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REPOSITIONING THE ROLE OF PUBLIC PROSECUTORS AS DOMINUS LITIS IN CORRUPTION CASES: AN ECONOMIC ANALYSIS OF LAW IN GOVERNMENT PROCUREMENT

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Abstract

This study aims to examine the urgency and potential of applying the Economic Analysis of Law Principle by the State Attorney of Indonesia in its capacity as Dominus Litis in handling corruption cases, in this case in the Government Procurement sector. This study aims to determine the policy related to the authority of the State Attorney as Dominus Litis in handling corruption cases in government procurement. This research is a normative legal study, as well as a case approach using illustrations of corruption cases related to government procurement of goods and services. This approach aims to build the author's legal argument through a review of cases related to the issues to be examined in this paper. Therefore, this research uses a descriptive approach in the form of prescriptive research. The results of this study are the existing conditions of the role of the Public Prosecutor as Dominus Litis to be applied in handling corruption cases in government procurement of goods and services, because the Public Prosecutor has been ineffective in considering the economic value of a prosecution policy. The repositioning of the role of the Public Prosecutor is necessary so that they do not only focus on formal and material evidence, but also consider the social and economic costs. The implications of the Economic Analysis of Law approach reveal that efforts to recover state losses and long-term prevention are more important than current criminalization.

Keywords: Dominus Litis, Economic Analysis of Law, Prosecutor, Corruption, Procurement.

1. Introduction

In carrying out its duties and authorities, the Attorney General's Office is led by the Attorney General, who oversees six Deputy Attorneys General and 31 Heads of High Prosecutor's Offices in each province. Law Number 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia also implies that the Attorney General's Office is in a central position with a strategic role in strengthening national security. This is because the Attorney General's Office is at the center and acts as a filter between the investigation process and the trial process, as well as being the executor of court rulings and decisions.[1] Thus, the Attorney General's Office acts as the controller of the case process (Dominus Litis), because only the Attorney General's Office can determine whether a case can be brought to court or not based on evidence that is valid according to Criminal Procedure Law.[2] Government procurement of goods and services is a sector that is prone to corruption. The handling of corruption cases by law enforcement officials, particularly by public prosecutors, often still focuses on proving the formal elements in Articles 2 and 3 of the Corruption Crime Law. In fact, an approach based on efficiency and the economic impact of case handling is very important in order to provide a deterrent effect and recover state losses.

It should be added that the Attorney General's Office is also the only agency that executes criminal judgments (executive ambtenaar). In addition to its role in criminal cases, the State Attorney also has another role in civil and administrative law, namely representing the government in civil and administrative cases as a state attorney. Prosecutors, as the executive authority in criminal matters, are authorized as public prosecutors and to enforce court decisions, as well as other authorities based on the law.

In the Indonesian criminal justice system, the Public Prosecutor plays the role of dominus litis, which means they have full authority to determine the continuation of a case after the investigation process, including in terms of transferring the case to court, conducting restorative justice, or terminating prosecution. Dominus Litis is a universal principle inherent to prosecutors.

[1] Febri Arrahim et al., 'The Role of State Attorney in Prosecutor's Office of An Effort to Protect State Assets', *Andalas Law Journal* 8, no. 2 (2023): 25, https://doi.org/10.25077/alj.v8i2.56.

[2] Fachrizal Afandi, 'Regulating Prosecutorial Independence and Impartiality in Indonesian Criminal Justice System', *Kosmik Hukum* 25, no. 2 (2025): 304–18, https://doi.org/10.30595/kosmikhukum.v25i2.25981.

Prosecutors, as public prosecutors, have a central role in the criminal justice system. The presence of State Attorney Regulation Number 15 of 2020 concerning Termination of Prosecution based on restorative justice is the basis for prosecutors to enforce criminal law oriented towards restorative justice. The enforcement of criminal law in general and restorative justice-oriented criminal law conducted by public prosecutors as Dominus Litis has weaknesses and obstacles found in its implementation process. The essence of Dominus Litis inherent in prosecutors has not been optimized. At the pre-prosecution stage, the prosecutor as Dominus Litis is only limited to receiving the Notification of Commencement of Investigation and examining the files from the investigator to be followed up to the prosecution stage or returned to the investigator.[3]

