P-ISSN: 3047-423X
E-ISSN: 3047-4264

Jurnal Justice Dialectical
Volume 3, Issue 2, 2025, pp. 176-197

Judges' Role in Suspect Determination and Evolving Legal Concepts

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Abstract

Corruption is classified as an extraordinary crime, necessitating the adoption of non-traditional law enforcement strategies. Recent developments allow judges to determine guilt or innocence based on evidence presented in court. This study examines the legal implications of judicial involvement in corruption investigations, with a particular emphasis on the evolving role of the dominus litis, traditionally reserved for public prosecutors. The research further explores reinterpretations of the *negatief wettelijk* principle and the concept of criminal awareness. Employing a normative juridical methodology, the study reviews relevant statutes, legal doctrines, and case law to inform its analysis. The findings suggest that judicial identification of suspects may undermine the principle of dominus litis and lead to institutional conflict between prosecutors and judges. This practice alters the application of the *negatief wettelijk* principle by enabling judges to form legal opinions before formal investigations are conducted. Additionally, the understanding of criminal awareness has shifted towards a more interpretive judicial approach. It is therefore essential to establish clear and equitable regulations governing judicial authority in corruption cases to ensure fair trials, prevent abuse of power, and maintain the balance and independence of law enforcement institutions.

Keywords: Corruption; Dominus Litis; Judicial Authority; *Negatief Wettelijk*;

Introduction

Corruption is a crime with systemic consequences for governance and the national economy, undermining public trust in the legal system.[1] As an extraordinary crime, corruption often evades conventional law enforcement mechanisms and requires innovative, sometimes controversial, approaches to address it.[2] One significant procedural development is the increasing

[1] S A Igbinedion and Anthony Osobase, 'Grand Corruption In The Global South: Legal, Political And Economic Analysis Of Assets Recovery In Nigeria', *Journal of Economic Criminology*, 2025, 100164 https://doi.org/https://doi.org/10.1016/j.jeconc.2025.100164
[2] Jay S Albanese, 'Corruption as the Cause, Not the Effect, of Organized Crime?: A Review and Assessment of Cases across the World', *Journal of Economic Criminology*, 7 (2025), 100137 https://doi.org/https://doi.org/10.1016/j.jeconc.2025.100137

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

Jurnal Justice Dialectical
Volume 3, Issue 2, 2025, pp. 176-197

authority granted to judges to determine the guilt or innocence of suspects based on facts established during corruption trials, a practice that has sparked considerable debate.[3] The current state of criminal punishment has not achieved its intended deterrent effect, contributing to the persistent rise in annual corruption cases. From a criminological perspective, potential offenders weigh the anticipated benefits of corruption against the likely costs, including punishment. When the perceived benefits outweigh the risks of sanction, this calculation becomes a decisive factor in the decision to commit corrupt acts.[4]

Building on these challenges, corruption in Indonesia has persisted as a significant and entrenched issue since the 1960s, with recent data indicating a continued upward trend.[5] In 2023, Indonesia Corruption Watch (ICW) documented 791 corruption cases involving 1,695 suspects, resulting in potential state losses of IDR28.4 trillion.[6] The persistence of these cases, alongside Indonesia's stagnant Corruption Perception Index (CPI) score of 34 and a ranking of 115th out of 180 countries, indicates that anti-corruption measures have not been prioritised by the government. Notably, corruption frequently occurs at the village level, underscoring the necessity for enhanced oversight and management of village funds to address corruption at the grassroots.[7]

Amid this ongoing struggle, the largest and most recent corruption case to emerge nationally was the Pertamina scandal in 2025, which is estimated to have caused the state approximately IDR193.7 trillion in losses.[8] This scandal involved the manipulation of oil and oil product trade, particularly the mixing of subsidised and non-subsidised oil, as well as the misuse of trade mechanisms that harmed the state.[9] The Attorney General's Office has named

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[3] Shih-Yung Chiu and others, 'Strategies to Control Corruption in Economic Development: The Role of Government Spending and Public Satisfaction', *Socio-Economic Planning Sciences*, 98 (2025), 102144 https://doi.org/https://doi.org/10.1016/j.seps.2024.102144

[4] Lorenzo Pasculli, 'Seeds of Systemic Corruption in the Post-Brexit UK', *Journal of Financial Crime*, 26.3 (2019), 705–18 https://doi.org/https://doi.org/10.1108/JFC-09-2018-0094

[5] Ali Mukartono and Muhammad Rustamaji, 'The Development of Corruption in Indonesia (Is Corruption a Culture of Indonesia ?)', *Proceedings of the 3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)*, 358.Icglow (2019), 139–41 https://doi.org/10.2991/icglow-19.2019.36

[6] Moh Iqra Syabani Korompot, Sholahuddin Al-Fatih and David Pradhan, 'The Principle of Equality Before the Law in Indonesian Corruption Case: Is It Relevant?', *Journal of Human Rights, Culture and Legal System*, 1.3 (2021), 135–46 https://doi.org/10.53955/jhcls.v1i3.13

[7] S.E.M.S. Dr. Sri Maryati and S.E.M.A. Prof. Dr. Elfindri, *Ekonomi Anti Korupsi: Pendidikan Anti Korupsi Dalam Konteks Ilmu Ekonomi Dan Pembangunan - Rajawali Pers* (Rajawali, 2024) https://books.google.co.id/books?id=xYxpEQAAQBAJ

[8] Ariawan Gunadi Erick Darmansyah, 'Dinamika Hukum Dan Politik Dalam Dugaan Kasus Korupsi Yang Melibatkan Pertamina: Analisis Yuridis Dan Implikasinya Terhadap Kebijakan Energi Nasional', *Jurnal Hukum Lex Generalis*, 5.11 (2024), 1–13 <https://doi.org/https://doi.org/10.56370/jhlg.v5i11.1065>

[9] E Trinovani and others, *Pendidikan Budaya Anti Korupsi (PBAK)* (PT Penerbit Qriset Indonesia, 2025) https://books.google.co.id/books?id=4_NpEQAAQBAJ

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

Jurnal Justice Dialectical
Volume 3, Issue 2, 2025, pp. 176-197

18 suspects, including executives of PT Pertamina Patra Niaga and related businesspeople. This case illustrates that corruption at Pertamina is not merely a sectoral issue, but a structural one that necessitates significant reforms in the governance of state-owned enterprises.[10]

From a legal perspective, these developments highlight a controversial practice of the identification of suspects in corruption cases, specifically the practice of judges making determinations based on the facts presented at trial.[11] This practice shifts the authority of the dominus litis, which was previously vested solely in public prosecutors, and prompts a reinterpretation of the *negatief wettelijk* principle that formerly restricted the designation of an individual as a suspect.[12] Normative legal studies suggest that granting judges the authority to determine guilt based on trial facts can be justified in the context of extraordinary crimes, such as corruption.[13] This justification is based on the principle of legal realism and the necessity to address the complexity and scale of systemic corruption in Indonesia. However, this practice also necessitates examination to ensure compliance with the principles of due process and a fair trial, as well as to maintain a balanced role between law enforcement agencies.[14]

This intersection of practice and legal doctrine is not merely theoretical; it has been reflected in several relevant court decisions. For instance, in the Corruption Court Decision at the Central Jakarta District Court, Case Number 39/Pid.Sus-TPK/2023/PN Jkt.Pst, concerning alleged corruption in the procurement of a migrant worker protection system at the Ministry of Manpower, the panel of judges states in their ruling state that, based on the trial facts, there were other parties who were strongly suspected of being perpetrators of the crime and recommended the naming of new suspects.[15]

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[10] Shavinra Rosmiftafany Kalvisanda, 'Analisis Yuridis Terhadap Dugaan Korupsi Impor Minyak Mentah Oleh Eksekutif PT Pertamina Patra Niaga', *DIALOG LEGAL*, 1.2 (2025), 68–77 https://mazalat.stisa-ashshofa.ac.id/index.php/dialoglegal/article/view/54

[11] 'Settlement Practices and Perspectives of Judges', in *Vanishing Legal Justice: The Changing Role of Judges in an Era of Settlements and Plea Bargains*, ed. by Michal Alberstein and Nofit Amir (Cambridge: Cambridge University Press, 2025), pp. 87–132 https://doi.org/DOI: 10.1017/9781009049313.008

