Legal Review of Police Discretional Authority in Terminating Investigations, Implications for Victims in Searching for Justice and Legal Truth

Danny Trisno Susetyo
Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ir. Sutami Street, No. 36 Kentingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126
dannyts@student.uns.ac.id

Hartiwiningsih Hartiwiningsih
Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ir. Sutami Street, No. 36 Kentingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126
hartiwiningsih@staff.uns.ac.id

Muhammad Rustamaji
Faculty of Law, Universitas Sebelas Maret, Surakarta, Indonesia
Ir. Sutami Street, No. 36 Kentingan, Jebres, Surakarta, Jawa Tengah, Indonesia 57126
Muhammad_rustamaji@staff.uns.ac.id

Abstract*—Cases that are still under investigation by the police, whether they want to be stopped or whether they want to continue to escalate the case from initial investigation to further investigation, are all within the absolute authority of Police Investigators. No law regulates judicial institutions that can oversee or handle public complaints regarding the termination of victim complaint reports by investigators. This can create or create an oligarchy of power, because of this discretion. Buying and selling and bargaining over cases is very possible, so that the almighty financial factor is no longer strange, truth and justice are just mere jargon, all of this is covered by the oligarchic power of investigators with the mask of discretion they have, without any control function from any party whatsoever. This research is to analyze the legal reasons for stopping public complaint reports at the investigation level by investigators, as well as the legal efforts taken by victims when their complaint reports are stopped by investigators. This research uses Normative, or doctrinal, legal research methods, carried out on written regulations, using data analysis techniques, through a qualitative approach, on the application of laws relating to pretrial institutions, with a theoretical basis regarding pretrial regulations, regarding regulations of the National Police Chief, and Related Police Chief Circular regarding requirements and procedures for terminating an investigation. The case has been stopped at the investigation stage until now there is no judicial institution to oversee it. The use of mass media or the press as social control can help reveal legal facts in trials (judex factie) and can be a means of controlling law enforcement, both in the Police, at the Prosecutor's Office, and in the Courts. It was concluded that terminating a complaint report that was still in the investigation stage was an absolute authority and was a monopoly of the power of POLRI investigators. There is no judicial institution where people can complain to seek justice against the arbitrary actions of POLRI investigators in stopping public complaints.

***Keywords*—Termination of Investigation; Police Discretion; Pretrial**

I. INTRODUCTION

It is not surprising that many cases or cases are stopped at the investigation level by National Police Investigators. This constitutes the absolute authority and is also the policy of the National Police Investigator, which cannot be interfered with or influenced or interfered with by any party. Whether the case is stopped or continued to the investigation level is entirely up to the investigator. As happened in the case of PT. Arya Kusumah Construction (PT. Arkuskons) by West Java Regional Police Investigators which according to the author has no legal basis. Based on

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the results of the case title, and the reasons or reasons that are the basis for decision making (ratio decidendi) in a case title, it is very premature to stop the complaint report from PT. Arkuskons. There are no statutory regulations that regulate legal protection for whistleblowers as victims. PT. Verbeck Mega Perkasa (PT. Vermesa) which operates as main contractor and PT. Arya Kusuma Construction (PT. Arkuskons) as a subcontractor collaborated for the construction of the Madrasah Aliyah Negeri (MAN) 4 Jakarta school building which was obtained from the Indonesian Ministry of Religion. The Cooperation Agreement and addendum to the Cooperation Agreement have been executed between PT. Vermesa and PT. Arkuskons as subcontractor totaling Rp. 6.74 billion. Besides that, PT. Arkuskons also provided bailout funds to pay workers' wages and payments to material suppliers, this was done without a written agreement, but there was evidence of funds transfer and payment receipts. The amount of bailout funds reached Rp. 3.81 billion and was only paid via transfer of Rp. 2.60 billion.

From this Cooperation Agreement problems arose because PT. Vermesa has received payment from the Indonesian Ministry of Religion. as the project owner, but the work of PT. Arkuskons as a subcontractor has not been paid at all. Initially PT. Vermesa gave a check for Rp. 4.3 billion as a means of payment to PT. Arkuskons, but it was not cleared because at the request of Vermesa, who informed him that the funds were not available. Next, to replace checks that were not cleared by PT. Vermesa gave 2 (two) checks from Mandiri Bank, Samarinda branch, worth IDR. 2.95 billion and Rp. 5 billion and provided 2 (two) land certificates in Samarinda. However, when the 2 (two) checks were cleared at different times (according to the check's effective date) they were all rejected for the reason that one sheet was worth Rp. 2.95 billion due to "insufficient balance" and the Rp. 5 billion was rejected because "the account was closed".

