



# Legal Policy of the Establishment of Deputy Attorney General for Military Affairs in the Structure of the Attorney General's Office of the Republic of Indonesia

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## ABSTRACT

The legal challenges within Indonesia's justice system revolve around the absence of a unified implementation of the one-roof prosecution policy for military crimes. Despite the apparent coordination authority vested in the Attorney General, as highlighted in Article 57 of the Military Justice Law and Article 18 of the Amendments to the Prosecutor's Office Law, practical enforcement reveals a lack of reporting by Auditors to the Attorney General regarding the prosecution of military criminal cases. Furthermore, issues arise in handling connection cases, where the Criminal Procedure Code stipulates joint trials for handling perpetrators from both general and military justice systems. However, in practice, many connectivity cases are tried separately, leading to dualism and disparities of prosecution. In response, a suggested solution was to establish the Deputy Attorney General for Military Affairs (DAGMA) as the new structure within the Attorney General's Office. This paper aims to obtain a comprehensive explanation regarding the legal policy behind establishing DAGMA as the assistant of the Attorney General in handling military affairs and connectivity cases. The method used in this research is juridical-normative, which mainly focuses on examining the law as norms or rules that apply in society and serve as guidelines for individual behavior. The findings proved that establishing DAGMA is the Government's effort to implement legal reform, especially regarding optimizing the performance of the Indonesian Prosecutor's Office as the implementer of state prosecutorial power to realize prosecutorial unity in Indonesia.

## 1. Introduction

One of the legal problems in Indonesia's justice system is that there is no unified implementation of the one-roof prosecution policy (one roof system) in carrying out policies and controlling the prosecution of military crimes. According to the provision of Law Number 31 of 1997 concerning Military Justice (the Military Justice Law), the administration of justice in criminal cases within the Indonesian National Armed Forces (INAF) is carried out by courts within the Military Justice environment, culminating in the Supreme Court. Meanwhile, the authority to carry out prosecutions lies with the Auditors.<sup>1</sup> Military Justice is the body that implements judicial power within the Armed Forces, which is a necessity for the inclusion of provisions in Article 24 paragraph (2) of the 1945

<sup>1</sup> Journal Articles: Muh. Irfan et al. (2022). "Kedudukan Jaksa dalam Pelaksanaan Penuntutan dalam Sistem Peradilan Pidana Militer berdasarkan Single Prosecution System. *Jurnal Pro Hukum*, 11 (1), p. 2.

Constitution of the Republic of Indonesia, which was held in the context of upholding law and justice by taking into account the interests of maintaining national security and defense.<sup>2</sup> Until now, Military Justice Law has been the specific legal basis for the administration of military criminal justice in Indonesia. The regulatory substance in this law includes matters regarding the jurisdiction of military justice, the organizational structure and functions of military justice, military justice procedural law and connectivity procedures, and military administrative law.<sup>3</sup>

Based on the elucidation of Article 57 paragraph (1) of Law Number 31 of 1997 concerning Military Justice (from now on referred to as Military Justice Law) explains that:

*"The Auditor General, in carrying out his duties in the technical field of prosecution, is responsible to the Attorney General of the Republic of Indonesia as the highest public prosecutor in the Republic of Indonesia through the Commander in Chief, while in carrying out his duties in developing the Prosecutor General he is responsible to the Commander in Chief."*

This is in line with the Elucidation of Article 18 paragraph (4) of Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia (from now on referred to as UU Kejaksaan), which states that:

*"Because the Attorney General is the highest leader and person responsible for controlling the implementation of the duties and authority of the Prosecutor's Office, the Attorney General is also the highest leader and person responsible in the field of prosecution."*

When we look closely, the Elucidation of Article 57 paragraph (1) of Military Justice Law and the Elucidation of Article 18 paragraph (4) of Attorney Law implies that, on the one hand, there is a technical-functional coordination authority for prosecution, which the Attorney General owns as the highest person responsible for prosecuting criminal cases both civil, criminal cases and military criminal cases. This provision implies that in handling cases in the Military Court environment, there is entanglement from the Prosecutor's Office in its position as a government institution with authority in prosecution matters by applicable regulations.<sup>4</sup> However, in law enforcement practices in the field, Auditors tend not to report every prosecution of military criminal cases they handle to the Attorney General, the highest person responsible for prosecution in the State of Indonesia.<sup>5</sup>

Other problems also occur in the mechanism for handling connection cases, the provisions of which can be found in Articles 89-94 of the Criminal Procedure Code (from now on referred to as Law Criminal Procedural Law (CPC). Article 89 of the CPC regulates that criminal acts of connection are committed jointly by those within the general and military justice system.<sup>6</sup> The handling of connectivity cases against civilian and military perpetrators should be examined and tried jointly (combined trials) in general courts, or, with exceptions, they can be reviewed and tried in military courts. These provisions do not open up the possibility of examining or dividing connectivity cases separately.<sup>7</sup> However, in practice, many connectivity cases are tried separately, where justiciable military trials are tried by military courts, and general courts try non-justiciable military cases. This incident will have consequences for dualism and disparity in prosecution. Dualism is because two

<sup>2</sup> Moch. Faisal Salam. (2006). *Hukum Pidana Militer di Indonesia*. Bandung: Penerbit Mandar Maju, p. 10.

<sup>3</sup> Journal Articles: Julu Parningotan. (2021). "Peradilan Pidana Militer dikaitkan dengan Asas Equality Before the Law." *Jurnal Ilmiah Nasional Mahasiswa Hukum*, 4 (2), p. 247.

