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COMPARATIVE ANALYSIS OF PROSECUTORIAL POWERS IN THE CRIMINAL JUSTICE SYSTEMS OF INDONESIA AND THAILAND

Yudi Anseria Siregar [a*)], Rachmad Abduh [*)]

[a)] *Universitas Muhammadiyah Sumatera Utara,*

[*)]*Corresponding Author: yudianseria1304@gmail.com*

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Abstract. This study examines the comparative regulation, authority, and procedural framework of prosecution within the criminal justice systems of Indonesia and Thailand. The research focuses on the normative arrangements governing prosecution, the scope of authority exercised by public prosecutors, and the procedural differences in criminal proceedings that influence prosecutorial practices in both countries. The method employed is normative juridical research using a comparative law approach, based on the analysis of statutory regulations, legal doctrines, and relevant scholarly literature. The findings indicate that Indonesia adopts the dominus litis principle, which places the public prosecutor as the sole authority controlling prosecution, as regulated under the Criminal Procedure Code (KUHAP) and the Law on the Public Prosecution Service. This system reflects a centralized and formalistic prosecutorial structure. In contrast, Thailand implements a prosecution system that grants broader discretionary powers to prosecutors during the pre-prosecution stage and allows greater victim participation within criminal proceedings. These differences demonstrate Indonesia's emphasis on legal certainty and institutional hierarchy, while Thailand prioritizes procedural flexibility and victim protection. This comparative analysis highlights the strengths and limitations of each system and provides valuable insights for the development and reform of prosecutorial authority within Indonesia's criminal justice system through comparative legal perspectives.

Keywords: prosecution, criminal procedure law, comparative law.

I. INTRODUCTION

The prosecutorial function is a central element in any criminal justice system because it represents the exercise of state power in charging and pursuing criminal cases before the court. In civil law systems such as those of Indonesia and Thailand, the role of the prosecutor is crucial not only for law enforcement but also for safeguarding legal certainty, public order, and individual rights. In Indonesia, the authority to conduct criminal prosecution is vested exclusively in the Public Prosecutor's Office (Kejaksaan Republik Indonesia), reflecting a single prosecution system (sistem penuntutan tunggal) which places prosecutorial power solely in the hands of state prosecutors. This authority is grounded in Law No. 16 of 2004 on the Public Prosecutor's Office, as amended by Law No. 11 of 2021, which reaffirm the Prosecutor General's Office as the sole body responsible for criminal prosecution in the Indonesian criminal justice system. In addition, the Indonesian Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana/KUHAP) regulates the procedural aspects of criminal prosecution, from the submission of charges to the court to trial preparation and presentation of evidence. These statutory frameworks are designed to ensure that prosecutorial decisions are uniform, consistent, and subject to procedural safeguards that uphold the principles of legality and due process.[1]

Despite the clarity of Indonesia's statutory allocation of prosecutorial authority, scholars and practitioners have raised concerns about the limited role of victims and broader participatory rights in the criminal process. In practice, victims in Indonesia may only participate as witnesses or seek civil remedies such as compensation claims, but they do not have standing to institute or directly pursue criminal charges. This structural limitation has been critiqued for potentially marginalizing victim interests and limiting public confidence in the criminal justice process.

In contrast, the Thai criminal justice system, as governed by the Thai Criminal Procedure Code (1934), embodies a more pluralistic approach to prosecutorial authority. Under Thailand's procedural law, the formal authority to prosecute is not exclusively held by public prosecutors; instead the Criminal Procedure Code explicitly recognizes that victims can be directly involved in the prosecution of criminal offenses through mechanisms known as private prosecution and joint prosecution. Under this framework, if no prosecution has been initiated, or even in conjunction with a public prosecutor, the victim of a crime has the statutory right to institute a prosecution or join the prosecutorial process (§4–§5 of the Thai Criminal Procedure Code). This means that in Thailand victims are not merely passive participants but can be active legal actors within the criminal procedure, allowing

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them to initiate or co-prosecute cases in court alongside the state-appointed prosecutor.[2]

The Thai model of prosecution thus reflects a policy choice that seeks to balance state control of prosecutorial functions with enhanced victim participation. Such a participatory dimension aims to strengthen victim protection and ensure that victims' interests are adequately represented within the criminal justice process. However, this structure also raises theoretical and practical questions about whether extending prosecutorial powers to victims could blur the line between private interests and public justice or undermine the uniformity of prosecutorial decisions.