According to Maria Soetopo Conboy, EAL is an application/tool of Economic Theory to evaluate the process, formation, structure, and impact of legislation and/or policies on society.[4] The essence of EAL is the impact of decisions/policies conducted today for the future, and the objective of EAL is for the welfare of society, as mandated by Article 33 of the 1945 Constitution of the Republic of Indonesia. Economic Analysis of Law (EAL) is a theory that applies economic principles to analyze legal issues. This approach also uses the concepts of value and efficiency to explain a legal rule and the outcomes that will be achieved. One of the objectives of EAL is to improve the welfare of society by maximizing the allocation of resources and can be used to improve legal rules that are no longer in line with the needs of society. As mentioned above, EAL is based on three basic concepts, namely Value, Utility, and Efficiency, which are based on human rationality.

2. Problem Formulation & Method Research

This study aims to analyze how the position of prosecutors as dominus litis can be directed to take prosecution policies that consider economic efficiency based on the Economic Analysis of Law approach. The issues discussed are: (1) how the concept of dominus litis is applied in the

[3] Dedy Chandra Sihombing et al., 'Penguatan Kewenangan Jaksa Selaku Dominus Litis Sebagai Upaya Optimalisasi Penegakan Hukum Pidana Berorientasi Keadilan Restoratif', *Locus: Jurnal Konsep Ilmu Hukum* 3, no. 2 (2023): 63–75, https://doi.org/10.56128/jkih.v3i2.42.

[4] Irma Reisalinda Ayuningsih, 'Mengenal Economic Analysis of Law', *Artikel DJKN*, 12 May 2023, https://www.djkn.kemenkeu.go.id/artikel/baca/16122/Mengenal-Economic-Analysis-of-Law.html.

handling of corruption cases, and (2) how the application of Economic Analysis of Law can strengthen the role of prosecutors in prosecution.

In this study, the author uses a normative legal research method to examine legislation and literature related to the issue under study. This involves the use of a statute approach, which relates to regulations governing law enforcement in the handling of criminal cases of corruption in government procurement of goods and services. This approach will help the author to identify and analyze the connection between legislation and the issue being studied. Furthermore, the author will also use a case approach, using illustrations of corruption cases in government procurement of goods and services. This approach aims to develop the author's perspective through a review of cases related to the issue being studied. The type of data used in this study is secondary data. Data was collected through library research and then analyzed qualitatively.

3. Theoritical Background

a. Dominus Litis in Indonesian Criminal Law

The provisions regarding the Dominus Litis Principle or Case Controller held by the Public Prosecutor (The State Attorney of the Republic of Indonesia) in handling a criminal case are not explicitly regulated in Law No. 8 of 1981 on Criminal Procedure (KUHAP), even though in practice, prosecutors are often involved in handling criminal cases from the investigation stage, because prosecutors do function as controllers and supervisors of the work of investigators (case controllers).[5] In the same vein, State Attorney Commissioner Bhatara Ibnu Reza explained that in the practice of law enforcement by the Public Prosecutor (State Attorney of the Republic of Indonesia), prosecutors are no longer “Active Dominus Litis”.

In fact, with the active involvement of the Public Prosecutor from the investigation stage at the police, the public prosecutor can easily prepare indictments and charges, because in addition to being able to understand the real situation and conditions of the investigation in the field, the public prosecutor also has an emotional connection to the criminal cases he handles.[6] However,

[5] Muhammad Hikmat Sudiadi, ‘Implementasi Asas Dominus Litis Dalam Sistem Peradilan Pidana Modern Di Indonesia’, *Jurnal Mahalisan* 1, no. 1 (2024): 1–15, https://doi.org/10.70837/9re7s725.

