosecution and investigation on behalf of the public, government and the state in an effort to achieve legal certainty. However, it is not uncommon to find military prosecutors who face legal problems with Case Submitting Officers (Patera). The purpose of this study is to analyze the existence of military prosecutors in the military justice system in Indonesia, and to identify the capacity of the dominus litis principle in realizing the independence and professionalism of military prosecutors. The method used in this study is a normative method through literature analysis on secondary data in the form of legal materials. The approach used is a historical, statutory, and conceptual approach, which is outlined through descriptive analysis. The results of this study indicate that; (1) efforts are needed to strengthen the existence of the prosecutor as the owner of the dominus litis principle in carrying out prosecutions within the military court environment; and (2) the principle of dominus litis strengthens the professionalism and independence of military prosecutors in the prosecution process, so as to produce optimal legal certainty.

Keywords—dominus litis, professional, independent, public prosecutor, military

INTRODUCTION

Based on the Ruling of the Constitutional Court of the Republic of Indonesia, in principle in the life of a democratic country, the main duties and functions of the military are actually preparing for war. The military is recruited, educated, trained, and armed with its main function, which is to deal with possible military threats from other countries [1]–[3]. In modern political and security dynamics, conflicts that occur within the state dominate more frequently than conflicts that are external or conflicts between countries. Therefore, guaranteeing political justice, economic justice, and legal justice is of course also a more important homework to be realized in minimizing the occurrence of conflicts within the country[4], [5].

Indonesia is a legal state which is also equipped with military power. Military power in Indonesia is mandated by the National Armed Forces, whose job is to uphold the sovereignty and integrity of the country. Not only that, the National Armed Forces also play a role as an instrument of state power by participating in a number of war and non-war military operations, as well as maintaining regional and international peace [6], [7]. To be able to carry out its role, the National Armed Forces are expected to be able to maintain professionalism which is illustrated by a law-abiding culture, with indicators of the level of frequency of violations of the law, in the implementation of duties and responsibilities [8], [9]. One of the alternative efforts is to maintain and improve the morale of soldiers, through building awareness and law enforcement within the military.

Law enforcement against members of the National Armed Forces who commit criminal acts is an implication of the existence of a legal state based on Pancasila and the 1945 Constitution. The aim is to

create a prosperous, safe, peaceful and orderly national life system[10]–[12]. To optimize efforts to uphold justice so as to produce strong legal certainty, the Indonesian government issued Law Number 31 of 1997 concerning Military Courts Law. The Law on Military Justice is one of the essential legal guidelines in military life in Indonesia, because its contents reflect the social order of military life in daily life in order to create order within the military environment. This is important because law must not only be centered on scientific aspects or judge's decisions, but must be reflected in people's daily lives [13], [14]. However, law and order within the military sphere cannot be achieved by sheer determination, but also needs to be followed by various concrete steps and the seriousness of the National Armed Forces and its law enforcement agencies in implementing and enforcing the law. Minimization of interference in the judicial process, overlapping, and legal confusion must be avoided in order to create the rule of law [15], [16].

In Law Number 34 of 2004 and the Law on Military Justice, it is emphasized that the military police (investigators), military prosecutors, and military judges are institutions that have the right to enforce the law against members of the National Armed Forces who commit crimes. As for Article 1 paragraph (2) of the Law on Military Justice, it is stated that military prosecutors consist of military judges, senior military judges, general judges of the armed forces of the Republic of Indonesia, and combat military judges. The authority of the auditor as described in Article 123 paragraph (1) letter f, among others, is in the realm of prosecution and investigation in accordance with the delegation from the Commander of the National Armed Forces. Therefore, the auditor plays a vital role in the law enforcement process within the National Armed Forces.

