



## Investigation's termination from the perspective of legal certainty

Heri Haryanto<sup>1</sup>, Ida Keumala Jeumpa<sup>2</sup>, Teuku Muttaqin Mansur<sup>2</sup>

<sup>1</sup> Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

<sup>2</sup> Lecturers, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

### Abstract

Article 24, paragraph (2) of Law Number 20 of 2025 regarding the Code of Criminal Procedure (KUHAP) delineates the grounds for the cessation of an inquiry by the Indonesian National Police. The termination of the investigation is conducted through a case conference and the Restorative Justice Mechanism (RJM). The conclusion of the investigation through a case presentation no longer necessitates a court ruling unless a pretrial motion is submitted by the party involved in the criminal case. Legal complications emerge when the findings of an investigator's case presentation are not filed for a pretrial motion by the pertinent party, resulting in ambiguity regarding the validity of the investigation's termination in the absence of a judicial ruling. This study utilises a normative legal methodology, incorporating a statutory approach and a case-based approach. This research utilises both secondary and primary data sources. This research seeks to elucidate the termination of investigations from the standpoint of legal certainty. The research findings indicate that the legal ramifications resulting from the cessation of the investigation within the criminal justice system culminate in a pretrial. The termination of the investigation possesses legal certainty if conducted in compliance with legislative provisions.

**Keywords:** Investigation's termination, criminal offense, legal certainty, law enforcement

### Introduction

The termination of investigations in the law enforcement process is one of the important stages, and its implementation presents numerous diverse problems, especially when viewed from the goals of law enforcement itself, namely justice, certainty, and legal utility. In the interpretation of the 1945 Constitution that Indonesia is a rule of law state (*rechtsstaat*), as a rule of law state, "law grows and develops in the daily life of society so that the behavior of society will be reflected in the values that prevail in society." Hans Kelsen, a criminal law expert, stated in his book *General Theory of Law and State* that "the behavior of society is reflected in the values or norms that exist in society"<sup>[1]</sup>.

Based on Article 1, point 5 of the Criminal Procedure Code, an investigation is a series of actions by investigators to search for and collect evidence to clarify a crime and identify the suspect. Article 24 paragraph (2) of the KUHAP states that the termination of an investigation is carried out because: there is insufficient evidence; the incident is not a criminal act; the investigation is terminated by law; there is a court decision that has obtained permanent legal force against the suspect for the same case; it is expired; the suspect has died; the complaint in a complaint offense has been withdrawn; the case is resolved thru the Restorative Justice mechanism; the suspect pays the maximum fine for an offense that is only punishable by a fine of up to category II; or the suspect pays the maximum fine of category IV for an offense that is punishable by imprisonment for a maximum of one (1) year or a fine of up to category III.

However, problems arise when the termination of an investigation is not based on strong legal grounds, and it sometimes creates issues when viewed from the perspective of law enforcement, particularly justice and legal certainty. This issue emerges in the handling of criminal cases, especially during the investigation phase. If the investigation of the case is terminated for legally justifiable reasons, such as insufficient evidence, non-criminal acts, or due to legal circumstances (the suspect has passed away,

statute of limitations, *ne bis in idem*, and failure to meet formal requirements for conducting an investigation). A termination of an investigation carried out by an investigator must be truly justifiable, meaning that the termination is based on facts, and, by law, the investigation must be halted. If the termination is carried out without a valid reason, it will create a negative image of the police institution as an investigator/law enforcement agency in the eyes of the public<sup>[2]</sup>. The impact of the termination of the investigation due to the absence of criminal elements, either because there is insufficient evidence or the incident is not a criminal act, results in the termination of the investigation by law. Based on the termination of the investigation, a legal study is required from the perspective of legal certainty, relating to several legal issues that arise in the termination of the investigation.

### Research Method

This research uses a normative juridical method. Normative legal research includes the study of legal principles, the study of legal systematics, the study of the level of legal synchronization, historical legal research, and comparative legal research<sup>[3]</sup>. The approaches used to address the issues in this writing include the statute approach and the case approach<sup>[4]</sup>. The data sources in this research consist of primary legal data and secondary legal data. The secondary and primary data obtained are then arranged in an orderly and systematic manner to be subsequently analyzed qualitatively with the aim of providing descriptions in words of the findings<sup>[5]</sup>.

