

# QUO VADIS CRIMINAL PROCEDURAL LAW IN INDONESIA AFTER THE ENACTMENT OF LAW NUMBER 1 OF 2023 CONCERNING THE CRIMINAL LAW CODE

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## Keywords

*Criminal Law Reform, Loss of Prosecution Authority, Criminal Procedure Law*

## ABSTRACT

The criminal law reform in Indonesia was initiated through the enactment of Law No. 1 of 2023 concerning the Criminal Code, which replaces the provisions of the 1946 Criminal Code. One significant change relates to the prosecution process, particularly concerning the circumstances under which prosecutorial authority may lapse. This study aims to examine the circumstances that cause the termination of prosecutorial authority and to analyze the regulation of the prosecution process following the implementation of the new Criminal Code. A normative juridical method was employed, utilizing a statute approach and comparative analysis, with secondary data collected through literature studies and analyzed qualitatively. The findings reveal that Law No. 1 of 2023 introduces substantial updates to the conditions resulting in the cessation of prosecutorial authority, differing from the arrangements under the 1946 Criminal Code. However, discrepancies in editorial formulation were identified between the new material criminal law and the formal criminal law as stipulated in the Criminal Procedure Code (KUHAP) of 1981 and the Draft Criminal Procedure Code of 2012. These inconsistencies indicate the need for harmonization to ensure uniformity and legal certainty within the criminal justice system. The implications of this study underline the necessity for legislative adjustments to align substantive and procedural criminal laws, thereby strengthening the coherence and effectiveness of criminal law enforcement in Indonesia.

## INTRODUCTION

The Indonesian nation has gone through a long historical journey starting from the colonization of various foreign countries to the present, of course this affects the laws that apply in Indonesia. Moreover, Indonesia is a state of law, which means that all state equipment is subject to the rule of law that applies in the territory of Indonesia (Al Fikri, 2022; Hadi, 2022; Siallagan, 2016; Widayati, 2022; Wigiyanto, 2022). During the period of Indonesian independence, legal instruments in this context were criminal law, contained in the Criminal Code (KUHP), which is an important legal instrument for building a criminal justice system that is fair and just for all Indonesian people. The

purpose of the Criminal Code is to maintain public order by protecting the public from criminal acts that occur in the community.

However, the changing times supported by technological advances and societal changes encourage legal reform in Indonesia. This legal change occurred in Indonesia at the end of the 20th century, with demands for changes to the legal system that are more transparent, effective, and relevant to democratic values, to be able to accommodate technological developments and social changes that have an impact on law in Indonesia. To answer the challenges of the times, the government made efforts to reform the law to improve the rule of law to suit the needs of today's society (Arsyawal et al., 2023; Isima, 2021; Raihana et al., 2023; Saputra, 2021; Zainuddin et al., 2022). The process of changing the rule of law also faces various challenges and controversies related to differences of opinion regarding several aspects of changing the rule of law, but the legal reform process continues by involving the participation of community groups such as legal experts, academics, activists, and civil society to ensure that the changes to the rule of law made can properly accommodate the interests of all parties.

The birth of criminal law reform through the ratification of Law Number 1 of 2023 concerning the Criminal Code is a real step by the government to provide reform for law enforcement in Indonesia. Today, criminal law in Indonesia uses the Dutch Criminal Code (KUHP), called *Wetboek van Strafrecht*. However, with the presence of Law Number 1 of 2023 on the Criminal Code as a reform in the criminal law system that is not only structural but also conceptual, with a more modern and progressive approach (Arifin, 2023; KUHP, 2023; Muksin, 2023; Orba Manullang et al., 2023; Prawiraharjo, 2023; Widiyanto & Ibrahim, 2023). The ratification of the law is a form of adaptation between the state of development of community life with laws that still uphold human rights, and the law will take effect after 3 (three) years from its enactment, namely in 2026. Law Number 1 of 2023 on the Criminal Code aims to reorganize all aspects of the national criminal law system as a whole, although its presence has invited debate because it contains several controversial legal rules, and also brings changes that are different from the old Criminal Code (KUHP).

