

Reconstructing the *Dominus Litis* Function in the Oversight of Undercover Investigations into Narcotics Offences: A Procedural Justice Perspective

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Abstract

The use of undercover investigation techniques in combating narcotics crimes has increased in response to the growing complexity of organised crime. However, the Indonesian legal framework governing these techniques remains fragmented across sectoral regulations and is not comprehensively integrated into criminal procedure law, limiting procedural oversight and investigative accountability. This study examines the impact of regulatory fragmentation on the implementation of the *dominus litis* principle and proposes a reconstruction model to strengthen procedural supervision. The research employs a prescriptive normative legal method using statutory, conceptual, comparative, and case approaches. The findings demonstrate that fragmented regulations confine the *dominus litis* function primarily to prosecutorial control after the investigation stage, preventing effective preventive supervision over investigative legality and evidence acquisition. To address this limitation, the study proposes the Integrated Procedural Supervision Model, which positions public prosecutors as procedural supervisors while preserving the institutional independence of investigators. The model is founded on the principles of integrated criminal justice, procedural supervision, accountability, and procedural justice. This study contributes to the development of Indonesian criminal procedure law by reconceptualising the *dominus litis* principle as a procedural supervisory mechanism and providing normative recommendations for harmonising regulations governing undercover investigation techniques.

Keywords: *Dominus Litis*; Integrated Procedural Supervision; Undercover Investigation

Abstrak

Penggunaan teknik penyelidikan terselubung dalam pemberantasan tindak pidana narkoba semakin berkembang seiring dengan meningkatnya kompleksitas kejahatan terorganisasi. Namun, pengaturannya dalam sistem hukum Indonesia masih terfragmentasi dalam berbagai regulasi sektoral dan belum terintegrasi secara komprehensif ke dalam hukum acara pidana, sehingga membatasi pengawasan prosedural dan akuntabilitas terhadap proses investigasi. Penelitian ini bertujuan menganalisis pengaruh fragmentasi regulasi terhadap pelaksanaan fungsi *dominus litis* serta merumuskan model rekonstruksi untuk memperkuat supervisi prosedural. Penelitian ini menggunakan metode penelitian hukum normatif yang bersifat preskriptif dengan pendekatan peraturan perundang-undangan, konseptual, perbandingan, dan studi kasus. Hasil penelitian menunjukkan bahwa fragmentasi regulasi menyebabkan fungsi *dominus litis* masih berorientasi pada pengendalian penuntutan setelah tahap penyidikan, sehingga pengawasan preventif terhadap legalitas tindakan penyelidikan dan perolehan alat bukti belum optimal. Sebagai solusi, penelitian ini menawarkan *Integrated Procedural Supervision Model* yang menempatkan Jaksa Penuntut Umum sebagai pengawas prosedural tanpa mengurangi independensi penyidik. Model ini berlandaskan prinsip sistem peradilan pidana terpadu, supervisi prosedural, akuntabilitas, dan keadilan prosedural. Penelitian ini berkontribusi pada pengembangan hukum acara pidana melalui rekonstruksi fungsi *dominus litis* serta memberikan rekomendasi harmonisasi pengaturan penyelidikan terselubung.

Kata Kunci: *Dominus Litis*; Supervisi Prosedural Terintegrasi; Penyelidikan Terselubung.

Introduction

Illicit narcotics trafficking has evolved from a localised criminal activity into a cross-jurisdictional criminal network characterised by closed organisational structures and multilayered operating patterns. Communication technologies, digital financial transactions, and fragmented divisions of labour enable offenders to conceal their identities, financial flows, and distribution routes.¹ These developments amplify the effects of narcotics crime on public health, security, the economy, and the state's law-enforcement capacity. The clandestine nature of such operations also means that overt investigative methods are often inadequate for identifying principal offenders or proving connections among network members. This situation has driven the development of special investigative techniques to obtain information and evidence from criminal environments that are difficult to penetrate.²

One such technique is undercover investigation, in which law-enforcement officers assume covert identities or roles to interact with targets and uncover criminal activities that ordinary investigative methods cannot reach.³ This technique offers operational advantages by enabling officers to understand network structures, transaction patterns, and offenders' involvement from within. Nevertheless, its effectiveness is invariably accompanied by legal risks. Undercover activity may develop into conduct that exceeds the authorised mandate, influences the commission of an offence, or raises questions about the admissibility of the evidence obtained. Accordingly, an undercover investigation cannot be assessed solely by the success of an arrest; the assessment must also encompass legality, proportionality, documentation of actions, and the availability of oversight mechanisms that can prevent *entrapment* and abuse of authority.⁴

Indonesia has adopted undercover investigative techniques in combating narcotics offences as part of its implementation of international commitments to suppress illicit narcotics trafficking and transnational organised crime.⁵ Law No. 35 of 2009 on Narcotics authorises investigators of the National Narcotics Agency to conduct

¹ United Nations Office on Drugs and Crime, *World Drug Report 2025* (Vienna: United Nations Office on Drugs and Crime, 2025).

² United Nations, "United Nations Convention against Transnational Organized Crime" (adopted 15 November 2000, 2225 U.N.T.S. 209, art. 20, 2000); United Nations Office on Drugs and Crime, *E4J University Module Series: Organized Crime, Module 8—Law Enforcement Tools and Cooperation* (Vienna: United Nations Office on Drugs and Crime, 2019).

³ United Nations Office on Drugs and Crime, "Undercover Operations," in *E4J University Module Series: Organized Crime, Module 8—Law Enforcement Tools and Cooperation* (Vienna: United Nations Office on Drugs and Crime, 2019).

⁴ European Court of Human Rights, *Teixeira de Castro v. Portugal*, Application No. 25829/94, Judgment, 9 June 1998; *Ramanauskas v. Lithuania* [GC], Application No. 74420/01 (2008).

