

Termination Of Investigation Based On The Principle Of Restorative Justice As A Reform Of The Criminal Justice System

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Abstract

Criminal law enforcement carried out by the Police has currently experienced developments. An investigator has often stopped an investigation because of a case resolution outside of court through a mechanism restorative justice. The aim of this research is to examine and analyze the authority of investigators in terminating investigations based on principles restorative justice. The type of research used by researchers related to this research is normative legal research. This research will examine the investigator's authority to terminate an investigation in a criminal case based on restorative justice. The research began by reviewing the provisions of the Republic of Indonesia National Police Regulation Number 8 of 2021 concerning the Enforcement of Criminal Acts. Based on the research that has been carried out, there are findings that a resolution of criminal cases outside the court has been regulated in this Perpol with several conditions, both formal and material. The existence of Perpol No. 8 of 2021 is a new breakthrough for the Indonesian Police to stop investigations due to cases being resolved outside of justice. Termination of an investigation because a case has been resolved outside of court is something regulated in the Criminal Procedure Code.

Keywords: Termination of Investigation, Restorative Justice, Criminal Justice System.

INTRODUCTION

The formulation of legislation actually has a purpose to be achieved. The creation of legislation is inseparable from its function of protecting human interests. Once legislation is enacted, it is necessary to follow up on it, namely through the enforcement of the law against violations of legal rules. The legal approach has a purpose, as stated by Mochtar Kusuma Atmadja: “The purpose of law enforcement is to achieve order in the social order of society.” Furthermore, in criminal law enforcement, order is the primary objective of criminal law. An orderly society is the result of the realization of order and law enforcement. Another equally important objective of law is the realization of a sense of justice in society. The content and scope of this vary depending on the society and the era (Suharnoko, 2015; Tutik, 2014).

When discussing criminal law enforcement, we cannot separate it from the criminal justice process. In principle, the criminal justice process must be carried out in accordance with the mechanisms established by the state. In Indonesia, we are familiar with the Criminal Procedure Code (KUHAP). Criminal procedural law, or criminal procedure law, is the foundation of the criminal justice process. Hazewinkel Suringa refers to criminal procedural law as “*ius puniendi*,” which means that criminal procedural law is the form of the state's right to prosecute criminal offenses, the right to adjudicate or impose criminal penalties, and the right to enforce criminal judgments (Satria, 2018; Si Boro et al., 2024; SUPRIYANTA, 2022).

It can be said that *ius puniendi* is a set of rules containing the rights of the state and state apparatus to threaten, coerce, impose, and enforce criminal penalties against persons or legal entities who violate the commands and prohibitions contained in substantive criminal law (*ius poenale*) (Prof. Dr. Barda Nawawi Arief, 2018).

In practice and theory, there are several principles related to the implementation of criminal procedure law, which affirm the protection of human dignity in the enforcement of legal processes. These principles are contained in the Criminal Procedure Code (KUHAP), which include the following (Salinah, 2017):

1. The principle of simple, swift, and inexpensive justice;
2. The principle of opportunity;
3. The principle of presumption of innocence;
4. The principle of equality before the law;
5. The principle of open court proceedings.

Later, in its development, there was a paradigm shift in the concept of criminal law, which led to several new perspectives on the theory of punishment. Initially, punishment was interpreted as retribution, so that in the absolute theory or theory of retribution, punishment was imposed because a person had committed a crime, and the justification for this was based on the crime itself. As stated by Johanes Andenaes, the primary purpose of punishment according to the absolute theory is to satisfy the demands of justice, while the beneficial effects are secondary. This absolute demand for justice is evident in Immanuel Kant's view in his book *Philosophy of Law* (Achmad, 2022; Northoff, 2012)

In 1974, a monumental event took place in Ontario, where the Victim Offender Reconciliation Program (VORP) was launched. This movement advocated for changes in the criminal justice system, emphasizing that punishment should no longer be seen as a means of retribution but rather as a way to restore the victim's losses and maintain a conducive social environment, a concept now commonly referred to as restorative justice. Similar movements also emerged in other countries, such as Indiana and England. In 1978, these countries prioritized the resolution of criminal cases using a restorative justice approach. The implementation of resolutions based on the principles of restorative justice has been considered more effective in providing options for resolving cases for both perpetrators and victims. Although initially, the credibility of this movement was questioned (Achmad Hartadi et al., 2023; Firmansyah, 2023; Risal, 2023).

In Indonesia, the enforcement of criminal law involves the participation of several law enforcement agencies. After a criminal case is reported to the police, an investigation is conducted. If the investigator declares the investigation complete, the case file is sent to the prosecutor's office. The prosecutor's office is at the forefront of criminal prosecution, making it a very important element in the enforcement of criminal law (Kemal, 2023). Additionally, once a court decision has attained final legal standing, it is the prosecutor who will execute the decision.

