

## **Dominus Litis Restorative Model: Reconstruction of the Role of the Prosecutor in Criminal Procedure Law Against Perpetrators with Mental and/or Intellectual Disabilities**

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### **Abstract**

This study aims to examine and formulate a restorative justice-based concept to strengthen the role of prosecutors as *dominus litis* in criminal procedure law concerning offenders with mental and/or intellectual disabilities (PMID). Despite Indonesia's ratification of the Convention on the Rights of Persons with Disabilities (CRPD), the current criminal procedure system remains formalistic and fails to provide equitable legal protection for vulnerable groups. Using a normative juridical method combined with doctrinal and comparative approaches, this study analyzes relevant laws, practices, and empirical data. Findings reveal that prosecutors currently act merely as procedural agents for court referral, with no legal discretion to divert or dismiss cases restoratively. The absence of judicial-health assessments and lack of interdisciplinary collaboration result in discriminatory prosecution of mentally disabled offenders. This research proposes a restorative *dominus litis* model, integrating prosecutorial discretion, forensic mental health assessments, and legal mechanisms for restorative case resolution. The model supports the reform of Indonesia's criminal procedure law toward a more inclusive, humane, and rights-based justice system.

**Keywords:** Dominus Litis; Restorative Justice; Mental Disability; Criminal Procedure; Prosecutorial Discretion; Vulnerable Groups

### **Introduction**

The phenomenon of crime involving persons with mental and/or intellectual disabilities (*PDM/PI*) has shown a significant increase, both quantitatively and qualitatively, in recent years (Al Fiqry & Widowaty, 2021; Hidayat & Ibrahim, 2023; Kadek Januarsa Adi Sudharma & Ayu Meiranda, 2022; Komariah & Lewoleba, 2021; Leskayanti & Dewi, 2023; Saputro et al., 2020). Based on Indonesia Health Profile 2023 data, there are more than 229,000 households in Indonesia that have members with severe mental disorders, of which West Java Province ranks first in *attachment cases* with more than 2,350 cases that have been successfully released since 2021. Many of these individuals are subsequently involved in criminal cases, but their settlements tend to follow a repressive approach that disregards the mental state of the perpetrator. Field findings also show that many have experienced criminalization, forced detention, and lack of proper legal assistance (Barkah, 2019; Kairupan et al., 2021).

This condition further clarifies that Indonesia's criminal procedure law system is not fully prepared to address the complexity of cases involving perpetrators with disabilities. The Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana, KUHAP*), as the principal regulation in criminal law enforcement, remains procedural, formalistic, and does not

provide prosecutors—who serve as *dominus litis*—with discretionary authority to apply a restorative justice-based approach for vulnerable groups such as *PDM/PI*. In practice, prosecutors are limited to administrative tasks of transferring cases, lacking the discretion to terminate prosecution on medical or humanitarian grounds (Djafar & Chandra, 2022; Firmansyah, 2020; Pasaribu Alvi Syahrin & Ekaputra, 2018; Perbawa, 2014).

The urgency of this research lies in the pressing need to align the criminal procedure law system with human rights principles and inclusive justice. When law enforcement remains oriented solely towards punishment without considering the perpetrator's mental capacity, substantive justice becomes difficult to achieve. Especially in the national legal development context towards *Golden Indonesia 2045*, a humanist and responsive legal approach to vulnerable groups is an essential prerequisite for a modern, civilized, and inclusive legal system that protects all citizens without discrimination.

However, to date, there is a scarcity of legal studies that specifically highlight the role of the prosecutor as *dominus litis* in resolving cases involving persons with mental disabilities. Most restorative justice research focuses on the juvenile criminal justice system or minor offenses. Discussions about persons with disabilities are more often framed in terms of social protection and health services rather than as legal subjects in criminal justice processes. This research gap is the focus of this study: how to construct an active, humanist, and restorative role for prosecutors in handling *PDM/PI* cases and reconstruct this role within the draft reform of the Criminal Code (*Rancangan Kitab Undang-Undang Hukum Pidana, RKUHP*).

Based on these backgrounds and problems, this study aims to analyze the role of the prosecutor as *dominus litis* in the current criminal procedural law system regarding perpetrators with mental and/or intellectual disabilities, and to formulate a concept for strengthening this role within the framework of criminal procedural law based on restorative justice. The contribution of this research is expected to be not only theoretical, enriching the development of criminal procedure law and restorative justice, but also practical, offering inclusive and responsive legal policy recommendations for vulnerable groups.

## Research Methods

This research used a normative legal approach combined with doctrinal research, which relied on literature studies to examine written legal norms in laws and regulations, official documents, and relevant scientific literature (Diantha, 2017; Soekanto & Mamudji, 2011). This method was chosen because the primary purpose was to analyze and formulate the concept of strengthening the role of the prosecutor as *dominus litis* in criminal procedure law based on restorative justice for perpetrators with mental and/or intellectual disabilities.