⁵ Sidik Sugiharto and Ujuh Juhana, "Normative Vacuum and Implementation Obstacles of the Undercover Buy Technique in Combating Illicit Narcotics Trafficking in Bandung City, Indonesia," *West Science Law and Human Rights* 4, no. 3 (2026): 199–209, <https://doi.org/10.58812/wslhr.v4i03.2915>.

undercover buys and *controlled deliveries* pursuant to written orders from their superiors.⁶ Within the National Police, undercover activity is also recognised as an investigative method that must be based on a written order, an investigative plan, and a written report of the results.⁷ This framework legitimises the use of special investigative methods, yet it also shows that the applicable rules have been developed primarily through sector-specific statutes and the internal regulations of investigative agencies rather than through a coherent procedural design within criminal procedure law.⁸

The problem, therefore, is not the absence of a legal basis, but the failure to establish an integrated normative relationship among the conferral of authority, the conduct of operations, oversight, and accountability for investigative outcomes. The Criminal Procedure Code regulates the general powers of inquiry officers and investigators, as well as the procedural relationship between investigators and public prosecutors, but it has not established a special regime governing the prerequisites for undercover activity, the limits of officers' participation, proportionality review, operational documentation, or inter-agency supervision.⁹ Consequently, investigators' actions tend to be evaluated under sector-specific regulations and their institutions' internal procedures. This pattern creates variations in practice and shifts most legality review to the stage after evidence has been generated and the case file submitted to the public prosecutor.¹⁰

This situation reveals an imbalance between the Public Prosecutor's accountability burden and the scope of prosecutorial oversight. Prosecutors must assess the completeness of the investigation, prepare the indictment, conduct the prosecution, and defend the evidence at trial, yet their involvement in the investigative process generally begins only upon receipt of the notice of commencement of investigation and the case file submitted by investigators.¹¹ The *dominus litis* function therefore operates more visibly as control over whether a prosecution proceeds than as a safeguard for the process's legality from its inception. If procedural violations, *entrapment*, or problems in obtaining evidence are discovered only during pre-prosecution review or at trial, oversight becomes corrective and arrives too late to

⁶ Febrina Annisa et al., "Distorsi Hukum Penggunaan Teknik Undercover Buy Dalam Tindak Pidana Narkotika Oleh Penyidik Kepolisian Republik Indonesia," *Nagari Law Review* 7, no. 2 (January 8, 2024): 363, <https://doi.org/10.25077/nalrev.v7.i.2.p.363-372.2023>.

⁷ Joni Kasim, "Penyamaran Aparat Kepolisian" (PID Polda Kepri, 2024).

⁸ Asari Suci Maharani and Supardi, "Reinforcing the Legal Basis of Undercover Buy as an Investigative Method in Criminal Procedure," *Legitimasi: Jurnal Hukum Pidana Dan Politik Hukum* 14, no. 1 (2025): 59–75, <https://doi.org/10.22373/legitimasi.v14i1.30053>.

⁹ Fachrizal Afandi and Ladito Risang Bagaskoro, "Judicial Scrutiny under Indonesia's KUHAP 2025: Transplantation and Institutional Incoherence," *Bravijaya Law Journal* 13, no. 1 (2026), <https://doi.org/10.21776/ub.blj.2026.013.01.02>.

¹⁰ Arianus Harefa, "Distorsi Hukum Penggunaan Teknik Undercover Buy Dalam Pengungkapan Tindak Pidana Narkotika Di Indonesia," *Jurnal Education and Development* 13, no. 3 (2025): 699–704.

¹¹ Dani Durahman and Maryadi Wijaya, "The Concept of Coordination Reform between Polri Institutions and the Public Prosecutor's Office in Pre-Prosecution," *Cendekia: Jurnal Hukum, Sosial Dan Humaniora* 2, no. 3 (2024): 702–13, <https://doi.org/10.70193/cendekia.v2i3.102>.

prevent the irregularity. This gap makes investigative accountability and procedural justice central concerns in the use of undercover investigations in narcotics cases.¹²

Methods

This study is situated within the tradition of normative legal research and adopts a prescriptive orientation. Law is examined not merely as a body of positive rules, but as a normative structure whose coherence, adequacy, and capacity to address institutional problems in the criminal justice process must be evaluated.¹³ The analysis focuses on the regulatory framework governing undercover investigations, the allocation of authority between investigators and Public Prosecutors, and the limitations of oversight mechanisms for intrusive investigative conduct. Through this orientation, the study moves from mapping the law in force to constructing an argument regarding the form of procedural supervision that ought to be developed.

The study employs four approaches to examine the research problem. *First*, the statutory approach analyses the relationship among criminal procedure law, narcotics legislation, provisions governing prosecutorial authority, investigative regulations, and international instruments relating to special investigative techniques. Each instrument is examined for its legal basis, the limits of permissible conduct, implementation procedures, and the accountability framework it establishes. *Second*, the conceptual approach constructs an analytical relationship among *dominus litis*, *due process of law*, *procedural justice*, the integrated criminal justice system, and the decolonial perspective. The decolonial perspective assesses whether prevailing institutional arrangements continue to reproduce modes of oversight that are administrative, hierarchical, or oriented toward repressive effectiveness.¹⁴ *Third*, the case approach examines judicial decisions concerning undercover activity, undercover buys, controlled deliveries, the legality of evidence-gathering methods, or official conduct that may amount to *entrapment*. These decisions are not treated as statistical data, but as materials for understanding how courts assess the legality of investigators' conduct and the quality of evidentiary accountability. Fourth, the comparative approach is used functionally to compare several patterns of relations between police and prosecution services in other legal systems. The comparison focuses on authorisation powers, oversight during operations, evidence validation, and accountability after investigative measures conclude.¹⁵ The comparative findings are not intended to transplant foreign models, but to identify elements that Indonesia's criminal justice system may adapt.