The handling of alleged criminal acts within the military environment begins with the investigation and investigation stage by the unit commander who acts as a superior who has the right to punish (Ankum), with the aim of assessing any alleged violations of law (disciplinary violations or criminal acts) committed by members of his unit. Military violations will be processed through military discipline law, while criminal violations will be followed up by a military criminal investigation process[17], [18]. The military criminal investigation process is carried out by military police investigators or military prosecutors[19], [20]. As an institution within the National Armed Forces, the prosecutor acts for and on behalf of the community, government and state and is responsible according to a hierarchical channel and is required to give birth to legal certainty. However, in reality, in the implementation of prosecution authority carried out by the auditor, problems are often found in case settlement due to overlapping authority with other law enforcement agencies, namely Papera. It turns out that Papera's involvement in the process of settling cases within the National Armed Forces institution has a legal basis, namely Article 35 of the Law of the Republic of Indonesia Number 29 of 1954 which was amended by Article 43 paragraph (2) of the Law of the Republic of Indonesia Number 20 of 1982 [21]. Because of this, problems arise regarding the existence of the prosecutor in carrying out the functions of prosecution and investigation in the settlement of criminal offenses within the military environment, and the capacity of the principle of dominus litis in strengthening the independence and professionalism of the prosecutor in carrying out his function as an instrument of military justice.

RESEARCH METHOD

This research is a normative legal research. In this study, several approaches were used, namely the statutory approach (statute approach) was carried out to review and analyze the laws and regulations in the Criminal Justice System in Indonesia that govern the Prosecutor's Office and the judicial process, the historical approach was carried out to find out the history of the Administrative Officer and act as a public prosecutor in Indonesia in the military justice environment and a conceptual approach is carried out to study concepts related to the principle of dominus litis[22], [23].The legal materials used are primary legal materials, secondary legal materials, and tertiary legal materials [24].The technique of collecting legal materials is

carried out by means of literature study on legal materials, both primary legal materials, secondary legal materials as well as tertiary legal materials and/or non-legal materials[24]. In conducting the analysis of legal material, steps are taken to interpret and construct the legal material. The interpretation used in this study is an interpretation based on the words of the law (plain meaning), historical interpretation in the statutory and historical approaches.

RESULTS AND DISCUSSION

The existence or existence of the Administrative Officer within the National Armed Forces as an institution that has duties and authorities in the field of prosecution is inseparable from the history of the Dutch colonial period in Indonesia, because the existence of the auditor as a prosecution institution at that time and the authority of the judge as a case breaker, so that its existence also cannot be separated from the history of the existence of courts within the military court environment during the Dutch colonial period.

Based on the Law of the Republic of Indonesia Number 5 of 1950 concerning the Composition and Powers of the Court/Prosecutor in the Military Judicial Environment as a Federal Law, it is stipulated that the Attorney General of the Republic of Indonesia also doubles as the Attorney General of the Army (or is currently concurrently serving as General Prosecutor of Indonesian National Armed Forces), and subsequently the enactment of the Emergency Law of the Republic of Indonesia Number 1 of 1958 Concerning Criminal Procedure Code at the Military Court which amended Law Number 6 of 1950, which has regulated the transfer of authority to the prosecutor, which was originally in the hands of the commander. The transfer of authority, namely the prosecutor as investigator (or interrogator), carrying out temporary detention, the prosecution process and handing over the case until the case is prosecuted in court, but the granting of the Military Prosecutor's authority as mentioned above, with the issuance of Law Number 1 of 1958, the authority of the prosecutor like that it becomes reduced, what was previously active becomes passive[25].

Because the legal system by granting authority to military prosecutors like that, it was felt that it would lead to dissatisfaction with the commanders (Ankum and Papera) which could easily lead to clashes between the Prosecutor's Office and the leadership of the forces/units, especially at that time there were still many Military Prosecutors held by Prosecutor from civil society with concurrent positions. In addition, the granting of such authority to Military Prosecutors actually reduces the position of commanders who must be fully responsible for the state of security and order within the Forces/units and must know at any time the position/condition of their subordinates as members of the military. In addition, because the political situation at that time was seen to be more stable, and military life was getting more stable, it occurred to him to replace the Military Judges and Military prosecutors who were still concurrently Judges and Military prosecutors of the District (General) Courts, with active military personnel who were experts in law.

