

Procedure for Prosecution of Criminal Cases According to the Criminal Procedure Law System in Indonesia and the Criminal Procedure Code of Thailand

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Abstract

regulates the manner in which the state enforces substantive criminal law while simultaneously safeguarding the human rights of all parties involved in judicial proceedings. This article aims to analyze the similarities and differences between the criminal prosecution procedures under the Indonesian criminal procedural law system and those provided for in the Criminal Procedure Code of Thailand, as well as to conduct a comparative examination of both systems. This study employs a normative juridical method using a statutory approach and a comparative approach, drawing upon primary, secondary, and tertiary legal materials, which are analyzed qualitatively. The findings demonstrate that Indonesia adopts a centralized prosecution system in which the Public Prosecutor serves as the dominus litis within the framework of the continental legal tradition. In contrast, Thailand, influenced by the common law tradition, accommodates mechanisms of private prosecution and joint prosecution, thereby providing greater opportunities for active victim participation. Similarities between the two systems include the application of the presumption of innocence, the requirement that evidence be presented before an independent judge, and the involvement of the police at the investigation stage. The differences are reflected primarily in the structure of prosecutorial authority, the degree of victim participation, and the policy orientation of criminal prosecution. A comparison of these two legal systems provides valuable perspectives for strengthening the reform of Indonesia's criminal procedural law through Law Number 20 of 2025, particularly with regard to victim protection and the efficiency of criminal prosecution.

Keywords: *Criminal Prosecution; Criminal Procedural Law; Comparative Law; Indonesia; Thailand*

A. Introduction

Criminal procedural law occupies a fundamental position in the criminal justice system because it functions as an instrument that regulates state procedures for enforcing material criminal law while ensuring the protection of human rights for every party dealing with legal proceedings¹. The principles of due process of law, equality

¹ M. Fahmi Idris, *Introduction to the Principles of Criminal Procedural Law* (Semarang: Prima Agus Foundation, 2025).

before the law, and the presumption of innocence must be reflected at every stage, from investigation, investigation, prosecution, to the implementation of court decisions, so that law enforcement does not turn into repressive actions that are contrary to substantive justice.

Globally, criminal procedural law has undergone a transformation from an inquisitorial model that places judges as the dominant actor to an adversarial model that balances the roles of public prosecutors and defenders before impartial judges². This shift was driven by the growing international awareness of human rights after World War II, as contained in the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights, which prompted countries to reorganize their criminal justice systems to ensure a fair trial, the right to legal assistance, and protection from arbitrary detention³.

The Southeast Asian region shows the diversity of the criminal procedure legal system due to the influence of colonial history and the adoption of different legal traditions. Countries with a continental legal background tend to place prosecutors as the main controller of prosecution, while countries influenced by common law traditions provide greater space for victim participation and private prosecution mechanisms⁴. This diversity is relevant to be studied comparatively because it reflects different approaches in balancing the interests of the state, victims, and suspects or defendants.

Indonesia, as a country with a continental legal system, inherited the structure of the criminal procedure law from the Dutch tradition which was later updated through Law Number 8 of 1981 concerning the Criminal Procedure Code (KUHP). The Criminal Procedure Code affirms the principle of *dominus litis*, namely that the main authority of the prosecution lies with the Public Prosecutor as the representative of the state⁵. For decades, this system has been considered to provide procedural certainty, but in practice it raises problems such as ineffective coordination between investigators and public prosecutors, the accumulation of cases, the lack of room for victim participation, and the tendency of a retributive approach⁶. This criticism is also related to the weak guarantee of suspects' rights, the limitation of pretrial control mechanisms, and the lack of optimal restorative settlement of cases, thus encouraging the need for more adaptive and humane criminal procedural law reform.

The update was realized through Law Number 20 of 2025 concerning the Criminal Procedure Code which replaces the 1981 Criminal Procedure Code. This new regulation contains the strengthening of the rights of suspects, defendants, victims, witnesses, and persons with disabilities; expansion of pretrial mechanisms; restorative justice arrangements; implementation of plea bargaining and deferred prosecution

² R. Saputra et al., *Criminal Procedure Law Reform: Welcoming the New Criminal Procedure Code* (Lake Malaya: Bird Library, 2025).