<sup>4</sup> Putu Nadya Prabandari et al. (2022). "Peranan Jaksa Agung Muda Bagian Pidana Militer dalam Penanganan Perkara Koneksitas". *Jurnal Analogi Hukum*, 4 (2), p. 183. doi: <https://doi.org/10.22225/ah.4.2.2022.182-186>

<sup>5</sup> Soma Dwipayana & I Gusti Ketut Ariawan. (2021). "Reformasi Pembentukan Kewenangan Jaksa Agung Muda Bidang Pidana Militer dalam Penanganan Perkara Pidana Militer di Indonesia". *Jurnal Kertha Semaya*, 9 (3), p. 483-484. doi: <https://doi.org/10.24843/KS.2021.v09.i03.p10>

<sup>6</sup> Article 89 of Law Number 8 of 1981 concerning Criminal Procedure Law (LN 76 of 1981, TLN. No. 3209).

<sup>7</sup> Ministry of Law and Human Rights of the Republic of Indonesia: Directorate General of Legislation, *Urgensi Koneksitas & Penanganan Perkara Koneksitas*. Available from: [https://ditjenpp.kemenkumham.go.id/index.php?option=com\\_content&view=article&id=5754:urgensi-koneksitas-penanganan-perkara-koneksitas&catid=268:kegiatan-djpp&Itemid=73&lang=en](https://ditjenpp.kemenkumham.go.id/index.php?option=com_content&view=article&id=5754:urgensi-koneksitas-penanganan-perkara-koneksitas&catid=268:kegiatan-djpp&Itemid=73&lang=en). [Accessed: 07 July 2023].

different prosecution agencies handle criminal acts. The gap in prosecution between prosecutors and prosecutors in imposing unequal sentences for the same criminal incident raises the potential for lawsuits against the State.<sup>8</sup>

All those problems above led to establishing an assistant element for the Attorney General in the Military Affairs field, or what could be called the Deputy Attorney General for Military Affairs (DAGMA). DAGMA is a new structure in the Attorney General's Office for the military criminal chamber, which plays the role of "decision maker" in overcoming various obstacles in prosecution in each court so that the objective of the law, which includes legal justice, legal certainty, and legal benefits are maintained. The formation of DAGMA is a form of implementation of the principle of a single prosecution system, which means that no other institution has the right to carry out prosecutions unless it is under the control of the Attorney General as the country's highest public Prosecutor. The principle of a single prosecution system is reflected in Article 2, paragraph (2) of Attorney Law, which states that: "The Prosecutor's Office is one and inseparable" (*een en ondeelbaar*).

Based on the background stated above, this paper analyzes and examines several questions:

- a. What is the legal policy of the establishment of DAGMA?
- b. How is the journey behind the formation of DAGMA as the new structure of the Attorney General's Office?
- c. What are the legal principles in establishing DAGMA?

## 2. Method

Research methods can be understood as a way to solve problems or develop science by applying scientific methods. According to Sugiyono, research methods are scientific ways to obtain valid data to discover, develop, and prove specific knowledge in the hope that it can be used to understand, solve, and anticipate problems.<sup>9</sup> The research method used is normative legal research, which studies law as norms or rules that apply in society and serve as guidelines for individual behavior.<sup>10</sup> This research will use both secondary and primary data. The secondary data collection process will be carried out by analyzing legal materials such as regulations, court decisions, and the latest articles regarding the topics that oblige the author to collect data by visiting libraries, learning centers, archive centers, or reading many books related to their research.<sup>11</sup> Additionally, to obtain primary data, the author conducted field research by conducting semi-structured interviews with officials and staff elements at the Deputy Attorney General for Military Affairs (DAGMA) in the Attorney General's Office, officials and staff elements at Assistant for Military Affairs (Aspidmil) at the West Sumatra High Prosecutor's Office, and Judges at the Military Court III-12 Surabaya.

## 3. Analysis and Result

### 3.1. Legal Policy of The Establishment of DAGMA)

At the beginning of its development, legal politics was narrowly defined as legal policy (legal policies) that apply in a particular area. In its further development, legal politics was then interpreted as thinking to determine and understand legal policies to determine the direction of legal

<sup>8</sup> Journal Articles: Kelaesar Anna et al. (2022). 'Kewenangan Jaksa Agung Muda Bidang Pidana Militer dalam Penuntutan Tindak Pidana Koneksitas'. *Journal of Lex Generalis (JLS)*, 3 (9), p. 1510. doi: <https://pasca-umi.ac.id/index.php/jlg/article/view/1084>

<sup>9</sup> Jonaedi Efendi & Johnny Ibrahim. (2016). *Metode Penelitian Hukum Normatif dan Empiris*. Jakarta: Kencana, p. 3.

<sup>10</sup> Abdulkadir Muhammad. (2004). *Hukum dan Penelitian Hukum*. Bandung: Citra Aditya Bakti, p. 37.