After the reformation of the Criminal Code (KUHP) through Law Number 1 of 2023 on the Criminal Code, which applies as Material Criminal Law, of course, it will be closely related to the formal criminal law regulated in the Criminal Procedure Code (KUHAP). Currently, the Formal Criminal Law still uses the Dutch heritage Criminal Procedure Law, namely Law Number 8 of 1981 concerning Criminal Procedure Law (Amrianto, 2023; Margo Hadi Pura & Faridah, 2021; Sihaloho, 2021; Yusefin & Chalil, 2018). Of course, after the renewal of the Criminal Code (KUHP) that the government has carried out, it also requires renewal of the Criminal Procedure Code (KUHAP) so that national legal development can be carried out perfectly as planned by the government. The reform of the Criminal Procedure Code has been scheduled by the government through the legal revitalization agenda volume II to overcome overlapping and multi-interpreted laws and regulations. The government has carried out the plan to reform the Criminal Procedure Code (KUHAP) by submitting the Draft Criminal Procedure Code (RKUHAP) to the DPR on March 6, 2013, after which the DPR will form a Working Committee (Panja) to discuss the draft. The Draft Criminal Procedure Code (RKUHAP) is currently included in the National Legislation Program (Prolegnas) Priority 2025.

There are many differences between the old Criminal Code and Law Number 1 of 2023 on the Criminal Code and the new Criminal Code. One of these differences is the regulation of the prosecution process, which starts from the prosecutor's investigation process. In the event that a criminal offense has occurred that is regulated in the Criminal Code (KUHP), the law authorizes the

prosecutor to be a public prosecutor to conduct prosecution. And every public prosecutor must realize that the prosecution process is an important stage in Criminal Procedure Law, because the success of the prosecution at this stage depends on the prosecutor's ability to prove the guilt of the defendant's actions at trial. By law, every criminal who commits a crime must be prosecuted and tried in court. The new Criminal Code states that the prosecution process carried out by the Public Prosecutor is carried out since the investigation process.

Changes in the prosecution process regulated in the old Criminal Code with Law Number 1 of 2023 on the Criminal Code, as the new Criminal Code, certainly have differences in the Material Criminal Law. The change in the regulation requires a formal criminal law that is relevant to Law Number 1 of 2023 on the Criminal Code, as the new Criminal Code. Currently the formal criminal law still uses the old Criminal Procedure Code, namely Law Number 8 of 1981 concerning the Criminal Procedure Code, which is considered to need harmonization and renewal through the Draft Criminal Procedure Code (RKUHAP) which will later become the new formal criminal law so that there is uniformity and consistency with the latest material criminal law in the Criminal Justice System. And the new Material Criminal Law is not only conceptual but also enforceable in practice.

Several studies have analyzed the importance of harmonization between material and formal criminal law. Syahrizal (2022) emphasized that changes in criminal material law must be followed by adjustments in criminal procedural law to maintain coherence in law enforcement practices. Meanwhile, Kusuma and Ardiansyah (2023) discussed that the application of new norms in the Criminal Code without procedural adjustments risks causing legal uncertainty at the law enforcement level. However, existing research has not specifically examined the impact of prosecutorial authority adjustments in the new Criminal Code compared to the old system, especially in the context of harmonizing prosecution processes from investigation to court proceedings. This research fills the gap by analyzing the loss of prosecutorial authority based on Law No. 1 of 2023 and its relevance to the formal criminal law that is still in transition. The novelty of this research lies in its focus on the synchronization needs between material and procedural criminal law post-criminal law reform, a topic that is still rarely studied comprehensively in the context of Indonesian legal renewal.

The objective of this research is to analyze the changes in the prosecution process and the circumstances that can cause the fall of prosecutorial authority based on Law No. 1 of 2023 concerning the Criminal Code, and to assess the need for harmonization with the Criminal Procedure Code (KUHP) and the Draft Criminal Procedure Code (RKUHAP).

## **RESEARCH METHOD**

This research uses a normative juridical research method to examine statutory regulations and literature related to the problem under study. With a statute approach related to regulations governing Criminal Procedure in Indonesia after the enactment of Law No. 1 of 2023 concerning the Criminal Code as the new Criminal Code (KUHP), this approach helps researchers to find out whether or not there is a relationship between the rules and the problems to be analysed. Then the researcher uses a comparative approach by using Law No. 1 year 2023 concerning the Criminal Code, the old Criminal Code (Wetboek van Strafrecht), Law No. 8 year 1981 concerning the Criminal Procedure Code and the Draft Criminal Procedure Law, as well as several countries that have implemented the prosecution process starting from the investigation process, this approach aims to see differences in the regulation of Criminal Procedure in Indonesia after the enactment of Law No. 1 year 2023 concerning the Code. This research uses secondary data, which is collected through library research, and then analysed qualitatively.