To ensure analytical depth, the study integrated four main approaches: the statute approach, the historical approach, the conceptual approach, and the comparative approach (Sugiyono, 2015; Suhaimi, 2018). The statute approach examined applicable legal regulations, such as the Criminal Procedure Code, Law Number 8 of 2016 concerning Persons with Disabilities, the Prosecutor's Law, and internal institutional regulations including Prosecutor's Regulation Number 15 of 2020 and Supreme Court Regulation Number 1 of 2024. The historical approach traced the conceptual background of the role of *dominus litis* in the Indonesian criminal law system and its evolution from the colonial period to the latest draft of the Criminal Code.

The conceptual approach developed a theoretical understanding of dominus litis and the application of restorative justice in criminal procedure law, referencing legal theories such as restorative justice theory (grand theory), legal protection theory (middle theory), and legal effectiveness theory (applied theory). These theories were used sequentially to build a framework connecting legal norms to their implementation and social relevance. The comparative approach examined best practices from countries that have implemented restorative approaches in their criminal justice systems, such as Canada and the Netherlands, particularly regarding cases involving individuals with mental or intellectual disabilities.

Legal materials were collected through library research on primary and secondary sources. Primary sources included relevant national and international laws, regulations, and official institutional documents. Secondary sources consisted of scientific literature, criminal law textbooks, accredited journal articles, and relevant dissertations to support the analysis. Additionally, secondary empirical data was obtained from documentation of interviews the author conducted with prosecutors, judges, and advocates handling cases involving perpetrators with disabilities in West Java and Central Java, serving as an interpretive complement to the normative analysis.

The study employed descriptive qualitative analysis by presenting the results of normative studies through systematic, logical, and argumentative descriptions. Analysis involved interpreting applicable legal provisions, comparing them with other systems, and drawing conclusions based on scientific arguments. Emphasis was placed on the coherence between theory and practice and the relevance of findings to future national legal policy, particularly in the context of reforming the Criminal Code.

## **Results and Discussion**

### **The Actual Condition of the Prosecutor's Role as a Dominus Litis in Handling PDM/PI Cases**

The results of the study show that the role of the prosecutor as a dominus litis in cases involving perpetrators with mental and/or intellectual disabilities (PDM/PI) is still very limited normatively and practically (Irawan, 2023; Maulidina et al., 2022; Ni'mah & Rusdiana, 2012; Raharjo & Astuti, 2017). The Criminal Procedure Code as the current criminal procedure law does not provide adequate discretion for prosecutors to stop prosecutions or intervene restoratively against perpetrators from this vulnerable group (Meliala, 2020). In practice, the handling of cases against PDM/PI perpetrators is carried out uniformly without considering mental conditions and intellectual abilities that affect criminal liability (Susanti & Wijaya, 2022).

Field data obtained from interviews with prosecutors at the Depok District Attorney's Office and the Central Lampung District Attorney's Office show that in general, the investigation and prosecution process is running as usual, without adequate judicial health examinations. Even if the perpetrator shows symptoms of a mental disorder, the decision to proceed to court is more often based on the investigator's testimony, not the results of a comprehensive medical assessment. This shows that there is no synergy between law enforcement agencies and medical institutions in the process of handling PDM/PI cases.

Normatively, the main obstacle lies in the Criminal Procedure Code which still adheres to a personal differential system, where the functions of investigation, prosecution, and correctional are carried out separately without unified coordination. In this context, the prosecutor only plays a role after the file is declared complete (P-21), and has no room to

intervene early against the perpetrator who is suspected of having a mental disorder. Even in conditions where the prosecutor suspects the mental state of the perpetrator, there is no formal mechanism to initiate a judicial medical assessment as a basis for determining the feasibility of the prosecution process.

From a practical perspective, the lack of understanding of law enforcement officials on the concepts of restorative justice and the protection of vulnerable groups is an obstacle in itself. Interviews also show that some prosecutors still consider the restorative approach to be only relevant for juvenile criminal cases or misdemeanors, not for cases involving PDM/PI. This reinforces the importance of legal training and a more inclusive and recovery-based law enforcement paradigm renewal.

### **Construction of Strengthening the Role of Dominus Litis Based on Restorative Justice**

Based on these findings, it is necessary to reconstruct the role of the prosecutor as dominus litis in order to carry out the control function of the case as a whole, including providing an alternative to resolving cases outside the court against PDM/PI perpetrators. One of the legal instruments that can be the basis for this strengthening is the 2023 Draft Criminal Code, which in Article 45 paragraph (1) allows the prosecutor to submit a case to the preliminary examining judge to assess whether or not it is feasible to proceed to the prosecution stage.

In addition, Article 53 letter h of the Criminal Code stipulates that a claim cannot be accepted if there has been a settlement outside the judicial process, as long as it is in accordance with the provisions of laws and regulations. This provision opens up space for prosecutors to stop cases through restorative justice mechanisms, provided that it is done legally, transparently, and accountably.