¹² Sarimonang Beny Sinaga et al., "The Prosecutor as Dominus Litis in Controlling Case Under the Draft of Criminal Procedure Code (RKUHAP)," *Jurnal Bina Mulia Hukum* 10, no. 1 (September 30, 2025): 132–48, <https://doi.org/10.24198/jbmh.v10i1.2420>.

¹³ Peter Mahmud Marzuki, *Penelitian Hukum*, Edisi revisi (Jakarta: Kencana, 2021).

¹⁴ Walter D Mignolo, "Delinking: The Rhetoric of Modernity, the Logic of Coloniality and the Grammar of De-Coloniality," *Cultural Studies* 21, no. 2–3 (2007): 449–514, <https://doi.org/10.1080/09502380601162647>.

¹⁵ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2013).

The analytical foundation consists of primary legal materials, secondary legal materials, and terminological supporting materials. Primary legal materials include criminal procedure legislation, laws governing the suppression of narcotics offences, provisions regulating the powers of investigators and public prosecutors, international instruments on organised crime and narcotics, and judicial decisions concerning undercover investigations and the legality of evidence acquisition.¹⁶ Secondary materials include monographs, journal articles, research findings, institutional reports, and legal scholarship concerning *dominus litis*, special investigations, procedural justice, *due process of law*, and legal decoloniality. Legal dictionaries and encyclopedias are used to a limited extent to ensure terminological consistency.

The materials were collected through library research involving identification, selection, classification, and critical reading. Each source was placed within a problem matrix covering: the legal basis and limits of authority for undercover investigations; the forms of oversight governing their implementation; the relationship between investigators and Public Prosecutors; and the procedural consequences for evidence and prosecution. This classification enables comparison by the function of each norm rather than merely by the type or hierarchical level of the regulation.

The analysis was conducted qualitatively by combining systematic and teleological interpretation. Systematic interpretation assessed relationships among regulations and each institution's position within the criminal justice process. Teleological interpretation evaluated whether the regulatory framework is consistent with the objectives of protecting rights, ensuring accountability in the exercise of authority, and securing a fair legal process. The interpretive findings were then developed through prescriptive legal reasoning to identify the gap between prosecutorial responsibility and the authority to oversee the investigative process.

The final stage of the analysis moves from *ius constitutum* to *ius constituendum*. Findings on normative fragmentation, limited coordination, and corrective oversight patterns form the basis for developing the Integrated Procedural Supervision Model. The model reconstructs the *dominus litis* function as procedural supervision beginning at the earliest stage of an undercover investigation, without transferring operational investigative authority to the Public Prosecutor. Thus, the study does not stop at criticising the law in force; it also proposes a conceptual design for regulatory harmonisation and stronger investigative accountability.

Results and Discussion

Fragmentation of the Legal Framework Governing Undercover Investigations and Limitations of the *Dominus Litis* Function

Undercover investigations in narcotics cases are justified by the nature of the crimes being uncovered. Illicit narcotics networks are generally structured around closed relationships, multilayered divisions of labour, restricted communications, and transactions deliberately designed to resist detection. Under these circumstances, law-

¹⁶ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2017); Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif, Cet. 17* (Jakarta: Rajawali Pers, 2015).

enforcement authorities cannot always identify principal offenders or the network's structure through overt investigative methods. Undercover activity, *undercover buys*, and *controlled deliveries* have therefore been developed as *special investigative techniques* to penetrate criminal environments, identify relationships among actors, and obtain evidence of transactions within the network.¹⁷

International law has recognised these techniques. The *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* of 1988 provides a basis for using *controlled delivery* as part of international cooperation to combat illicit narcotics trafficking. Broader recognition appears in the *United Nations Convention against Transnational Organised Crime* of 2000, which encourages States Parties to make special investigative techniques available, including undercover operations, electronic surveillance, and controlled delivery, insofar as their use is consistent with the fundamental principles of their respective domestic legal systems.¹⁸

Under Indonesian law, Law No. 35 of 2009 on Narcotics authorises investigators of the National Narcotics Agency to conduct undercover buys and controlled deliveries. Both techniques must be used pursuant to a written order from a superior and therefore cannot be undertaken solely at an individual officer's discretion.¹⁹ Within the National Police, undercover activity is likewise recognised as an investigative method that must be conducted under a written order, an investigative plan, and a written report of the results.²⁰

A significant development followed the enactment of Law No. 20 of 2025 on the Criminal Procedure Code. Article 16(1) of the 2025 Criminal Procedure Code expressly recognises undercover activity, undercover buys, and controlled deliveries as methods that may be used during the inquiry stage. Article 17 further requires inquiry officers to prepare an inquiry plan and submit it to investigators before conducting the activity.²¹ These provisions eliminate the former Code's lack of explicit recognition of such investigative techniques.²²

¹⁷ Jacqueline E Ross, "Undercover Policing and the Shifting Terms of Scholarly Debate: The United States and Europe in Counterpoint," *Annual Review of Law and Social Science* 4 (2008): 239–73, <https://doi.org/10.1146/annurev.lawsocsci.4.110707.172416>.

¹⁸ United Nations, *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, adopted 20 December 1988, 1582 U.N.T.S. 95, art. 11; United Nations, *United Nations Convention against Transnational Organized Crime*, adopted 15 November 2000, 2225 U.N.T.S. 209, art. 20.

¹⁹ Rodriko Kembuan, "Teknik Penyidikan Pembelian Terselubung Dan Penyerahan Di Bawah Pengawasan Menurut Undang-Undang Nomor 35 Tahun 2009 Tentang Narkotika," *Lex Crimen* 9, no. 4 (2020): 188–96, <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/30820>.

²⁰ Ni Luh Fenny Sulistya Murty and Nyoman Satyayudha Dananjaya, "Undercover Buy Dan Controlled Delivery Sebagai Teknik Penyidikan Kasus Penyalahgunaan Narkotika (Studi Di Polresta Denpasar)," *Kertha Desa* 10, no. 8 (2022).