## RESULTS AND DISCUSSION

### Loss of Authority

In addition to regulating prosecutorial authority, the legislation also regulates the loss of prosecutorial authority. The loss of authority to prosecute a criminal offense is caused by several special situations regulated in the legislation. The old Criminal Code had regulations on prosecutorial termination, but Law Number 1 of 2023 changed it to the new Criminal Code. By claiming that the prosecution process is a judicial procedure that starts with the investigation, the new Criminal Code does not make a clear distinction between the investigation and prosecution processes. As a result, it can be argued that the new Criminal Code views the investigation as a sequence of prosecution procedures.

The loss of prosecutorial authority is regulated by Law Number 1 Year 2023 concerning the Criminal Code Article 132 paragraph (1), which stipulates that the prosecutorial authority is declared waived in the following scenarios: if a case has been the subject of a court decision that has been granted enduring legal effect, the perpetrator of the criminal act has passed away, the case has expired, a fine has been paid, a complaint has been withdrawn in a criminal act complaint, an out-of-court settlement has occurred, and amnesty and abolition have been granted. Article 132 year the 2023 Criminal Code does not only regulate the loss of prosecutorial authority carried out by the Public Prosecutor on the legal subject of *natuurlijke* person or human but also states that the loss of prosecutorial authority applies to corporate legal subjects as mentioned in Article 132 paragraph (2) of the 2023 Criminal Code with further arrangements in Article 121 year the 2023 Criminal Code.

Some of the circumstances that cause the public prosecutor's authority to file a prosecution to be terminated were previously regulated in the old Criminal Code, but there are several additional reasons in the new Criminal Code. The following is an explanation of the circumstances that can be the reason for the loss of prosecutorial authority:

### **The Presence of a Court with Permanent Legal Force in the Same Case (*inkracht van gewijsde*)**

The Criminal Code 2023, Article 132 paragraph (1) letter a, stipulates that the authority to prosecute may be revoked if a court decision has been rendered permanent legal force against all parties involved in the same case. Article 76, paragraph (1) of the Criminal Code 1946 previously regulated the regulation of this matter. This provision stipulates that an individual may not be prosecuted twice for an act for which an Indonesian judge has tried them with a final decision, unless the judge's decision is still subject to reversal. In the sense that Indonesian justices, including those of the *swapraja* and *adat* tribunals, in locations that have these courts. This is in line with the principle of *ne bis in idem*, which means that a person sentenced with permanent legal force for a criminal offense cannot be prosecuted again for the same act. This is a guideline so that there is no examination and prosecution twice in the same case; both the Criminal Code 2023 and the Criminal Code 1946 regulate that if this happens, it can remove or nullify the authority to prosecute by the Public Prosecutor.

### **Suspect Or Defendant Passes Away**

The Criminal Code 2023, Article 132 paragraph (1) letter b, stipulates that the prosecutorial authority may be forfeited in case of the suspect or accused's death. This arrangement was previously regulated in the old Criminal Code of 1946 in Article 77, which stipulates that the authority to prosecute a criminal offense is terminated upon the accused's death. Because the prosecution of responsibility for the occurrence of a criminal act must be carried out by the criminal act perpetrator himself, the regulation regarding the nullification of prosecutorial authority due to the death of the

suspect or defendant is common. If there is another possibility, such as the death of the criminal act perpetrator, it is appropriate that the prosecution process cannot be continued by law because the criminal act perpetrator cannot be held accountable for his actions and the blame cannot be transferred to another person. These circumstances are regulated by both the Criminal Code 2023 and the Criminal Code 1946.

### **Expiration Of Prosecution**

According to Criminal Code 2023 Article 132, paragraph (1), letter c, the power to drop the prosecution is revoked if it expires. The Criminal Code of 1946's Article 78, paragraph (1), which states that the right to pursue a crime is revoked at its expiration, likewise governs this arrangement. Legislation provides for the provision of an expiration period with the aim that for cases that have not been resolved for a very long time, it is possible that evidence has been lost or is no longer complete and witnesses begin to lose their memories and even forget about the matter because of the time that has passed, which can eliminate the authority to prosecute. Arrangements regarding the expiration of cases that eliminate prosecution in both the Criminal Code 2023 and the Criminal Code 1946 have been regulated with more detailed provisions in subsequent articles that explain the limitations of a criminal offense said to expire, and the prosecution authority becomes void.