Furthermore, Law Number 11 of 2021 concerning Amendments to the Prosecutor's Law provides new authority to prosecutors in organizing criminal and judicial health statistics, which can be used as a basis for requesting an assessment from a hospital owned by the Prosecutor's Office (Adhyaksa Hospital) as a prerequisite for the termination of prosecution for PDM/PI perpetrators. Thus, the prosecutor not only acts as a prosecutor, but also as a controller of the legal process that guarantees that justice is not only upheld in a repressive manner, but also humanistically and adaptively.

The findings in this study are relevant to the theory of restorative justice that places restoration as the main goal of law enforcement. In line with the opinions of Marian Liebmann and Sukardi, justice is not only interpreted as revenge for criminal acts, but as a process of reconciliation between perpetrators, victims, and society (Gultom, 2022). In the context of PDM/PI perpetrators, recovery includes protection of human dignity, medical rehabilitation, and avoidance of social stigmatization.

From the point of view of legal protection theory, according to Satjipto Rahardjo, the state is obliged to ensure that every citizen, including vulnerable groups, has access to fair legal treatment (Ari Atu Dewi, 2018). In this case, the prosecutor as a dominus litigation actor has the responsibility to prevent discrimination and criminalization of PDM/PI through an adaptive prosecution policy.

As for the theory of legal effectiveness put forward by Soerjono Soekanto, the success of a legal rule is not only determined by the quality of its norms, but also by the implementing structure and the accompanying legal culture (Sarkosi, 2023). Therefore, strengthening dominus litis not only requires regulatory changes, but also institutional transformation and mental coaching of law enforcement officials to be in line with the values of inclusivity and social justice.

### **Research Contribution to Law**

## Dominus Litis Restorative Model: Reconstruction of the Role of the Prosecutor in Criminal Procedure Law Against Perpetrators with Mental and/or Intellectual Disabilities

This research offers significant scientific novelty in the field of criminal procedural law, especially in the context of strengthening the role of the prosecutor as a *dominus litis* for perpetrators with mental and/or intellectual disabilities (PDM/PI). So far, legal studies on restorative justice have generally been more directed at child protection or the resolution of minor crimes. Meanwhile, this study specifically fills a gap in studies related to the protection of perpetrators from vulnerable groups of PDM/PI in the criminal justice system.

The main novelty lies in the integration of the concept of restorative justice into the prosecutor's *dominus litis* function in the pre-adjudication phase. The restorative *dominus litis* model offered is a new approach in Indonesian criminal procedure law, where the prosecutor does not only act as an exaggeration of the case, but as the main actor in assessing the feasibility of the case to be continued or transferred through alternative mechanisms of settlement out of court.

In addition, this study proposes a judicial health mechanism of the prosecutor's office as a new institutional instrument to conduct assessments of PDM/PI perpetrators. This concept has never been systematically developed in the Indonesian legal literature, and it becomes a new foundation for linking the prosecuting authority with clinical considerations in rehabilitative efforts, not just punishment.

Secara konseptual, penelitian ini juga menawarkan kerangka pemikiran teoretis yang terpadu melalui integrasi antara teori keadilan restoratif, teori perlindungan hukum, dan teori efektivitas hukum. Pendekatan teoretis ini digunakan bukan hanya sebagai landasan normatif, tetapi juga sebagai alat untuk menganalisis struktur kelembagaan, praktik peradilan, dan arah pembaruan hukum nasional dalam konteks perlindungan PDM/PI.

### Conclusion

This study confirms that the role of the prosecutor as *dominus litis* in the current Indonesian criminal procedure law system remains highly limited, particularly in handling cases involving perpetrators with mental and/or intellectual disabilities (PDM/PI). This limitation is rooted in the formalistic and rigid legal framework of the Criminal Code, which restricts prosecutorial discretion to resolve cases through restorative justice mechanisms. Empirical evidence shows that PDM/PI offenders are often subjected to standard criminal procedures without adequate psychiatric evaluation, specialized legal assistance, or treatment considering their mental condition, resulting in unfair legal processes that violate human rights and restorative principles. Theoretically, integrating restorative justice, legal protection, and legal effectiveness theories supports the need for special, inclusive, and humane treatment for PDM/PI offenders. The prosecutor's role should extend beyond mere case referral to the court, acting as a responsible agent ensuring substantive justice, including for mentally impaired perpetrators. This study proposes a restorative *dominus litis* model that positions prosecutors as primary decision-makers in resolving PDM/PI cases, supported by judicial health assessments, expanded discretion, and accountable prosecution termination procedures, aligning with ongoing Criminal Code reforms and national policies promoting inclusive, social justice-based law. Future research could investigate the practical implementation challenges and outcomes of this model across diverse regional contexts in Indonesia to further refine restorative legal practices for vulnerable populations.

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