The differences between Indonesia and Thailand in allocating prosecutorial authority are not merely technical but reflect underlying legal philosophies and policy priorities. Indonesia's centralized prosecutorial authority aims to preserve coherence and predictability, while Thailand's law introduces participatory mechanisms that emphasize victim empowerment within the criminal process. Comparative legal research suggests that such differences have implications for the effectiveness of law enforcement, protection of victim rights, and public trust in the criminal justice system. By examining both statutory structures and judicial practices, this study contributes to a deeper understanding of how prosecutorial authority is conceptualized and operationalized in two ASEAN criminal justice systems with shared civil law heritage but divergent statutory articulations.

II. RESEARCH METHODS

This study employs a normative legal research method with a comparative approach to examine and analyze prosecutorial authority within the criminal justice systems of Indonesia and Thailand. Normative legal research is primarily concerned with the study of legal norms, principles, and doctrines as embodied in statutory regulations, court decisions, and authoritative legal literature. The comparative approach is used to systematically compare legal rules governing prosecution in both countries in order to identify similarities, differences, and underlying legal philosophies. Through this approach, the research seeks not only to describe positive law (ius constitutum), but also to evaluate the coherence and effectiveness of prosecutorial authority within each legal system. Comparative legal research is widely recognized as an essential method for understanding how different legal systems regulate similar legal institutions and for assessing the strengths and weaknesses of each system in a broader regional or international context.[3]

The specification of this research is descriptive-analytical, meaning that it aims to provide a systematic description of the legal norms regulating prosecutorial authority in Indonesia and Thailand, followed by an in-depth legal analysis of their substance and implications. The descriptive element focuses on outlining statutory provisions governing prosecution, such as the authority of public prosecutors, the procedural role of victims, and the institutional structure of prosecutorial bodies. The analytical element involves interpreting these provisions using legal doctrines and theories of criminal procedure to assess how prosecutorial authority is exercised and limited in practice. This type of research specification is commonly used in doctrinal legal studies to bridge normative analysis with critical legal reasoning, particularly in comparative studies involving multiple jurisdictions.

The research relies primarily on secondary legal data, as is typical in normative and comparative legal studies. Secondary data consist of legal materials that have already been formulated and published and are divided into primary, secondary, and tertiary legal materials. Primary legal materials include binding legal sources such as Indonesia's Criminal Procedure Code (KUHAP), Law No. 16 of 2004 on the Public Prosecutor's Office as amended by Law No. 11 of 2021, as well as Thailand's Criminal Procedure Code and related statutory provisions governing prosecution. Secondary legal materials comprise academic books, peer-reviewed journal articles, legal commentaries, and comparative law studies discussing prosecutorial authority, victim participation, and criminal justice systems. Tertiary legal materials, such as legal dictionaries, encyclopedias, and legal databases, are used to support conceptual clarification and terminological consistency.

Data collection in this research is conducted through library research (documentary study). This technique involves systematically collecting and examining legislation, official legal documents, scholarly writings, and academic journals relevant to prosecutorial authority and comparative criminal procedure. Library research enables the researcher to obtain comprehensive and authoritative legal materials without direct field observation, which is consistent with the normative nature of the study. Through this method, relevant legal norms and scholarly arguments are identified, categorized, and organized to facilitate structured comparative analysis between the Indonesian and Thai legal systems.

The data analysis method applied in this research is qualitative legal analysis, emphasizing interpretative and comparative reasoning rather than statistical measurement. Legal materials collected are analyzed through content analysis to identify normative patterns, institutional arrangements, and procedural mechanisms governing prosecutorial authority. The analysis proceeds by comparing the legal frameworks of Indonesia and Thailand to determine their conceptual foundations, scope of authority, and implications for victim participation and legal certainty. Deductive reasoning is employed to draw conclusions based on legal principles and doctrines, while comparative synthesis is used to integrate findings into a coherent assessment of prosecutorial authority in both jurisdictions. Qualitative analysis is particularly suitable for normative and comparative legal research because it allows for a contextual and doctrinal understanding of legal norms and their practical consequences.

III. RESULTS AND DISCUSSION

The provisions governing prosecution regulated in the criminal justice systems of Indonesia and Thailand.

The regulation of criminal prosecution constitutes a fundamental component of the criminal justice system, as it

determines which institution holds the authority to bring criminal charges before the court and under what legal framework such authority is exercised. In both Indonesia and Thailand, prosecutorial authority is regulated through statutory instruments that reflect each country's legal philosophy, institutional structure, and approach to criminal justice. Although both systems share a civil law tradition, their regulatory frameworks demonstrate significant differences in terms of centralization of authority and victim participation.[4]

In Indonesia, the legal framework governing prosecution is primarily regulated by the Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana/KUHAP). KUHAP establishes prosecution as a distinct procedural stage following investigation and explicitly assigns the authority to prosecute criminal cases to the public prosecutor (Jaksa Penuntut Umum). This legal construction reflects a state-centered approach, where prosecution is viewed as an exclusive manifestation of state power aimed at maintaining public order and legal certainty.