²¹ Ministry of Law and Human Rights Republic of Indonesia, "Penyelidik Dan Penyelidikan KUHAP 2025" (BPSDM Hukum, 2026).

²² Tubagus Heru Dharma Wijaya et al., "Policing in the Shadows: Undercover Buying and the Social Construction of Legal Evidence in Indonesia's Post-KUHAP 2025 Criminal Justice System," *Baileo: Jurnal Sosial Humaniora* 3, no. 3 (2026): 705–22, <https://doi.org/10.30598/baileofisipvol3iss3pp705-722>.

Nevertheless, incorporating undercover investigations into the Criminal Procedure Code has not fully resolved the fragmentation problem. The 2025 Code provides a general basis for permissible measures and the duty to prepare a plan, but its operational requirements remain dispersed across the Narcotics Law and the internal regulations of investigative agencies. No integrated parameters still govern necessity and proportionality, the limits of officers' participation in criminal activity, the duration of operations, changes of target, termination procedures, or the legal consequences of acting beyond the authorised mandate. Fragmentation therefore concerns not primarily the existence of a legal basis, but the failure to integrate standards of implementation and accountability within a single oversight architecture.²³

This fragmentation can be divided into three dimensions. First, normative fragmentation, in which provisions on the legal basis of authority, written orders, and operational implementation are dispersed among different instruments. Second, procedural fragmentation, reflected in the absence of a continuous relationship among operational planning, implementation, documentation, evidence preservation, and assessment of prosecutorial viability. Third, institutional fragmentation, characterised by the continuing predominance of internal oversight by the institution that plans and conducts the operation. Together, these dimensions make it easier to treat undercover investigation as an operational power of investigators rather than as part of an evidence-generating process that ultimately determines the quality of the prosecution.²⁴

The 2025 Criminal Procedure Code has strengthened coordination between investigators and public prosecutors. Article 58 provides that investigators handle every criminal case, with public prosecutors involved through coordination within the integrated criminal justice system. Article 59 establishes an equal, complementary, and mutually supportive relationship, while Article 65 authorises public prosecutors to receive and examine case files and coordinate to complete the investigation.²⁵ These provisions represent an important development in strengthening the *dominus litis* function.

However, Article 59 of the 2025 Criminal Procedure Code stipulates that coordination begins when the notice of commencement of investigation is delivered. At the same time, undercover activity, undercover buys, and controlled deliveries may already be employed during the inquiry stage under Article 16. Under this framework, a period remains before the formal investigation begins during which crucial decisions about targets, methods, the limits of officers' involvement, and

²³ Maqdir Ismail, "Anotasi Putusan Nomor 2216 K/Pid.Sus/2012," *Dictum: Jurnal Kajian Putusan Pengadilan* 17 (2025).

²⁴ Febby Mutiara Nelson and Abni Nur Aini, "Bridging the Gap of Ineffective Coordination in Indonesia: A Comparative Study on the Functional Differentiation and Dominus Litis Principle," *Media Iuris* 8, no. 3 (2025): 387–416, <https://doi.org/10.20473/mi.v8i3.77425>.

²⁵ Rudi Pradisetia Sudirdja, "Wajah Baru Koordinasi Penyidik-Penuntut Umum Dalam KUHP Nasional" (Hukumonline, 2025), <https://www.hukumonline.com/berita/a/wajah-baru-koordinasi-penyidik-penuntut-umum-dalam-kuhp-nasional-lt6923ceef1bc66/>.

forms of documentation may be made without the Public Prosecutor's procedural involvement.

This period is significant because decisions made during the inquiry stage may determine the legality and quality of evidence at later stages. When the public prosecutor gains access only after the formal investigation has commenced or after the case file has been submitted, the prosecutor faces the results of an operation that have already crystallised. The prosecutor may request formal and substantive completion, but cannot necessarily remedy conduct that has already exceeded legal authority, documentation that was not created from the outset, or officers' interactions that have already developed into *entrapment*. This condition reveals an asymmetry between responsibility and oversight authority. Public prosecutors draft indictments, prove the elements of offences, and defend the admissibility of evidence at trial. Yet that responsibility is not fully matched by an opportunity to review the legality of evidence-gathering methods while the operation is still under control. Studies of *dominus litis* and functional differentiation also show that investigator-prosecutor coordination has generally taken the form of document exchange and case-file review rather than supervision of evidence formation from the earliest stage.²⁶

Within this framework, the *dominus litis* function operates more clearly as *prosecution control*: the authority to determine whether the investigation should proceed to court. It has not yet fully developed into *procedural supervision* that safeguards the continuity of legality from inquiry through prosecution. Corrections to investigative deficiencies are consequently retrospective because they occur only after the operation has concluded and its legal consequences have arisen.²⁷ Expanding the *dominus litis* function does not mean transferring operational investigative authority to prosecutors. Functional differentiation remains necessary to prevent power concentration and preserve each institution's expertise. Investigators determine field tactics, protect personnel, and respond to changing circumstances. The problem lies not in that independence, but in the lack of a point of connection where legality, proportionality, documentation, and evidentiary readiness can be reviewed before an issue develops into a trial dispute.²⁸

Based on this analysis, the entry into force of the 2025 Criminal Procedure Code has strengthened the legal basis for undercover investigations and investigator-prosecutor coordination, but it has not yet established a supervisory chain that fully reaches the period before the formal investigation begins. The deficiency lies in the failure to connect the recognition of investigative techniques in Article 16 with the coordination mechanism that, under Article 59, begins only upon delivery of the notice

²⁶ Sinaga et al., "The Prosecutor as Dominus Litis in Controlling Case Under the Draft of Criminal Procedure Code (RKUHAP)."