### Results and Discussions

The termination of the investigation is a cessation of the case in the criminal justice system. The termination of the investigation is carried out based on several reasons, as emphasized in Article 24 paragraph (2) of the Indonesian Criminal Procedure Code (later called as the KUHAP). In the event that the Investigator terminates the investigation, the Investigator informs the Public Prosecutor, the Victim,

the Suspect, or the Suspect's Family about the termination of the investigation. The termination of the investigation carried out by the Investigator is a continuation of the case review decision. This means that the termination of the investigation determined by the Investigator is the outcome of the case review. This is in accordance with what is emphasized in Article 27 of the KUHAP.

Article 27 of the Criminal Procedure Code emphasizes that the case title and the termination of the investigation are primarily the domain of the Investigator. This article does not explicitly mandate the Investigator to submit a request for the termination of the investigation resulting from the case title to the Court, unlike the diversion mechanism, which indeed requires a Court ruling. On the contrary, Article 27 actually emphasizes the obligation of the Public Prosecutor: "If the termination of the investigation based on the case title is declared invalid by the Court, then the Public Prosecutor is obliged to proceed to prosecution." In other words, this article is "active" only when there is a request for a review of the validity of the termination of the investigation to the Court, not as a routine obligation for the Investigator to seek a ruling from the Court. This shows that Article 27 of the KUHAP is not a mandatory submission requirement, but rather a response to potential disputes.

This clarity is reinforced by Article 62 paragraph (2) of the KUHAP, which states, "If the case status is decided to be terminated, the Investigator is obliged to issue a decree of termination of the investigation by notifying the Public Prosecutor of the termination of the investigation." The Investigator's obligation after the case status is decided to be terminated is to issue a Decree of Termination of and subsequently not to request a decree from the Chief District Court but to notify the Public Prosecutor as the recipient of the SPDP (Letter of Notification of the Commencement of Investigation). This emphasizes that the Investigation Termination Decree resulting from the case examination is an internal product of the Investigator that does not require validation from the Court.

Article 27 of the Criminal Procedure Code contains the phrase "a request is submitted to the District Court to examine the legality or illegality of the termination of the investigation..." Regarding a termination of the investigation thru a case review that has been determined by the Investigation Supervision Commission, it must be submitted to the District Court to examine the legality or illegality of the termination of the investigation. This refers to the Pretrial mechanism. Parties who object, such as victims, reporters, or their legal representatives, can file a test of the validity of the Investigation Order. According to Article 1 number 15 of the KUHAP, pretrial is defined as the authority of the district court to examine and decide on objections raised by the suspect or the suspect's family, the victim or the victim's family, the reporter, or the lawyer or legal aid provider authorized to represent the legal interests of the suspect or the victim, against the actions of the investigator in conducting the investigation or the actions of the public prosecutor in conducting the prosecution as regulated in the KUHAP.

Article 158 letter b of the KUHAP states that the authority of Pretrial includes the legality of the termination of Investigation/Prosecution, as well as Article 161, which grants this right to the relevant parties. The mechanism of Article 27 does not regulate the Investigator to request a ruling from the Court, but rather serves as an opening norm

for external parties to annul the Investigation Termination Decision (SKP), and if proven unlawful by the Court, it obliges the Public Prosecutor to proceed with the Prosecution. Article 27 of the KUHAP emphasizes the obligation of the Public Prosecutor to proceed with the Prosecution if the termination of the investigation is unlawful. This is because, in criminal justice practice, one of the fundamental issues that often arises is undue delay in legal proceedings, especially after the court has rendered a decision that should be followed up by law enforcement agencies. A court decision only has true meaning when followed by concrete actions, not left to stagnate as a normative declaration that does not advance the legal process. When a verdict is not immediately implemented, the judicial process risks losing its function in ensuring legal certainty and justice for those seeking justice.

This is in line with what Hyronimus said that "the law exists, if it does not exist it cannot be called. The law lives and develops in thought, literature, and the reality of human life"<sup>[6]</sup>. This means that every legal decision or ruling has a definite conclusion and can be implemented according to what is stipulated in the legal regulations themselves. Humberto explains that legal certainty is certainty as a normative principle<sup>[7]</sup>. "This certainty is associated with the idea of determinism, stability, and predictability. Certainty is related to the existence of specific regulations or norms regarding certain matters, cases, or events. Stability is defined as the consistent and unchanging application of rules or norms. Meanwhile, predictability is defined as something that can be anticipated from decisions based on the relevant rules or norms"<sup>[8]</sup>.