Because the work of PT. Arkuskons as subcontractor has completed it well, but PT. Vermesa instead made payment with 2 (two) blank checks from Bank Mandiri worth Rp. 2.95 billion and Rp. 5 billion, as well as 2 (two) land certificates in Samarinda which were used as collateral, but no agreement was ever carried out at all, so this case was brought to the legal realm. PT. Arkuskons, as a victim who suffered losses, made a complaint to the West Java Regional Police Criminal Investigation Unit. The author raises the urgency of this case in the article, because the police stopped reporting the PT complaint. Arkuskons as a victim has no legal basis. This case is important for us to review the legal reasons for terminating the case in the case at the West Java Regional Police, are there sufficient legal reasons or not? With the termination of cases that are still at the investigation level, it is completely under the absolute authority of police investigators, being an oligarchy of investigative power, whether the case is stopped or continued depends on the investigator who handles it because there are no rules or laws that regulate where the victim or reporter (complainant) can go. seek legal protection, where up to now there is no judicial institution that can protect victims whose cases are stopped by investigators while they are still at the investigation level.

II. LITERATUR REVIEW

What is in the pretrial realm is if the case is stopped at the investigation process, as regulated in Article 77 of the Criminal Procedure Code. [1] It is appropriate for the Investigator/Reskrim Unit in handling cases to be a professional who has knowledge and skills, by legal principles, and reflects the values of truth and justice in the case being tried. so that they can handle the problems they face. It could be said that legal scholars only discuss quid juris (normative truth). What is truth? In the sense that they reduce the understanding of social facts about power. Some say that "truth is supported by law", and perhaps that word is close to what is meant by law. Because what was originally used to explain truth in the resolution of relationships and order of behavior, can only be approached through the understanding of the European terms recht, droit, diritto, ius, in the legal sense. In our first understanding, truth is everything that is supported by power, or any validation brought by political society, namely the State.[2]

Whitney believes science and research are the same process, so science and research are the same process. The result of this process is truth.[3] While talking about issues of justice. Justice is not an assessment criterion, because it is an element that must exist in the law, even though from a moral perspective it is something bad. The more levels of order and security there are, the more aspects of justice there are because the relativity of its principles is the same as the aspects of justice (i.e. aspects of reconciling the initial stages of the conflict between values that are manifested in a fact). social) is infinite. We can express this by saying that "order" and "normative facts" are just two words from the same data, and that many types and levels of order, as well as various normative facts, without justice, are meaningless terms.

Discontinued reports of complaints regarding alleged criminal acts of fraud (article 378 of the Criminal Code) and embezzlement (article 372 of the Criminal Code) of funds committed by PT. Verbeck Mega Perkasa (PT. Vermesa), PT. Arkuskons went to the West Java Regional Police because the handling of the case could not be escalated to an investigation. After all, no criminal incident could be found. According to the attorney for the reporter/complainant,

this is not feasible is very premature, and has no legal basis. There are no laws or regulations that regulate the mechanism and means of complaints regarding the termination of investigations into public complaints to the police, and there is no judicial institution where the public can complain about the action of stopping investigations by police investigators, so this is a necessary legal vacuum. be paid attention to by the public in general and the government and law enforcers in particular, to immediately propose the DPR regarding the means and mechanism for public complaints regarding the termination of investigations by Police Investigators to uphold justice and legal truth regarding the actions of Police Investigators/Investigators.