²⁷ Ananda Putri Lestari and Vita Mahardhika, "Analisis Yuridis Terhadap Pengawasan Upaya Paksa Dalam Proses Penyidikan (Studi Komparatif Indonesia Dengan Belanda)," *Indonesian Journal of Contemporary Law* 3, no. 2 (2026), <https://journal.unesa.ac.id/index.php/ijcl/article/view/51223>.

²⁸ Febby Mutiara Nelson and Abni Nur Aini, "Bridging the Gap of Ineffective Coordination in Indonesia: A Comparative Study on the Functional Differentiation and Dominus Litis Principle," *Media Iuris* 8, no. 3 (October 24, 2025): 387–416, <https://doi.org/10.20473/mi.v8i3.77425>.

of commencement of investigation. This gap provides the basis for reconstructing the *dominus litis* function as a limited, documented, and risk-based mechanism of procedural supervision.

Implications of Regulatory Fragmentation for Investigative Accountability and Procedural Justice

Investigative accountability requires that the legal basis for every exercise of authority be traceable, that the decision-making process be reviewable, and that the resulting outcomes be answerable. This requirement is especially important in undercover investigations because some activities must remain concealed from both the target and the public. Secrecy is necessary to protect officers' safety and an operation's success, but it must not become an exemption from accountability.²⁹

An undercover investigation must be accompanied by records stating the reasons for selecting the technique, the official who authorised it, the operational objective, the identity or category of the target, the permitted actions, the duration, and the methods for safeguarding the results. Such documentation is necessary to distinguish conduct intended to uncover existing criminal activity from official conduct that instead creates the criminal intent or event. Scholarship on undercover policing shows that officers' participation in criminal environments invariably creates dilemmas because officers may commit or facilitate acts that would ordinarily be prohibited by law.³⁰

The first risk concerns expanding conduct beyond the initial mandate. Operational circumstances may change rapidly and require officers to make immediate decisions. Without limits on permissible conduct and procedures for reporting changes, discretion initially granted to penetrate a network may evolve into involvement that is no longer proportionate to the investigation's objective.

The second risk concerns *entrapment*. Undercover activity is intended, in principle, to uncover an offence that has already been planned or committed by the target. A problem arises when officers apply pressure or provide inducements or facilities that become determinative in producing an offence that would not otherwise have occurred. In *Teixeira de Castro v. Portugal* and *Ramanauskas v. Lithuania*, the European Court of Human Rights affirmed that the interest in combating crime does not justify using evidence obtained through police incitement.³¹

A number of Indonesian narcotics decisions also reflect objections concerning entrapment, the fabrication of events, and the use of evidence generated primarily

²⁹ Katerina Hadjimatheou, "Neither Confirm nor Deny: Secrecy and Disclosure in Undercover Policing," *Criminal Justice Ethics* 36, no. 3 (2017): 279–96, <https://doi.org/10.1080/0731129X.2018.1424756>.

³⁰ Elizabeth E. Joh, "Breaking the Law to Enforce It: Undercover Police Participation in Crime," *Stanford Law Review* 62, no. 1 (2009): 155–98, <https://www.jstor.org/stable/40379722>.

³¹ Rights, *Teixeira de Castro v. Portugal*, Application No. 25829/94, Judgment, 9 June 1998; *Ramanauskas v. Lithuania* [GC], Application No. 74420/01; European Court of Human Rights, *Ramanauskas v. Lithuania* [GC], Application No. 74420/01 (2008).

through the conduct of officers or informants. Supreme Court Decisions No. 401 K/Pid.Sus/2012 and No. 815 K/Pid.Sus/2012, for example, are frequently cited in evidentiary discourse to demonstrate the importance of judicial caution toward evidence allegedly created through a law-enforcement scenario.³² These decisions show that operational effectiveness does not, by itself, guarantee the legality of the evidence-gathering process.

The third risk concerns evidentiary integrity. Physical evidence, communications, recordings, and transactions obtained through an undercover operation must be clearly linked to the suspect and supported by an unbroken chain of custody. Uncertainty concerning timing, officers' roles, the transfer of items, or changes of target may impair the public prosecutor's ability to explain the evidence at trial. The legality of evidence therefore depends not only on whether it falls within a legally recognised category, but also on the lawfulness and traceability of how it was obtained.³³

Regulatory fragmentation separates the party that produces evidence from the party required to account for it. Investigators control how information and physical evidence are obtained, while public prosecutors must present those results in court. If documentation is not prepared comprehensively from the beginning of the operation, prosecutors can construct their arguments only from the materials already available. A deficiency at the inquiry stage then shifts from an administrative problem into an evidentiary one.³⁴

This condition affects the process at three levels. At the case level, procedural uncertainty creates room to challenge investigators' conduct and the validity of evidence. At the institutional level, differing assessments by investigators and public prosecutors may prolong the process of completing the case file. At the systemic level, the absence of common standards weakens the state's ability to demonstrate that intrusive investigative powers are used in a controlled and proportionate manner and only when necessary. Within the framework of *due process of law*, a legal basis alone is insufficient to justify measures that restrict liberty and privacy. Such measures must also pursue a legitimate objective, be implemented through reviewable procedures, and include corrective mechanisms in the event of irregularities. Article 17 of the 2025 Criminal Procedure Code, which requires an inquiry plan, provides a basis for initial documentation but does not specify the parameters of necessity, proportionality, and limits on officers' participation that the plan must include.

The theory of *procedural justice* treats process quality as a source of legitimacy for law-enforcement institutions. Public compliance depends not only on the state's success in imposing punishment, but also on perceptions that officials act neutrally, treat individuals with dignity, exercise authority consistently, and can explain the basis

³² Mahkamah Agung Republik Indonesia, Putusan Nomor 401 K/Pid.Sus/2012; Mahkamah Agung Republik Indonesia, Putusan Nomor 815 K/Pid.Sus/2012.

³³ Natalia Brady, "Evidence, Special Investigative Techniques and the Right to a Fair Hearing," *ERA Forum* 15 (2014): 37–49, <https://doi.org/10.1007/s12027-014-0334-3>.