### **Pay Criminal Fine**

The Maximum Category II Fine is Rp. 10.000.000

According to the 2023 Criminal Code's Article 132, paragraph (1), letter d, if the maximum fine for a crime that has a maximum penalty of category II is paid willingly, the prosecution power is waived. This article explains for minor criminal offenses punishable by category I and category II fines such as desecration of the State Flag, State Emblem and National Anthem, Disturbance of Environmental Peace and Public Meetings, Disturbance of Funerals and Corpses, Organizing a Party or Crowd, Carrying out work without permission or exceeding authority, disturbance of land, seeds, plants and yards, interfering with and obstructing the judicial process, causing public danger, without permission to make explosives, crimes of delinquency against persons or property, crimes of recklessness that endanger the public, Disregard for the Order of an Authorized Official, Destruction of State Edicts, Use of Ranks, Titles, and Regalia, Misuse of Livestock Transportation Certificate, Crime of Irrigation, Crime of Counterfeiting Currency and Banknotes, Crime Against Origin and Marriage, Crime of Theft, Crime of Embezzlement, Crime of Fraudulent Acts, Abuse of Authority and Violation of Obligations by Shipmasters, and Crime of Adulteration if the perpetrator of the crime pays a fine in accordance with the criminal act committed, the prosecution authority is waived.

The Maximum Penalty of Category IV is Rp. 200.000.000 for Criminal Offenses That Carry a Maximum Penalty of One Year in Prison or a Maximum Penalty of Category III is Rp. 50.000.000

According to the 2023 Criminal Code's Article 132, paragraph (1), letter e, the prosecution power is waived since the maximum category IV fine is paid voluntarily for crimes carrying a maximum sentence of one year or a maximum category III fine. According to this article, if the public prosecutor concurs that the offender can pay the maximum penalty of either category IV or category III, the prosecution power may be waived, which consists of Criminal Offenses based on Racial and Ethnic Discrimination, Unauthorized Pawnshop, Interfering and Obstructing the Judicial Process, Criminal Offenses of Carelessness Endangering the Public, Destruction of Evidence for the Interest of Public Office, Criminal Offenses of Disclosure of Secrets, Criminal Offenses of Fraudulent Acts, and Destruction and Damage to Buildings.

The power to prosecute under Article 132 paragraph (1) letters d and e may be nullified by paying penalties, although this regulation does not apply to repeat crimes. The authority to prosecute offenses punishable by fine only shall be extinguished if the maximum fine and costs incurred if the prosecution has been initiated by the authority of the official appointed for this purpose by general regulations, and within the time stipulated by him, according to Article 132 paragraph (1) letter d and e, which was previously regulated in Article 82 paragraph (1) of the Criminal Code 1946. The 1946 Criminal Code regulated the payment of fines, and was then updated with more detailed rules regarding the amount of fines and provisions on the types of criminal offenses that can be subject to fines in the 2023 Criminal Code.

### **Withdrawal Of Complaint for Complaint Crimes**

According to the Criminal Code 2023's Article 132, paragraph (1), letter f, prosecution jurisdiction may be lost if a criminal offense complaint is withdrawn. The following are examples of crimes that can only be punished in response to a complaint: Assaults on the Dignity or Honor of the President and/or Vice President, The Head of a Friendly State and its Deputy are Attacked for their Honor or Dignity, Insults against the Government or State Institutions, Interfering and Obstructing the Judicial Process, Defamation of the Dead, and Criminal Acts of Disclosure. In these crimes, if the complaint is dropped, it is deemed that there isn't one, and the prosecution authority is also cancelled.

### **A Settlement Outside the Process Has Occurred**

According to Criminal Code 2023 Article 132, paragraph (1), letter g, a settlement reached outside the legally mandated court process results in the loss of prosecution authority. This article accommodates the settlement of cases through restorative justice, which has the advantage of reducing the number of cases entering the court, but because the case has been resolved with an out-of-court settlement, the prosecutorial authority over the suspect can be lost or cancelled because the case is considered over.

### **Given Amnesty or Abolition**

The Criminal Code 2023's Article 132, paragraph (1), letter h, declares that prosecution jurisdiction is forfeited when amnesty or abolition is granted. Abolition and amnesty were formerly governed by Law Number 11 of 1954 Concerning Amnesty and Abolition and the 1945 Constitution of the Republic of Indonesia. Amnesty is forgiveness by removing criminal penalties, whereas abolition is the loss of the authority to prosecute and halt criminal prosecution. Both regulations can be carried out with the consideration of the House of Representatives (DPR RI).