<sup>11</sup> Zainudin Ali. (2010). *Metode Penelitian Hukum*. Jakarta: Sinar Grafika, p. 106.

development and reform that would be achieved from these legal policies.<sup>12</sup> Padmo Wahyono, in his ideas, stated that legal politics is the basic policy that determines the direction, form, and content of the laws that will be formed. Meanwhile, Mochtar Kusumaatmadja views legal politics as policy in the field of law and legislation that is used to achieve legal reform.<sup>13</sup>

According to the definition proposed by Satjipto Rahardjo, legal politics can be understood as a series of activities that involve choosing and determining the methods to achieve specific goals in society's social and legal fields.<sup>14</sup> Meanwhile, Soedarto, who once served as the chief drafter of the Criminal Code, views legal politics as state policy through state bodies that have the authority to establish desired regulations, which are expected to be used to express what is contained in society and to achieve what is aspired.<sup>15</sup>

Furthermore, in defining legal politics, Abdul Hakim Garuda Nusantara uses the terminology "National Legal Politics," which can be interpreted as legal policy (legal policy) that will be implemented or implemented nationally by a particular country's Government.<sup>16</sup> The scope of national legal politics includes creating new legal provisions necessary to meet the demands of societal developments and affirming the functions of law enforcement or law-implementing institutions and the development of their members.<sup>17</sup>

Based on the various definitions put forward by the experts above, it can be concluded that legal politics is a process in which the State, through authorized institutions or officials, takes policies to determine which laws must be updated, changed, or maintained, as well as regulating laws relating to State and government administration. This aims to ensure that state goals can be planned and achieved reasonably and orderly in stages.<sup>18</sup> Furthermore, according to the legal system theory by Lawrence M. Friedman, the elements of the legal system studied in legal politics include legal substance, structure, and culture. A legal structure is an institution formed by the legal system with various functional roles. The realization of a legal structure supporting the implementation of the legal system can be seen from the presence of law-implementing institutions or institutions, including the Police, Prosecutor's Office, Courts, and so on.<sup>19</sup>

The Prosecutor's Office of the Republic of Indonesia, as one of the law enforcement institutions in Indonesia, is an integral part of the legal structure studies, which always requires renewal and reformation to optimize national law. Based on the meaning of political law and legal system theory above, the presence of DAGMA) can be seen as an effort by authorized state officials, in this case, the President of the Republic of Indonesia and the Attorney General of the Republic of Indonesia, to carry out legal reforms to revitalize the implementation of law enforcement in Indonesia, especially regarding optimizing the performance of the Indonesian Prosecutor's Offices an institution implementing state power in the field of prosecution. DAGMA) is an institutional strengthening program for the Prosecutor's Office of the Republic of Indonesia to achieve unified prosecution in Indonesia.

In the process of establishing DAGMA as a new institution within the organizational structure of the Attorney General's Office, there are undoubtedly several goals to be achieved, both personal and

<sup>12</sup> Padmo Wahyono. (1986). *Indonesia Negara Berdasarkan Atas Hukum*. Jakarta: Ghalia Indonesia, p. 160 as cited by Moh. Mahfud MD. (2010). *Politik Hukum di Indonesia*. Jakarta: Rajawali Pers, p. 1.

<sup>13</sup> Abdul Latif & Hasbi Ali. (2010), *Politik Hukum*, Jakarta: Sinar Grafika, p. 23.

<sup>14</sup> *Ibid*.

<sup>15</sup> Moh. Mahfud MD. (2010). *Politik Hukum di Indonesia*, Jakarta: Rajawali Pers, p. 1.

<sup>16</sup> Abdul Hakim Garuda Nusantara, "Politik Hukum Nasional", paper presented at the Legal Aid Training Work (Kalabahu), organized by the LBIT Indonesia Foundation and LBH Surabaya, September 1985 as cited by Imam Syaukani & A. Ahsin Thohari. (2004). *Dasar-dasar Politik Hukum*, Depok: Rajawali Pers, p. 30-31.

<sup>17</sup> Abdul Latif & Hasbi Ali. (2010). *Op.Cit.*, p. 27.

<sup>18</sup> Abdul Latif & Hasbi Ali. (2010). *Op.Cit.*, p. 21.

<sup>19</sup> Jendelahukum.com, *Penggalan Teori Sistem Hukum Ala M. Friedman*. Available from: [https://jendelahukum.com/penggalan-teori-sistem-hukum-ala-m-friedman/#\\_ftn5](https://jendelahukum.com/penggalan-teori-sistem-hukum-ala-m-friedman/#_ftn5). [Accessed: October 18, 2023].

intra-institutional. DAGMA was formed based on coordinating two institutions: the Indonesian National Army and the Prosecutor's Office of the Republic of Indonesia. The steps taken by the Attorney General's Office in bringing DAGMA into its organizational structure are an inseparable part of the study of political law as a legal reform undertaken by the Government to maximize the operation of the legal system.

The formation of DAGMA was legitimized through the legal product Presidential Regulation Number 15 of 2021 concerning the Second Amendment to Presidential Regulation Number 38 of 2010 concerning the Organization and Work Procedures of the Prosecutor's Office of the Republic of Indonesia (from now on referred to as Presidential Decree No. 15 of 2021) which was stipulated by the President of the Republic of Indonesia Joko Widodo on 11 last February 2021. The formation of DAGMA through Presidential Decree No. 15 of 2021 is seen as an effort to optimize and strengthen the Adhyaksa Corps as an institution in carrying out its duties and functions as well as being a firm step for the Government, especially the President of the Republic of Indonesia, in ensuring a better law enforcement process in society.<sup>20</sup>