³⁴ Marly Meani Silalahi, "Analisis Yuridis Pembuktian Tindak Pidana Narkotika Melalui Metode Undercover Buy," *Jurnal Riset Ilmu Hukum* 5, no. 2 (2025), <https://doi.org/10.29313/jrih.v5i2.8532>.

for their decisions.³⁵ Recent research on procedural justice also demonstrates a consistent relationship among fair treatment, police legitimacy, and the public's willingness to cooperate with law-enforcement authorities.³⁶

In covert operations, not every element of procedural justice can be afforded directly to the target. A target obviously cannot be informed or consulted before the measure is undertaken. That limitation heightens the need for institutional oversight, documented reasons, and an opportunity to review the process after the operation becomes known. Operational secrecy must be balanced against other institutions' and the courts' ability to determine whether authority was exercised lawfully.³⁷

Oversight conducted solely by the implementing institution makes neutrality difficult to demonstrate. Internal oversight remains important for ensuring discipline and security, but it is insufficient to connect an operation with evidentiary standards and prosecutorial responsibility. Prosecutors occupy a key position because they assess the investigation's sufficiency and legality before bringing a case to court.

This need can be explained through the tension between the *crime control model* and the *due process model*. Suppressing narcotics networks requires speed, secrecy, and the capacity to penetrate criminal environments. This orientation reflects the crime control model's demand for effectiveness. Yet conduct focused solely on results may disregard procedural safeguards and increase the risk of conviction based on unlawfully obtained evidence. The *due process model* emphasises that the reliability of law-enforcement outcomes depends on controls over official power and opportunities to test the legality of official conduct.³⁸

These interests need not be treated as mutually exclusive alternatives. Excessively bureaucratic oversight may impede rapid responses, but leaving operations entirely to internal discretion may diminish the process's legitimacy. The design of oversight must correspond to the level of risk. The longer an operation continues, the more intensive the officer's participation, and the greater the potential interference with individual rights, the stronger the need for assessment, documentation, and multilayered supervision.

The 2025 Criminal Procedure Code provides a basis for coordination through Articles 58 and 59. However, because formal coordination begins upon delivery of the notice of commencement of investigation, oversight may remain retrospective regarding techniques already employed during the inquiry stage. This pattern permits

³⁵ Tom R Tyler, *Why People Obey the Law*, 2nd ed. (Princeton, NJ: Princeton University Press, 2006), 161–178.

³⁶ Herbert L Packer, *The Limits of the Criminal Sanction* (Stanford, CA: Stanford University Press, 1968), 149–173 Brady, “Evidence, Special Investigative Techniques and the Right to a Fair Hearing,” 37–49

³⁷ European Court of Human Rights, *Roman Zakharov v. Russia* [GC], no. 47143/06 (2025) 232–234 ; European Court of Human Rights, *Case of Ekimdzhiev and Others v. Bulgaria*, no. 70078/01 (2020) 335–337.

³⁸ Herbert L. Packer, *The Limits of the Criminal Sanction* (Stanford: Stanford University Press, 1968), 149–173; Brady, “Evidence, Special Investigative Techniques and the Right to a Fair Hearing,” 37–49.

deficiencies to be discovered only after the operation has ended or after the resulting evidence has formed the basis for designating a suspect. Procedural justice requires a shift from consequence-based oversight to risk-based oversight. Undercover activity limited to observation or information gathering does not necessarily require the same form of control as an operation involving a transaction, active participation by officers, a change of target, or the prolonged use of the technique. Supervision should differ based on the nature of the conduct, urgency, duration, potential infringement of rights, and effect on the evidence.³⁹

Accountability within this framework does not require investigators to obtain prosecutorial approval for every technical measure. Investigators remain responsible for operational strategy and safety. The prosecutor's role is to review whether the legal basis for authority, limits on permissible conduct, documentation, and the evidence-gathering process can be justified. This allocation of roles permits irregularities to be detected before a case becomes entirely dependent on problematic evidence.

Accordingly, the implications of fragmentation extend beyond administrative disorder. Fragmentation delays legality review, separates evidence production from accountability for that evidence, and weakens the system's capacity to prevent irregularities. These conditions underlie the need to reconstruct the *dominus litis* function as procedural supervision beginning when legal risks first arise.

Reconstructing the *Dominus Litis* Function as a Procedural Supervision Model

Reconstructing the *dominus litis* function begins with the understanding that control over a case should not begin only after the investigation file is complete. Decisions made when an investigation is planned already shape the case's direction, the validity of evidence, and prosecutorial readiness. In an undercover operation, target selection, forms of interaction, limits on officers' involvement, documentation, and timing of termination form part of the evidentiary foundation.⁴⁰

In this study, the *dominus litis* function is not reconstructed as a power enabling prosecutors to take over investigative operations. Investigators continue to determine tactics, personnel, the use of covert identities, the timing of transactions, officer protection, and responses to field conditions. Prosecutors serve as procedural supervisors who assess the legal basis for authority, compliance with limits on permissible conduct, documentation quality, and the operation's evidentiary consequences. This framework aligns with the coordination approach in the 2025 Criminal Procedure Code, which places investigators and public prosecutors on an equal, complementary, and mutually supportive footing. The reconstruction does not abolish

³⁹ Home Office, *Covert Surveillance and Property Interference: Code of Practice* (London: Home Office, 2022). paras. 4.6–4.7, 9.11–9.12.