In order to get legal experts in the military, in 1952 the Military Law Academy and Military Law College were established. After obtaining active staff with legal expertise, starting in 1961 a replacement (transfer or transfer) of Judges, Military Prosecutors from the District Court was held with active experts from the military. The replacement of personnel has been made available and this is based on the Instruction of the Minister of the Attorney General No. 157/MDJAG/1961/SI dated 11 April 1961 which instructed all Military Prosecutors at the District Courts to hand over their dual duties to Military Prosecutors who came from the military. This aims to perfect the principle of unity of command in line with the will of the Law of the Republic of Indonesia Number 29 of 1954 concerning the Defense of the Republic of Indonesia, and on September 19, 1961 the Joint Decree of Army Chief of Staff and the Minister of Attorney General Number MK No. /KPTS-189/9/1961 where the Minister of Attorney General "transferred" (replaced) his authority, powers and responsibilities related to the Military Prosecutor's Office. As a follow-up on the transfer of authority, then in 1969, the Attorney General of the Republic of Indonesia concurrently served as Attorney

General for the Army and after the integration of the positions of Auditor General-Oditur General in each force starting from the Army, Navy, Air Force, and Police, becomes a single institution namely National Armed Forces as the highest prosecutor within the institutions.

His duties were to carry out technical legal supervision, use of authority to hand over cases, as well as investigations, as well as all activities of prosecuting cases within the National Armed Forces. In his remarks, the Attorney General who is also the Military Attorney General mentioned that what is transferred is the authority and responsibility of the Minister of the Attorney General as the head of the Prosecutor's Department, especially those related to the Attorney General's Office, to delegate authority, not hand over positions, so that the functions of the Attorney General of the Army remain attached to the Attorney General of the Republic of Indonesia. The delegation of authority in daily implementation is carried out by General Prosecutor of National Armed Forces, the aim of which is to achieve law enforcement and justice, as well as uniformity in the application of law in resolving cases within the National Armed Forces, as well as achieving legal certainty. With the transfer of authority as the Military Attorney General, in fact since then, actually the Military Court and the Military Prosecutor's Office have been realized in both formal and material terms. The delegation of authority from the Minister of Attorney General who is also the Attorney General of the Armed Forces to the Minister of Defense and Armed Forces has been carried out by National Armed Forces until now.

Based on this description, it is illustrated that law enforcement policies place dominus litis authority that has been owned by Military Prosecutors within the National Armed Forces environment in the settlement of a crime. dominus litis is a principle that provides an illustration of the possession of a limited prosecution authority which is regulated and held by the prosecutor (prosecutor) in a monopoly manner, or as the owner of absolute/absolute rights, meaning that no other body has the right to prosecute [26]–[28]. Apart from that, with the existence of transitional regulations in the 1945 Constitution which states that all laws and regulations that existed before our independence remain valid as long as they do not conflict with the 1945 Constitution, then all regulations governing the position of the Court/Court in court – courts in the Military environment in Indonesia still use the old rules.

With the dynamics of laws and regulations governing military prosecutors as institutions authorized to prosecute, the Law of the Republic of Indonesia Number 31 of 1997 concerning Military Courts was issued which regulated several matters concerning Courts within the military court environment along with the organizational structure and functions of military courts, military prosecutors in military court environment along with the organizational structure and functions of the prosecutor in the military court environment, military court procedural law and connectivity procedures, as well as military administrative law. In this law, it is stated that military prosecutors in the military court environment consist of Military Judges, High Military Officers, General Auditors for the Armed Forces of the Republic of Indonesia, and Combat Military Officers. Its function is to carry out the process of prosecution and investigation based on delegation from the Commander of the Armed Forces of the Republic of Indonesia. In Article 5 paragraph (1) of the Law on Military Justice, it is stated that the Military Court is the executor of judicial power within the Armed Forces which is formed to uphold law and justice by taking into account the interests of the implementation of state defense and security, and the auditor is the executing body of state government power in the field of prosecution. and investigations within the armed forces based on delegation from the Commander in Chief with due observance of the interests of the implementation of state defense and security.

