



## The Prosecutor's Pre-Prosecution And Prosecution In Accordance With The Criminal Procedure Code

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<p><b>Article History</b>            Received: 2026-01-03            Revised: 2026-01-13            Published: 2026-01-30</p> <p><b>Keywords:</b>  <i>Pre-Prosecution;            Prosecution; Public            Prosecutor; Criminal            Procedure Code</i></p>	<p>This article examines the legal construction and practical implementation of the prosecutor's authority in pre-prosecution and prosecution under the Indonesian Criminal Procedure Code (KUHAP). The study departs from the normative ideal of an integrated criminal justice system that positions the prosecutor as dominus litis, responsible for controlling the flow of criminal cases from investigation to adjudication. Using a normative juridical method with a statute-based and conceptual approach, this research critically analyses the regulatory framework governing pre-prosecution and prosecution, as well as its application in practice. The findings indicate that although KUHAP formally grants prosecutors a strategic role in ensuring the completeness of case files and the legality of prosecutions, the existing regulatory design, particularly under the old KUHAP, tends to produce procedural formalism, weak coordination between investigators and prosecutors, and limited mechanisms of accountability. The article further argues that recent reforms introduced in the new KUHAP reflect a paradigm shift towards strengthening judicial control and due process safeguards, especially through the reconfiguration of pretrial mechanisms. However, these normative improvements still face structural and institutional challenges that may hinder their effectiveness. This study contributes to the development of criminal procedural law by highlighting the normative-practical gap in prosecutorial functions and offering a critical foundation for evaluating prosecutorial reform in Indonesia's evolving criminal justice system.</p>

### I. INTRODUCTION

Criminal law enforcement in Indonesia is a fundamental pillar in realising a democratic and just rule of law. Amidst the ongoing efforts to reform criminal procedure law, the role of the prosecutor as the public prosecutor, particularly in the pre-indictment and indictment stages, has become a critical focus because it determines the direction and quality of the entire criminal justice process. This stage is not merely a procedural formality, but also a strategic space to simultaneously guarantee the principle of due process and protect the human rights of suspects, victims, and the public interest.

Ideally, the pre-trial and trial processes under the Criminal Procedure Code (KUHAP) are designed to ensure that the investigation conducted by investigators can be accurately and

comprehensively continued by prosecutors, and that the prosecutor's decision to prosecute or dismiss the case is based on strong evidence, proper legal considerations, and the principles of speedy, simple, and low-cost justice. In this concept, the prosecutor not only functions as the prosecutor in court but also as the dominant party in the litigation, determining the suitability of the case file to be submitted to court, in accordance with the principles of legality and opportunity in the Criminal Procedure Code (Tampoli, 2016).

However, empirical facts reveal a number of problems in the practical implementation of the pre-prosecution and prosecution stages in Indonesia. First, coordination between investigators and prosecutors during pre-trial often suffers from weak operational guidelines and inter-agency communication, potentially

leading to delays in case file completion and substantively inconsistent decisions. Empirical research found that unclear instructions for completing files, incorrect application of criminal articles, and administrative and time constraints are the main causes of inefficiency in the pre-trial process at some district attorney's offices (Anggara et al., 2023).

Second, at the normative level, there is an imbalance between the prosecutor's principle of *litis dominans* and the still ambiguous regulations regarding the time limits and standards for assessing the completeness of case files received from investigators, as stipulated in the articles of the Criminal Procedure Code (KUHAP) concerning pre-indictment. The current KUHAP still places this mechanism in separate provisions without adequate detailed regulation regarding the clarity of evidentiary standards and independent oversight mechanisms for prosecutors' decisions (Amin, 2024).

Recent changes to the criminal procedure legal framework, particularly with the enactment of the new Criminal Procedure Code (KUHAP) alongside the new Criminal Code (KUHP) since early 2026, present both new opportunities and challenges for understanding and practicing prosecution. The new Criminal Procedure Code (KUHAP) should clarify the prosecutor's position within the integrated criminal justice system and address criticisms of the old KUHAP, including issues of authority division between investigators and prosecutors, as well as pre-indictment mechanisms that are more responsive to legal certainty and the effectiveness of law enforcement. However, a detailed description of these changes still requires in-depth academic study because the substantial differences between the old and new Criminal Procedure Codes have not been sufficiently explored in scientific literature (Purba, 2024).

## **II. RESEARCH METHODS**

This research adopts a qualitative approach with a normative-juridical character enriched by limited empirical analysis (normative-empirical legal research) (Abdussamad & Sik, 2021). The primary focus is the critical examination of

criminal procedure norms governing prosecutorial authority at the pre-indictment and trial stages under the old and new Criminal Procedure Codes (KUHAP), while also assessing their implementation in practice.