### **Arrangement of Prosecution Process and Termination of Prosecution Authority in Criminal Procedure Law After Enactment of Law No. 1 of 2023 On the Criminal Code**

According to the previously provided explanation, the Criminal Code of 1946 has different provisions for terminating prosecutorial authority. These include *ne bis in idem*, the death of the suspect or defendant, the prosecution's expiration, and the settlement of cases outside of court. The Criminal Code 2023 contains provisions for terminating prosecutorial authority, such as when a court decision with permanent legal force has been made on the same case, when the suspect or defendant dies, expiration, when the maximum fine for criminal offenses that carry a maximum penalty of category II is paid voluntarily, when the maximum fine for criminal offenses that carry a maximum penalty of one year in prison or a maximum penalty of category III is paid voluntarily, when complaints regarding criminal offenses are withdrawn, when a settlement outside of the legal system

as stipulated by the law, and when amnesty or abolition is granted. The 1946 Criminal Code rule on the termination of prosecutorial jurisdiction is updated and made clearer by the 2023 Criminal Code regulation.

The regulation of the fall of prosecution authority in the 2023 Criminal Code in the explanation of Article 132 which states that the prosecution process begins after the investigation states that the 2023 Criminal Code does not clearly separate the investigation process and the prosecution process, instead it sees that the investigation process and the prosecution process are one unit of the criminal justice process. And with this arrangement, of course, it requires a coordination mechanism between the Police Investigator and the Public Prosecutor regarding the circumstances of the loss of prosecution authority so that there is no disagreement between the two institutions in handling a case. This provision is the same as Article 39 Het Herzienne Inlandsch Reglement / HIR (Staatsblad 1941 No. 44) which states that the authority of the prosecutor in addition to being a public prosecutor is also given the authority to conduct investigations and further investigations because investigations are part of the prosecution so that if there are cases that are not followed up by investigators, the prosecutor can take over and conduct his investigation of the case.

Therefore, in the criminal justice system, the role of the public prosecutor is very important in controlling cases based on the principle of *dominus litis*. In addition, the Public Prosecutor also has an active role in investigative actions, and usually in Continental European countries, the Criminal Procedure Code (KUHP) includes the Prosecutor as one of the investigators. Even in some countries, the Prosecutor is also placed as an investigator in the first order, followed by other investigators. In the criminal justice system, several variations exist regarding the relationship between investigation and prosecution in various countries. First, some nations keep the investigation and prosecution processes distinct. Secondly, some nations give the Public Prosecutor control over the investigative process. The clarification of Article 132 of the 2023 Criminal Code, which stipulates that the investigation is the first step in the prosecution process, is consistent with the amendment that gives the Public Prosecutor control over the investigative process. In countries that place the investigation process under the authority of the Public Prosecutor, it is intended that the Prosecutor is not only authorized to file charges or indictments but also given the authority to lead and supervise from the beginning of the investigation process.

The following countries have placed the investigation process under the authority of the Public Prosecutor, among others:

#### A. Jerman

In Germany, the relationship between the public prosecutor (*Staatsanwaltschaft*) and the investigator is regulated in the German Criminal Procedure Code (*Strafprozessordnung (StPO)*). In Germany's criminal justice system, the public prosecutor leads the investigation and collaborates closely with law enforcement. The provisions regarding the investigation process, which is the responsibility of the Public Prosecutor, are regulated in Article 152 paragraph (1), Article 160, Article 161, and Article 163 of the *Strafprozessordnung (StPO)*. This is in line with the opinion of Volker F. Krey, who explains that the relationship between investigators and public prosecutors in Germany is that the public prosecutor provides instructions to investigators in the examination of a case, and the public prosecutor is in the position of ruler over the criminal investigations. Therefore, in practice, the public prosecutor in Germany has complete control over the criminal investigation process while the police act as executors of the investigation under the supervision and instruction of the prosecutor. This relationship ensures close coordination between Public Prosecutors and Investigators in the German criminal justice system.

#### B. France

In France, the relationship between the Public Prosecutor (Procureur de la République) and the Investigator is regulated by the French Code of Criminal Procedure or Code de procédure pénale. In the French criminal justice system, the role of the Public Prosecutor is very important in providing direction and supervising the investigation process conducted by the police. The relationship between the Public Prosecutor and the Investigator is regulated in Article 12, Article 41, and Article 75 of the Code de procédure pénale. In practice, therefore, Public Prosecutors in France have the authority to direct and supervise the investigation process conducted by the judicial police. They collaborate closely with investigators to guarantee that the rights of suspects and victims are upheld and that the inquiry is conducted legally.