The Law on Military Justice has regulated that the prosecutor has been placed in a position as a “prosecutor” institution which has the authority to prosecute every case that has been submitted to a court within the military court or general court, according to the principle of “dominus litis,” no other institution or personnel has the right to prosecute, apart from the Public Prosecutor, which is absolute and monopoly. This

means that the Public Prosecutor is the only institution that owns and monopolizes the prosecution in the settlement of criminal cases. It means that, as a controller and supervisor of the settlement of cases, namely the legal direction of an investigative process as well as whether or not a criminal case resulting from an investigation can be prosecuted is the absolute authority of the Public Prosecutor. The application of the function of the auditor which is based on the principle of dominus litis is as the recipient of the dossier of the results of the investigation, the maker of the minutes of opinion, and the maker of the indictment, along with the completeness of the letters and evidence relating to the case in question, to be subsequently delegated/submitted to the court to be prosecuted and examined in a court of competent jurisdiction.

In the Law on Military Justice, there are several policies that have formulated the use of prosecution authority, which can reinforce the existence of the duties and powers of military prosecutors, especially in the position of public prosecutor. With the Law on Military Justice providing authority in the field of prosecution in a limited way, it is undeniable that the prosecutor as the monopoly holder in enforcing the law of public prosecutors in the military court environment means that no other body (for example by Papera as it is now) has the right to participate in the process of settling cases in prosecution level. This is what is meant by the application of the dominus litis principle by the prosecutor in settling cases in the military court environment. The principle of dominus litis has emphasized that no other body has the right to make a determination, apart from the Public Prosecutor who is absolute and monopoly, because the Prosecutor as the Public Prosecutor is the only institution that owns and monopolizes the prosecution in settling cases in the military court environment, including in this case, even a judge cannot request that a criminal case that has occurred be submitted to him, the judge in resolving cases is only passive and waits for the charges filed by the prosecutor as a public prosecutor..

With the application of the principle of dominus litis within the military justice environment in the process of settling cases carried out by the Judicial Institution, it can realize the independence and professionalism of the prosecutor and prosecutor as an institution and executor of public prosecutors within the military justice environment. However, because it has been regulated by the Law on Military Justice, it is undeniable that unit commanders (Ankum) to the commander's superiors who are commonly called Papera, are involved in settling cases within the military court environment, because military unit commanders have many roles/tasks, including the development of units, development of personnel who are prepared for Military Operations for War (OMP) and Military Operations Other Than War (OMSP). For this reason, the involvement of Papera authorities in particular (including Ankum), which can be categorized as law enforcers in settling cases in the military court environment must be limited. To support this, it is necessary to reform or reorganize institutions and at the same time the authority of Papera becomes a matter of reforming legal development in the military justice environment.

CONCLUSION

The existence of the dominus litis principle in the prosecution by the prosecutor of the current criminal acts is clear and limited. The principle of dominus litis in procedural practice can realize the professionalism and independence of the prosecutor as a public prosecutor in order to create legal certainty. The application of the principle of dominus litis can be a driving force for the spirit of legal reform in the context of law enforcement in order to create legal certainty, regarding the existence of prosecution authority in the process of settling cases by military prosecutors. By basing the principle of dominus litis in the process of prosecution to resolve cases committed by the prosecutor, it is appropriate that there should be a reformulation or rearrangement of the position and institutional authority of Papera in settling cases within the Military Court environment. Therefore, Papera's position should be placed in the investigation room, not in the prosecution room in the case submission process. This placement aims to avoid disharmony with the prosecutor as the sole owner of prosecution authority as a manifestation of the principle of dominus litis. To support this goal, efforts are needed to reform the Law on Military Justice, especially in relation to the

placement of the prosecutor's authority which must be adjusted to the rules that apply in general as the authority of the general prosecutor, and then the placement of Papera's authority to submit cases through Ankum in the investigation process in resolving cases in the environment military court.