³ *Ibid.*

⁴ N. Rohmat, *The Criminal Justice System* (Yogyakarta: K-Media, 2024).

⁵ R. Saputra et al., *Criminal Procedure Law Reform: Welcoming the New Criminal Procedure Code* (Lake Malaya: Bird Library, 2025).

⁶ N. Rohmat, *The Criminal Justice System* (Yogyakarta: K-Media, 2024).

agreements; and digitization of judicial administration⁷. The position of the Public Prosecutor remains as the controller of the case, but accompanied by the obligation to coordinate early with investigators and a non-litigation settlement room for certain cases, so that there is a shift in orientation from mere criminal imposition to judicial recovery and efficiency.

In contrast to Indonesia, Thailand implements the Criminal Procedure Code B.E. 2477 (1934) which has undergone various amendments. This system is influenced by common law traditions so that it displays a stronger adversarial character and gives a significant role to the victim⁸. Thailand's criminal procedure law recognizes a private prosecution mechanism that allows victims to file cases directly in court without fully relying on the public prosecutor, as well as joint prosecution that allows victims to act as co-plaintiffs with the public prosecutor. This model reflects a victim-centered justice orientation that places victims as active subjects, not just witnesses.

The fundamental difference between the two systems can be seen in the structure of prosecutorial authority. Indonesia maintains the centralization of prosecution to the Public Prosecutor, while Thailand opens up decentralization through the direct participation of victims. Centralization provides consistency in prosecution policies but has the potential to reduce the space for victim participation, while private mechanisms expand access to justice but risk fragmentation and inequality in the quality of evidence⁹. The comparison of the two countries is relevant given the geographical proximity, similarity of social characteristics, and intensity of legal interaction in the ASEAN region, especially in responding to transnational crime and population mobility that demands an effective criminal justice system that is both sensitive to victim protection.

Based on this description, this article is compiled to answer two main problems, namely: (1) how are the similarities and differences in criminal prosecution procedures in the Indonesian criminal procedure law system and the Criminal Procedure Code of Thailand; and (2) how are the criminal prosecution procedures in the two legal systems compared.

B. Research Methods

This study uses normative juridical research methods, namely legal research that uses materials in the form of theories, concepts, principles, and legal regulations related to the subject of discussion¹⁰. The nature of this research is descriptive, which aims to describe the state of the research object without drawing generally accepted conclusions. The approaches used are the statute approach and the comparative approach to

⁷ R. Saputra et al., *Criminal Procedure Law Reform: Welcoming the New Criminal Procedure Code* (Lake Malaya: Bird Library, 2025).

⁸ F. P. Suhartanto and Y. Febrianty, "Comparison of Civil Law and Common Law Legal Systems," *Consensus: Journal of Defense, Law and Communication Sciences* 1, no. 3 (2024): 72–83.

⁹ S. Ferry et al., *The Existence of Prosecutorial Authority in Corruption Cases in Indonesia and Several Countries* (Pekanbaru: Hawa and AHWa, 2023).

¹⁰ Irwansyah, *Legal Research: Choice of Methods and Practices for Writing Articles* (Yogyakarta: Mirra Buana Media, 2020).

compare two different criminal procedure law systems¹¹..

The primary legal materials used include Law Number 20 of 2025 concerning the Criminal Procedure Code of Thailand B.E. 2477 (1934), which is equipped with secondary legal materials in the form of books, journals, and previous research results, as well as tertiary legal materials in the form of legal dictionaries and encyclopedias¹². Data is collected through library research both offline and online, then analyzed qualitatively with a deductive mindset to draw conclusions on similarities, differences, and comparisons of criminal prosecution procedures between the two countries.

C. Analysis And Discussion

1. Similarities and Differences in Criminal Case Closure Procedures in the Criminal Procedure Law System

a. Procedure for Prosecution of Criminal Cases in the Indonesian Criminal Procedure Law System

Indonesia adheres to an integrated criminal justice system based on the principle of division of function, which is a strict separation between the authority of investigation, prosecution, examination in court, and the implementation of decisions, which is philosophically intended to realize social protection towards social welfare¹³. Although normatively this system has been integrated, in practice the synergy between law enforcement institutions is not fully optimal, so it still leaves coordination problems¹⁴.