According to Roscue Pound, he prioritizes practical goals, namely in point (5) "Defending what has been called the just implementation of the law" and "urging those legal teachings should be considered as guidelines towards just results for the society and not as especially as forms that cannot change"[2] In addition to obtaining the truth in the legal facts presented in the trial, it is also to find out the response of the West Java Regional Police and National Police Headquarters to news published in various mass media, both print and online media, regarding the legal facts revealed in the trial facts. The Indonesian press is always faced with the need to fight. Fight for many things. Starting from fighting for the truth, so that factual truth becomes actual, fighting for control to run well and irregularities to be immediately resolved, fighting for justice to be possible and goodness to have the opportunity to be done and enjoyed by members of society, also fighting for functions in society and the State to run well, and fight for itself to always be able to grow and develop into a functional institution or institution by the field in which it works.[4]

With the publication of the pre-trial conference in the mass media, will have an impact on the case, or can the investigation and investigation process continue or not? So that this legal vacuum can be addressed immediately, a Law or Legislative Regulation has been created that regulates rules and mechanisms for people who complain about police actions that stop their complaints. Apart from that, it aims to eliminate oligarchic police power, especially regarding cases complained about by the public which are still in the investigation stage. Absolute authority or a monopoly of authority is a form of oligarchic power that can create opportunities for police officers to carry out conflicts of interest in conducting black-and-white investigations. The case is completely in the hands of investigators, without any supervision by the legal community (social legal control) to realize social justice and the absence of judicial institutions to seek legal justice.

III. METHOD

This research uses qualitative approach, namely case studies regarding the termination of the PT Arkuskons report at the West Java Regional Police, study of trial documents from the beginning of the application to the end of the trial decision. With normative legal research methods. Using data analysis techniques/methods on trial facts, analyzing the Pretrial Application and the application of the Laws and Legislation relating to Pretrial, its influence on the case, and whether the investigation process can be followed up or not. Data collection techniques, using literature study, are carried out by searching, inventorying, and studying laws and regulations, other secondary data related to the legal domain regarding investigations and pre-trial. as well as field studies by following the proceedings of the pretrial hearing from the beginning of the reading of the petition to the end of the trial decision, seeing and hearing journalists' interviews with the Pretrial Petitioner and his attorney. Primary data was obtained directly from factual data, the complainant/reporter, and his attorney, while secondary data was obtained from official documents, books, and research results in the form of journals, papers, and so on.[5]

IV. RESULT & DISCUSSION

Results of research findings (scientific findings) followed by discussion of cases of the position of legal norms. Termination at the investigation level by the Police, there is no judicial institution for public complaints to seek justice, because there are no laws and regulations that regulate this matter. The description of the discussion is descriptive, analytical, and critical as follows:

From SP2HP Number: B/790/viii/2021/Ditreskrimum, dated 31 August 2021, based on the conclusion of the results of the degree used as a reason for stopping the police report, namely:

The first reason is "that the 2 (two) checks used as evidence had previously been confirmed and known by both parties to have no funds and were only used as collateral." If the check giver has informed the recipient of the check before the effective date that the check has no funds, then the check giver is not at fault if the check is cleared and it turns out to be rejected because of "Insufficient Balance". If this can be used as a justification and does not result in criminal charges, it will hurt the world of banking and business. Any person or entity can arbitrarily confirm to the recipient of the check that the check should not be cleared yet, because there are no funds. If this action is justified and there are no criminal sanctions, then the world of banking in Indonesia will become untrustworthy among business people, especially from abroad, because checks that have been issued by Indonesian banks as a means of payment have no legal force or legal sanctions for the check drawer. Meanwhile, the police stated that the check was only as

collateral. Can checks be used as collateral? What form does a check take as collateral? A check is a means of payment in which the funds in the check drawer's account are a source of payment for an obligation of the check drawer, because there is no form of collateral in the form of a check, whereas what can be used as collateral is a receivable/bill, the form of which is a Cessie.

The second reason is that "the Reporting Party's money is the Reported Party's loan for the construction costs of the MAN 4 Jakarta building which has been used according to its intended purpose, and the building or project does exist." These reasons have no relevance to the main problem. The position of the Reporting Party is as a Project Subcontractor while the Reported Party is the party who received the project (main contractor) for the construction of the MAN 4 Jakarta building. There is a Cooperation Agreement. So there is no relevance at all to borrowing and borrowing (there is no Loan Agreement), and there is no relevance that the funds have been used according to their intended purpose. However, with the Petitioner funding the project, construction of the project has been completed by the Petitioner by the sub-contractor agreement, and the project owner (bouwheer) has made payment in full according to the project contract value to the Reported Party. The problem is that the proceeds from the project payments were not used to return the Petitioner's funds and the profit sharing that had been agreed upon between the Petitioner and the Reported Party was not carried out. The project could be completed because it was funded by the Petitioner, however, once there was payment from Bouwheer, the working capital money used by the Reported Party to complete the project was not returned to the Petitioner as the funder. In this case, the Reported Party has committed criminal acts of fraud and embezzlement. It seems that the investigator does not understand the essence of the reporter's report, the person who is the victim and the person reporting in this case is not the owner of the MAN 4 Jakarta building construction project but is the reporter. So the reason that it has been used according to its intended purpose and that the building or project does exist is a reason that is not fundamental at all because the one who was harmed (as a victim) was not MAN 4 Jakarta, but the Reporting Party.