REFERENCES

1. Z. H. Azizah, "Mendefinisikan Kembali Konsep Keamanan dalam Agenda Kebijakan Negara-Bangsa (Redefining the Concept of Security in the Nation-State Policy Agenda)," *Jurnal Diplomasi Pertahanan*, vol. 6, no. 3, pp. 94–104, 2020.
2. E. S. De Ornay and N. Azizah, "Kepentingan Keamanan Nasional Rusia Dalam Serangan Militer Terhadap Ukraina Tahun 2022," *Jurnal Communitarian*, vol. 4, no. 1, 2022, doi: 10.56985/jc.v4i1.226.
3. E. D. Hastri and R. A. N. R. Utamie, "Kolaborasi peran diplomasi politik luar negeri indonesia dengan upaya peningkatan kompetensi militer indonesia," *Jurnal Jendela Hukum*, vol. 9, no. 2, pp. 172–190, 2022.
4. W. Z. Zuhro and M. Ubaidillah, "Analisis Hukum Konflik Militer Studi Kasus : Perselisihan di Palestina dan Israel," *Al-Ahkam: Jurnal Hukum Pidana Islam*, vol. 3, no. 2, pp. 93–104, 2021.
5. F. M. Iqbal and I. Dwiprigitaningtias, "Kudeta Militer Myanmar Dalam Perspektif Hukum Internasional," *Jurnal Dialektika Hukum*, vol. 3, no. 1, pp. 113–129, 2021.
6. W. R. Martani, I. G. Sumertha, and E. R. Hidayat, "Peran Standby Force Pusat Misi Pemeliharaan Perdamaian Tentara Nasional Indonesia (PMPP TNI) Dalam Mempersiapkan Pasukan Pada Misi Pemeliharaan Perdamaian," *Jurnal Diplomasi Pertahanan*, vol. 6, no. 1, p. 74, 2020.
7. N. D. Y. Amanda and D. Mulyana, "Pola Komunikasi Keluarga Anggota TNI-AD," *Jurnal Riset Public Relations*, vol. 1, no. 2, pp. 142–147, 2022, doi: 10.29313/jrpr.v1i2.499.
8. Y. Mulyana, "Pertanggungjawaban Pidana Terhadap TNI Pangkat Titular Yang Melakukan Pelanggaran Hukum," *Jurnal Pendidikan Dasar Dan Sosial Humaniora*, vol. 2, no. 3, pp. 467–478, 2023.
9. S. H. Syam, "Efektivitas Pelaksanaan Hukuman Penahanan bagi Anggota Militer yang Melakukan Pelanggaran Disiplin Militer di Polisi Militer Angkatan Laut Lantamal V Surabaya," *Sultan Jurisprudence: Jurnal Riset Ilmu Hukum*, vol. 2, no. 2, pp. 244–257, 2022.
10. M. Leese and S. Pollozek, "Not so fast! Data temporalities in law enforcement and border control," *Big Data and Society*, vol. 10, no. 1, 2023, doi: 10.1177/20539517231164120.
11. S. Suramin, "Indonesian Anti-Corruption Law Enforcement: Current Problems and Challenges," *Journal of Law and Legal Reform*, vol. 2, no. 2, pp. 225–242, 2021, doi: 10.15294/jllr.v2i2.46612.
12. L. Rhodes, "Human Rights, Those Who Are Governed and the Legitimacy of Law Enforcement," *Comparative Civilizations Review*, vol. 82, no. 82, pp. 5–9, 2020, [Online]. Available: <https://scholarsarchive.byu.edu/ccr/vol82/iss82/5>.
13. Hasaziduhu Moho, "Penegakan Hukum di Indonesia Menurut Aspek Kepastian Hukum, Keadilan, dan Kemanfaatan," *Universitas Dharmawangsa*, vol. 13, no. 1, pp. 138–149, 2019.
14. S. Amin, "Keadilan Dalam Perspektif Filsafat Hukum Terhadap Masyarakat," *EL-AFKAR : Jurnal Pemikiran Keislaman dan Tafsir Hadis*, vol. 8, no. 1, p. 1, 2019, doi: 10.29300/jpkth.v8i1.1997.
15. M. E. Montol, "KEDUDUKAN Kejaksaan Republik Indonesia dalam Sistem Pemerintahan Menurut Undang-Undang Nomor 16 Tahun 2004," *Lex Administratum*, vol. 10, no. 1, pp. 119–128, 2022, doi: 10.2207/jjws.91.328.
16. M. M. Meidiana, "Integrasi Pengujian Peraturan Perundang-undangan oleh Mahkamah Konstitusi," *Undang: Jurnal Hukum*, vol. 2, no. 2, pp. 381–408, 2020, doi: 10.22437/ujh.2.2.381-408.
17. C. M. Warner and M. A. Armstrong, "The Role of Military Law and Systemic Issues in the Military's Handling of Sexual Assault Cases," *Law and Society Review*, vol. 54, no. 1, pp. 265–300, 2020, doi: 10.1111/lasr.12461.
18. N. Ramati, "The Rulings of the Israeli Military Courts and International Law," *Journal of Conflict and Security Law*, vol. 25, no. 1, pp. 149–169, 2020, doi: 10.1093/jcsl/krz017.
19. A. J. Rifani and S. Wicaksana, "Independensi Peradilan Militer Terhadap Prajurit TNI Sebagai Pelaku