[12] S.H.S.E.M.H. Dr. Binsar M. Gultom, *Pandangan Kritis Seorang Hakim Dalam Penegakan Hukum Di Indonesia 3*, Pandangan Kritis Seorang Hakim Dalam Penegakan Hukum Di Indonesia (Gramedia Pustaka Utama, 2017) https://books.google.co.id/books?id=EMxGDwAAQBAJ

[13] B Z Tamanaha, *Beyond the Formalist-Realist Divide: The Role of Politics in Judging* (Princeton University Press, 2009) https://books.google.co.id/books?id=1Bbl-0GG5TUC

[14] Santiago Basabe-Serrano, 'Judicial Corruption: The Constitutional Court of Ecuador in Comparative Perspective', in *The Limits of Judicialization: From Progress to Backlash in Latin America*, ed. by Sandra Botero, Daniel M Brinks, and Ezequiel A Gonzalez-Ocantos (Cambridge: Cambridge University Press, 2022), pp. 217–41 https://doi.org/DOI: 10.1017/9781009093859.009

[15] Hafiyyan Nur Annafi, Ikhwanul Muslim and Rahmatullah Ayu Hasmiati, 'Tinjauan Yuridis Terhadap Putusan Nomor 36 / Pid . Sus- TPK / 2023 / PN Smr Dalam Perkara Tindak Pidana

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

Jurnal Justice Dialectical
Volume 3, Issue 2, 2025, pp. 176-197

Although the judges did not have the formal authority to designate suspect status, their statement became the basis for law enforcement officials to initiate a new investigation. A similar situation also occurred in Decision Number 74/Pid.Sus-TPK/2022/PN Jkt.Pst, regarding the corruption in the Kominfo 4G BTS project, where the panel of judges named additional individuals strongly suspected of involvement in the crime; this was subsequently acted upon by the Attorney General's Office, which named further suspects.[16]

The involvement of judges in determining suspects, typically the responsibility of investigators and prosecutors, raises questions about prosecutorial autonomy and the *negatief wettelijk* principle, which requires judges to decide based on conviction and legal evidence.[17] When judges call for further investigation despite lacking explicit authority, the boundary shifts towards a more subjective interpretation.[18] This also redefines "knowledge of a crime" from an administrative-legal basis to a more substantive one, thereby affecting the distribution of dominus litis. Previous studies have examined corruption in law enforcement from various perspectives.

First, the dissertation by IGM. Nurdjana[19] highlighted the problematic nature of the criminal law system and its implications for law enforcement, specifically concerning corruption, by focusing on regulatory disharmony, overlapping authority between institutions, weak infrastructure, and a deficient legal culture within the apparatus. However, this study has not yet addressed the issue of judges' authority during the suspect determination stage, particularly within the framework of the concepts of *dominus litis* and *negatief wettelijk stelsel*.

Second, Anis Rifai's[20] research reconstructs the legal framework for the criminal liability of state-owned enterprises (BUMN) in corruption cases,

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Korupsi', *Action Research Literate*, 8.8 (2024), 2199–2210 https://doi.org/https://doi.org/10.46799/arl.v8i8.476

[16] Althafferani F Nasution, Nasywa Putriani Ikbal and Leonita Indah Maharani, 'Pengaruh Tindak Pidana Korupsi Megaproyek BTS (Base Transceiver Station) Oleh Kominfo Terhadap Tingkat Kepercayaan Mahasiswa Ilmu Politik UPN " Veteran " Jakarta', *INDEPENDEN*, 5.1 (2024), 13–20 https://doi.org/10.24853/independen.5.1.13-20

[17] Mahrus Ali and others, 'Corruption, Asset Origin and the Criminal Case of Money Laundering in Indonesian Law', *Journal of Money Laundering Control*, 25.2 (2021), 455–66 https://doi.org/https://doi.org/10.1108/JMLC-03-2021-0022

[18] Bertrand Crettez and others, 'Judicial Venality in Old Regime France: A Rational Choice Analysis', *Journal of Comparative Economics*, 2025 https://doi.org/https://doi.org/10.1016/j.jce.2025.05.005

[19] NURDJANA, 'Problematik Sistem Hukum Pidana Dan Implikasinya Pada Penegakan Hukum Tindak Pidana Korupsi' (Universitas Islam Indonesia, 2009) https://dspace.uii.ac.id/handle/123456789/9363

[20] Anis Rifai, 'Rekonstruksi Model Hukum Pertanggungjawaban Pidana Korporasi Badan Usaha Milik Negara (Bumn) Dalam Tindak Pidana Korupsi Di Indonesia' (Universitas Sebelas Maret, 2019) https://digilib.uns.ac.id/dokumen/detail/76707/

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

Jurnal Justice Dialectical
Volume 3, Issue 2, 2025, pp. 176-197

emphasising the limitations of procedural law and the application of corporate governance principles to recover state losses. While pertinent to the context of corruption eradication, this research does not address the shifting role of judges during the pre-prosecution stage or the suspect determination process, nor does it explore the philosophical aspects and evidentiary system. Third, Hibnu Nugroho's[21] dissertation presents an alternative model for integrating corruption investigations, emphasising the coordination between investigators from the Police, the Prosecutor's Office, and the Corruption Eradication Commission (KPK) to overcome sectoral egos. Although it considers law enforcement coordination, this study does not examine how judicial intervention in the initial stages of a case affects the integration of investigations and the *dominus litis authority*.

In light of the limitations in existing scholarship, this research offers a novel contribution by specifically examining the phenomenon of suspect determination by judges in corruption cases. This approach conceptually challenges the doctrine of *dominus litis,* the exclusive authority of the public prosecutor in determining prosecution, and influences the application of the *negatief wettelijk stelsel,* a system of proof requiring a judge's conviction based on valid evidence.[22] By combining normative analysis, case studies of court decisions, and implications for the design of the criminal justice system, this study broadens the discourse on corruption eradication. Consequently, it not only addresses a gap in research concerning judges' authority during the pre-prosecution stage but also evaluates its impact on the balance of power between law enforcement agencies.

In light of these circumstances, this study conducts an in-depth analysis of the legal implications arising from the judicial authority to determine suspects based on trial facts, particularly in cases involving corruption. The research examines how this practice shifts the concept of dominus litis, reinterprets the *negatief wettelijk* principle, and expands the understanding of criminal knowledge. This study is significant in establishing a clear legal framework that delineates the boundaries of authority among law enforcement agencies, safeguards due process and ensures the consistent application of fair trial principles in the ongoing effort to eradicate corruption.

[21] Hibnu Nugroho, 'Membangun Model Alternatif Untuk Integralisasi Penyidikan Tindak Pidana Korupsi Di Indonesia' (Universitas Diponegoro, 2011) https://eprints.undip.ac.id/40720/

[22] Owoade Abdul Lateef M Hary Djatmiko, Mira Sri Rahayu, 'The Friction in Evidence Law: Criticism on Evidence of Negative Wettelijk Bewijstheorie in Tax Crimes', *Jurnal Hukum*, 41.1 (2025), 92–110 https://doi.org/http://dx.doi.org/10.26532/jh.41.1.92-110

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
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Jurnal Justice Dialectical
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Methodology

This study employs a normative legal research method with a comparative approach, supported by in-depth interviews.[23] The normative approach analyses legal principles, norms, court decisions, and the structure of judicial authority in the judicial process for corruption crimes in Indonesia. The comparative approach examines the legal systems of Indonesia, the Netherlands, and France to identify the differences and similarities in the regulation of judicial authority, as well as the application of the dominus litis principle and the differentiation of judicial functions. Primary data were collected through a literature review encompassing the constitutions, laws, and court decisions of the three countries. Secondary sources included books, journals, and legal literature, while tertiary sources comprised legal dictionaries and supplementary references. This study combines statutory, conceptual, and philosophical methods to examine regulations, doctrinal perspective, and the philosophical foundations of justice and the purpose of law. In addition to document analysis, data were conducted through interviews with sources from relevant institutions in Indonesia, such as the Supreme Court, the Corruption Court, the Prosecutor's Office, and the KPK. The interviews explored judicial authority, the dominus litis principle, and the division of functions within the criminal justice system. Analysis of legal materials was conducted deductively through grammatical, systematic, and historical interpretation. This research is prescriptive-analytical in nature, aiming to develop a regulatory model of judicial authority in determining guilt or innocence based on trial facts, grounded in legal certainty and the principle of a fair trial.