⁴⁰ G E McDowell, "Use of the Undercover Technique in Corruption Investigations," in *Prosecution of Public Corruption Cases* (Washington, DC: U.S. Department of Justice, 1988), 101–14, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/use-undercover-technique-corruption-investigations-prosecution>.

functional differentiation; instead, it develops coordination that extends beyond exchanging documents once the investigation is underway.⁴¹

The reconstruction must also take Indonesia's historical and institutional context into account. A decolonial perspective avoids mechanically transplanting foreign models and reassesses inter-institutional relations that are excessively administrative, hierarchical, or repressively oriented. Decoloniality concerns not only repealing colonial regulations, but also dismantling knowledge structures and power relations that continue to shape the design of legal institutions after the formal end of colonialism.⁴²

On this basis, the study develops the Integrated Procedural Supervision Model. The model rests on four principles. First, the principle of an integrated criminal justice system, which treats inquiry, investigation, prosecution, and judicial examination as distinct stages within a single process of legal accountability. Second, the principle of procedural supervision, which confines prosecutorial oversight to the legality and quality of the process without interfering with field strategy. Third, the principle of accountability, which requires every exercise of authority to be documented and reviewable. Fourth, the principle of procedural justice, which ensures that law-enforcement effectiveness is not achieved by disregarding rights and the integrity of the process.

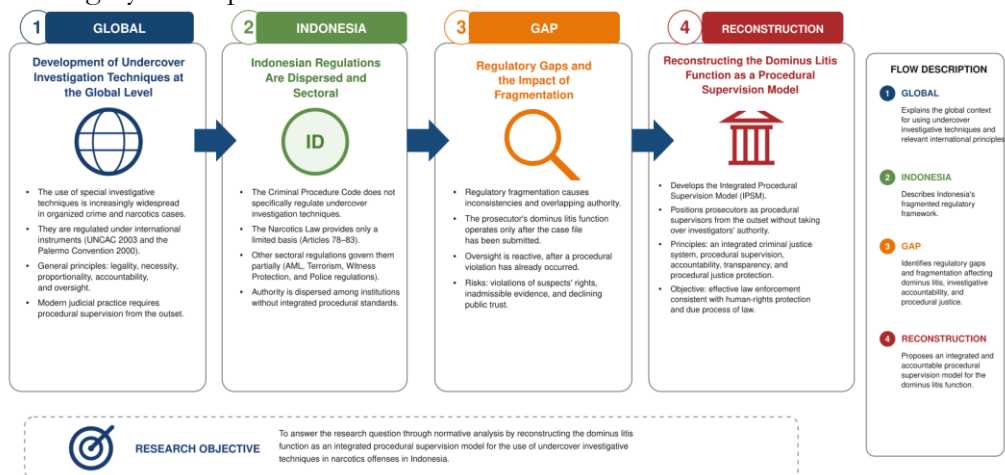


Figure 1. The Integrated Procedural Supervision Model as a Reconstruction of the *Dominus Litis* Function in the Oversight of Undercover Investigations within Indonesia's Criminal Justice System

Source: Prepared by the Authors (2026).

⁴¹ Sinaga et al., “The Prosecutor as Dominus Litis in Controlling Case Under the Draft of Criminal Procedure Code (RKUHAP).”

⁴² Aníbal Quijano, “Coloniality of Power, Eurocentrism, and Latin America,” *Nepantla: Views from South* 1, no. 3 (2000): 533–80, <https://muse.jhu.edu/article/23906>. Walter D Mignolo, “The Geopolitics of Knowledge and the Colonial Difference,” *South Atlantic Quarterly* 101, no. 1 (2002): 57–96, <https://doi.org/10.1215/00382876-101-1-57>.

The supervision model operates through four interconnected stages. The first is *procedural review*. Before conducting an operation, investigators assess the legal basis for authority, the objective, the necessity of using the technique, risks to individual rights, limits on officers' involvement, and the documentation plan. For high-risk operations, investigators submit the results of the procedural assessment to the public prosecutor without disclosing technical information that could endanger personnel or compromise the operation.

Procedural review need not take the same form for every activity. A brief undercover action to verify information may use a simple notification and documentation process. By contrast, an operation involving transactions, the prolonged use of an assumed identity, officers' participation in criminal activity, or expansion of the target requires a more extensive assessment. This risk-based approach preserves investigators' flexibility while ensuring that intrusive techniques are not used without objective justification.

The second stage is *procedural monitoring*. Prosecutors exercise oversight not through technical direction, but by maintaining a documentary trail, progress reports, and notification of material departures from the original plan. Changes of target, extensions of duration, increased officer involvement, or the use of additional methods must be accompanied by reviewable reasons. In urgent circumstances, investigators may take immediate action to protect officers or prevent the loss of evidence. Such action must, however, be reported within a specified period after it is taken. Post-action notification is necessary to ensure that the need for rapid response does not become a permanent justification for avoiding oversight.

The third stage is *evidence validation*. After an operation produces information or physical evidence, investigators and public prosecutors assess whether the manner in which it was obtained complied with the written order and operational plan, whether the chain of custody remained intact, whether recordings retain their integrity, whether the chronology is consistent, and how officers' conduct relates to the evidence generated. The assessment focuses not only on the existence of the evidence, but also on whether the acquisition process can be explained consistently at trial.⁴³

At this stage, investigators can still identify documentation deficiencies before the case file is declared complete. If records conflict, a change of target remains unexplained, or conduct potentially amounts to incitement, investigators may provide clarification. Clarification, however, must not be used to fabricate documents retrospectively or to conceal conduct that lacked a legal basis from the outset.

The fourth stage is *prosecution review*. Prosecutors assess the sufficiency of the evidence, procedural compliance, potential defence objections, and the case's readiness for referral to court. Unlike a case-file examination focused solely on the existence of documents, *prosecution review* uses the entire supervisory record from planning through evidence validation. This stage aligns with the authority granted to

⁴³ Brady, "Evidence, Special Investigative Techniques and the Right to a Fair Hearing."

public prosecutors under the 2025 Criminal Procedure Code to receive and examine case files and to coordinate the completion of the investigation.

Together, the four stages combine preventive and corrective oversight. The preventive component operates through initial review and the monitoring of changing risks. The corrective component operates through evidence validation and assessment of prosecutorial viability. Under this framework, *dominus litis* not only determines whether a case proceeds after the investigation concludes, but also helps ensure that the path to prosecution follows lawful procedures.