### 3.2. The Journey Behind the Formation of DAGMA as The New Structure of The Attorney General's Office

The idea of forming the DAGMA) was initiated by the Indonesian Prosecutor's Center Management (PJI) in holding the PJI National Seminar in several big cities in Indonesia in 2014, where one of the central points discussed in the seminar was related to the discourse formation of the Deputy Attorney General for Military Affairs (DAGMA)).<sup>21</sup> Apart from that, coordination guidelines have also been established between the National Army and the Prosecutor's Office of the Republic of Indonesia in the form of a Memorandum of Understanding Number: KEP-070/A/JA/04/2018 and Number: Kerma/17/IV/2018 dated 10 April 2018 which contains provisions regarding the assignment of Auditors into the body of the Prosecutor's Office of the Republic of Indonesia and Prosecutors as supervisors at the Auditor General of National Army Office.<sup>22</sup>

The ideas and concepts from the PJI National Seminar were again discussed officially at the 2019 National Working Meeting of the Prosecutor's Office of the Republic of Indonesia at the Yasmin Hotel Cianjur on December 3-6, 2019. The results in the form of recommendations from the national working meeting were related to the finalization of the study on the Center for Military Crime or Deputy Attorney General for Military Affairs.<sup>23</sup> Various series of discussions within the internal scope of the National Army and the Prosecutor's Office of the Republic of Indonesia ultimately led to a Focus Group Discussion (FGD) session on 22 January 2020 to discuss the ideal format for the organizational structure of the Prosecutor's Office of the Republic of Indonesia which was implemented in collaboration with the Central Management of the Indonesian Prosecutor's Association and Babinkum INAF Headquarters. One of the speakers, Dr. Barita Simanjuntak, S.H., M.H., CFrA (Chair of the Indonesian Prosecutor's Commission), said that he fully supports the development of the Prosecutor's organization through the formation of the Deputy Attorney General for Military Affairs (DAGMA). According to him, the formation of DAGMA is in line with the principle that prosecutors are one and inseparable and strengthens the existence of the Prosecutor's Office as the holder of the *dominus litis* principle.<sup>24</sup> This FGD agreed to establish an institutional structure for the Deputy Attorney General for Military Affairs (DAGMA)) to integrate policies for

<sup>20</sup> hukumonline.com., *Begini Pengaturan Perpres Pembentukan Struktur Jampidmil*. Available from: <https://www.hukumonline.com/berita/a/begini-pengaturan-perpres-pembentukan-struktur-jampidmil-lt602f81946910f/?page=all>. [Accessed 19 October 2023].

<sup>21</sup> Asep N. Mulyana. (2020). *Mandat Konstitusional Jaksa Agung Muda Bidang Pidana Militer*. Jakarta: Rajawali Pers, p. 100.

<sup>22</sup> *Ibid.*, p. 103.

<sup>23</sup> *Ibid.*

<sup>24</sup> Journal Articles: Muhammad Ihsan. (2021). "Kedudukan Kejaksaan Republik Indonesia dalam Proses Penuntutan Peradilan Militer di Indonesia". *Jurnal Intelektualita: Keislaman, Sosial, dan Sains*, 10 (2), p. 290. doi: <https://doi.org/10.19109/intelektualita.v10i2.8907>

prosecuting criminal cases between civil and military legal subjects. This decision is based on considerations of realizing the principles of accountability and transparency of the law enforcement process implemented in achieving guarantees and protection principles of equality before the law as reflected in the provisions of Article 27 of the 1945 Constitution of the Republic of Indonesia.<sup>25</sup>

### 3.3. Legal Principles in Establishing DAGMA

The formation of DAGMA is based on several legal principles and principles that apply in the Indonesian legal system, including the following:

#### a. The embodiment of the Principles of Distribution of Power (Sharing of Power) through the Mechanisms of Check and Balance

Based on the constitutional mandate as stated in Article 1 paragraph (3) of the Constitution of the Republic of Indonesia Year 1945, the Indonesian State is a democratic legal state, which is based on Pancasila and the 1945 Indonesian Constitution. The implementation of government processes in administrative affairs in Indonesia is not entirely based on the teachings of John Lock's separation of powers or Montesquieu's Tria Politica theory (division of powers)<sup>26</sup>. Although it can be seen through the amendments to the 1945 Constitution of the Republic of Indonesia that the institutional system in Indonesia has shifted from distribution of power to separation of power, it cannot be denied that separation of powers does not mean that one institution cannot relate to other institutions.<sup>27</sup> This is by including various constitutional provisions in the 1945 Constitution of the Republic of Indonesia, which demonstrate the existence of the principles of distribution and division of power.

Furthermore, it can be understood that the main principle of the distribution and division of state power emphasizes the condition that no single state organ monopolizes a branch of state power. Each State organ administering state power carries out its duties and functions coordinated and collaboratively with other organs.<sup>28</sup> This principle of power distribution seeks to minimize the accumulation or abuse of power by certain bodies and institutions in the administration of Government through a mechanism for monitoring each other in a balanced way through the mechanism of check and balance.

The implementation of the principle of distributive power through a check and balance mechanism can also be seen in the implementation of government power in the field of prosecution carried out by the Indonesian Prosecutor's Office. As stated in the elucidation of Article 57 paragraph (1) of Military Justice Law *jo.* the elucidation of Article 18 paragraph (4) of UU Kejaksaan, has illustrated that there is a technical coordination between the Auditor General to the Attorney General as the holder of the highest prosecutorial power in carrying out prosecutions within the military justice environment.