The study is analytical-critical in nature, aiming not only to describe normative structures and regulatory changes but also to evaluate their adequacy, systemic coherence, and implications for due process of law, legal certainty, and substantive justice within the Indonesian criminal justice system.

The research object consists of legal norms and prosecutorial practices. Normative materials include the old and new KUHAP, prosecutorial regulations, and relevant court decisions, while empirical insights are drawn from prosecutorial performance reports and prior empirical studies, without direct observation of individual actors.

Data were collected through library research and document analysis, involving primary, secondary, and limited tertiary legal materials. Data analysis was conducted qualitatively using normative interpretation, comparative analysis, and critical evaluation to assess whether regulatory changes effectively address existing practical problems or generate new conceptual and institutional challenges.

## **III. RESULTS AND DISCUSSION**

### **A. Normative Pre-Prosecution Reconstruction in the Old and New Criminal Procedure Codes**

The research results indicate that pre-trial regulation in the old Criminal Procedure Code is normatively still minimal and procedurally orientated. Article 14 letter b and Article 110 of the old Criminal Procedure Code only affirm the prosecutor's authority to examine the completeness of case files and return them to the investigator if they are deemed incomplete. However, this provision is not accompanied by clear normative parameters regarding standards for material and formal completeness, strict deadlines, and accountability mechanisms for repeated file return actions. This normative vacuum creates a very wide margin of discretion for prosecutors, which in practice often leads to

legal uncertainty for both suspects and victims (Lanongbuka, 2020).

This finding aligns with research results stating that pre-trial proceedings under the old Criminal Procedure Code (KUHAP) tended to be a "grey area" because they were not regulated in detail and operationally, making their implementation highly dependent on the individual policies of prosecutors and the bureaucratic culture of the prosecutor's office in each regio (Lanongbuka, 2020). As a result, there are disparities in pre-prosecution practices across regions, both in terms of the duration of file completion and the quality of corrections to the results of the investigation.

Unlike the old Criminal Procedure Code, the new Criminal Procedure Code shows an effort at normative reconstruction of the pre-prosecution stage by incorporating the principle of judicial control and strengthening the protection of suspect's rights. One important change is the expansion of pre-trial objects to include the legality of the termination of prosecution, which indirectly also relates to the quality of pre-prosecution. This reformulation shows that lawmakers are beginning to realise that pre-trial is not merely an administrative stage, but a crucial phase that determines whether a case is worthy of being tested in court or should be dismissed for legal certainty and justice (Lanongbuka, 2020).

Theoretically, this change can be understood as a paradigm shift from prosecutorial dominance without control towards controlled prosecutorial discretion, as developed in modern due process of law theory. However, the results of this study indicate that although the new Criminal Procedure Code is more progressive normatively, it has not fully resolved the technical and institutional issues in pre-prosecution practice.

## **B. Prosecution by the Prosecutor and the Dynamics of the Dominus Litis Principle in Two Regimes of the Criminal Procedure Code**

This research found that both the old and new Criminal Procedure Codes still maintain the principle of dominus litis, meaning the prosecutor is the primary controller of criminal cases at the

prosecution stage. Prosecutors have the authority to draft indictments, determine the charges, and decide whether a case is suitable for referral to court. However, the fundamental difference lies in how the legal system controls the use of such authority.

In the old Criminal Procedure Code, the authority of the dominus litis tended to be absolute because it was not balanced by effective external oversight mechanisms. For example, the termination of prosecution, although it can be tested through pre-trial hearings, is rarely done in practice and is not supported by clear assessment standards. This strengthens the prosecutor's position, but at the same time opens the door to potential abuse of power or at least non-transparent decisions (Rustamaji, 2017).

The new KUHAP is attempting to restructure this relationship by expanding the scope of judicial review of prosecutorial actions, including the termination of prosecution and procedural violations in the case handling process. This finding aligns with research results, which states that the new Criminal Procedure Code does not eliminate the dominus litis, but rather "tames" this authority through the principle of functional differentiation and stronger judicial oversight (Ecep Nurjamal, S.H., 2020).

However, this research also found that the strengthening of such normative controls has not been fully accompanied by the structural readiness of law enforcement officers. In practice, there is still a tendency for prosecutors to interpret their authority traditionally, namely as the full owner of the case, rather than as law enforcement actors who must be subject to the principles of accountability and transparency. This condition indicates an implementation gap between the new norms and the old institutional culture.

## **C. Pre-Trial Implementation Problems: Between Progressive Norms and Institutional Reality**

The research results indicate that the main pre-prosecution problem lies not solely in the normative aspect, but in the dimensions of implementation and inter-agency coordination.

Empirical research from 2020–2025 shows that coordination between investigators and prosecutors is still weak, particularly in aligning perceptions regarding case construction and the fulfilment of criminal elements. This caused the case file to go back and forth indefinitely, ultimately harming legal certainty for the parties (Kristanto, 2022).