Investigation and inquiry are the initial stages of a criminal trial. It is at this stage that evidence is collected and suspects are identified. Reporting a criminal case is the initial process that must be undergone in the enforcement of criminal law; it can be said that investigation and inquiry are the gateway to a case. Given this strategic position, it is only fitting that the initial stage of restorative justice be implemented. Given that the application of restorative justice is a new concept in the investigation process that is not yet included in the Criminal Procedure Code, the author is interested in further examining the application of restorative justice with the following research question: What are the investigative authorities' powers regarding the termination of investigations based on the principles of restorative justice in the criminal justice system?

The purpose of this study is to examine and analyze the implementation of restorative justice in the criminal justice system, particularly at the investigation stage. Furthermore, this study examines the authority of an investigator to terminate an investigation based on restorative justice, which is not yet regulated in the Criminal Procedure Code.

RESEARCH METHODS

The type of research used by researchers in this study is normative legal research. This study will examine the authority of investigators to terminate investigations in criminal cases

based on restorative justice. The research begins by examining the provisions of Indonesian National Police Regulation No. 8 of 2021 on the Enforcement of Criminal Offenses Based on Restorative Justice (Perpol No. 8 of 2021), which is then linked to the implementation of the criminal justice system. Furthermore, it will also examine the implementation of the termination of investigations in the provisions of the Criminal Procedure Code and its development as contained in Perpol No. 8 of 2021. Meanwhile, the research approach in examining the legal issues raised uses a statute approach, conceptual approach, and case approach. Referring to the opinion of Peter Mahmud Marzuki, normative research is a process of seeking answers to the issues being studied by examining legal rules, legal principles, and possibly through related doctrines and theories (Diantha, 2017a, 2017b, 2019).

RESULT AND DISCUSSION

Authority is not only defined as the right to exercise power, but also as the ability to enforce and uphold the law, ensure obedience, issue orders, make decisions, exercise supervision, jurisdiction, or power (Hartoyo et al., 2021; Sinambela, 2019). Legally, authority is defined as the power granted by legislation to produce legal consequences. Meanwhile, according to H.D. Stoud, authority is defined as “the entirety of administrative legal powers exercised by public law subjects in administrative legal transactions,” meaning that authority can be described as the totality of rules concerning the acquisition and exercise of governmental authority by public law subjects in public law (Fachruddin, 2004; Fitria, 2014; Putrijanti, 2017).

Law enforcement is an effort to realize the ideas of justice, legal certainty, and social benefit. Thus, law enforcement is essentially a process of realizing ideas. Law enforcement is the process of enforcing or implementing legal norms as guidelines for actors in legal transactions or relationships in social and state life. Law enforcement is an effort to realize the legal ideas and concepts that the people hope for. Law enforcement is a process that involves many things (Puspitawati, 2020; Semesta, 2023). The ultimate goal of law is justice. Therefore, all efforts related to law must be directed toward finding a legal system that is most suitable and consistent with the principles of justice. Law must be closely intertwined with justice; law is fair legislation. If a specific law, i.e., legislation, contradicts the principles of justice, then that law is no longer normative and cannot be considered law anymore. Legislation only becomes law if it meets the principles of justice. In other words, justice is a constitutive element of all concepts of law (Huijbers, 1982; T. Huijbers, 2003; Zainimal, 2021).

Essentially, the purpose of law enforcement is to realize what the law intends to achieve. Teguh Prasetyo says that the purpose of law is to achieve balance so that the relationships created by the interests of society do not result in chaos. Furthermore, according to him, the general purpose of law is to achieve justice. This was stated by Gustav Radbruch, as quoted by Teguh Prasetyo, that the purpose of law is to achieve three things, namely (Aristo Evandy A. Barlian & Annisa D. Permata Herista, 2021; Cahya Amala et al., 2022; Marbun, 2014)

1. Legal certainty,
2. Justice, and
3. Beneficence

When viewed closely, the essence of the purpose of law lies in justice. The problem with law enforcement is that fairness is often very relative. In other words, what is fair to one person may not be fair to another, which is where the law plays its role, or it can be said that legal interpretation is essential in examining a legal case. To ensure that the objectives of the law—certainty, justice, and utility—are achieved without discrimination (Aaron Alexander, 2023; Hasaziduhu Moho, 2019).

Legal developments are reflected in the types of laws developed by state authorities through three types of legal developments, namely:

1. Repressive Law
2. Autonomous Law
3. Responsive Law

Repressive law is law as a tool of repressive power used by state authorities or ruling regimes in government. Law is developed as part of an absolute power system aimed at maintaining power, where repressive law is harsh and detailed for the people but lenient for lawmakers and state authorities because law is subject to the politics of power. Compliance is mandatory, and non-compliance by the people is considered deviant behavior that is severely punished. Criticism of the state authorities is considered disloyalty. This type of law is unable to withstand the pressure of state power, especially from the ruling regime, and thus becomes merely an instrument of “security” with implications for legal choices.