The prosecution process in Indonesia begins with an investigation carried out by the Police. Investigators are tasked with carrying out a series of actions of enforcement or coercive efforts, examination, settlement, and submission of case files, ranging from making police reports, investigations, summons, arrests, detention, searches, confiscation, to handing over case files along with suspects and evidence to the public prosecutor¹⁵. The complexity of investigators' duties is increasing because investigators are required to effectively uncover criminal acts while upholding the human rights of suspects, including the risk of filing a pretrial lawsuit for the investigator's erroneous actions¹⁶.

After the case file is declared complete, the authority shifts to the Prosecutor's Office through the Public Prosecutor who is positioned as dominus litis or the controller of the case¹⁷. This stage consists of pre-prosecution, namely research

¹¹ A. Aida, D. Hermina, and N. Norlaila, "Types of Quantitative Research Data (Correlational, Comparative, and Experimental)," *Al-Manba Scientific Journal of Islam and Society* 10, no. 1 (2025): 31–40.

¹² J. Efendi and J. Ibrahim, *Legal Research* (Jakarta: Kencana, 2016).

¹³ N. Nursyamsudin and S. Samud, "Integrated Criminal Justice System According to the Criminal Code," *Court: Journal of Islamic Law Studies* 7, no. 1 (2022): 149–160.

¹⁴ K. Husin and B. R. Husin, *The Criminal Justice System in Indonesia* (Jakarta: Sinar Grafika, 2022).

¹⁵ M. K. Zulkarnaen, E. Salia, and A. W. Wardana, "The Role of Resort Police Investigators Muara Enim in Law Enforcement against the Crime of Rape of Biological Children," *Doctrinal* 6, no. 1 (2021): 34–62.

¹⁶ *Ibid.*

¹⁷ N. Artadinata and S. Lasmadi, "Public Prosecutor's Arrangement in Handling Corruption Crimes Based on the Principle of Dominus Litis," *PAMPAS: Journal of Criminal Law* 4, no. 3 (2023): 311–321.

on the completeness of the investigation file; if it is incomplete, the prosecutor returns the file with instructions (P-18/P-19), and if it is complete (P-21), the file is accepted for drafting an indictment. The next stage of prosecution is in the form of preparing and reading the indictment at trial, submitting evidence, and submitting criminal charges against the defendant. The Public Prosecutor's strategic position places him as the main link between the investigation stage and the judicial process to ensure legal certainty and the effectiveness of criminal law enforcement¹⁸.

At the trial stage, the judge is authorized to independently examine, adjudicate, and decide the case based on the Public Prosecutor's indictment and the legal facts revealed at the trial. The advocate plays a role in accompanying and ensuring that the rights of the suspect or defendant are fulfilled throughout the prosecution and trial process. These rights are regulated in detail in the provisions regarding the position of the suspect and the defendant, including the right to be immediately examined, submitted to a court hearing, and tried (speedy trial right); the right to make a defense; special rights for suspects in custody; the right during examination at trial; the right to pursue legal remedies; and the right to demand compensation and rehabilitation¹⁹. One of the rights that often causes debate is the right of suspects to choose to answer or refuse to answer questions from investigators, public prosecutors, and judges, considering the importance of protection from psychological pressure in the examination²⁰.

Through Law Number 20 of 2025, the position of the Public Prosecutor as the controller of cases is maintained, but strengthened by the obligation to coordinate early with investigators as well as the opening of non-litigation settlement spaces and a restorative justice approach for certain cases²¹. This update shows a shift in the orientation of Indonesia's prosecution policy from purely retributive to a more responsive approach to victim recovery and judicial efficiency.

2. Criminal Procedure According to the Criminal Procedure Code of Thailand

Thailand implements an integrated law enforcement system based on the constitutional monarchy model with a blend of common law and civil law traditions, involving the Royal Thai Police, the Prosecutor's Office, and the Court in stages from investigation to correction, with the aim of improving the efficiency, accountability, and transparency of law enforcement²².

¹⁸ D. C. Sihombing, A. Syahrin, M. Ablisar, and M. Mulyadi, "Strengthening Authority of the Prosecutor as Dominus Litis as an Effort to Optimize Restorative Justice Oriented Criminal Law Enforcement," *Locus: Journal of Legal Concept Studies* 3, no. 2 (2023): 63–75.