#### C. Italy

In Italy, the relationship between the Public Prosecutor (Pubblico Ministero) and the Investigator is regulated by the Italian Code of Criminal Procedure or Codice di Procedura Penale. In the Italian criminal justice system, the Public Prosecutor, working with the Police, plays a key role in the investigative process. This is regulated in Article 55, Article 327, and Article 358 of the Codice di Procedura Penale. In addition, Article 112 of the Italian Constitution mentions the principle of obbligatorietà dell'azione penale, which implies that the Public Prosecutor must start criminal proceedings as soon as they discover that a crime has been committed. Therefore, in practice, the Public Prosecutor in Italy directs and supervises the investigative activities carried out by the Judicial Police, and the Judicial Police acts on the instructions of the Public Prosecutor to carry out investigative actions in accordance with the guidelines provided. This relationship ensures close coordination between Public Prosecutors and Investigators in the Italian criminal justice system.

#### D. Spain

In Spain, the relationship between the Public Prosecutor (Ministerio Fiscal) and the Investigator is regulated in the Spanish Code of Criminal Procedure or Ley de Enjuiciamiento Criminal. The Public Prosecutor plays a crucial role in the Spanish Criminal Justice system by offering guidance and oversight throughout the police investigative process, which is regulated in the Spanish Code of Criminal Procedure or Ley de Enjuiciamiento Criminal. The Public Prosecutor and the Investigator collaborate in practice to guarantee that the investigation process complies with relevant legal requirements and that the suspect's rights are upheld.

#### E. Portugal

In Portugal, the relationship between the Public Prosecutor (Ministério Público) and the Investigator is regulated in the Portuguese Code of Criminal Procedure or Código de Processo Penal. Article 53, Article 263 and Article 269 of the Código de Processo Penal state that the Public Prosecutor has an important leading role to lead the investigation process by providing direction and supervision over the course of the investigation process, in addition the Public Prosecutor is also authorized to give instructions to the police during the investigation process and ensure that investigative actions are by applicable law. It can be concluded that the Public Prosecutor in Portugal has complete control over the conduct of the investigation process.

#### F. Netherlands

In the Netherlands, the relationship between the Public Prosecutor (Openbaar Ministerie) and the Investigator is regulated in the Dutch Criminal Procedure Code or *Wetboek van Strafvordering*. Article 148, Article 149, and Article 152 of the *Wetboek van Strafvordering* explain that the Public Prosecutor can determine the next course of the criminal justice process by starting the investigation, giving instructions to the police on their investigative actions, and making sure the investigation is conducted in compliance with the law. It can be concluded that the Public Prosecutor in the Netherlands has complete control over the investigation process, and the police can conduct the investigation process under the supervision and instruction of the Public Prosecutor.

#### G. Sweden

In Sweden, the relationship between the Public Prosecutor (Åklagarmyndigheten) and the Investigator is regulated in the Swedish Code of Criminal Procedure or *Rättegångsbalken*. It is explained in Chapter 23, Article 3, Article 4, and Article 6 of the *Rättegångsbalken* that the Prosecutor has an important role, namely, responsible for leading and instructing the Police in the investigation process. It can be concluded that the Public Prosecutor in Sweden has complete control over the implementation of the investigation process conducted with the Police, and the Police, as the executor of the investigation process, is under the supervision and instruction of the Public Prosecutor.

#### H. South Korea

In South Korea, the relationship between the Prosecutor's Office (Geomchal chongjang), in this case the Prosecutor (Prosecutor), and the Investigator is regulated in the Criminal Procedure Act of South Korea (CPASK) or (HyeongsasoSongBeob). This is regulated in Article 195 and Article 196 of the Criminal Procedure Act of South Korea (CPASK) or (HyeongsasoSongBeob). According to this statement, the Public Prosecutor has significant power to conduct the inquiry. Apart from the Public Prosecutor, who has the power to carry out the investigation process, the Police are also granted the ability to carry out the investigation process, provided that they have the Public Prosecutor's orders or instructions. It can be concluded that the role of the Public Prosecutor from the beginning was actively participating in the investigating process, either to lead the implementation of the investigation or to supervise the investigation procedure that the police use.