[6] Raymond Ali et al., ‘Restructuring the Termination of Prosecution in the Criminal Jurisdiction System of Indonesia’, *Scholars International Journal of Law, Crime and Justice* 4, no. 2 (2021): 27–33, https://doi.org/10.36348/sijlcj.2021.v04i02.001.

the Indonesian criminal justice system no longer refers to universal practices that do not position prosecutors as dominus litis as active controllers of cases from the beginning of case handling, so that the understanding of dominus litis based on the Criminal Procedure Code limits the Public Prosecutor's ability to supervise the investigation and examination process.[7]

The regulation and confirmation of the role and authority of prosecutors must be adjusted to the implementation of the New Criminal Code and other authorities regulated by law. For example, Restorative Justice, the Juvenile Criminal Justice System (SPPA), and Deferred Prosecution Agreements (DPA) in corporate crimes. This includes confirming the accountability and transparency of the performance of public prosecutors. This includes complaint and supervision mechanisms in the implementation of coercive measures by prosecutors. It also includes the discretion to terminate cases at the investigation and prosecution stages.

According to the Deputy Director of Programs at the Indonesia Judicial Research Society (IJRS), Aedy Ardhan Saputro, the Dominus Litis principle is not written in the Criminal Procedure Code (KUHAP) and the State Attorney Law. However, the practice of Dominus Litis authority has become a general principle and is internationally agreed to be the authority of prosecutors.[8] In addition, according to him, there is one strong authority possessed by the State Attorney's Office, but unfortunately it is not used properly, namely the issue of opportunity. For example, if a prosecutor wants to deponeer (freeze) a case, it is biased. So, in fact, prosecutors can control cases, but the scope is not large.[9]

b. Economic Analysis of Law

The EAL theory, as developed by Richard A. Posner, emphasizes that law should be analyzed based on its efficiency. In the context of criminal law, law enforcement should be viewed from the perspective of social costs, economic benefits, and deterrent effects. Posner, in his book

[7] Gede Perbawa, 'Kebijakan Hukum Pidana Terhadap Eksistensi Asas Dominus Litis Dalam Perspektif Profesionalisme Dan Proporsionalisme Jaksa Penuntut Umum', *Arena Hukum* 7, no. 3 (2014): 325–42, https://doi.org/10.21776/ub.arenahukum.2014.00703.2.

[8] Tiar Adi Riyanto, 'Fungsionalisasi Prinsip Dominus Litis Dalam Penegakan Hukum Pidana Di Indonesia', *Jurnal Lex Renaissance* 6, no. 3 (2021), https://doi.org/10.20885/JLR.vol6.iss3.art4.

[9] Rofiq Hidayat, 'Mendorong Pengaturan Asas Dominus Litis Dalam RKUHAP', *Hukumonline.Com*, 21 December 2022, https://www.hukumonline.com/berita/a/mendorong-pengaturan-asas-dominus-litis-dalam-rkuhap-lt63a2df457374f/?page=2.

titled “Economic Analysis of Law,” first published in 1973, shares a perspective not dissimilar to that of other legal and economic experts. He builds upon post-Coasian teachings and economic theory. One notable aspect of his work is his ability to develop his analysis both normatively and empirically. The emphasis on legal analysis in “Economic Analysis of Law” is more prominent than economic predetermination analysis. Indeed, “Economic Analysis of Law” is a legal analysis that utilizes economic science and expands the dimensions of law. Posner never formally received education in economics. Since 1983, Posner has also served as a Senior Lecturer at the University of Chicago Law School and as a Judge at the US Court of Appeals, Seventh Circuit.

Posner responds to this utilitarian framework with his own concept. Starting from the basic understanding that humans are essentially homo economicus, meaning that in taking actions to fulfill their economic needs, they prioritize economic value based on economic reasons and considerations. In conducting all of this, humans are always given the choice to obtain economic satisfaction or happiness, which is ultimately aimed at increasing prosperity (wealth maximizing), so it can be said that humans are creatures who have rationality in both monetary and non-monetary terms to improve their lives (rational maximers).