Results and Discussion

Judicial Power to Determine Suspect from Trial Evidence

The emerging judicial practice in Indonesia, where judges identify new suspects based on facts established at trial, represents a pivotal and controversial shift in the country's criminal justice system, particularly in cases involving corruption and other complex misconduct.[24] While Article 1, point 14, and Article 109 (1) of the Criminal Procedure Code vest the authority to designate suspects exclusively in investigators, with the public prosecutor holding *dominus litis* over case management, recent court

[23] Abdul Kadir Jaelani and Resti Dian Luthviati, 'The Crime Of Damage After the Constitutional Court ' s Decision Number 76 / PUU-XV / 2017', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 31–41 https://doi.org/https://doi.org/10.53955/jhcls.v1i1.5

[24] Deni Setya Bagus Yuherawan Eny Suastuti, Lalu Muhammad Hayyanul Haq, Yudi Widagdo Harimurti, 'Transformation and Effects of Human Rights Protection on Determining Corruption Suspects as a Pretrial Object under the Indonesian Criminal Justice System', *Lex Scientia Law Review*, 8.2 SE-Research Articles, pp. 817–858, https://doi.org/10.15294/lslr.v8i2.14667

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

Jurnal Justice Dialectical
Volume 3, Issue 2, 2025, pp. 176-197

decisions reveal a growing judicial tendency to extend their role beyond adjudication.[25] By naming "reasonably suspected" perpetrators who were never formally investigated, judges effectively blur the procedural boundary between investigation and adjudication.[26] This phenomenon raises fundamental questions about prosecutorial autonomy, the reinterpretation of the *negatief wettelijk* principle, and the balance between judicial innovation aimed at combating extraordinary crimes and the preservation of due process, legal certainty, and the separation of powers.[27]

This practice has been observed in high-profile cases, including the Ministry of Communication and Information Technology's 4G Base Transceiver Station (BTS) project and the procurement of a migrant worker protection system. In these instances, judges identified specific individuals suspected of involvement within their rulings or judicial considerations. Law enforcement agencies subsequently relied on these judicial statements to initiate further investigations and identify additional suspects. This development effectively expands the judicial role and addresses challenges faced by law enforcement for complex crimes such as corruption, where initial investigations often fail to identify all responsible parties.

The Century Bank case was a high-profile corruption scandal involving the controversial 2008 government bailout of Bank Century, which was alleged to have caused substantial state financial losses and implicated several senior officials.[28] The case, known as the Century Bank Case (*Praperadilan Decision No. 24/Pid.Pra/2018/PN Jkt.Sel*), concerned a pretrial hearing in which Judge Effendi Mukhtar explicitly ordered the KPK to conduct an investigation and identify new suspects, including figures such as former Vice President Boediono, Muliaman D. Hadad, and Raden Pardede. This directive was controversial because the Criminal Procedure Code (KUHAP) grants such this authority only to investigators. The Judge's decision attracted sharp criticism, notably from Ganjar Laksamana Bondan, who argued that the judge had

[25] Naomi Artadinata and Sahuri Lasmadi, 'Pengaturan Jaksa Penuntut Umum Dalam Penanganan Tindak Pidana Korupsi Berdasarkan Asas Dominus Litis', *PAMPAS: Journal of Criminal Law*, 4.3 SE-Articles (2023), 311–21 https://doi.org/https://doi.org/10.22437/pampas.v4i3.28637

[26] Mark D Snow and Joseph Eastwood, 'Interviewing Suspects in Criminal Investigations: Decisions and Their Consequences', in *The Cambridge Handbook of Psychology and Legal Decision-Making*, ed. by Monica K Miller and others, Cambridge Handbooks in Psychology (Cambridge: Cambridge University Press, 2024), pp. 225–39 https://doi.org/DOI: 10.1017/9781009119375.015

[27] Hamidah Abdurrachman and Abdul Malik Mufty, 'Analisis Penerapan Asas Dominus Litis Untuk Menjaga Keseimbangan Kewenangan Antara Kejaksaan Dan Kepolisian Dalam Sistem Peradilan Pidana', *Proceedings Series on Social Sciences & Humanities*, 23.SE-Articles (2025), 1–7 https://doi.org/https://doi.org/10.30595/pssh.v23i.1541

[28] Nabila Naswa, 'Hukum Perbankan Tentang Bank Century Yang Berhubungan Dengan Hukum Bisnis Di Mulai Dari Direksi Hingga Dewan Komisaris', *JLEB: Journal of Law, Education and Business*, 2.1 (2024), 301–7 https://doi.org/https://doi.org/10.57235/jleb.v2i1.1640

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

Jurnal Justice Dialectical
Volume 3, Issue 2, 2025, pp. 176-197

exceeded the normative authority permitted during of the pretrial process.[29] In several pretrial review decisions, judicial panels have emphasised the need for investigators to take additional steps, such as identifying new suspects or initiating a judicial review (*Peninjauan Kembali*, PK) based on trial evidence, even in the absence of formal suspect identification.[30] This practice constitutes a form of judicial expansion that advances the legal process and demonstrates judicial activism extending beyond the parameters established by the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP).[31]

This trend, evident in cases such as Kominfo, the procurement of the Indonesian migrant worker protection system, and Bank Century, demonstrates a consistent judicial pattern. Judges are expanding their role beyond adjudication by utilising trial evidence to prompt further investigations into individuals who have not been previously examined.[32] In the Bank Century pretrial decision, for instance, Judge Effendi Mukhtar ordered the KPK to investigate and name high-ranking officials, including a former Vice President, despite the Criminal Procedure Code granting such authority exclusively to investigators.[33] By effectively directing prosecutorial action, this ruling encroached on the *dominus litis* principle, which reserves control over the prosecution process to the public prosecutor, thereby altering the prosecutorial hierarchy and autonomy in decision-making.[34] This approach, while framed as judicial innovation to address the complexity of extraordinary crimes like corruption, creates a doctrinal dilemma by blurring the procedural boundary between adjudication and investigation.[35] It increases the risk that judicial impartiality may be compromised, particularly if the same judge later adjudicates the case they have helped initiate.[36] These

[29] R. Adelia, 'Konsekuensi Yuridis Terhadap Penetapan Tersangka Oleh Hakim Praperadilan (Studi Putusan Nomor:24/Pid.Pra/2018/PN.Jkt.Sel)', *Verstek*, 9.36 (2021), 642–49 https://doi.org/https://doi.org/10.20961/jv.v9i3.55055

[30] S H Adam Ilyas, *Hukum Acara Pidana: Dari Penyelidikan Hingga Eksekusi Putusan* (PT RajaGrafindo Persada, 2024) https://books.google.co.id/books?id=aOMNEQAAQBAJ

[31] S.H.M.H.D.L.S.H.M.H.D.D.S.N.S.H.M.H. Dr. Rio Saputra, *Reformasi Hukum Acara Pidana: Menyongsong KUHAP Baru* (Langgam Pustaka, 2025) https://books.google.co.id/books?id=bnFREQAAQBAJ

[32] Naswa.

[33] Pudji Astuti HERLAMBANG PONCO PRASETYO, 'ANALISIS PUTUSAN PRAPERADILANNOMOR: 24/Pid.Prap/2018/PN.Jkt.Sel PENETAPAN TERSANGKA BARUKASUS BANK CENTURY', *NOVUM : JURNAL HUKUM*, 7.30 (2020) https://doi.org/https://doi.org/10.2674/novum.v7i4.32800

[34] 'Prosecutors, Voters, and the Criminalisation of Corruption in Latin America', in *Prosecutors, Voters, and the Criminalization of Corruption in Latin America: The Case of Lava Jato*, ed. by Ezequiel A Gonzalez-Ocantos and others, Cambridge Studies in Law and Society (Cambridge: Cambridge University Press, 2023), pp. i–i https://www.cambridge.org/core/product/AA7C612437F29C3A7A3895346B7853CB

[35] Ali and others.