Further regulation of prosecutorial authority in Indonesia is provided by Law No. 16 of 2004 on the Public Prosecutor's Office, as amended by Law No. 11 of 2021. These laws affirm the position of the Prosecutor's Office as the sole institution authorized to conduct criminal prosecution on behalf of the state. The statutory recognition of the prosecutor as dominus litis underscores the centralized nature of prosecutorial authority, ensuring consistency in law enforcement and preventing fragmentation of prosecutorial discretion.[5]

Under the Indonesian legal framework, individuals or victims of crime do not possess the legal standing to initiate criminal prosecution independently. Their role is limited to that of witnesses or parties seeking compensation through separate civil claims. This limitation is normatively justified by the principle that criminal prosecution is a matter of public interest rather than private retribution. Academic discourse in Indonesian criminal law emphasizes that this approach is intended to prevent arbitrary or emotionally driven prosecutions that could undermine procedural fairness.

In contrast, the Thai criminal justice system regulates prosecution under the Thai Criminal Procedure Code (B.E. 2477/1934), which adopts a more pluralistic approach to prosecutorial authority. While public prosecutors remain central actors in the criminal process, Thai law explicitly recognizes that criminal prosecution may also be initiated by victims. This provision reflects a legal acknowledgment that victims possess legitimate interests that may warrant direct procedural involvement in criminal proceedings.

The Thai Criminal Procedure Code allows for private prosecution, whereby victims may directly file criminal charges before the court, particularly in cases where public prosecutors choose not to pursue prosecution. In addition, Thai law permits joint prosecution, enabling victims to participate alongside public prosecutors in conducting criminal proceedings. These provisions demonstrate a regulatory framework that balances state authority with individual participatory rights.[6]

From a normative perspective, Thailand's regulatory model is grounded in the principle of access to justice, emphasizing that victims should not be wholly dependent on prosecutorial discretion. Legal scholars argue that this framework enhances accountability within the prosecutorial system and serves as a corrective mechanism when state prosecutors fail to act. As a result, prosecution in Thailand is not monopolized by the state but shared with private actors under legally defined conditions.

Comparative legal studies highlight that the divergence between Indonesian and Thai prosecutorial regulations reflects differing policy priorities. Indonesia prioritizes legal certainty, uniformity, and centralized control, whereas Thailand emphasizes procedural inclusivity and victim empowerment. These differing regulatory approaches influence how justice is perceived and administered within each legal system, particularly in terms of public trust and victim satisfaction.[7]

Despite these differences, both systems maintain procedural safeguards to prevent abuse of prosecutorial authority. In Indonesia, prosecutorial decisions are subject to internal supervision and judicial oversight, while in Thailand, private prosecutions are still constrained by procedural requirements and judicial review. Thus, although the regulatory frameworks differ, both systems aim to balance efficiency, fairness, and accountability in criminal prosecution.

In conclusion, the provisions governing prosecution in Indonesia and Thailand illustrate two distinct models within civil law criminal justice systems. Indonesia adopts a centralized prosecutorial regime rooted in state authority and public interest, whereas Thailand implements a hybrid regulatory framework that integrates state prosecution with victim participation. This comparative understanding provides a crucial foundation for analyzing prosecutorial authority and its implications for criminal justice reform in both jurisdictions.

The authority to carry out prosecution exercised within the criminal justice systems of Indonesia and Thailand.

The exercise of prosecutorial authority reflects how criminal law is operationalized in practice, beyond its formal regulation in statutory provisions. In Indonesia, the authority to carry out prosecution is exercised exclusively by the Public Prosecutor's Office (Kejaksaan Republik Indonesia), which acts as the sole representative of the state in criminal proceedings. This authority encompasses evaluating investigation files, determining whether a case meets evidentiary thresholds, formulating indictments, presenting charges before the court, and executing final court decisions. The Indonesian prosecutorial system therefore demonstrates a centralized and hierarchical structure in which prosecutorial discretion is institutionally unified.[8]

In exercising this authority, Indonesian prosecutors function as dominus litis, meaning that they control the direction and continuation of criminal cases. Prosecutors have the power to return incomplete investigation files to investigators, request additional evidence, or discontinue prosecution through mechanisms such as termination of prosecution (SP3) or, more recently, termination of prosecution based on restorative justice principles. This prosecutorial discretion is normatively justified as a mechanism to ensure efficiency, legal certainty, and proportionality in criminal law enforcement, while preventing

the overburdening of courts with cases that lack sufficient legal basis.