Referring to the provisions of Article 27 of the KUHAP that any termination of an investigation declared invalid by the court, the continuation of that decision is the obligation of the public prosecutor to conduct prosecution, which is a manifestation of legal certainty that is already determined and normative in nature because it has been stipulated by legal rules. Furthermore, this obligation of the Public Prosecutor is something that will never change because it is already established in Article 27 of the KUHAP, and it can be predicted or anticipated that if the judge declares the termination of an investigation invalid, prosecution will be carried out immediately. Based on Article 27 of the Criminal Procedure Code, there are matters that need to be examined more thoroughly. This norm is directly related to efforts to prevent undue delay after the court, thru the pretrial mechanism, declares the termination of the investigation invalid. Article 27 of the New Criminal Procedure Code not only addresses authority but also the obligation of the state to ensure that criminal proceedings run effectively and do not drag on without certainty.

Article 27 of the Criminal Procedure Code also grants judges legal legitimacy to assess both the formal and substantive aspects of the termination of the investigation. Judges do not merely examine administrative procedures, but also the rationality and sufficiency of the grounds for terminating the investigation. In the doctrine of criminal procedural law, such a decision must be understood as a binding correction that must be followed up on, so as not to become a new source of delay in the legal process<sup>[9]</sup>. Article 27 of the New Criminal Procedure Code is intended as an anti-undue-delay instrument, as it forces cases to move from the investigation stage to the adjudication stage in court.

The presence of Article 27 of the New Criminal Procedure Code is a progressive step in strengthening legal certainty and preventing undue delay after the pretrial decision. This norm emphasizes that a judge's decision should not stop as a symbolic correction, but must be followed up with prosecution. However, without more detailed regulations on deadlines, implementation mechanisms, and legal consequences, the potential for prolonged delays remains. Therefore, strengthening Article 27 of the New Criminal Procedure Code through technical regulations and law enforcement policies is important so that the goals of criminal procedural law reform are truly realized in practice and do not remain at the normative level alone. The termination of the investigation is not only carried out after a case review but also through the Restorative Justice Mechanism. The Restorative Justice Mechanism is implemented to restore the original state.

The Restorative Justice Mechanism at the Investigation and Prosecution stages is carried out through an agreement to resolve the case in the presence of the Investigator or Prosecutor. The agreement to resolve the case is evidenced by a case resolution agreement letter signed by the perpetrator, the Victim, and the Investigator or Prosecutor. Based on the case resolution agreement letter, the Prosecutor issues a letter of termination of the Investigation. This letter is notified by the Prosecutor to the Public Prosecutor, and a Decree is requested from the Chief District Court within 3 days. If the Investigation Termination Letter is born based on the MKR mechanism, the Chief District Court has the authority to issue a Decree granting or rejecting the letter. This is different from the Letter based on the case title, which is essentially a product of the Investigator that sometimes does not have the same will from the victim/reporting party; therefore, this product does not need to be submitted for a Decree to the Chief District Court, as this product is still given space by the KUHAP to be tested through the pretrial mechanism.

Regarding the termination of the investigation carried out by the investigator, it must consider legal certainty, meaning that the criminal case being examined can indeed be terminated based on the applicable legal provisions, not because of other factors deliberately created to stop the case, such as designating a deceased accident victim as a suspect, which would obviously prevent the case from proceeding because the suspect has passed away. Then, the cessation of the investigation must consider a sense of justice; if there are certain parties who suffer losses in the case, but the case is terminated, then those who are harmed do not receive their rights. In addition, the cessation of the investigation must also consider the legal utility, whether the cessation of the investigation in a criminal case is acceptable to all parties involved, whether the cessation of the investigation in law enforcement provides benefits to certain parties, and if there are parties who are dissatisfied with the cessation of the investigation, then the application of the law does not benefit the parties involved in the case.

Here is a case of termination of investigation related to legal certainty, that there is a Foundation managed jointly by A and B. Over time, B filed a civil lawsuit regarding the ownership of the foundation, and the court granted B's lawsuit, declaring B the winner in the Court's Decision.

Then B reported A to the Aceh Police with a report of fraud and embezzlement of foundation funds. During the investigation process, it turned out that B could not prove the fraud and embezzlement committed by A because there was no printout of the account showing the amount of money embezzled by A.