[36] Armunanto Hutahaean and Erlyn Indarti, 'Implementation of Investigation by the Indonesian National Police in Eradicating Corruption Crime', *Journal of Money Laundering Control*, 23.1 (2020), 136–54 https://doi.org/https://doi.org/10.1108/JMLC-12-2018-0075

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

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developments underscore the urgent need for systemic reform grounded in a robust normative framework and standardised procedures.[37]

This shift in judicial function has significant legal consequences. First, it may undermine dominus litis by diminishing prosecutorial control over the prosecution. Second, it prompts a reinterpretation of the *negatief wettelijk* principle, which traditionally restricts judges to considering valid evidence when convicting. It is now invoked to justify new trials beyond the original indictment. Third, in the absence of clear procedures, this practice risks blurring the distinction between the roles of judge and investigator, potentially resulting in violations of due process and the right to a fair trial. Compared to other countries, Indonesia's judicial practice of naming suspects based on trial facts is both unique and problematic from the perspective of procedural law.[38] In civil law systems such as France, *the juge d'instruction* (investigating judge) is legally mandated to conduct investigations into cases. This authority operates within a clear legal framework, encompassing established rules of evidence, standard of probable cause, and strict deadlines. In France, investigating judges do not adjudicate cases at the same level as the court of law, which reduces the risk of conflicts of interest.[39]

In the Netherlands, a system similar to Indonesia's judicial system is employed. However, there is a mechanism known as *rechter*-commissaris. This judge can order specific investigations, such as summoning witnesses or questioning suspects, when there is substantial evidence of others' involvement. This authority is strictly defined by law and overseen by the court, preventing conflicts between the roles of judging and investigating.[40]

In Indonesia, judges identifying suspects based on trial evidence lack clear legal authority. This practice did not arise from law reform but emerged as a pragmatic response to the limitations of investigations into complex crimes, such as corruption.[41] The absence of a defined legal framework distinguishing the judge's role in adjudication from that in suspect identification creates two primary risks. First, it conflates adjudicatory and investigative functions. Second, impartiality may be compromised if a judge subsequently tries an individual they previously identified as a suspect.

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[37] Ade Paranata, 'The Miracle of Anti-Corruption Efforts and Regional Fiscal Independence in Plugging Budget Leakage: Evidence from Western and Eastern Indonesia', *Heliyon*, 8.10 (2022), e11153 https://doi.org/https://doi.org/10.1016/j.heliyon.2022.e11153

[38] I N S Saleh and others, *Hukum Dan Peradilan Di Indonesia : Kajian Teori Dan Praktik Hukum Di Indonesia* (PT. Sonpedia Publishing Indonesia, 2025) https://books.google.co.id/books?id=cSFNEQAAQBAJ

[39] BELONOSOV Vladimir Olegovych, 'INVESTIGATING JUDGE UNDER THE FRENCH CODE OF CRIMINAL PROCEDURE', 1.75 (2024) https://doi.org/https://doi.org/10.33184/pravgos-2024.1.1

[40] Suparto, 'The Comparison Between the Judicial Commission of the Republic of Indonesia and the Netherlands Council for the Judiciary', *UNIFIKASI: Jurnal Ilmu Hukum*, 06.1 (2019), 40–52 https://doi.org/https://doi.org/10.25134/unifikasi.v6i1.1527

[41] Eny Suastuti, Lalu Muhammad Hayyanul Haq, Yudi Widagdo Harimurti.

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

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Judicial Activism Theory, as articulated by Oliver Wendell Holmes Jr. and Aharon Barak, conceptualises this practice as a form of *rechtvinding* that addresses extraordinary crimes where initial investigations fail to identify all perpetrators. Judges who interpret trial facts beyond the indictment seek to address deficiencies in law enforcement and promote substantive justice.[42] However, this approach raises concerns regarding the separation of powers, as described by Montesquieu, because it may blur the boundaries between adjudication and investigation and undermine prosecutorial autonomy.[43] Legal Realism, advanced by Karl Llewellyn and Jerome Frank, suggests that such judicial decisions are influenced by both legal texts and the socio-political imperative to combat systemic corruption.[44] In the absence of a formal legal framework, this approach risks devolving into selective law enforcement, thereby threatening the principle of due of , as defined by Edward Coke, and the fair trial guarantees established by the International Covenant on Civil and Political Rights (ICCPR).[45] The lack of procedural safeguards, including adversarial hearings for newly identified suspects, increases the risk of prejudice and undermines judicial impartiality.

From a comparative law perspective, Indonesia's practice constitutes a form of judge-made law developed through trial and error. In contrast, other countries formalise similar judicial authority through binding procedures and comprehensive oversight. This disparity suggests that Indonesia requires regulatory measures to support this approach. Potential steps include amending the Criminal Procedure Code (KUHAP) or issuing guidelines from the Supreme Court. Establishing clear rules and evidentiary standards would enable judges to determine guilt or innocence based on the fact presented at trial, while safeguarding the principles of fair trial and legal certainty.

This judicial authority has the potential to strengthen anti-corruption efforts and promote substantive justice. However, in the absence of a robust legal framework and stringent evidentiary standards, significant risks persist. These include the potential for abuse of power and threats to legal certainty. Supreme Court rules or guidelines are necessary to establish clear mechanisms, boundaries, and consequences for judges when determining guilt or innocence based on trial facts. Such measures are essential to strike a balance between judicial innovation and the protection of defendants' and suspects' rights.

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[42] Robert C Post, 'Oliver Wendell Holmes', in *The Taft Court: Making Law for a Divided Nation, 1921–1930*, ed. by Robert C Post, Oliver Wendell Holmes Devise History of the Supreme Court of the United States (Cambridge: Cambridge University Press, 2023), x, 163–224 https://doi.org/DOI: 10.1017/9781009336246.009

[43] Bernhard Ganglmair and G Andrea, 'Separation of Powers : The Case of Antitrust', *SSRN Electronic Journal*, 2012, 1–25 https://doi.org/http://dx.doi.org/10.2139/ssrn.1987741

[44] Matthew Angelosanto, 'Legal Realism and the Predictability of Judicial Decisions', *ISSLP*, 2.3 (2023), 4–14 https://doi.org/https://doi.org/10.61838/kman.isslp.2.3.2

[45] Raymond Wacks, 'Philosophy of Law: A Very Short Introduction' (Oxford University Press, 2006) https://doi.org/10.1093/actrade/9780192806918.001.0001

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

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The Dominus Litis Doctrine and Negatief Wettelijk's Principle

The phenomenon of judges naming or recommending new suspects based on trial facts in corruption cases is a development that has the potential to fundamentally alter two key doctrines in Indonesian criminal procedure law: the doctrine of *dominus litis* and the *negatief wettelijk* principle. This change impacts technical procedural aspects and the balance of power among law enforcement agencies, legal certainty, and the protection of suspects' rights.[46]

Conceptually, *dominus litis* is a doctrine that places the public prosecutor in control of a criminal case, both in determining whether the case is worthy of proceeding to trial and in designing the construction of the indictment. This doctrine implicitly protects the prosecution's independence from intervention by other parties, including judges. In the Criminal Procedure Code (*Kitab Undang-Undang Hukum Acara Pidana*, KUHAP) system, this division of authority is clear: investigators determine whether a suspect is identified based on sufficient preliminary evidence, while the public prosecutor decides whether the case meets the requirements for submission to court. However, when a judge explicitly states during the adjudication process that there are other parties who are reasonably suspected of being the perpetrators, the role of *dominus litis* is effectively subordinated to the judge's findings. Although the judge does not normatively mandate the determination of a suspect, such a statement carries significant persuasive authority, both politically and in terms of public perception, leading prosecutors to often feel compelled to follow up to preserve the legitimacy of their institution.

This phenomenon has been evident in high-profile cases, such as the Indonesian Migrant Worker Protection System procurement case at the Ministry of Manpower and the 4G BTS case at the Ministry of Communication and Information Technology.[47] In these instances, judges identified individuals suspected of involvement who were not originally listed as defendants. Following the verdicts, the Attorney General's Office initiated new investigations into these individuals. This practice blurs the distinction between moral and legal obligations. Although the Criminal Procedure Code does not grant judges direct authority to designate suspects, the practical effect of their statements closely resembles a legally binding order.