¹⁹ M. H. Pura and H. Faridah, "The Basis of the Accuser in Legal Protection of the Rights of a Suspect Based on Law Number 8 of 1981 concerning the Criminal Procedure Code," *Sasana Law Journal* 7, no. 1 (2021): 79–95.

²⁰ S. A. Abdullah, O. K. Haris, A. Rizky, and Y. Tabilino, "Legal Protection of Suspect for Arbitrary Treatment in Investigation Through the Right of Non-Reply," *Halu Oleo Legal Research* 6, no. 1 (2024): 122–140.

²¹ R. Margono and I. Arief, "Pre-Prosecution Problem Solving of Criminal Cases (Formal and Material Criminal Law)," *Journal of Research and Service Locus* 4, no. 9 (2025): 8751–8764.

²² M. A. Tajuddin and A. E. N. Jaya, *The Criminal Justice System* (Yogyakarta: Nem, 2023).

At the investigation and investigation stage, the police are responsible for receiving criminal reports, conducting investigations, collecting physical and forensic evidence, examining witnesses and victims, and conducting interviews with suspects. Sections 83 and 84 of the Criminal Procedure Code require suspects to be informed of the reason for arrest, charges charged, and the right to remain silent, as well as to be given access to contact family or legal counsel²³. This provision is intended to prevent arbitrary detention while protecting suspects' communication rights from the early stages of the legal process.

Section 134 of the Criminal Procedure Code stipulates that interrogation must be carried out humanely without coercion, threats, or deception, and any statement obtained through coercion cannot be used as evidence; the interrogation process must also be recorded to ensure transparency²⁴. After the investigation process is completed, the police compile a case file and provide recommendations to the prosecutor regarding the feasibility of the case to be prosecuted or terminated.

At the prosecution stage, the Public Prosecutor reviews the completeness of the case file and may order additional investigations if necessary. If the evidence is sufficient, the prosecutor prepares an indictment and submits the case to the court, with the burden of proof to convince the judge beyond a reasonable doubt that the defendant has committed a criminal act²⁵. Section 8 of the Criminal Procedure Code provides a number of rights to defendants at trial, including the right to a lawyer, the right to a speedy and continuous trial, the right to examine evidence and case documents, the right to summon and examine witnesses, and the right to obtain medical care if necessary, which reflects the Thai legal system's commitment to the principle of fair trial²⁶.

A special characteristic of the Thai prosecution system lies in the role of the aggrieved party or aggrieved party, who has the right to file criminal charges directly with the court or through a private lawyer without having to go through the police, especially for certain cases such as defamation or misdemeanors, in order to minimize abuse of authority by the authorities²⁷. Section 13 of the Criminal Procedure Code also affirms the right to a free translator for suspects or defendants who do not understand Thai, as well as the regulation on the limitation of detention time and the right to apply for a suspension of detention (bail) as stipulated in Sections 87-90 and Section 108/1-108/6²⁸. Special protection is also given to children and foreign nationals who are

²³ M. I. Fadhila, "Optimizing the Protection of Suspects' Rights in the Arrest Process: A Comparative Study of Criminal Law Practices in Indonesia and ASEAN Countries," *Veritas Procedura* 1, no. 1 (2025): 26-49.

²⁴ *Ibid.*

²⁵ S. Ferry, et al., *The Existence of Prosecutorial Authority in Corruption Cases in Indonesia and Several Countries* (Pekanbaru: Hawa and AHWA, 2023).

²⁶ M. I. Fadhila, "Optimizing the Protection of Suspects' Rights in the Arrest Process: A Comparative Study of Criminal Law Practices in Indonesia and ASEAN Countries," *Veritas Procedura* 1, no. 1 (2025): 26-49.

²⁷ S. Ferry, et al., *The Existence of Prosecutorial Authority in Corruption Cases in Indonesia and Several Countries* (Pekanbaru: Hawa and AHWA, 2023).

²⁸ M. I. Fadhila, "Optimizing the Protection of Suspects' Rights in the Arrest Process: A Comparative Study of Criminal Law Practices in Indonesia and ASEAN Countries," *Veritas Procedura* 1, no. 1 (2025): 26-49.

suspects. In addition to general law enforcement agencies, Thailand has specialized agencies such as the Anti Money Laundering Office (AMLO), National Counter Corruption Commission (NCCC), and Special Investigation Department (SID) that handle certain types of criminal acts, while trials are conducted through an adversarial system without a jury mechanism²⁹.