The new Criminal Procedure Code does indeed offer a more responsive normative framework, but it does not explicitly regulate sanctions or legal consequences if pre-trial proceedings are conducted in a protracted or unprofessional manner. This gap indicates that the reform of criminal procedure law still prioritises rule-making over rule enforcement. In other words, the law has been updated, but the mechanisms to ensure compliance with that law have not been adequately established.

From the perspective of legal effectiveness theory, this condition strengthens the argument that the success of legal reform is not only determined by the quality of the norms, but also by the readiness of the legal structure and culture. As stated by research result, the reform of the Criminal Procedure Code will lose its substantive meaning if it is not accompanied by a paradigm shift in law enforcement officials and the strengthening of internal and external oversight systems (Runtunuwu, 2023).

#### **D. The Position of Research Findings in the Map of Previous Studies and Its Scientific Implications**

Compared to previous research, the findings of this study have both similarities and differences. The similarity lies in the recognition that the old Criminal Procedure Code (KUHAP) had structural weaknesses in regulating pre-trial proceedings and controlling the authority of prosecutors. However, this research goes beyond previous studies by placing the new Criminal Procedure Code as the object of critical evaluation, rather than simply as a normative solution assumed to be better (Tampoli, 2016).

The scientific implication of this finding is the need for a shift in the focus of criminal procedure law studies from merely analysing normative texts

towards an integrative study that connects norms, practices, and institutional culture. This research confirms that the revision of the Criminal Procedure Code should not be understood as the ultimate goal, but rather as a starting point for building a pre-trial and prosecution system that is truly accountable, transparent, and orientated towards substantive justice.

## **IV. CONCLUSION AND SUGGESTIONS**

### **A. Conclusion**

This research confirms that the pre-trial and prosecutorial regulations in the old and new Indonesian Criminal Procedure Code (KUHAP) demonstrate both continuity and a paradigm shift in Indonesian criminal procedure law. Conceptually, the principle of *dominus litis* remains upheld as the basis for the prosecutor's authority in controlling criminal cases. However, this study found that under the old Criminal Procedure Code, this authority tended to exist without an adequate normative control framework, thus creating room for legal uncertainty, disparities in practice, and potential deviations in both the pre-prosecution and prosecution stages.

The new Criminal Procedure Code only shows corrective efforts through a normative reconstruction that is more responsive to the principle of due process of law, particularly by expanding judicial control mechanisms over prosecution and the termination of prosecution. This research concludes that the change is theoretically a step forward because it places the prosecutor's authority within a framework of accountability and power balance in the criminal justice system. However, the main contribution of this research is to show that these normative updates have not been fully followed by the structural and cultural readiness of law enforcement agencies, thus limiting their effectiveness in practice.

With an analytical-critical approach, this research contributes scientifically by revealing the gap between progressive criminal procedure norms and their implementation reality. This research not only enriches the theoretical discourse on pre-trial and trial proceedings but

also clarifies that the success of the Criminal Procedure Code reform cannot be measured solely by changes in the text of the law, but rather by its ability to transform patterns of authority relations, institutional practices, and the orientation of justice in criminal law enforcement.

### B. Suggestion

Based on these conclusions, this study recommends several strategic and realistic points. First, from the perspective of developing criminal procedure law theory, it is necessary to strengthen the conceptual framework regarding pre-indictment as a substantive phase in the criminal justice process, not merely an administrative step. The theory of *dominus litis* needs to be reinterpreted within the framework of accountability and judicial control to align with the principles of a democratic rule of law.

Second, from the perspective of law enforcement practice, it is recommended that more detailed and binding operational guidelines be formulated for prosecutors in conducting pre-indictment and indictment, particularly regarding case file completeness standards, completion deadlines, and internal evaluation mechanisms. Strengthening the professional capacity of prosecutors through continuing education is also an urgent need to ensure that changes to the Criminal Procedure Code do not remain at the normative level.

Third, for policymakers, this research suggests that the implementation of the new Criminal Procedure Code should be accompanied by strengthening cross-agency monitoring and evaluation systems, including optimising the role of pre-trial hearings as an effective and accessible control instrument. Without consistent oversight, the reform of criminal procedure law risks losing its transformative power.

Fourth, for future research, it is recommended to conduct in-depth empirical studies based on field data regarding pre-trial and post-trial prosecution practices after the new Criminal Procedure Code came into effect, including comparative studies with legal systems in other countries. A socio-legal and comparative approach will be crucial in assessing the extent to which the

reform of Indonesian criminal procedure law truly impacts the quality of criminal justice and human rights protection.

Thus, this research is expected not only to be an academic contribution but also a reflective foundation for the development of Indonesian criminal procedure law that is more just, accountable, and orientated towards legal certainty in the future.

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