Meanwhile, the principle of negative legality initially functioned as a safeguard, ensuring that judges' decisions were based solely on two elements: (1) legally valid evidence, and (2) the judge's belief in that

[46] Renato Nazzini, 'Competition Enforcement and Procedure' (Oxford University Press, 2016) https://doi.org/10.1093/law:ocl/9780199578832.001.0001

[47] Fathimathuz Zachra, De Chaniago Moody and Rizqy Syailendra, 'Menggali Akar Masalah Korupsi Di Indonesia : Analisis Terhadap Faktor-Faktor Pendorong Dan Solusi Pemberantasannya', *JERUMI: Journal of Education Religion Humanities and Multidiciplinary*, 1.2 (2023), 548–52 https://doi.org/https://doi.org/10.57235/jerumi.v1i2.1428

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

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evidence. The objective was to prevent decisions from being purely subjective, thereby maintaining an objective basis in the form of legally recognised evidence. However, in the practice of determining suspects by judges, this principle has undergone reinterpretation. Judges now use their belief in trial facts to suggest the involvement of other parties as the basis for recommending new suspects, even though the case has not yet formally entered the investigation stage against those parties. This shift changes the principle of negative legality from a merely limiting instrument into a proactive mechanism that encourages the initiation of new cases.

These developments have significant implications for the criminal justice system. First, the judicial role expands from passive adjudication based solely on the indictment to the active identification of additional perpetrators. Second, this shift blurs the functional boundaries between judicial and prosecutorial authorities, thereby undermining the principle of separation of functions within criminal justice. Third, from a human rights perspective, there is a risk of violating the principle of impartiality if a judge subsequently presides over the trial of an individual they previously identified as a suspect.

Table 1. Comparison study of the Judges' Authority and Role in Indonesia, the Netherlands, and France

Aspect	Indonesia	Netherlands (*Rechter-commissaris*)	France (*Juge d'instruction*)
Legal Basis	No explicit provision in the Criminal Procedure Code (KUHAP); developed as *judge-made law* through court decisions.	Clearly regulated under the *Wetboek van Strafvordering* (Dutch Criminal Procedure Code).	Strictly regulated under the *Code de procédure pénale* (French Criminal Procedure Code).
Main Function	Judges adjudicate cases based on the prosecutor's indictment, but in practice may recommend naming new suspects based on trial facts.	The investigating judge may order specific investigative actions (summoning witnesses, questioning suspects) to complete the case file; does not serve as the trial judge for the case.	The investigating judge conducts a comprehensive judicial investigation, leading the process before the case is brought to trial.
Role Separation	No clear separation; judges who recommend new suspects may end up adjudicating the same case.	Separate from the trial judge; ensures independence and prevents conflicts of interest.	Separate from the trial court judge; does not rule on cases they have investigated.
Evidentiary Standard	Not regulated; depends on the judge's interpretation and *persuasive authority*.	Must meet the threshold of sufficient initial evidence (*voldoende aanwijzingen*), verified through legal procedure.	Must meet the *charges suffisantes* (sufficient evidence) standard, tested within the formal investigative framework.
Oversight Mechanism	No formal mechanism; no independent body oversees judges' recommendations.	Supervised by the court and bound by strict legal limitations.	Supervised by the *Chambre de l'instruction* (Court of Appeal chamber for investigative oversight).
Risk to Due Process & Fair Trial	High, as adjudicative and investigative roles overlap.	Low, as roles and functions are clearly separated.	Low, as roles and functions are clearly separated and strictly monitored.

Sources: various data processed by the author

The Netherlands and France are comparable because both adhere to the civil law tradition, like Indonesia, but have developed a more structured

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

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model for dividing authority among judges, prosecutors, and investigators.[48] The Netherlands is relevant because its judicial system includes the *rechter-commissaris*, a special judge who can order investigative actions yet remains separate from the judge examining the case. This demonstrates how the principle of *dominus litis* can still be upheld, even though the judge plays a role during the investigation phase. France was chosen because of the existence of the *juge d'instruction*, which acts as an investigating judge with broad authority who is strictly regulated by the *Code de procédure pénale* and supervised by the *Chambre de l'instruction*. This model illustrates how judicial investigative power can be exercised without compromising due process or the right to a fair trial.[49]

This comparison reveals that the practice in Indonesia, which has evolved as judge-made law without revision of the Criminal Procedure Code or formal oversight mechanisms, entails a greater risk of legal uncertainty, potential conflicts of interest, and a weakening of *dominus litis*. In contrast, in the Netherlands and France, similar authority is exercised within a clear legal framework, featuring a separation of roles and strict oversight that ensures the protection of the suspect's rights. Understanding this distinction allows for more targeted recommendations for legal reform in Indonesia: not to eliminate judicial innovation in corruption cases, but to place it within a system that is transparent, accountable, and consistent with the principles of the rule of law.

Compared to other jurisdictions, this shift in judicial authority in Indonesia operates without an adequate legal framework, resulting in both procedural uncertainty and practical enforcement challenges. In France, the *juge d'instruction* operates within a codified and rigidly supervised system. The role is institutionally separated from the trial bench, governed by standardised investigation procedures, clear evidentiary thresholds, and strict timelines, thereby minimising the risks of role confusion and bias. In the Netherlands, the *rechter*-commissaris may order specific investigative actions, such as summoning witnesses or questioning suspects; however, every step is explicitly authorised and reviewed within a transparent procedural regime, ensuring that prosecutorial autonomy remains intact. By contrast, Indonesia has allowed the practice of judges naming new suspects to evolve as a form of judge-made law, emerging from *ad hoc* judicial reasoning rather than statutory reform. The absence of explicit procedural

[48] A. Budianto, 'A Comparative Study of French , British , Dutch , and Russian External Supervisory Agencies of Investigators and Prosecutors within Integrated Criminal Justice System A . Introduction As Stated in the First-Year Report (2013) of This Study , Two Factors', *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 5.3 (2018), 527–42 https://doi.org/https://doi.org/10.22304/pjih.v5n3.a7

[49] Bagus Hanindyo Mantri, . Hartiwingsih and Muhammad Rustamaji, 'Termination of Prosecution by Public Prosecutor in Corruption Crime in Indonesia: A Comparison with Various Countries', *Journal of Ecohumanism*, 3.8 SE-Articles (2025), 10341 – 10352 https://doi.org/https://doi.org/10.62754/joe.v3i8.5645

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

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safeguards, oversight bodies, and codified limits has led to inconsistencies among courts, uncertainty for law enforcement agencies, and vulnerability to accusations of bias or overreach. This unstructured approach risks undermining the legitimacy of judicial determinations, particularly in politically sensitive corruption cases, and highlights the pressing need for amendments to the Criminal Procedure Code or Supreme Court regulations to formalise boundaries, establish oversight, and ensure compatibility with due process and fair trial standards.

Therefore, to prevent distortions of the *dominus litis* doctrine and the principle of negative legality, a targeted reformulation of Indonesia's criminal procedural law is necessary. This reform should explicitly define the scope of judicial authority in suspect determination, including whether such authority is confined to non-binding judicial notes (judicial remarks) in the decision's considerations, or whether it may extend to formal recommendations under strictly regulated procedures.[50] At a minimum, revisions to the Criminal Procedure Code (KUHAP) or the issuance of a Supreme Court Regulation (*Peraturan Mahkamah Agung, Perma*) should: 1) establish evidentiary standards by requiring that any judicial indication of new suspects be supported by clear and convincing evidence, consistent with the evidentiary thresholds applied when initiating investigations into extraordinary crimes such as corruption, terrorism, and money laundering; 2) establish a verification mechanism mandating review by a preliminary oversight panel or *hakim komisaris* before law enforcement may act on judicial recommendations, thereby ensuring impartial validation of legal sufficiency and procedural compliance; 3) prevent role conflicts by prohibiting judges who issue recommendations from adjudicating any subsequent cases involving those same suspects, thus safeguarding judicial impartiality; 4) standardise documentation by requiring that recommendations be recorded in a separate, standardised annex to the judgment, with limited legal effect until verified through formal prosecutorial procedures; and 5) institutional oversight through the creation a joint oversight body comparison representatives from the Supreme Court, the Attorney General's Office, and the KPK to monitor the implementation of such judicial powers and address any allegations of abuse or procedural violations. With these safeguards in place, judicial innovation in identifying potential suspects can be preserved as a legitimate anti-corruption tool while fully upholding the principles of due process of law, fair trial, and legal certainty.