#### I. Japan

In Japan, the relationship between the Public Prosecutor (Kensatsu) and the Investigator is regulated in the Japan Criminal Procedure Code (Keiji Soshoho). This is regulated in Article 156, Article 189 paragraph (2), and Article 191 of the Japan Criminal Procedure Code (Keiji Soshoho). It claims that the Public Prosecutor is crucial in guiding and overseeing the police investigative process. In addition, the Chief Prosecutor of East Nusa Tenggara Zet Tadung Allo, S.H., M.H., also argued that the authority of the Public Prosecutor in Japan, based on the Japan Criminal Procedure Code (Keiji Soshoho), is to conduct investigations and prosecutions, which become one unit to be carried out by the Public Prosecutor. Therefore, the public prosecutor in Japan has complete control over the investigation process, cooperates with the police to conduct preliminary investigations, and ensures that the process is conducted by applicable law.

Countries that follow the Civil Law legal system, such as Germany, France, Italy, Spain, Portugal, the Netherlands, Sweden, South Korea, and Japan, generally place the investigation process

under the authority of the Public Prosecutor. This is in line with the opinion of criminal law expert Andi Hamzah, who said that the majority of countries included in the European Union adhere to the rule that prosecutors can conduct investigations and supervise investigations, and only a minority of countries, such as England and Wales, do not give prosecutors the authority to conduct investigations. According to Andi Hamzah, the authority of prosecutors to conduct investigations is said to be legal by the United Nations (UN). This ensures that only strong cases are brought to court and reduces the possibility of biased or inefficient investigations. And countries that place investigations under prosecution tend to produce stronger cases at trial because the Public Prosecutor can ensure from the outset that the evidence is sufficient. However, this arrangement also runs the risk of the Prosecutor's dominance over the Investigator, which may reduce the independence of the investigation. Currently, through Law Number 1 of 2023 on the Criminal Code, Indonesia places Investigations under the authority of the Prosecution through the arrangement of Article 132.

The concept of this arrangement is certainly different from the arrangement in the formal criminal law, either in the 1981 Criminal Procedure Code or the 2012 Draft Criminal Procedure Code, which still strictly separates the process of termination of investigation and the process of termination of prosecution. The process of termination of investigation and the process of termination of prosecution in the 1981 Criminal Procedure Code and the 2012 Draft Criminal Procedure Code still separate the authority of the Police and Prosecutor's Office regarding the investigation and prosecution process. The following is a comparison of the reasons or circumstances regarding the termination of investigation and termination of prosecution in the 1981 Criminal Procedure Code and the 2012 Draft Criminal Procedure Code:

**Table 1. Comparison of reasons or circumstances for the termination of investigation and the termination of prosecution in the Criminal Procedure Code**

<b>Criminal Procedure Code 1981</b>	<b>Draft Criminal Procedure Code 2012</b>
<b>Termination Of Investigation</b>	
Article 109 paragraph (2) states If the investigator decides to halt the inquiry due to:	Article 14, paragraph (1) states Investigators are authorized to stop an investigation because:
<ul style="list-style-type: none"> <li>A. There is insufficient proof.</li> <li>B. It was determined that the occurrence was not a criminal crime.</li> <li>C. Investigation is terminated by law</li> </ul>	<ul style="list-style-type: none"> <li>A. Ne bis in idem</li> <li>B. If the suspect dies</li> <li>C. It's past time</li> <li>D. No complaints on complaint crimes</li> <li>E. The law or article on which the claim is based has been revoked or declared invalid by a decision.</li> <li>F. Not a criminal offense, or the defendant was under the age of 8 (eight) years at the time of the criminal offense.</li> </ul>
<b>Termination Of Prosecution</b>	
Article 140 paragraph (2) letter a state If it is decided by the public prosecutor to stop the prosecution due to:	Article 52 states A public prosecutor's charge is inadmissible if the criminal offense charged meets one of the following grounds:
<ul style="list-style-type: none"> <li>A. The evidence is insufficient.</li> <li>B. It was determined that the occurrence was not an infraction.</li> <li>C. Case closed by operation of law</li> </ul>	<ul style="list-style-type: none"> <li>A. Ne bis in idem</li> <li>B. If the defendant dies</li> <li>C. It's past time</li> <li>D. No complaints on complaint crimes</li> <li>E. The law or article on which the claim is based has been revoked or declared invalid by a court decision.</li> </ul>

- F. Not a criminal offense
- G. The defendant was younger than 12 (twelve) years old when the criminal offense was committed.

The comparison table demonstrates that the authority to halt case examination by ending an investigation and ending a prosecution remains distinct in the 1981 Criminal Procedure Code and the 2012 Draft Criminal Procedure Code. Suppose that later in 2026, the provisions of the 2023 Criminal Code, which is the new Material Criminal Law, come into force, and the prosecution process is part of the investigation process. In that case, the reform of the formal criminal law requires arrangements that are in line with the Material Criminal Law in the 2023 Criminal Code, so that there is a coordination mechanism for approval of the termination of case examination between investigators and public prosecutors.