Referring to the principle of *actori incumbit onus probandi*, which is a principle in criminal procedural law, meaning that the one who accuses is the one who must prove. In this case, B is unable to prove the report against A for fraud and embezzlement. Therefore, this case cannot be escalated to an investigation or dismissed due to insufficient evidence. The continuation of the principle of *actori incumbit onus probandi* is *actore non probante, reus absolvitur*, which means that if it cannot be proven, the defendant must be acquitted (if it has reached the prosecution stage), which means that proof is an important process in criminal law.

Referring to the principle of legal certainty, if this case is terminated or investigated in the future by the investigator or assistant investigator, it can be considered an appropriate action. It refers to the principle of legal certainty and the sufficiency of evidence that supports the termination of the investigation. In line with what was conveyed by Husni (police commissary), if the termination of the investigation is carried out in accordance with the standard operational procedures for terminating investigations, then the termination of the investigation can be held accountable both legally and procedurally, and a consistent pattern of action can be established for investigators/investigator assistants in terminating investigations. This is closely related to the principle of legal certainty that any case deemed eligible for termination by the investigator based on legal provisions can be terminated, hence that a case does not drag on and give the impression of uncertainty in law enforcement.

Then, if further examined regarding the termination of the investigation conducted by the police investigator based on the KUHAP, it can be said that a termination of the investigation through a case title can undermine the value of legal certainty in the termination of the investigation. This can be illustrated by a termination of the investigation decree issued solely by the police investigator without a court ruling because no pretrial motion was filed by the parties involved in a case, so the termination of the investigation decree is limited to the Letter of Termination of Investigation from the investigator without a ruling from the District Court.

This is clearly stated in Article 27 of the KUHAP that there is no pretrial examination if no application is submitted, thus providing an opportunity for a case not to proceed to the prosecution stage because no pretrial application was submitted. Legal norms like this are considered not to provide legal certainty in the criminal justice system. Because the termination of the investigation through a case review, whether or not a pretrial motion is filed by the aggrieved party, should still be subject to examination regarding the legality of the termination of the investigation by the district court, as in the process of termination of the investigation through MKR, the court has the authority to examine whether the MKR process is carried out correctly and in accordance with the applicable regulations.

Referring to legal certainty, the law is not ambiguous in every sentence, nor does its legal language in the norm lead to multiple interpretations. This is in accordance with a principle in the formulation of legislation, namely the principle of "clarity of formulation"<sup>[10]</sup>. This becomes a determining factor in whether a law can be said to be certain or not. Because in the cessation of investigations thru a case review, there is concern that it will create legal uncertainty since the mechanism for filing a pretrial motion is not mandatory but rather an initiative from the aggrieved party, making the court's ruling a choice rather than a necessity.

### **Conclusion**

To sum up, the investigation decision is executed for several reasons as stipulated in Article 24, paragraph (2) of the Criminal Procedure Code (KUHAP). The legal consequence of ending the investigation is the initiation of a pretrial hearing upon request from the aggrieved party following a case presentation by the Police Investigator. However, if the investigation's termination is executed via the MKR, no pretrial will take place, as the MKR allows the judge to unilaterally approve or deny the termination without requiring a petition from the aggrieved party. The investigation is a process within the criminal justice system aimed at enforcing the law. The termination of an investigation conducted under the law enforcement procedure is governed by legislation. The termination of an investigation possesses legal certainty when executed in compliance with statutory provisions.

### **References**

1. Kelsen H. General Theory of Law and State, terjemahan Anders Wedberg. The Lawbook Exchange, 1993.
2. Najib ZKA. "Akibat Hukum Penghentian Penyidikan Perkara Pidana dan Permasalahannya dalam Praktik". Diponegoro Law Review, 2012:1(4):4.
3. Soekanto S. Pengantar Penelitian Hukum. UI-Press, Jakarta, 2006, 51.
4. Suhaimi. "Problem Hukum dan Pendekatan dalam Penelitian Hukum Normatif". Jurnal: Yustitia, 2018:19(2):203.
5. ND MF, Achmad Y. Dualisme Penelitian Hukum Normatif dan Empiris. Pustaka Pelajar, Yogyakarta, 2010, 42.
6. Rhiti H. Kepastian Hukum (Pengantar Teoretis dan Filosofis). Kanisius, Yogyakarta, 2025, 1-2.
7. Avila H. Certainty in Law. Springer International Publishing, Switzerland, 2016, 6.
8. Rhiti H. Loc. Cit., 135-136.
9. Hamzah A. Hukum Acara Pidana Indonesia. Sinar Grafika, Jakarta, 2014, 80.
10. Rhiti H. Op. Cit., 150.