Posner's contributions focus more on economic efficiency to explain the law (common law). Thus, according to him, if the law is better understood, it will be easier to examine its implications. To maintain the core of his position, Posner developed Law and Economics through his book The Economics of Justice in 1981. Posner defines efficiency as “exploiting economic resources in such a way that human satisfaction, as measured by aggregate consumer willingness to pay for goods and services, is maximized.” He describes such efficiency efforts as efforts to increase welfare (wealth maximization). Although this definition is said to be narrow, Posner continues to build his analysis (even expanding the concept of utility) from various topics, such as the legalization of same-sex marriage in Massachusetts.[10]

c. Corruption in Government Procurement

Government procurement of goods and services often becomes an arena for budget irregularities, with various methods such as mark-ups, fictitious procurement, or illegal direct

[10] Fajar Sugianto, *Economic Approach To Law*, Seri Analisis Ke-Ekonomian Tentang Hukum 2 (Prenada Media Kencana, 2013).

appointments. According to Chapter 1, General Provisions, Article 1 of Presidential Regulation No. 16 of 2018, it is stated that: Procurement of goods/services is the process of obtaining goods/services by Ministries/Agencies/Local Government Units/Other Institutions, which begins with needs assessment and continues until the completion of all activities required to obtain the goods/services. Such procurement activities are funded by the State Budget (APBN) or Regional Budget (APBD), whether carried out through self-management or by goods/services providers.

Government procurement of goods and services plays a crucial role in achieving national development objectives, particularly in enhancing public services at both the central and regional levels.[11] The legal parties involved in the procurement of goods and services are the government and the goods/services providers. The government acts as the buyer or user of goods or services, while the goods/services providers act as the sellers. In the procurement of goods and services, the government and the goods/services providers are bound by a procurement contract. In this contract, the rights and obligations of each party, as well as the procedures for implementation, must be clearly defined.

4. Analysis and Discussion

Most prosecutors still focus on formal evidence rather than economic considerations. In many cases, prosecutions are carried out without taking into account the potential for asset recovery or compensation for state losses.[12] Legally, the role of prosecutors in prosecuting cases is based solely on Article 14(b) of the Criminal Procedure Code (KUHAP), Law No. 11 of 2021 on the Prosecutor's Office as Dominus Litis, and the Attorney General's Guidelines, namely PERJA No. 15/2020 on Restorative Justice, but it does not yet include EAL. In legal practice, under the principle of progressive law, there is no need to wait for positivization (written provisions in the law), so prosecutors can and are entitled to apply the EAL approach as long as it does not violate the principle of legality and aims for efficiency, substantive justice, and protection of state

[11] Izzudin Arsalan et al., 'Reposisi Kewenangan Kejaksaan Dalam Melakukan Penegakan Tindak Pidana Korupsi Dan Maladministrasi Pemerintahan', *JURNAL USM LAW REVIEW* 4, no. 2 (2021): 651–62, https://doi.org/10.26623/julr.v4i2.4248.

[12] Irwan Hafid, 'Perampasan Aset Tanpa Pemidanaan Dalam Perspektif Economic Analysis Of Law', *Jurnal Lex Renaissance* 6, no. 3 (2021), https://doi.org/10.20885/JLR.vol6.iss3.art3.

finances. Even the Supreme Court of the Republic of Indonesia, through a number of precedents, has frequently emphasized the principles of effectiveness and the restoration of state finances.

In the criminal corruption case related to the procurement of goods and services for the 4G Base Transceiver Station (BTS) project by former Minister of Communication and Information Johnny G. Plate, which was processed at the Corruption Court in Central Jakarta, it was proven that there was a state loss of Rp. 8.03 trillion. and Johnny G. Plate was found to have received bribes and approved the expansion from 5,052 villages to 7,904 villages without adequate analysis, approved payments for unfinished projects, benefited contractors, and received luxurious facilities such as golf facilities and overseas trips.[13] For this reason, the Public Prosecutor demanded the maximum penalty for the defendant, but in the court of law, Johnny G. Plate was sentenced to 15 years in prison, a fine of Rp. 1 billion, a subsidiary sentence of 6 months' imprisonment, and compensation of Rp.16.1 billion + USD 10,000 (at the Appeal, Cassation, and Review stages). Additionally, the Supreme Court's decision also ordered the confiscation of a Land Rover vehicle as additional compensation, and if Johnny G. Plate fails to pay the compensation, he will face an additional 5 years' imprisonment as a subsidiary sentence. Thus, the execution process will begin in July 2024 following the Cassation Decision and will be reinforced by the Review Decision in May 2025.