Furthermore, based on the provisions of Article 35 paragraph (1) letter i of UU Kejaksaan, it can be understood that the implementation of prosecutorial powers within the National Army scope by the Auditors originated solely from the delegation of prosecutorial authority possessed by the Attorney General as the Highest Public Prosecutor in Indonesia. This regulation at least shows the origin of the responsibility for the technical implementation of Auditors' prosecutions to the Attorney General. However, in practice, the Auditors often need to report the implementation of the prosecutions they have carried out to the Attorney General. This shows that the realization of checks and balances has not been achieved between the 2 (two) state power institutions, namely the Auditors as part of the judicial power within

<sup>25</sup> *Ibid.*, p. 107-108.

<sup>26</sup> *Ibid.*, p. 143.

<sup>27</sup> People's Consultative Assembly (MPR). (2017). *Checks and Balances dalam Sistem Ketatanegaraan Indonesia*. Jakarta: Badan Pengkajian MPR RI, p. iii.

<sup>28</sup> Asep. N. Mulyana, *Loc.Cit.*

the scope of military justice and the Indonesian Prosecutor's Office as other bodies whose functions are related to judicial control.

Based on these circumstances, DAGMA) In this case, the Attorney General was formed as an assistant leadership element to bridge coordination between auditors in various courts within the military justice environment and the Attorney General. This is to ensure certainty and fairness in the prosecution process in Indonesia. The presence of DAGMA) is a form of implementation of the mechanisms of check and balance where state institutions supervise each other in a balanced manner between one another and other state powers. DAGMA)'s role in bridging coordination between the Auditor General and the Indonesian Prosecutor's Office in prosecutions reflects the application of energy distribution principles as contained in the provisions of Article 24 of the 1945 Constitution of the Republic of Indonesia jo. Article 38 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power (from now on referred to as UU Kekuasaan Kehakiman).<sup>29</sup> Implementing this check and balances mechanism is also an effort to realize the Integrated Criminal Justice System (ICJS), especially in implementing prosecutions in the military justice environment and handling connectivity cases in Indonesia.

#### **b. Ensuring the Implementation of the Principles of Due Process of Law to Achieve Legal Objectives**

The establishment of DAGMA) is inseparable from those efforts to achieve legal objectives, namely legal justice, legal certainty, and legal benefits, as well as eliminate disparities and dualism in prosecuting criminal offenses in the Indonesian legal system. This is closely related to connectivity justice in regulating the Military Justice Law, UU Kekuasaan Kehakiman, and CPL as a mechanism for resolving criminal acts committed jointly by those who are the subjects of general justice and military justice. In the period from 2015 to 2019, it was reported that the number of perpetrators of criminal acts who were subjects of military criminal law was 12,019 perpetrators, of which, if classified based on work unit origin, then 10,397 people came from the Indonesian Army, 989 people from the Indonesian Navy, and 621 legal subjects from the Indonesian Air Force.<sup>30</sup> This report shows that military members' involvement in criminal cases remains high.

In handling connection cases, the perpetrators should be examined and tried together in a general court environment unless otherwise determined to be resolved through military justice. However, unfortunately, it is still prone to be resolved separately within the scope of military justiciable and non-military justiciable (*splitting*). Examples of cases where connectivity cases were resolved separately were the corruption case in procuring AW-101 helicopters within the Indonesian Air Force and the bribery in the Maritime Security Agency (Bakamla) monitoring satellite procurement project worth IDR 200 billion.<sup>31</sup> Moreover, up to now, the mechanism for handling connection cases through military justice is still relatively high with a fluctuating range, namely at a relative value of above 2,000 cases in 2017 and 2018 and more than 1,500 cases in 2019.<sup>32</sup>

If we took another look into the data above, the higher the number of crimes committed by military officers, the greater the possibility that the crimes that occur are the result of the convergence of the Criminal Code (from now on referred to as CC) and the Military Criminal Code (from now on referred to as MCC). The CC applies if the act falls within more than one

<sup>29</sup> *Ibid.*, p. 144-145.

<sup>30</sup> The data was obtained from Babinkum of the National Army in April 2020 related to the subject of military law as perpetrators of criminal acts for the 2015-2019 period, as included in Asep N. Mulyana. (2020). *Mandat Konstitusional Jaksa Agung Muda Bidang Pidana Militer*. Jakarta: Rajawali Pers, p. 83.

<sup>31</sup> Indonesia Corruption Watch (ICW), *Peradilan Koneksitas Kasus Korupsi*. Available from: <https://antikorupsi.org/id/article/peradilan-koneksitas-kasus-korupsi>. [Accessed: October 28, 2023].

<sup>32</sup> Kelaesar Anna et al. (2022). *Op.Cit.*, p. 1508.

criminal regulation or is *concursum idealis* as determined in Article 63 of CC. If the resolution of connectivity cases through the *splitting* mechanism becomes more widespread, then this will have implications for dualism and disparities in prosecution. Dualism is related to institutional dualism in prosecution, and disparity is related to differences in the formulation and imposition of crimes against 2 (two) or more legal subjects in the same case object.

Based on the circumstances above, such a mechanism is considered unable to provide legal certainty in resolving cases of connectivity and justice for perpetrators, especially civil society, because there are differences in settlement mechanisms for the same case object. The resolution of connectivity cases is carried out separately (*splitting*) at a normative theoretical and juridical level and can be said to be unjustified or null and void.<sup>33</sup> This again highlights the various contradictions in the presence of military justice as a special court, which seems to provide room for exclusivism for National Army members who commit criminal acts, especially those that harm civilian interests. So far, military justice as a special court has raised several problems related to equality before the law *principle*.