[50] Tiar Adi Riyanto, 'Fungsionalisasi Prinsip Dominus Litis Dalam Penegakan Hukum Pidana Di Indonesia', 481–92 https://doi.org/https://doi.org/10.20885/jlr.vol6.iss3.art4

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

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Implications for Due Process and Fair Trial Principles

A judge's determination or recommendation of a suspect, based on trial evidence, significantly impacts due process and fair trial principles.[51] These principles form the primary foundations for protecting human rights within the criminal justice system. Due process requires that every law enforcement action adhere to proper legal procedures.[52] Each individual's rights must be respected from the outset, including the right to be informed of the charges, to defend oneself, and to receive equal treatment under the law. Simultaneously, a fair trial demands that judicial processes are objective, transparent, and free from conflicts of interest. All decisions must rely on an impartial evidentiary process. Judicial involvement in identifying suspects during the pre-investigation stage can undermine these protections, as it blurs the boundaries between officials, creates opportunities for bias, and risks violating suspects' rights. Therefore, both legislative and procedural reforms are necessary to uphold due process and ensure fair trials.[53]

This practice creates three main problems with important doctrinal implications. First, judges may violate the presumption of innocence when judges identify people as suspects, even informally, the public perceives this as an accusation. The named person faces social stigma and damage to their reputation without an opportunity to defend themselves. This risk was clear in the Century Bank pretrial decision (No. 24/Pid.Pra/2018/PN Jkt.Sel). The judge named Boediono, a former vice president, and senior officials for investigation by the KPK.[54] Before any formal step, media headlines focused on these names. This fuelled public suspicion and political pressure, even though no charges were filed. The same pattern appeared in the BTS 4G Kominfo corruption case. Judges called some business leaders and officials "reasonably suspected" in their written decision. This comment, repeated in the media, harmed their reputations well before prosecutors checked evidence or began formal action.[55]

Second, such statements strain the *dominus litis* doctrine. This doctrine is crucial because it ensures prosecutorial autonomy in deciding whether and when to initiate criminal proceedings, allowing prosecutors to independently assess evidence and exercise discretion based on investigative findings. When judicial interventions override this doctrine, such as judges effectively compelling prosecutors to open investigations, the essential balance of

[51] Erwin Susilo and others, 'Pretrial Failures in Ensuring the Merit of Cases: Critical Analysis and Innovative Reconstruction', *Journal of Ecohumanism*, 3.8 SE-Articles (2024), 8602 – 8612 https://doi.org/10.62754/joe.v3i8.5477

[52] Rodiyah Rodiyah Rendy Laputigar, Suhadi Suhadi, 'Integrating Due Process into The Enforcement Framework of Criminal Law', *IJCLS (Indonesian Journal of Criminal Law Studies)*, 9.1 (2024) https://doi.org/https://doi.org/10.15294/ijcls.v9i1.50293

[53] Eny Suastuti, Lalu Muhammad Hayyanul Haq, Yudi Widagdo Harimurti.

[54] HERLAMBANG PONCO PRASETYO.

[55] Nasution, Ikbal and Maharani.

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

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powers is disrupted. These risks undermine prosecutorial independence, leading to investigations driven not by objective evidence but by pressure to maintain institutional legitimacy in response to judicial statements, as seen in the Century Bank and BTS 4G Kominfo cases.

Third, the *negatief wettelijk* principle is subtly reinterpreted. This rule states that judges can only decide based on legally valid evidence and a conviction. However, judges now sometimes rely on their belief in trial facts to justify new cases. These facts were only tested for the original defendant. Blurring the roles of judge and investigator undermines legal certainty, especially when evidence shifts without formal oversight.

Proponents of judicial naming may argue that such practices promote transparency and accountability, especially in high-profile cases where public interest demands swift action. They may contend that judges' involvement helps prevent investigative inertia and signals a firm stance against serious crimes. However, without clear legal frameworks and procedural safeguards, these justifications cannot outweigh the risks of undermining prosecutorial discretion, blurring institutional roles, and violating fundamental rights. In this context, the Century Bank and BTS 4G Kominfo cases are not isolated anomalies but part of a broader structural shift, one that blurs the separation of powers within Indonesia's criminal procedure, challenges the theoretical boundaries of dominus litis, and expands the scope of the *negatief wettelijk* principle beyond its original intent. Without a formal legal framework to govern these practices, their continuation risks eroding due process, fair trial guarantees, and public trust in the judiciary.
From a due process view, this practice may violate the right to be heard. Suspects can be named publicly without formal notice or an opportunity to respond. During the pre-investigation phase, when judges informally or early assign suspect status, the individual often remains unaware and cannot respond or challenge the claim. This lack of notice denies them basic procedural protections.

From the standpoint of a fair trial, judicial involvement at this early stage blurs the clear separation between investigative and adjudicative roles. Investigators and prosecutors are responsible for gathering evidence and determining suspect status, while judges must remain impartial arbiters.[56] When judges participate in assigning suspect status before formal charges are laid, it risks creating bias and undermining the neutrality required in the judicial process, thereby jeopardising the fairness of the eventual trial.

A three-part policy solution is required. First, lawmakers should revise the Criminal Procedure Code (KUHAP). New rules must restrict judges' power over serious crimes, such as corruption, terrorism, and money laundering.

[56] Olena Boryslavska, 'Judicial Reforms In Eastern Europe: Ensuring The Right To A Fair Trial Or An Attack On The Independence Of The Judiciary?', *Access to Justice in Eastern Europe*, 9.1 (2021), 122–42 https://doi.org/https://doi.org/10.33327/AJEE-18-4.1-a000049

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

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Judges should intervene only when clear and convincing evidence is present. For example, in Germany, judicial involvement is strictly regulated, requiring prior judicial review of pre-investigation steps. This approach protects due process. A special judge or panel should review the evidence before an investigation begins. This ensures the process is legal and protects those recommended for investigation. Second, the Supreme Court rules should prohibit judges who recommend suspects from handling related cases. This prevents bias and supports fairness. The Supreme Court should limit judges' recommendations to non-binding notes, allowing investigators to rely on official procedures. This keeps the process fair and balanced. Third, law enforcement agencies must officially notify the recommended suspects and provide a summary of the evidence before any formal actions are taken. Suspects should be allowed to object during a hearing at the pre-investigation stage. Additionally, the evidence cited by the judges must also be pre-examined for legality and accuracy.

This multi-layered approach, modelled on jurisdictions with robust procedural safeguards, strikes a balance between the need for the effective prosecution of extraordinary crimes and the protection of fair trial principles, thereby enhancing both justice and public trust. Clear rules and strong safeguards help to maintain the effectiveness of judicial suspect recommendations in combating corruption. This approach maintains due process and fair trial rights, supports the legitimacy of the court, and preserves the balance of power among law enforcement agencies. Most importantly, it protects individual rights against abuse.

Conclusion

Judicial practices in which judges determine or recommend suspects based on trial facts in corruption cases have led to significant changes in three key areas. *First*, regarding judicial authority, this approach transforms the judge's role. Judges shift from passive adjudicators to active initiators of legal proceedings. While this method can identify additional perpetrators in complex corruption cases, it blurs boundaries between investigation, prosecution, and adjudication. *Second*, there has been a conceptual shift has occurred in the doctrine *of dominus litis* and the principle *of* negative legality. This doctrine which once gave exclusive control to the public prosecutor, is subordinate to judicial findings. The principle of negative legality, once an objective limitation, has evolved into a tool for initiating new investigations. *Third*, this practice impacts due process and fair trial principles. It can threaten the presumption of innocence, create conflicts of interest among judges, and introduce uncertainty regarding the validity of evidence. The risk of bias and stigmatisation for those recommended as suspects threatens judicial integrity and public trust. In response, this study proposes three measures. First, the Criminal Procedure Code (KUHAP) should be reformed to define judicial authority in specific contexts and require rigorous evidentiary standards. Second, the Supreme Court should issue technical

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

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guidelines to restrict recommendations, establish verification procedures, and prevent the same judge from handling related cases. Third, the rights of recommended suspects should be reinforced, such as through *preliminary review* and *adversarial hearings. With clear* regulations and procedures, this judicial innovation can be integrated into the criminal justice system. It can help combat corruption while maintaining the rule of law, judicial independence, and human rights protections.