The third reason is "that the Reporting Party has received a return from the Reported Party amounting to Rp. 2,600,000,000. (two billion six hundred million rupiah) and 2 certificates as collateral", of which the 2 (two) certificates are SHM.No.3561 & SHM No.3562 which is located in Village/Ex. Timbau, Tenggarong District, Kutai Kartanegara Regency/City, East Kalimantan, on behalf of Tatik (not on behalf of the Reported Party)." Unfounded reasons. The return of IDR 2,600,000,000 is the Reporting Party's effort to save its funds. Payments from the owner of the MAN 4 Jakarta project were taken by the Reported Party to benefit himself at the expense of the Reporting Party as a sub-contractor and also the funder of the project worth IDR 6,740,000,000, - which has not been paid at all by the Reported Party. The wages of workers and material suppliers that can be secured are Rp. 2,600,000,000. for partial payments, but it is still less than Rp. 1,210,000,000. Meanwhile, regarding the 2 (two) certificates SHM.No.3561 & SHM No.3562 in the name of Tatik, as the owner of the land certificate, they have never been summoned for an inspection. The certificate owner has never entered into a guarantee agreement with the Reporting Party.

The Criminal Investigation Unit who stopped the case, without clear grounds, did not continue the main substance of the report. The Unit Head and Investigators have also not examined the witnesses who are directly related to the case, namely:

a. Bank Mandiri Samarinda branch office, as the recipient and implementer of the standing instruction (SI) from the Reported Party as the owner of the PT Vermasa account, did not carry out the orders in the SI. Investigators have not yet asked for information. The SP2HP explains "that the Bank Mandiri Samarinda branch office had been summoned, but did not attend", but this does not mean that the investigator must remain silent, there is no effort to meet with the Bank Mandiri Samarinda branch.
b. PT. Batara Guru Group, as check drawer/account owner at Bank Mandiri Samarinda branch office, whose check was rejected because there were no funds and because the account had been closed, has not yet been summoned for questioning. Using a check to pay a sum of money to the recipient of the check, whose account has already been closed, is a form of fraud.
c. Mr. Yosef Nur, S.H. was the liaison/mediator who introduced/brought together the Reported Party with the Reported Party Hasmini as the Main Director of PT. Vermesa. whose addresses are already known have not yet been summoned for questioning, to reveal the facts so that the a quo case can be brought to light.
d. Have not yet examined the Criminal Expert to ask for an opinion on the a quo case.
e. This shows that the reasons for terminating the case were very unreasonable, careless, ambiguous, seemed haphazard, not fast in handling, and not accountable, because the case could not be escalated to investigation. After all, no criminal incident was found.

Humans are creatures that think (anima intellectual), which are also equipped with feelings, attitudes, and actions. His attitudes and actions originate from the knowledge he obtains through feeling or thinking activities. Reasoning is

a mental activity as a way of achieving knowledge from one knowledge to another through connecting knowledge. It can be said that every way of thinking has what is called a criterion of truth, and this criterion of truth is the basis for the process of discovering the truth.[3]

Whereas based on the above matters it is clear that the Reported Party violated Article 378 of the Criminal Code concerning Fraud and violated Article 372 of the Criminal Code concerning Embezzlement. The Head of Criminal Investigation and Investigators have violated the Republic of Indonesia National Police Circular Number 7 of 2018 concerning Termination of Investigations which regulates the conditions and mechanisms for terminating investigations, point 3.a. the requirements for the investigation process are incomplete and have not been carried out by the Investigator, namely: 3.a.4) Collection of information material; 3.a.5) Collection of documents; 3.a.6) Expert opinion (if necessary)[6], has not been carried out at all by the Investigator.