Considering the situation in the implementation of connectivity justice, the Government, which in this case includes the President of the Republic of Indonesia and the Attorney General of the Republic of Indonesia, has established DAGMA as an institution whose main aim is to overcome the phenomenon of disparities and dualism in handling connectivity in Indonesia. DAGMA) plays a role in ensuring the implementation of a fair legal process (due process of law) for perpetrators of connectivity cases who come from 2 (two) different judicial environments. The meaning of due process means that DAGMA plays an essential role in ensuring that the perpetrators in connection cases are legally processed for a criminal act they have committed.<sup>34</sup> DAGMA) has duties and authorities that include handling connectivity cases and supervising the implementation of connectivity mechanisms by law enforcement officers in civil and military environments in designated connectivity cases. DAGMA aims to ensure certainty and efficiency in implementing connectivity justice and realize a justice system based on speed, simplicity, and affordable costs.

### c. Consequences of the Dominus Litis Principle

The Prosecutor's Office is a government institution in the Indonesian criminal justice system that exercises state power in prosecution and other authorities based on law. Therefore, as a state instrument with the authority to prosecute, the Prosecutor is seen as the "party" who controls the case process from start to finish/execution. Apart from being the bearer of prosecutorial power, the Prosecutor's Office is the only agency implementing criminal decisions (executive officer). The presence of a prosecutor determines the success of the law enforcement process in a country, so it is not uncommon for prosecutors to be seen as the central figure in the effectuation of criminal justice.<sup>35</sup>

The authority to carry out prosecutions possessed by the Prosecutor's Office is nothing other than a manifestation of the *dominus litis* principle. *Dominus litis* comes from Latin where *dominus* means owner--while *litis* means case or lawsuit. Black's Law Dictionary 8th Edition translated *dominus litis* as follows: "The party who makes the decisions in a lawsuit, usually as distinguished from the attorney."<sup>36</sup> *Dominus lists* principles that have also been recognized in favorable legal products, precisely in Article 1 number 1 *jo*. Article 2, paragraph (1) of

<sup>33</sup> Journal Articles: Parluhutan Sagala. (2016). "Tinjauan Putusan terhadap Penyimpangan Ketentuan Hukum Acara Pemeriksaan Koneksitas". *E-Jurnal Peradilan Militer*. Available from: <https://www.dilmiltama.go.id/home/index.php/e-jurnal.html>. p. 12.

<sup>34</sup> The data was obtained based on an interview with Indra Muda Nasution, Head of Prosecution at the Assistant for Military Affairs at the West Sumatra High Prosecutor's Office on Monday, December 04, 2023.

<sup>35</sup> Jan. S. Maringka. (2017). *Reformasi Kejaksaan dalam Sistem Hukum Nasional*. Jakarta: Sinar Grafika, p. 39.

<sup>36</sup> Black's Law Dictionary 8th Edition by Bryan A. Garner. (2004). p. 1479.



Attorney Law states that the Prosecutor's Office is a government institution whose functions are related to judicial power, which exercises state power in the field of prosecution and other authorities based on law, which is exercised independently.

The consequence of the *dominus litis* principle is that the control of prosecutorial policy and its authority must be placed under the control of the Prosecutor's Office, which places the head of this institution, namely the Attorney General of the Republic of Indonesia, as the Highest Public Prosecutor. The position of the Prosecutor is based on the *dominus litis* principle, which gives the Prosecutor the authority to control the case. It is the only institution that can determine whether or not a case can be submitted to the prosecution stage. This principle reflects the implementation of the single prosecution system principle, which means that all prosecutorial authority exercised by any institution is under the supervision and control of the Attorney General of the Republic of Indonesia as the Highest Public Prosecutor.<sup>37</sup>

The *dominus litis* principle can also be found in several constitutional court decisions. *First*, Constitutional Court Decision Number 55/PUU-XI/2013 shows that the Constitutional Court recognizes the critical role of the Prosecutor's Office and Prosecutors as controllers of prosecution or *dominus litis* in the case-handling process, which aims to build legal order and respect human rights. *Second*, Constitutional Court Decision Number 29/PUU-XIV/2016 contains a narrative of the panel of judges' considerations, which emphasizes the strategic position of the Prosecutor as the sole holder of prosecutorial authority (*dominus litis*).<sup>38</sup> The principle of *dominus litis* is also functionalized in the regulation of the authority to stop a prosecution held by the prosecutor's office, as regulated in Article 140 paragraph (2) of CPL in that condition where the evidence is insufficient, the case is not a criminal case, or there are legal reasons that justify stopping the prosecution.<sup>39</sup> Based on the description above, the Prosecutor is a *dominus litis* who controls and is interested in handling the case from start to finish.

#### d. Implementation of the Principles of a Single Prosecution System

Furthermore, as stated by Attorney General Sanitiar Burhanudin, DAGMA) was formed to embody a single prosecution system in handling all criminal acts to create transparency and objectivity in case handling. DAGMA's formation reflects the implementation of the single prosecution system principle, which means no prosecutorial authority is exercised by any institution except for its control by the Attorney General of the Republic of Indonesia as the highest public Prosecutor.<sup>40</sup> The principle of a single prosecution system is reflected in Article 2, paragraph (2) of UU Kejaksaan, which states that "the prosecutor's office is one and inseparable" (*een en ondeelbaar*). This means that prosecution must exist in one institution, namely the Prosecutor's Office, so that unity of policy in the field of prosecution can be maintained and unified characteristics in its thinking, behavior, and work procedures can be displayed.