Scholarly analysis of Indonesia's prosecutorial practice emphasizes that such centralized authority enhances consistency in criminal prosecution and aligns prosecutorial policy with national law enforcement objectives. However, critics argue that this concentration of authority may marginalize victims' interests, as victims have no formal power to influence prosecutorial decisions once a case enters the criminal justice system. Consequently, the exercise of prosecutorial authority in Indonesia prioritizes public order and state interest over individualized victim participation.

In contrast, the exercise of prosecutorial authority in Thailand is characterized by a pluralistic and participatory structure. While public prosecutors remain central actors in the prosecution process, the Thai criminal justice system allows victims to actively exercise prosecutorial authority under specific legal conditions. This includes the right to initiate criminal proceedings independently (private prosecution) and the right to participate alongside public prosecutors (joint prosecution). As a result, prosecutorial authority in Thailand is not monopolized by a single institution but distributed among multiple legal actors.[9]

Thai public prosecutors exercise their authority by reviewing investigation reports, filing indictments, and representing the state in criminal trials. However, unlike Indonesia, a prosecutorial decision not to pursue a case does not necessarily terminate the victim's access to justice. Victims may still proceed with prosecution by directly filing charges before the court, thereby exercising a legally recognized prosecutorial function. This mechanism serves as a form of external accountability over prosecutorial discretion.

Legal scholars argue that Thailand's approach reflects a stronger commitment to victim-centered justice, as it empowers victims to protect their interests when state prosecution is perceived as insufficient or delayed. The exercise of private prosecution also reinforces procedural transparency and mitigates concerns of prosecutorial inaction or selective enforcement. Nevertheless, this expanded exercise of prosecutorial authority introduces challenges related to procedural complexity and consistency, particularly when private prosecutors lack legal expertise comparable to that of state prosecutors.

Comparatively, the exercise of prosecutorial authority in Indonesia is largely institution-driven, whereas in Thailand it is actor-driven, involving both state and private legal actors. Indonesia relies on institutional supervision and internal control mechanisms within the Prosecutor's Office to regulate prosecutorial conduct, while Thailand relies on judicial oversight to manage the coexistence of public and private prosecutions. These different modes of exercising prosecutorial authority significantly affect how criminal justice is experienced by victims, defendants, and the broader public.[10]

From a procedural perspective, Indonesian prosecutors operate within a closed system where prosecutorial authority flows vertically from the Prosecutor General to subordinate prosecutors. In Thailand, prosecutorial authority flows horizontally, allowing victims to engage directly with the judicial process. This distinction illustrates differing assumptions about trust in state institutions: Indonesia places greater trust in centralized prosecutorial control, whereas Thailand institutionalizes mechanisms to compensate for potential prosecutorial shortcomings.

In sum, the exercise of prosecutorial authority in Indonesia and Thailand reveals contrasting models of criminal justice governance. Indonesia's model emphasizes uniformity, state control, and administrative efficiency, while Thailand's model emphasizes participation, accountability, and access to justice. Understanding these differences is essential for evaluating prosecutorial effectiveness and for considering future reforms aimed at balancing legal certainty with victim protection within criminal justice systems.

The comparison of criminal procedural law regarding prosecutorial authority between Indonesia and Thailand

The comparison of criminal procedural law concerning prosecutorial authority between Indonesia and Thailand reveals fundamental differences in how each legal system structures, limits, and legitimizes the exercise of prosecution. Although both countries adhere broadly to the civil law tradition, their criminal procedure laws demonstrate divergent approaches to prosecutorial authority, particularly regarding institutional centralization, procedural stages, and the role of victims within the prosecution process.[11]

In Indonesia, criminal procedural law adopts a state-centered prosecutorial model, in which the authority to prosecute is exercised exclusively by public prosecutors as representatives of the state. Under the Indonesian Criminal Procedure Code (KUHAP), prosecution is procedurally positioned as a formal stage following investigation, and only prosecutors are legally empowered to submit indictments, determine the legal qualification of offenses, and present charges before the court. This procedural structure reinforces the principle of dominus litis, whereby prosecutors control the initiation, continuation, and termination of criminal proceedings.[12]

Procedurally, Indonesian criminal law emphasizes vertical coordination and hierarchical supervision in the exercise of prosecutorial authority. Prosecutorial discretion is regulated internally through administrative guidelines, prosecutorial policies, and institutional oversight mechanisms within the Prosecutor's Office. Judicial involvement in prosecutorial decisions is limited primarily to trial adjudication and pretrial review mechanisms, such as praperadilan, which examine the legality of arrest, detention, or termination of investigation and prosecution. As a result, prosecutorial authority in Indonesia operates within a closed procedural system dominated by state institutions.