- Tindak Pidana Narkotika,” *Audito Comparative Law Journal (ACLJ)*, vol. 2, no. 3, pp. 131–142, 2021, doi: 10.22219/aclj.v2i3.16756.
20. A. F. Lubis, “Profesionalisme Oditur Militer dalam Melakukan Penuntutan,” *Das Sollen: Jurnal Kajian Kontemporer Hukum dan Masyarakat*, vol. 1, no. 1, pp. 1–13, 2022, doi: 10.11111/moderasi.xxxxxxx.
 21. I. Ghozali, “Kebijakan Hukum Pidana Terhadap Kewenangan Oditur Militer untuk Optimalisasi Percepatan Fungsi Penuntutan dalam Sistem Peradilan Pidana Militer di Indonesia,” *Jurnal Res Justitia: Jurnal Ilmu Hukum*, vol. 2, no. 2, pp. 360–371, 2022.
 22. N. K. D. N. I. Weda, I. M. Arjaya, and I. P. G. Seputra, “Penerapan Asas Hakim Aktif (Dominus Litis) dalam Persidangan di Pengadilan Tata Usaha Negara (Studi Kasus Putusan No.1/G/2017/PTUN.DPS.),” *Jurnal Preferensi Hukum*, vol. 2, no. 1, pp. 27–32, 2021, doi: 10.22225/jph.2.1.3048.27-32.
 23. T. Adi Riyanto, “Fungsionalisasi Prinsip Dominus Litis Dalam Penegakan Hukum Pidana Di Indonesia,” *Jurnal Lex Renaissance*, vol. 6, no. 3, pp. 481–492, 2021, doi: 10.20885/jlr.vol6.iss3.art4.
 24. P. M. Marzuki, *Penelitian Hukum*. Jakarta: Prenada Media, 2011.
 25. T. H. Fosse, A. Skogstad, S. V. Einarsen, and M. Martinussen, “Active and passive forms of destructive leadership in a military context: a systematic review and meta-analysis,” *European Journal of Work and Organizational Psychology*, vol. 28, no. 5, pp. 708–722, 2019, doi: 10.1080/1359432X.2019.1634550.
 26. L. P. Tresna, Amiruddin, and Ufran, “Implementation of the Principle of Dominus Litis in Positive Law in Indonesia,” *International Journal Of Multidisciplinary Research And Analysis*, vol. 5, no. 11, pp. 3123–3131, 2022, doi: 10.47191/ijmra/v5-i11-20.
 27. C. Sihombing, A. Syahrin, M. Ablisar, and M. Mulyadi, “Penguatan Kewenangan Jaksa Selaku Dominus Litis Sebagai Upaya Optimalisasi Penegakan Hukum Pidana Berorientasi Keadilan Restoratif,” *Locus: Jurnal Konsep Ilmu Hukum*, vol. 2, no. 1, pp. 281–293, 2022.
 28. M. Rony, R. Amrullah, and E. Dewi, “Legal politics against Dominus Litis at the Attorney General’s Office in Exercising the Power of Prosecution,” *International Journal of Multicultural and Multireligious Understanding*, vol. 9, no. 6, pp. 156–164, 2022.