On the other hand, a fundamental difference is seen in the structure of the prosecution authority. Indonesia maintains the centralization of prosecution in the Public Prosecutor as a state representative based on the principle of *dominus litis*, so that the victim is essentially in the position of a complainant or witness, not a party who can file criminal charges independently³⁰. In contrast, Thailand opens up the decentralization of prosecution authority through the recognition of private prosecution and joint prosecution, which allows victims to act as independent prosecutors or co-plaintiffs with prosecutors³¹. These differences reflect a different orientation in balancing the interests of the state and the interests of victims in the criminal justice process.

The next difference lies in the control mechanism over the validity of investigations. Indonesia provides pretrial institutions as a control mechanism for coercive actions by investigators and public prosecutors, although this mechanism is still criticized for the limited scope of its examination³². Thailand, on the other hand, relies on the bail mechanism and the limitation of detention time stipulated in detail in Sections 87-90 and 108/1-108/6 of the Criminal Procedure Code, in addition to the interrogation mechanism that must be recorded to ensure transparency³³.

Another difference is seen in special law enforcement agencies. Thailand has its own institutions such as the Anti Money Laundering Office and the National Counter Corruption Commission that handle certain types of crimes separately from the public prosecution mechanism³⁴, while Indonesia handles special crimes such as corruption and money laundering through prosecutors and law enforcement agencies that are the same as general crimes, albeit with special procedural laws in sectoral laws³⁵. In addition, in terms of legal reform orientation, Indonesia through Law Number 20 of 2025 has only introduced restorative justice and non-litigation settlement in a more

²⁹ S. Ferry, et al., *The Existence of Prosecutorial Authority in Corruption Cases in Indonesia and Several Countries* (Pekanbaru: Hawa and AHWa, 2023).

³⁰ N. Artadinata and S. Lasmadi, "Public Prosecutor's Arrangement in Handling Corruption Crimes Based on the Principle of *Dominus Litis*," *PAMPAS: Journal of Criminal Law* 4, no. 3 (2023): 311–321.

³¹ S. Ferry, et al., *The Existence of Prosecutorial Authority in Corruption Cases in Indonesia and Several Countries* (Pekanbaru: Hawa and AHWa, 2023).

³² N. Rohmat, *The Criminal Justice System* (Yogyakarta: K-Media, 2024).

³³ M. I. Fadhila, "Optimizing the Protection of Suspects' Rights in the Arrest Process: A Comparative Study of Criminal Law Practices in Indonesia and ASEAN Countries," *Veritas Procedura* 1, no. 1 (2025): 26–49.

³⁴ S. Ferry, et al., *The Existence of Prosecutorial Authority in Corruption Cases in Indonesia and Several Countries* (Pekanbaru: Hawa and AHWa, 2023).

³⁵ D. C. Sihombing, A. Syahrin, M. Ablisar, and M. Mulyadi, "Strengthening Authority of the Prosecutor as *Dominus Litis* as an Effort to Optimize Restorative Justice Oriented Criminal Law Enforcement," *Locus: Journal of Legal Concept Studies* 3, no. 2 (2023): 63–75.

institutional manner ³⁶, while Thailand has previously accommodated the participation of victims directly through the private prosecution mechanism since the enactment of the Criminal Procedure Code B.E. 2477 (1934).

b. Comparison of Criminal Prosecution Procedures in the Indonesian and Thai Criminal Procedure Law Systems

A comparison of the two systems shows that the structural choices of centralization and decentralization of prosecution have different implications for the effectiveness of law enforcement, the workload of the apparatus, the protection of human rights, and the public's access to justice³⁷. The centralization of prosecution as adopted by Indonesia provides consistency in prosecution policy because all decisions to continue or stop cases are in the hands of one institution, namely the Prosecutor's Office, so that the standard of assessment of the adequacy of evidence is relatively uniform. However, this model has the potential to reduce the scope for victim participation in determining the direction of their own case resolution, especially in cases that are considered less priority by the public prosecutor.