References

A. Budianto, 'A Comparative Study of French , British , Dutch , and Russian External Supervisory Agencies of Investigators and Prosecutors within Integrated Criminal Justice System A . Introduction As Stated in the First-Year Report (2013) of This Study , Two Factors', *PADJADJARAN Jurnal Ilmu Hukum (Journal of Law)*, 5 (2018), 527–42 **https://doi.org/10.22304/pjih.v5n3.a7**

Abdurrachman, Hamidah and Abdul Malik Mufty, 'Analisis Penerapan Asas Dominus Litis Untuk Menjaga Keseimbangan Kewenangan Antara Kejaksaan Dan Kepolisian Dalam Sistem Peradilan Pidana', *Proceedings Series on Social Sciences & Humanities*, 23 (2025), 1–7 https://doi.org/https://doi.org/10.30595/pssh.v23i.1541

Adam Ilyas, S H, *Hukum Acara Pidana: Dari Penyelidikan Hingga Eksekusi Putusan* (PT RajaGrafindo Persada, 2024) https://books.google.co.id/books?id=aOMNEQAAQBAJ

Albanese, Jay S, 'Corruption as the Cause, Not the Effect, of Organized Crime?: A Review and Assessment of Cases across the World', *Journal of Economic Criminology*, 7 (2025), 100137 https://doi.org/https://doi.org/10.1016/j.jeconc.2025.100137

Alberstein, Michal and Nofit Amir, eds., 'Settlement Practices and Perspectives of Judges', in *Vanishing Legal Justice: The Changing Role of Judges in an Era of Settlements and Plea Bargains* (Cambridge: Cambridge University Press, 2025), pp. 87–132 https://doi.org/DOI: 10.1017/9781009049313.008

Ali, Mahrus, Syarif Nurhidayat, Muhammad Shidqon Prabowo and Rusli Muhammad, 'Corruption, Asset Origin and the Criminal Case of Money Laundering in Indonesian Law', *Journal of Money Laundering Control*, 25 (2021), 455–66 https://doi.org/https://doi.org/10.1108/JMLC-03-2021-0022

Angelosanto, Matthew, 'Legal Realism and the Predictability of Judicial Decisions', *ISSLP*, 2 (2023), 4–14 https://doi.org/https://doi.org/10.61838/kman.isslp.2.3.2

Annafi, Hafiyyan Nur, Ikhwanul Muslim and Rahmatullah Ayu Hasmiati, 'Tinjauan Yuridis Terhadap Putusan Nomor 36 / Pid . Sus- TPK / 2023 / PN Smr Dalam Perkara Tindak Pidana Korupsi', *Action Research Literate*, 8 (2024), 2199–2210 https://doi.org/https://doi.org/10.46799/arl.v8i8.476

Artadinata, Naomi and Sahuri Lasmadi, 'Pengaturan Jaksa Penuntut Umum Dalam Penanganan Tindak Pidana Korupsi Berdasarkan Asas Dominus Litis', *PAMPAS: Journal of Criminal Law*, 4 (2023), 311–21 https://doi.org/https://doi.org/10.22437/pampas.v4i3.28637

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

Basabe-Serrano, Santiago, 'Judicial Corruption: The Constitutional Court of Ecuador in Comparative Perspective', in *The Limits of Judicialization: From Progress to Backlash in Latin America*, ed. by Sandra Botero, Daniel M Brinks, and Ezequiel A Gonzalez-Ocantos (Cambridge: Cambridge University Press, 2022), pp. 217–41 https://doi.org/DOI: 10.1017/9781009093859.009

Boryslavska, Olena, 'JUDICIAL REFORMS IN EASTERN EUROPE: ENSURING THE RIGHT TO A FAIR TRIAL OR AN ATTACK ON THE INDEPENDENCE OF THE JUDICIARY?', *Access to Justice in Eastern Europe*, 9 (2021), 122–42 https://doi.org/https://doi.org/10.33327/AJEE-18-4.1-a000049

Chiu, Shih-Yung, Hsiu-Wan Hung, Chih-Yu Yang, Chiu-Mi Chen and Yung-ho Chiu, 'Strategies to Control Corruption in Economic Development: The Role of Government Spending and Public Satisfaction', *Socio-Economic Planning Sciences*, 98 (2025), 102144 https://doi.org/https://doi.org/10.1016/j.seps.2024.102144

Crettez, Bertrand, Bruno Deffains, Olivier Musy and Ronan Tallec, 'Judicial Venality in Old Regime France: A Rational Choice Analysis', *Journal of Comparative Economics*, 2025 https://doi.org/https://doi.org/10.1016/j.jce.2025.05.005

Dr. Binsar M. Gultom, S.H.S.E.M.H., *Pandangan Kritis Seorang Hakim Dalam Penegakan Hukum Di Indonesia 3*, Pandangan Kritis Seorang Hakim Dalam Penegakan Hukum Di Indonesia (Gramedia Pustaka Utama, 2017) https://books.google.co.id/books?id=EMxGDwAAQBAJ

Dr. Rio Saputra, S.H.M.H.D.L.S.H.M.H.D.D.S.N.S.H.M.H., *Reformasi Hukum Acara Pidana: Menyongsong KUHAP Baru* (Langgam Pustaka, 2025) https://books.google.co.id/books?id=bnFREQAAQBAJ

Dr. Sri Maryati, S.E.M.S., S.E.M.A. Prof. Dr. Elfindri, *Ekonomi Anti Korupsi: Pendidikan Anti Korupsi Dalam Konteks Ilmu Ekonomi Dan Pembangunan - Rajawali Pers* (Rajawali, 2024) https://books.google.co.id/books?id=xYxpEQAAQBAJ

Eny Suastuti, Lalu Muhammad Hayyanul Haq, Yudi Widagdo Harimurti, Deni Setya Bagus Yuherawan, 'Transformation and Effects of Human Rights Protection on Determining Corruption Suspects as a Pretrial Object under the Indonesian Criminal Justice System', *Lex Scientia Law Review*, 8, 817–58 https://doi.org/https://doi.org/10.15294/lslr.v8i2.14667

Erick Darmansyah, Ariawan Gunadi, 'Dinamika Hukum Dan Politik Dalam Dugaan Kasus Korupsi Yang Melibatkan Pertamina: Analisis Yuridis Dan Implikasinya Terhadap Kebijakan Energi Nasional', *Jurnal Hukum Lex Generalis*, 5 (2024), 1–13 https://doi.org/https://doi.org/10.56370/jhlg.v5i11.1065

Ganglmair, Bernhard and G Andrea, 'Separation of Powers : The Case of Antitrust', *SSRN Electronic Journal*, 2012, 1–25 https://doi.org/http://dx.doi.org/10.2139/ssrn.1987741

Gonzalez-Ocantos, Ezequiel A, Paula Muñoz Chirinos, Nara Pavão and Viviana Baraybar Hidalgo, eds., 'Prosecutors, Voters, and the Criminalisation of Corruption in Latin America', in *Prosecutors, Voters, and the Criminalization of Corruption in Latin America: The Case of Lava Jato*, Cambridge Studies in Law and Society (Cambridge: Cambridge University Press, 2023), pp. i–i https://www.cambridge.org/core/product/AA7C612437F29C3A7A3895346B7853CB

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

Jurnal Justice
Dialectical
P-ISSN: 3047-423X
E-ISSN: 3047-4264
Volume 3, Issue 2, 2025, pp. 176-197

HERLAMBANG PONCO PRASETYO, Pudji Astuti, 'ANALISIS PUTUSAN PRAPERADILANNOMOR: 24/Pid.Prap/2018/PN.Jkt.Sel PENETAPAN TERSANGKA BARUKASUS BANK CENTURY', *NOVUM : JURNAL HUKUM*, 7 (2020) https://doi.org/https://doi.org/10.2674/novum.v7i4.32800

Hutahaean, Armunanto and Erlyn Indarti, 'Implementation of Investigation by the Indonesian National Police in Eradicating Corruption Crime', *Journal of Money Laundering Control*, 23 (2020), 136–54 https://doi.org/https://doi.org/10.1108/JMLC-12-2018-0075

Igbinedion, SA and Anthony Osobase, 'GRAND CORRUPTION IN THE GLOBAL SOUTH: LEGAL, POLITICAL AND ECONOMIC ANALYSIS OF ASSETS RECOVERY IN NIGERIA', *Journal of Economic Criminology*, 2025, 100164 https://doi.org/https://doi.org/10.1016/j.jeconc.2025.100164

Jaelani, Abdul Kadir and Resti Dian Luthviati, 'The Crime Of Damage After the Constitutional Court ' s Decision Number 76 / PUU-XV / 2017', *Journal of Human Rights, Culture and Legal System*, 1 (2021), 31–41 https://doi.org/https://doi.org/10.53955/jhcls.v1i1.5