By contrast, Thailand's criminal procedural law establishes a pluralistic prosecutorial framework, in which prosecutorial authority is not confined solely to public prosecutors. Under the Thai Criminal Procedure Code, criminal prosecution may be carried out through public prosecution, private prosecution, or joint prosecution between the state and the victim. This procedural arrangement reflects a more decentralized model that allows multiple actors to participate in the prosecution process under judicial supervision.[13]

From a procedural standpoint, Thailand's system grants victims procedural standing to initiate criminal cases directly before the court when public prosecutors decline to act or

when victims seek direct redress. This means that the procedural gateway to prosecution in Thailand is more accessible than in Indonesia, as it does not depend exclusively on prosecutorial discretion exercised by a state institution. Judges play a more active procedural role in screening private prosecutions to ensure compliance with evidentiary and procedural requirements, thereby maintaining procedural balance.

Another significant procedural distinction lies in the timing and control of prosecutorial authority. In Indonesia, prosecutorial authority is exercised sequentially and institutionally, beginning with the assessment of investigation files and culminating in trial advocacy. The procedural law restricts external interference in prosecutorial decision-making, reinforcing efficiency and uniformity. In Thailand, however, procedural law allows prosecutorial authority to be exercised concurrently by different actors, which introduces procedural flexibility but also increases the complexity of criminal proceedings.

The role of victims further highlights the procedural divergence between the two systems. Indonesian criminal procedure treats victims primarily as sources of evidence or claimants in civil compensation claims attached to criminal cases. Victims do not possess procedural rights to challenge prosecutorial inaction directly through prosecution. In contrast, Thai criminal procedure elevates victims to procedural subjects with autonomous prosecutorial rights, thereby embedding victim participation directly into the structure of criminal procedure.

Comparative legal scholarship suggests that Indonesia's procedural model prioritizes legal certainty, consistency, and administrative efficiency, whereas Thailand's model prioritizes access to justice and accountability of prosecutorial discretion. Indonesia's approach minimizes procedural fragmentation but risks marginalizing victim interests, while Thailand's approach enhances participatory justice but may lead to procedural inconsistency and increased judicial workload.[14]

Despite these differences, both systems incorporate safeguards to prevent abuse of prosecutorial authority. Indonesian criminal procedure relies on internal prosecutorial accountability and limited judicial review, while Thailand's criminal procedure relies on judicial oversight to regulate private and joint prosecutions. These safeguards illustrate different procedural strategies to balance prosecutorial power with fairness and due process.

In conclusion, the comparison of criminal procedural law regarding prosecutorial authority between Indonesia and Thailand demonstrates two contrasting procedural paradigms. Indonesia embodies a centralized, state-dominated prosecutorial procedure, whereas Thailand adopts a hybrid procedural model that integrates state prosecution with victim-driven mechanisms. These differences reflect broader normative choices about the relationship between the state, victims, and criminal justice, and they offer valuable insights for future reforms in criminal procedural law within both jurisdictions.

IV. CONCLUSIONS

Based on the comparative analysis of prosecutorial regulation, authority, and criminal procedural law in Indonesia and Thailand, it can be concluded that both countries adopt distinct models of prosecutorial authority that reflect different normative orientations within their criminal justice systems. Indonesia regulates prosecution through a centralized, state-dominated framework in which prosecutorial authority is exclusively vested in the Public Prosecutor's Office as the sole representative of state interests, emphasizing legal certainty, institutional control, and procedural uniformity. Conversely, Thailand adopts a more pluralistic regulatory and procedural approach that allows prosecutorial authority to be exercised not only by public prosecutors but also by victims through private and joint prosecution mechanisms, thereby strengthening access to justice and accountability. In terms of authority implementation, Indonesia prioritizes hierarchical supervision and institutional discretion, while Thailand emphasizes participatory justice supported by judicial oversight. Procedurally, these differences result in a closed and sequential prosecutorial system in Indonesia, contrasted with a flexible and inclusive procedural structure in Thailand. Overall, the comparison demonstrates that Indonesia's model prioritizes efficiency and consistency, whereas Thailand's model prioritizes victim participation and procedural openness, offering important insights for the development and reform of prosecutorial authority within comparative criminal justice systems.

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