The establishment of DAGMA) To affirm the position of the Indonesian Prosecutor's Office as *dominus litis*, it must be interpreted as an implementation of the principle of a single

<sup>37</sup> The data was obtained based on an interview with Fajar Rudi Manurung as Head of the Sub-Directorate of Execution, Extraordinary Legal Remedies and Examination (Uheksi) at the Jampidmil Directorate of Execution, Extraordinary Legal Remedies and Examination (Uheksi) on November 14, 2023.

<sup>38</sup> Journal Articles: Muh. Ibnu Fajar Rahim. (2023). Asas-Asas Hukum Penuntutan: The Legal Principles of Prosecution. *The Prosecutor Law Review*, 1 (1), p. 16. doi: <https://prolev.kejaksaan.go.id/kejaksaan/article/view/1>.

<sup>39</sup> Journal Articles: Tiar Adi Riyanto. (2021). Fungsionalisasi Prinsip Dominus Litis Dalam Penegakan Hukum Pidana Di Indonesia. *Lex Renaissance*, 3 (6), p. 488. doi: <https://doi.org/10.20885/ILR.vol6.iss3.art4>

<sup>40</sup> The data was obtained based on an interview with Fajar Rudi Manurung as Head of the Sub-Directorate of Execution, Extraordinary Legal Remedies and Examination (Uheksi) at the Jampidmil Directorate of Execution, Extraordinary Legal Remedies and Examination (Uheksi) on November 14, 2023.

prosecution system in an integrated criminal justice system. The basis for applying the principle of a single prosecution system in the international world can be seen in Article 11 of the United Nations Guidelines on the Role of Prosecutors, adopted by the 8th Crime Prevention Congress in Havana on 27 August-7 September 1990. Article 11 reads that:

*"Prosecutors must play an active role in the process of handling criminal cases, including carrying out prosecutions and, if permitted by law or by local customs, play an active role in investigations, monitoring the validity of such investigations, supervising the implementation of court decisions and carrying out other functions as representatives of the public interest."*<sup>41</sup>

The principle of a single prosecution system as a basis for strengthening the role of the Prosecutor's Office as the implementer of state power in the field of prosecution in the law enforcement process of a country has also been adopted in the constitutions of various countries in the world.<sup>42</sup> In the scope of Southeast Asia, Vietnam, through its constitution in Article 138, states that "The people's supervisory body is led by the chief procurator who has the highest position in prosecution." In Article 132 of its constitution, the Chinese State states that "The Supreme People's Procuratorate is the highest prosecutorial organ that directs the duties of the Regional People's Procuratorate and the Special People's Procuratorate." In the African region, South Africa, in Article 179 paragraph (1) of its constitution, states that "There is only one national prosecuting authority established by Act of Parliament." Furthermore, in Article 88, paragraph (4) of its constitution, Ghana states, "All criminal acts prosecuted in the name of the Republic of Ghana with the approval of the Attorney General"<sup>43</sup>

Several countries, such as Ukraine, Finland, and Russia, have also implemented similar arrangements in the European region. The Ukrainian Constitution, in Article 121, states that "the Ukrainian Prosecutor's Office is a unified system entrusted with carrying out prosecutions in court on behalf of the state." Furthermore, Article 104 of the Finnish Constitution states that "the Prosecutor's Office is headed by the highest prosecutor, namely the Attorney General, who is appointed by the President of the Republic." Likewise, Russia, in its constitution, states that "The Prosecutor's Office of the Russian Federation is a unified hierarchical system in which lower Prosecutors are subject to the orders of higher Prosecutors and culminate in the Prosecutor General of the Russian Federation"<sup>44</sup>

The principle of the single prosecution system has also been adopted in the Indonesian legal system. In essence, the principle of a single prosecution system means that "The Prosecutor is one and cannot be separated (*een en ondeelbaar*)," which means that the Indonesian Prosecutor's Office is one and cannot be separated. This principle speaks of a unified prosecution policy under the Attorney General as the Highest Public Prosecutor.<sup>45</sup> The regulation of the "*een en ondeelbaar*" principle is nothing other than the basis for carrying out the duties of the Prosecutor's Office to maintain a unified prosecutorial policy that displays unique characteristics that are integrated into the thoughts, behavior, and work procedures of the Prosecutor's Office.<sup>46</sup>

<sup>41</sup> Jan. S. Maringka. (2017). *Op.Cit.*, p. 39.

<sup>42</sup> Asep N. Mulyana. (2021). 'Jampidmil sebagai Upaya Adaptif dan Inovatif menghadapi Tuntutan Perkembangan Penegakan Hukum dalam Penanganan Perkara Koneksitas.' *Legal Materials in the 2021 Fiscal Year Coordination Meeting*, p. 21-22.

<sup>43</sup> The author processed the data based on an investigation of the constitutions in various Southeast Asian countries, which reflect the implementation of the principle of a single prosecution system.

<sup>44</sup> The author processed the data based on an examination of constitutions in various countries in the European region that reflect the implementation of the principle of a single prosecution system.

<sup>45</sup> Academic Text of the Draft Law of the Republic of Indonesia concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia, 2020, p. 58.

<sup>46</sup> Jan. S. Maringka. (2017). *Op.Cit.*, p. 40.