In the criminal corruption case related to the procurement of goods and services by the Ministry of Trade for sugar imports in 2015-2016 by former Minister of Trade Tom Lembong. Tom Lembong is currently undergoing examination in court at the Corruption Criminal Court of the Central Jakarta District Court regarding allegations of irregularities in the procurement process of government goods and services related to the issuance of import permits, which constitute procurement within the context of trade and distribution, contrary to procedures, resulting in losses amounting to Rp. 400 billion.

In this case, the Prosecutor did not directly apply the Principle of Economic Analysis of Law; instead, the Prosecutor focused on state losses, calculating state losses as the basis for the indictment. This constitutes an economic approach, albeit limited to calculating the legal consequences rather than a comprehensive cost-benefit analysis. Then, regarding the demand for

[13] Agung Pangeran Bungsu and Fohan Muzakir, 'Analisis Framing Kasus Korupsi Menteri Kominfo Johnny G Plate', *Journal of Da'wah* 2, no. 1 (2023): 132–49, https://doi.org/10.32939/jd.v2i1.2813.

compensation, it shows the intention to restore state losses (fiscally restorative) and aims to deter business actors and corrupt bureaucrats from abusing their authority in import procurement. However, it should be noted that the prosecutor has not explicitly applied the Economic Analysis of Law, due to the following reasons:

a. The absence of formal arguments in the prosecutor's indictment stating that the prosecution was intended to restore market efficiency or prevent the collapse of the national trading system;
b. No analysis of the social and economic costs of such corrupt practices, such as the impact on sugar market prices, losses incurred by local sugar cane farmers due to excessive imports, and reduced state revenue from leaked taxes/import duties;
c. No approach to calculating long-term impacts, such as the impact on investment in the food sector or losses to national logistics distribution.

Prosecutors handling the 2015–2016 sugar import case involving the former Minister of Trade have not explicitly applied the principles of Economic Analysis of Law (EAL). Instead, they have relied on a conventional normative legal approach focused on state losses and the punishment of perpetrators, without systematically applying legal economic analysis instruments in constructing their arguments. Thus, the application remains limited to a normative legal approach and state losses, rather than on optimizing the long-term economic benefits of law enforcement.

With the EAL approach, prosecutors should consider: (1) the cost of handling the case, (2) the potential for asset recovery, and (3) the long-term deterrent effect. A plea bargain with the condition of recovering state losses can be more beneficial than a long prison sentence. The application of Economic Analysis of Law by prosecutors as dominus litis is an urgent need in modern law enforcement, especially in corruption cases that have a systemic impact on the economy. In the future, EAL-based prosecution can become the foundation for realizing laws that are not only normatively fair, but also economically beneficial to society and the state.[14]

In EAL, the concept of rational choice is a fundamental assumption. The concept of rational choice is based on the fundamental assumption that humans are essentially rational beings. Human satisfaction is unlimited in nature, and humans are never satisfied with what they have obtained

[14] Hafid, 'Perampasan Aset Tanpa Pemidanaan Dalam Perspektif Economic Analysis Of Law'.

and achieved, so they are driven to make the best decisions from the available options given the scarcity of resources. This is conducted for the purpose of wealth maximization, so that humans as economic beings are also referred to as rational maximizers.

As rational beings, the choices they make are based on considerations of profit and loss, advantages and disadvantages, by comparing the costs that must be incurred with the results that will be obtained. In addition to making decisions about their choices, humans also have the ability to seek the next best alternative, which is limited. Such efforts and abilities can be described as maximization.[15] A choice cannot be separated from the concept of scarcity. This aligns with classical economic theory, which states that everyone desires more than what is available to satisfy themselves.[16]

In addition, there is also the concept of value, which according to Posner, can be defined as something that is meaningful or important (significance), a desire or aspiration (desirability) for something, whether monetary or non-monetary, so that its inherent nature is the self-interest of humans to achieve satisfaction. A value can be identified by its inherent characteristics, namely an expected return or loss. Human considerations in determining a value ultimately always aim at the relevance of wealth maximization. Economic profits are formulated as Economic Profits = Total Revenue – (Explicit Cost + Implicit Cost) and/or economic benefits are more in the form of satisfaction or happiness that is monetary and non-monetary in nature, aimed at total utility.