In contrast, Thailand's decentralization model through private prosecution expands victims' access to justice, especially in cases of a personal nature such as defamation, as victims do not need to rely entirely on the decisions of law enforcement officials³⁸. However, this mechanism risks causing fragmentation of the prosecution process and inequality in the quality of evidence, considering that victims' ability to independently draft and prove their charges can vary, potentially causing disparities in judicial outcomes between similar cases.

In terms of the protection of the rights of suspects and defendants, both systems regulate the right to legal assistance and the right not to be coerced into giving evidence, but Thailand regulates more explicitly the obligation to record interrogations and prohibits the use of statements obtained through pressure as evidence³⁹, while Indonesia regulates the protection more generally in the provisions on the rights of suspects and defendants without explicit recording obligations in the old law, although the update through Law Number 20 of 2025 opens up opportunities to strengthen such supervision through the digitization of judicial administration⁴⁰.

From the aspect of efficiency and policy orientation, Indonesia's criminal procedure law reform shows a convergence with the Thai system, especially through restorative justice arrangements, plea bargaining, and deferred prosecution agreements that provide room for case resolution outside the full litigation

³⁶ R. Margono and I. Arief, "Pre-Prosecution Problem Solving of Criminal Cases (Formal and Material Criminal Law)," *Journal of Research and Service Locus* 4, no. 9 (2025): 8751–8764.

³⁷ S. Ferry, et al., *The Existence of Prosecutorial Authority in Corruption Cases in Indonesia and Several Countries* (Pekanbaru: Hawa and AHWA, 2023).

³⁸ *Ibid.*

³⁹ M. I. Fadhila, "Optimizing the Protection of Suspects' Rights in the Arrest Process: A Comparative Study of Criminal Law Practices in Indonesia and ASEAN Countries," *Veritas Procedura* 1, no. 1 (2025): 26–49.

⁴⁰ R. Saputra, et al., *Criminal Procedure Law Reform: Welcoming the New Criminal Procedure Code* (Lake Malaya: Bird Library, 2025).

mechanism⁴¹. This convergence indicates that although the two countries depart from different legal traditions, namely civil law in Indonesia and a combination of common law-civil law in Thailand, there is a universal tendency to balance the interests of law enforcement, judicial efficiency, and victim recovery⁴².

The comparison is also relevant to the need for harmonization of criminal procedural law in the ASEAN region, considering the intensity of legal interactions, population mobility, and transnational crime that demand minimum standards of protection of the rights of suspects, defendants, and victims that can be mutually understood by law enforcement officials in the region. Thailand's private prosecution model can be a consideration for Indonesia in expanding the space for victim participation without sacrificing legal certainty which has been the strength of the centralistic system, while Indonesia's experience in instituting pretrial can be a reference for strengthening control mechanisms for acts of coercion in other countries

D. Conclusions and Recommendations

Criminal prosecution procedures in Indonesia and Thailand both begin with police investigations, adhere to the principle of presumption of innocence, and require proof before independent judges, but differ fundamentally in the structure of prosecutorial authority. Indonesia adheres to the centralization of prosecution to the Public Prosecutor as dominus litis, while Thailand accommodates decentralization through private prosecution and joint prosecution mechanisms that provide room for active participation of victims. A comparison of the two systems shows that centralization provides consistency in prosecution policies but limits victim participation, while decentralization expands access to justice but risks causing fragmentation and disparity in the quality of evidence. The reform of Indonesia's criminal procedural law through Law Number 20 of 2025 shows the direction of convergence with a number of aspects in the Thai system, especially through the strengthening of restorative justice and non-litigation settlement mechanisms, so that the comparison of these two criminal procedural law systems can be considered for strengthening prosecution policies that are fairer, more efficient, and oriented towards the protection of human rights in the ASEAN region.

⁴¹ R. Margono and I. Arief, "Pre-Prosecution Problem Solving of Criminal Cases (Formal and Material Criminal Law)," *Journal of Research and Service Locus* 4, no. 9 (2025): 8751–8764.

⁴² F. P. Suhartanto and Y. Febrianty, "Comparison of Civil Law and Common Law Legal Systems," *Consensus: Journal of Defense, Law and Communication Sciences* 1, no. 3 (2024): 72–83.

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