The existence of the principle of a single prosecution system in laws and regulations in Indonesia can be seen in the following periodization:<sup>47</sup>

**1) The Early Era of the Independence of the Unitary State of the Republic of Indonesia (NKRI) (Periode 1947-1948)**

In the early days of Indonesian independence, the formulation of the principle of a single prosecution system can be found in Law Number 7 of 1947, as later amended by Law Number 19 of 1948, concerning the Composition and Powers of Judicial Bodies and the Prosecutor's Office. In essence, the law stipulates that each court (Supreme Court, High Court, and District Court) has one Prosecutor's Office whose jurisdiction is the same and consists of one or several Prosecutors counted as one Chief Prosecutor.

**2) Old Order Era (Periode 1961)**

The principle of a single prosecution system at this time can be found in the regulatory content of Law Number 5 of 1961 concerning Basic Provisions for the Prosecutor's Office of the Republic of Indonesia, precisely in the provisions of Article 3 and Article 7. Article 3, paragraph (1) contains the provision: "The Prosecutor's Office is one and indivisible." Furthermore, the provisions of Article 7 paragraph (1) emphasize that: "The Attorney General is the Highest Public Prosecutor".

**3) New Order Era (Periode 1972-1998)**

During the New Order era, 3 (three) legal instruments demonstrated the existence of the single prosecution system principle in the Indonesian legal system, including:

- a) Presidential Decree Number 53 of 1972 concerning Control and Supervision of the Use of Authority to Submit Cases, Preliminary Examinations, and Prosecution within the Armed Forces of the Republic of Indonesia. Article 2 paragraph (1) contains provisions which explain that: "Auditor General carries out the duties, authority, and responsibilities of the Attorney General for the Armed Forces within ABRI based on the delegation of authority he received from the Attorney General through the Minister of Defense and Security/Commander of the Armed Forces of the Republic of Indonesia."
- b) The SKB of the Commander of the Armed Forces and the Attorney General, dated 13 January 1973, confirmed that the Auditor General received a delegation from the Attorney General.
- c) Military Justice Law. Elucidation of Article 57 paragraph (1) stipulates that the Auditor General while accomplishing his duties in the technical field of prosecution, is responsible to the Attorney General of the Republic of Indonesia as the highest public Prosecutor in the Republic of Indonesia. Furthermore, Chapter IV concerning Military Criminal Procedure Law in Part Five concerning Connection Examination Procedures (Article 199 and Article 202) contains provisions relating to the implementation of coordination in resolving some instances with the Attorney General as the Highest Public Prosecutor in the territory of the Unitary State of the Republic of Indonesia.

**4) Post-Reformation Period (Periode 1998-present)**

After the reform, the Government, through its legislative power, attempted to formulate various new laws and regulations to accommodate state administration. At this time, the existence of the principle of a single prosecution system was concretized

<sup>47</sup> The author processed the data based on a search for statutory regulations that reflect the implementation of the single prosecution system principle.

in a special law that regulates the institution of the Indonesian Prosecutor's Office, namely Law Number 16 of 2004, as amended by Law Number 11 of 2021 concerning the Prosecutor's Office of the Republic of Indonesia.

In this law, the principle of a single prosecution system is formulated concretely in the provisions of Article 2 paragraph (2), which reads: "The prosecutor's office as referred to in paragraph (1) is one and inseparable". Then, the formulation of these regulations is emphasized through the explanatory part of Article 2 paragraph (2), which explains that the purpose of being one and inseparable is to become the basis for carrying out the duties and authority of the Prosecutor's Office, which aims to maintain the unity of the Prosecutor's policy so that it can display unique characteristics that are unified in the thoughts, behavior and work procedures of the Prosecutor's Office (*een en ondeelbaarheid*).

By looking at the reflection of the implementation of the single prosecution system principle as contained in the various statutory provisions above, it is hoped that, in the end, it can eliminate the occurrence of disparities in prosecution and various other problems related to the technical implementation of prosecution. The realization of unified implementation of the one-roof prosecution policy with the implementation of the single prosecution system not only shows the State's efforts to ensure equal treatment for civilian and military subjects but is also an effort to achieve the goals of law enforcement, namely justice, legal certainty, and legal benefits. In this way, the State can maintain a balance of protection between the State, society, and individual interests, which includes the interests of criminal perpetrators and crime victims.

#### 4. Conclusion

The legal policy of the establishment of Deputy Attorney General for Military Affairs (DAGMA) is the Government's effort to implement legal reform, especially regarding optimizing the performance of the Indonesian Prosecutor's Office as the implementer of state prosecutorial power to realize prosecutorial unity in Indonesia. Apart from that, the formation of DAGMA as a new institution in the organizational structure of the Attorney General's Office is also a consequence of various legal principles applied in the legal system in Indonesia. *Firstly*, it embodies the power distribution principle through a check and balance mechanism. *Secondly*, DAGMA plays a role in ensuring the implementation of a fair legal process (due process of law) for perpetrators of connection cases to achieve legal objectives, namely legal justice, legal certainty, and legal benefits, as well as eliminating disparities and dualism in the handling of military criminal cases due to the lack of unified implementation of the one-roof prosecution policy (one roof system) under the coordination of the Attorney General's Office. *Thirdly*, the formation of DAGMA is also a consequence of adopting the *dominus litis* principle, which highlights the implementation of the principle of a single prosecution system, especially regarding institutions implementing state power in the field of prosecution.

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