Kalvisanda, Shavinra Rosmiftafany, 'Analisis Yuridis Terhadap Dugaan Korupsi Impor Minyak Mentah Oleh Eksekutif PT Pertamina Patra Niaga', *DIALOG LEGAL*, 1 (2025), 68–77 https://mazalat.stisa-ashshofa.ac.id/index.php/dialoglegal/article/view/54

Korompot, Moh Iqra Syabani, Sholahuddin Al-Fatih and David Pradhan, 'The Principle of Equality Before the Law in Indonesian Corruption Case: Is It Relevant?', *Journal of Human Rights, Culture and Legal System*, 1 (2021), 135–46 https://doi.org/10.53955/jhcls.v1i3.13

M Hary Djatmiko, Mira Sri Rahayu, Owoade Abdul Lateef, 'The Friction in Evidence Law: Criticism on Evidence of Negatief Wettelijk Bewijstheorie in Tax Crimes', *Jurnal Hukum*, 41 (2025), 92–110 https://doi.org/http://dx.doi.org/10.26532/jh.41.1.92-110

Mantri, Bagus Hanindyo, . Hartiwingsih and Muhammad Rustamaji, 'Termination of Prosecution by Public Prosecutor in Corruption Crime in Indonesia: A Comparison with Various Countries', *Journal of Ecohumanism*, 3 (2025), 10341 – 10352 https://doi.org/https://doi.org/10.62754/joe.v3i8.5645

Mukartono, Ali and Muhammad Rustamaji, 'The Development of Corruption in Indonesia (Is Corruption a Culture of Indonesia ?)', *Proceedings of the 3rd International Conference on Globalization of Law and Local Wisdom (ICGLOW 2019)*, 358 (2019), 139–41 https://doi.org/10.2991/icglow-19.2019.36

Nasution, Althafferani F, Nasywa Putriani Ikbal and Leonita Indah Maharani, 'Pengaruh Tindak Pidana Korupsi Megaproyek BTS (Base Transceiver Station) Oleh Kominfo Terhadap Tingkat Kepercayaan Mahasiswa Ilmu Politik UPN " Veteran " Jakarta', *INDEPENDEN*, 5 (2024), 13–20 https://doi.org/10.24853/independen.5.1.13-20

Naswa, Nabila, 'Hukum Perbankan Tentang Bank Century Yang Berhubungan Dengan Hukum Bisnis Di Mulai Dari Direksi Hingga Dewan Komisaris', *JLEB: Journal of Law, Education and Business*, 2 (2024), 301–7 https://doi.org/https://doi.org/10.57235/jleb.v2i1.1640

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

Jurnal Justice Dialectical
Volume 3, Issue 2, 2025, pp. 176-197

Nazzini, Renato, 'Competition Enforcement and Procedure' (Oxford University Press, 2016) https://doi.org/10.1093/law:ocl/9780199578832.001.0001

Nugroho, Hibnu, 'Membangun Model Alternatif Untuk Integralisasi Penyidikan Tindak Pidana Korupsi Di Indonesia' (Universitas Diponegoro, 2011) https://eprints.undip.ac.id/40720/

NURDJANA, 'Problematik Sistem Hukum Pidana Dan Implikasinya Pada Penegakan Hukum Tindak Pidana Korupsi' (Universitas Islam Indonesia, 2009) https://dspace.uii.ac.id/handle/123456789/9363

Olegovych, BELONOSOV Vladimir, 'INVESTIGATING JUDGE UNDER THE FRENCH CODE OF CRIMINAL PROCEDURE', 1 (2024) https://doi.org/https://doi.org/10.33184/pravgos-2024.1.1

Paranata, Ade, 'The Miracle of Anti-Corruption Efforts and Regional Fiscal Independence in Plugging Budget Leakage: Evidence from Western and Eastern Indonesia', *Heliyon*, 8 (2022), e11153 https://doi.org/https://doi.org/10.1016/j.heliyon.2022.e11153

Pasculli, Lorenzo, 'Seeds of Systemic Corruption in the Post-Brexit UK', *Journal of Financial Crime*, 26 (2019), 705–18 https://doi.org/https://doi.org/10.1108/JFC-09-2018-0094

Post, Robert C, 'Oliver Wendell Holmes', in *The Taft Court: Making Law for a Divided Nation, 1921–1930*, ed. by Robert C Post, Oliver Wendell Holmes Devise History of the Supreme Court of the United States (Cambridge: Cambridge University Press, 2023), x, 163–224 https://doi.org/DOI: 10.1017/9781009336246.009

R. Adelia, 'Konsekuensi Yuridis Terhadap Penetapan Tersangka Oleh Hakim Praperadilan (Studi Putusan Nomor:24/Pid.Pra/2018/PN.Jkt.Sel)', *Verstek*, 9 (2021), 642–49 https://doi.org/https://doi.org/10.20961/jv.v9i3.55055

Rendy Laputigar, Suhadi Suhadi, Rodiyah Rodiyah, 'Integrating Due Process into The Enforcement Framework of Criminal Law', *IJCLS (Indonesian Journal of Criminal Law Studies)*, 9 (2024) https://doi.org/https://doi.org/10.15294/ijcls.v9i1.50293

Rifai, Anis, 'Rekonstruksi Model Hukum Pertanggungjawaban Pidana Korporasi Badan Usaha Milik Negara (Bumn) Dalam Tindak Pidana Korupsi Di Indonesia' (Universitas Sebelas Maret, 2019) https://digilib.uns.ac.id/dokumen/detail/76707/

Riyanto, Tiar Adi, 'Fungsionalisasi Prinsip Dominus Litis Dalam Penegakan Hukum Pidana Di Indonesia', 481–92 https://doi.org/https://doi.org/10.20885/jlr.vol6.iss3.art4

Saleh, I N S and others, *Hukum Dan Peradilan Di Indonesia : Kajian Teori Dan Praktik Hukum Di Indonesia* (PT. Sonpedia Publishing Indonesia, 2025) https://books.google.co.id/books?id=cSFNEQAAQBAJ

Snow, Mark D and Joseph Eastwood, 'Interviewing Suspects in Criminal Investigations: Decisions and Their Consequences', in *The Cambridge Handbook of Psychology and Legal Decision-Making*, ed. by Monica K Miller, Logan A Yelderman, Matthew T Huss, and Jason A Cantone, Cambridge Handbooks in Psychology (Cambridge: Cambridge University Press, 2024), pp. 225–39

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025

P-ISSN: 3047-423X
E-ISSN: 3047-4264

Jurnal Justice Dialectical
Volume 3, Issue 2, 2025, pp. 176-197

https://doi.org/DOI: 10.1017/9781009119375.015

Suparto, 'The Comparison Between the Judicial Commission of the Republic of Indonesia and the Netherlands Council for the Judiciary', *UNIFIKASI: Jurnal Ilmu Hukum*, 06 (2019), 40–52 https://doi.org/https://doi.org/10.25134/unifikasi.v6i1.1527

Susilo, Erwin, Mohd Din, . Suhaimi, Teuku Muttaqin Mansur and Dharma Setiawan Negara, 'Pretrial Failures in Ensuring the Merit of Cases: Critical Analysis and Innovative Reconstruction', *Journal of Ecohumanism*, 3 (2024), 8602 – 8612 https://doi.org/10.62754/joe.v3i8.5477

Tamanaha, B Z, *Beyond the Formalist-Realist Divide: The Role of Politics in Judging* (Princeton University Press, 2009) https://books.google.co.id/books?id=1Bbl-0GG5TUC

Trinovani, E and others, *Pendidikan Budaya Anti Korupsi (PBAK)* (PT Penerbit Qriset Indonesia, 2025) https://books.google.co.id/books?id=4_NpEQAAQBAJ

Wacks, Raymond, 'Philosophy of Law: A Very Short Introduction' (Oxford University Press, 2006) https://doi.org/10.1093/actrade/9780192806918.001.0001

Zachra, Fathimathuz, De Chaniago Moody and Rizqy Syailendra, 'Menggali Akar Masalah Korupsi Di Indonesia : Analisis Terhadap Faktor-Faktor Pendorong Dan Solusi Pemberantasannya', *JERUMI: Journal of Education Religion Humanities and Multidiciplinary*, 1 (2023), 548–52 https://doi.org/https://doi.org/10.57235/jerumi.v1i2.1428

Article History
Submitted 26 March 2025- Revision Required 29 July 2025 - Accepted 14 August 2025