Furthermore, EAL also recognizes the concept of efficiency discussed by various figures, including Pareto, Kaldor-Hicks, and Coase. Pareto offers two concepts of benefit allocation to measure efficiency, namely Pareto Optimality and Pareto Superiority. Pareto Optimality occurs when the distribution of benefits reaches a level that makes everyone equally happy. If this is not possible, then Pareto Superiority can be applied, which is a method where at least one person feels happier without any other person feeling more miserable. The application in legal provisions is that all legal provisions are considered good if they increase collective welfare (Pareto Optimality), or at least bring about positive change for one group without reducing the welfare of another group (Pareto Superiority).[17]

[15] Sugianto, *Economic Approach To Law*.
[16] Sugianto, *Economic Approach To Law*.
[17] Yuli Indrawati, *Economic Analysis of Law (EAL) Atas Ketentuan Pasal 2 Huruf g Undang-Undang Nomor 17 Tahun 2013 Tentang Keuangan Negara* (Mujahid Press, 2014).

Kaldor-Hicks states that various methods can be pursued as long as the happiness of citizens can continue to be increased regardless of whether other citizens experience a decrease in happiness. Here, the totality (accumulation) of happiness after division still brings an increase in happiness. Thus, compensation is applied. This method will encourage the law to always view the goodness of the law based only on the happiness of the largest number of citizens (the greatest happiness of the greatest number).[18]

Ronald Coase analyzed the connection between rules of liability and the allocation of resources. According to him, a new legal rule can be considered beneficial and worth maintaining if it minimizes costs (cost efficiency). These costs are not only for the parties directly involved but must also consider the externalities borne by society. This is because externalities are sometimes borne not only by one generation but also by subsequent generations. Externalities are costs or benefits arising from a transaction that must be borne or received by those who are not directly involved in the transaction.

Another school of thought in EAL is utilitarianism, which focuses on utility. According to Cooter and Ulen, utility is the benefit obtained from decision-making in choosing options with alternative uses. In EAL, the concept of utility refers to the usefulness or benefit of economic goods that can provide/generate profits that lead to welfare. There are two types of utility in EAL: first, expected utility, as defined by utilitarian thinkers as happiness; and second, utility in the sense used by utilitarian philosophers, namely happiness.

From the basic economic concepts outlined above, it is clear that these concepts do not stand alone but form a unified framework for evaluating economic aspects in the analysis of an issue, such as the effectiveness of regulations and legal provisions. Legal provisions are said to be effective if they have value (i.e., their application can be enforced), are useful (function according to their purpose), and are efficient (their enforcement is for the welfare of the people). The economic approach to law (EAL) can be distinguished into three theses, namely the descriptive thesis, where economic concepts and principles are used merely to describe an existing legal rule. The explanatory thesis uses economic concepts and principles to explain why a society should

[18] Sidharta, *Utilitarianisme* (UPT Penerbit Universitas Tarumanegara, 2007).

have a particular legal rule. The evaluative thesis uses economic concepts and principles as criteria for evaluation, so that a rule can be decided to be established, maintained, or revoked.

5. Conclusion

The repositioning of the role of prosecutors as dominus litis must be directed towards producing prosecution policies that take economic efficiency into account. The EAL approach is a solution so that case handling is not only repressive, but also preventive and restorative because the concept of dominus litis in the practice of handling corruption cases in government procurement of goods and services is clearly stated in the Criminal Procedure Code and PERJA, so that prosecutors have full authority and discretion in prosecuting perpetrators of corruption in government procurement of goods and services based on the EAL principle. The application of EAL can strengthen the role of prosecutors in prosecution, as prosecutors have revealed the economic efficiency aspect in handling corruption cases in government procurement of goods and services, even though it is not yet supported by formal regulations. This is very important because it is necessary to formulate a State Attorney policy that explicitly integrates the EAL principle into the guidelines for prosecuting corruption, especially in the procurement of goods and services in the government.

6. Recommendations

There needs to be an update to the Criminal Procedure Code that integrates provisions related to the authority of prosecutors as dominus litis, specifically in handling corruption cases that fall under the scope of special crimes. There needs to be an update to the State Attorney's internal guidelines that integrates economic considerations in the prosecution of corruption cases. In addition, training on EAL for prosecutors is important so that they can assess the socio-economic impact of each legal action.

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