The criminal justice system or integrated criminal justice system in Indonesia is often referred to as the criminal justice system in Law No. 8 of 1981 on the Criminal Procedure Code (KUHAP), which begins with the police as the institution with investigative and prosecutorial authority, followed by the prosecutor's office as the institution with the authority to prosecute, followed by the court system, where judges act as adjudicators, and the correctional system, which serves as both a place for the execution of sentences and a place for rehabilitation. Although, in its development, there are other enforcement agencies outside the KUHAP that also perform the functions of agencies within the KUHAP, such as the Corruption Eradication Commission (KPK) and the National Narcotics Agency (BNN).

Romli Atmasmita (Nugraha, 2019) describes the characteristics of a systemic approach in criminal justice as follows:

1. Emphasis on coordination and synchronization among the components of the criminal justice system (police, prosecutor's office, courts, and correctional institutions).
2. Oversight and control of the use of power by the components of the criminal justice system.

The effectiveness of the crime prevention system is more important than the efficiency of case resolution. The use of law as an instrument to strengthen “the administration of justice.”¹⁴ Therefore, it is mandatory to refer to the Criminal Procedure Code, both in the investigation and examination processes as referred to in the provisions of Article 284 paragraph (2) of the Criminal Procedure Code (83pp027, n.d.; Makarewa et al., 2021; Wasitomo & Widjajanti, 2020).

The termination of an investigation is the authority of an investigator. The conduct of an investigation must be independent and free from interference from any party. The authority of an investigator to conduct an investigation is regulated in the provisions of criminal procedure law, the concrete norms of which are contained in the Criminal Procedure Code. Article 7 paragraph (1) states, “Investigators, due to the obligations attached to their position, have the authority to:”

- Receiving reports or complaints from individuals regarding criminal acts;
- Taking initial actions at the scene of the crime;
- Conducting arrests, detentions, searches, and seizures;
- Summoning individuals for questioning and obtaining statements, whether as suspects or witnesses;
- Conducting the termination of an investigation;
- Conducting other actions in accordance with the law for which they are responsible (Makarewa et al., 2021; Wasitomo & Widjajanti, 2020).

Furthermore, in conducting an investigation, an investigator has the authority to terminate the investigation, which must be done responsibly in accordance with applicable regulations. There are several fundamental reasons for terminating an investigation, such as: 1) There is

insufficient evidence, 2) the incident is not a criminal offense, 3) the investigation is terminated in the interests of justice.

Over time, there has been a paradigm shift in the criminal justice system, where the concept of criminal justice can be resolved outside of court. This concept of resolving criminal cases outside of court uses a restorative justice approach.

Restorative Justice, commonly known as restorative justice, is “a victim-centered response to crime that empowers victims, offenders, their families, and community representatives to address the harm and losses caused by crime.”

Legal expert Daly states that the concept of restorative justice emphasizes “recovery from the losses and damages suffered by victims as a result of criminal acts committed by offenders.” The implementation of restorative justice must prioritize the recovery of victims' losses first, thereby facilitating peace between offenders and victims. This concept is known as the concept of reparation.

The resolution of criminal cases by prioritizing restoration of the original state should be maximized. Punishment that prioritizes retribution is no longer relevant to the current development of criminal law. Therefore, law enforcement agencies, particularly the police, should apply the principle of restorative justice in the performance of their investigative functions. The resolution of criminal cases by prioritizing the restoration of the original state should be maximized. Cases that meet the requirements as stated in Perpol No. 8 of 2021. There are material and formal requirements for the implementation of the principle of restorative justice. Material requirements include that the criminal act does not cause prolonged conflict in the community, a statement from the parties to waive their right to prosecute, and others. Formal requirements include a request for reconciliation from the parties, a reconciliation agreement, a record of the implementation of restorative justice, and others. (Koto et al., n.d.; Saputra et al., 2023) The existence of this regulation indicates that there is a new mechanism outside the Criminal Procedure Code for halting investigations, which in this case is the authority of an investigator to review and decide.

CONCLUSION

The resolution of criminal cases using a restorative justice approach has been regulated in several regulations. The application of restorative justice at the investigation stage is regulated in Perpol No. 8 of 2021. The resolution of criminal cases outside the court system is regulated in this Police Regulation with certain formal and material conditions. The issuance of Police Regulation No. 8 of 2021 marks a new breakthrough for the Indonesian National Police to halt investigations due to the resolution of cases outside the court system. The termination of investigations due to the resolution of cases outside the court system is regulated in the Criminal Procedure Code (KUHAP). However, based on Police Regulation No. 8 of 2021, this may be done by investigators in a responsible manner and without violating existing regulations.

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