Implementation of the model must be accompanied by clear limitations. Prosecutors may not determine undercover officers' identities, communication techniques, transaction timing, or protective tactics. Their authority is confined to reviewing legality, the limits of permissible conduct, documentation, and evidentiary consequences. Investigators remain responsible for disagreements over field strategy, while procedural legality disputes must be resolved through documented coordination.

Confidentiality is essential to implementing the model. Information provided to public prosecutors is limited to what is necessary for procedural assessment. Access classifications, confidentiality obligations, and secure storage systems must protect officers' and informants' identities, communication details, and operational strategies. Strengthened oversight must not create new risks to personnel safety.

At the normative level, implementing the model requires harmonisation among the 2025 Criminal Procedure Code, the Narcotics Law, and investigative agencies' institutional regulations. The Code recognises both special investigative techniques and investigator-prosecutor coordination, but implementing regulations must set parameters for necessity and proportionality, limit officers' involvement, specify documentation requirements, establish procedures for changing targets, define emergency procedures, and set out the legal consequences of violations.

At the institutional level, the Prosecutor's Office, the National Police, and the National Narcotics Agency should develop a joint protocol governing the categories of operations subject to notification, the minimum information to be provided, reporting timeframes, emergency procedures, forms of evidence validation, and the resolution of differing assessments. The protocol should operate as an accountability mechanism rather than merely as an administrative arrangement.

At the evidentiary level, supervision results should form part of the case's procedural record. The entire record need not be disclosed publicly because some information concerns officer safety and investigative methods. Nevertheless, the court must be able to review the information necessary when the legality of an operation is challenged. Confidentiality must not become immunity from legal scrutiny.⁴⁴

The model also enables institutional evaluation based on patterns in the use of investigative techniques. Data on the number of operations, target changes, duration, documentation issues, objections raised at trial, and case outcomes can help improve

⁴⁴ Office, *Covert Surveillance and Property Interference: Code of Practice*; American Bar Association, *Standards for the Prosecution Function*, Standard 3, n.d.

standards. Evaluation can be conducted without disclosing the identities of targets or officers, thereby balancing accountability with confidentiality.

The principal contribution of the Integrated Procedural Supervision Model is to shift when the *dominus litis* function begins. Under the prevailing framework, that function becomes stronger after the investigation results are submitted. Under the proposed model, control over the case begins when investigative decisions may determine the legality of evidence and the direction of prosecution. This shift is not an unlimited expansion of prosecutorial power, but an alignment between evidentiary responsibility and the opportunity to exercise oversight.

The model ultimately seeks to preserve the effectiveness of uncovering narcotics offences, investigators' operational independence, evidentiary integrity, and the protection of individual rights simultaneously. These four interests need not be treated as mutually exclusive choices. With clear role allocation and risk-based supervision, undercover investigations can remain responsive to organised crime without losing sight of legality, accountability, due process, and procedural justice.

Conclusion

This study finds that the fundamental problem in using undercover investigations in narcotics cases no longer lies in their legal recognition, but in the discontinuity of the supervisory chain between the stage at which evidence is generated and the stage at which it must be accounted for in court. The 2025 Criminal Procedure Code recognises undercover activity, undercover buys, and controlled deliveries and strengthens coordination between investigators and public prosecutors. Nevertheless, that coordination does not yet fully encompass crucial decisions made during the inquiry stage, including target selection, limits on officers' involvement, modifications to operational plans, and documentation of actions. Consequently, investigators generate evidence through covert operations, while Public Prosecutors assess it only after most procedural consequences can no longer be prevented. This pattern leaves the *dominus litis* function operating predominantly as control over prosecution rather than as a safeguard for the legality of the evidence-gathering process.

This gap affects investigative accountability and procedural justice. Oversight centred on the internal mechanisms of investigative agencies is insufficient to ensure that intrusive techniques satisfy the requirements of necessity, proportionality, traceability, and the prohibition of *entrapment*. When legality is reviewed only through case-file examination or argument at trial, oversight becomes corrective and cannot prevent conduct that has already exceeded the authorised mandate. Under these circumstances, success in uncovering narcotics networks may conflict with evidence admissibility, the protection of individual rights, and the legitimacy of the law-enforcement process.

In response, this study proposes the Integrated Procedural Supervision Model, which reconstructs *dominus litis* as limited procedural supervision without transferring operational control of investigations to prosecutors. The model connects four stages: *procedural review*, *procedural monitoring*, *evidence validation*, and *prosecution review*. Investigators

continue to determine strategy, personnel, safety, and field measures, while public prosecutors assess the legal basis of authority, the limits of permissible conduct, the quality of documentation, and evidentiary consequences. This allocation preserves functional differentiation without creating a separation that impedes accountability across stages.

The novelty of this study lies in shifting when the *dominus litis* function begins. Control over the case no longer operates only after the investigation results have been received; it begins when investigative decisions may determine the legality of evidence and the direction of prosecution. This reconstruction is also not intended to transplant the relationship between prosecutors and police mechanically found in foreign legal systems. From a decolonial perspective, the model seeks to establish institutional relations suited to Indonesia's needs by moving away from formalistic administrative coordination toward oversight that is equal, measurable, and accountable.

Implementing the model requires harmonisation among the 2025 Criminal Procedure Code, Law No. 35 of 2009 on Narcotics, and the implementing regulations governing undercover investigations. This harmonisation should be supplemented by a joint protocol among the National Police, the National Narcotics Agency, and the Prosecutor's Office concerning operational risk classifications, the minimum information to be disclosed, emergency procedures, confidentiality protection, evidence validation, and review of alleged irregularities. Through this framework, the effectiveness of combating narcotics offences can be maintained without detaching the exercise of state authority from legality, accountability, *due process of law*, and procedural justice.

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