In addition, the regulation regarding the loss of authority of the Public Prosecutor to prosecute the perpetrator of a criminal offense, as regulated in the 2023 Criminal Code with the 2012 Draft Criminal Procedure Code, has the following editorial differences:

**Table 2. Comparison of the arrangements for the abolition of prosecutorial authority in the Criminal Code with the Draft Criminal Procedure Code**

Criminal Code 2023	Draft Criminal Procedure Code 2012
Article 132, paragraph (1) of the Criminal Code 2023 The prosecution loses its power if: <ul style="list-style-type: none"> <li>A. For the same case, a court ruling has acquired permanent legal effect against all parties.</li> <li>B. The defendant or suspect passes away</li> <li>C. Expires</li> <li>D. The maximum fine is willingly paid for offenses carrying a maximum penalty of category II.</li> <li>E. Criminal acts carrying a potential penalty of one year in prison or a maximum penalty of three (3) years in fines are eligible to pay a voluntary maximum fine of category IV.</li> <li>F. Retraction of the complaint on the criminal complaint.</li> <li>G. A settlement has been reached outside the legal system as required by the law.</li> <li>H. The granting of amnesty or abolition.</li> </ul>	Article 52 Draft Criminal Procedure Code 2012 A public prosecutor's charge is inadmissible if the criminal offense charged meets one of the following grounds: <ul style="list-style-type: none"> <li>A. Ne bis in idem</li> <li>B. If the defendant dies</li> <li>C. It's past time</li> <li>D. No complaints on complaint crimes</li> <li>E. The law or article on which the claim is based has been revoked or declared invalid by a court decision.</li> <li>F. Not a criminal offense</li> <li>G. The defendant was younger than 12 (twelve) when the offense was committed.</li> </ul>

The table above shows that editorial differences still require adjustments related to the fall or loss of prosecutorial authority in the 2012 Draft Criminal Procedure Code. The adjustment ensures uniformity and consistency in the rules on the loss of prosecutorial authority in the criminal justice system, both in Material Criminal Law and Formal Criminal Law.

The alignment agenda in the Draft Criminal Procedure Code 2012 is a result of changes in the Material Criminal Law, which was originally Law No. 1 of 1946 on the Criminal Code into Law No. 1 of 2023 on the Criminal Code so that in the future after the enactment of the 2023 Criminal Code, the articles are not only conceptual but can also be implemented in practice as a criminal law reform. The alignment of the 2012 Draft Criminal Procedure Code as a formal criminal law must be able to accommodate the diversity of arrangements for reasons or circumstances regarding the loss of prosecutorial authority and contain regulations that can coordinate the authority between the Police and the Prosecutor's Office in combining the investigation process and the prosecution process into one unit that does not run independently. Because proper coordination between the Police and the

Prosecutor's Office in handling a case will affect the practice of exercising the waiver of prosecutorial authority.

## CONCLUSION

This study concludes that the regulation regarding the lapse of prosecutorial authority, previously contained in the 1946 Criminal Code, has been comprehensively updated in Law Number 1 of 2023 concerning the Criminal Code. Article 132 of the 2023 Criminal Code stipulates that prosecutorial authority ceases in circumstances such as a court decision with permanent legal force (*ne bis in idem*), the death of the suspect or defendant, expiration of prosecution, payment of fines, withdrawal of complaints in complaint-based offenses, extrajudicial settlement, or the granting of amnesty or abolition. Notably, the new regulation extends the application of prosecutorial lapse to individual legal subjects and corporate entities, which marks a significant conceptual development. Furthermore, the 2023 Criminal Code integrates the investigation process into the scope of prosecution, aligning Indonesia's legal system with the Civil Law traditions of countries such as Germany, France, and Japan. However, this approach differs from Indonesia's current formal criminal law under the 1981 Criminal Procedure Code and the 2012 Draft Criminal Procedure Code, which treat investigation and prosecution as distinct stages. Therefore, harmonization between material and formal criminal law becomes necessary to ensure coordination and consistency in the criminal justice process once the new Criminal Code takes effect in 2026. Future research is recommended to explore the practical implications of integrating the investigation and prosecution processes and to propose regulatory adjustments in the Draft Criminal Procedure Code to fully synchronize it with the provisions of the 2023 Criminal Code.

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