The legal basis that the Petitioner uses in Article 15 of the Regulation of the Head of the National Police of the Republic of Indonesia Number 14 of 2012 concerning Management of Criminal Investigations which states that "Investigative activities are carried out in stages, including a. investigation". [7] So investigation is a stage of investigation.

In legal theory, Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP) adheres to the principle of legalism where literally the words written in the Law cannot be interpreted other than what is written in the Law, in this case the Book The Criminal Procedure Law (KUHAP), with the enactment of Article 77 letter a of the Criminal Procedure Code along with the phrase termination of investigation, has limited and eliminated the meaning of the control function in the process of enforcing criminal procedural law, because in reality investigation is not a process that can be separated from the investigation. This is inconsistent with Article 28D paragraph (1) of the 1945 Constitution which states that "everyone has the right to recognition, guarantees, protection, and fair legal certainty as well as an equal treatment before the law". The real loss is the rejection of the pretrial application which was stated in the judge's consideration in the pretrial decision "that the termination of the investigation is not a pretrial object"; Article 77 letter a of the Criminal Procedure Code states as follows: "The district court has the authority to examine and decide, by the provisions regulated in this law, whether or not an arrest, detention, termination of investigation or termination of prosecution is legal." [8]

In line with the opinion of M. Yahya Harahap, S.H., "Investigation" is the first stage of action at the start of an investigation. Investigation is not an act that stands alone apart from the investigative function. The investigation is an inseparable part of the investigative function. In the Guidelines for the Implementation of the Criminal Procedure Code, "an investigation is one of the methods or sub-functions of an investigation that precedes other actions, namely action in the form of arrest, removal, search, confiscation, examination of letters, summons, inspection action, and sending files to general processing. ". So, before any investigative action is carried out, an investigation is carried out by an investigating officer, with the aim and purpose of collecting "initial evidence" or "sufficient evidence" so that a follow-up investigation can be carried out.[9] In fact, in Article 77 of the Criminal Procedure Code "the District Court has the authority to examine and decide, by the provisions regulated in this law regarding: a. whether or not the arrest, elimination, disclosure and prosecution is lawful."[1]

Because an investigation is not an act that stands alone, separate from the investigative function, the request is to file a pretrial application at the Bandung District Court, because this is the authority of the Bandung District Court, even though it is not explicitly written in the Criminal Procedure Code, it is implicitly part of an integral part of the investigation.

The judge's function is as a discoverer of law, acting to translate or give meaning so that a legal rule or a legal understanding can be factually by the concrete legal event that occurred, and to avoid conveying, legal discovery can be carried out using instruments or methods of interpretation, analogy, legal refinement (rechtsverfijning), legal construction and argumentum a contrario. According to Bagir Manan, the judge's obligation to find the law is caused by several factors, one of which states "Almost all concrete legal events are not completely described precisely in a law or statutory regulation";

The function of judges to make laws or make laws is constructed as an effort by judges who must decide, but there are no legal rules that can be used as a basis. This task of creating law is necessary if there is a legal vacuum (rechtsvacuum/legal vacuum).[10] One of the principles of justice in Indonesia based on the provisions of Article 5 paragraph (1) of Law Number 48 of 2009 is that there is an obligation for judges to explore, follow and understand the legal values and sense of justice that exist in society. According to Moh. Koesnoe, studying law in Indonesian is the same as looking for new laws, here it means implementing laws as well as making laws which are a combination of decisions based on concrete social problems that must be decided.[10] So judges are not just legal spokespeople.

Our law is entering its lowest point which we call the loss of legal spirit, legal life that is unimaginative, chaotic and shabby, as Kunto Wibisono said, "there has been a confusion in the vision and mission of our law which has led to the destruction of the rule of law". Or if we borrow the term from post-modernist thinker Julia Kristeva, this is an

abject condition, namely a life event that is chaotic, uncertain and hopeless, abject law means a condition or circumstance where everyone is playing around. around and get involved in legal games. , some are crying, some are laughing, some are selling, some are naked, some are shameless and there is nothing.[11]

All law enforcers, especially judges, must always prioritize the value of justice rather than legal certainty in resolving a case, so that a sense of justice in society is more easily achieved. In society, there will always be changes in the values that shape laws which have an impact on existing laws, so changing laws into laws that suit the conditions of society is a necessity.[12]

Based on the decision of the Constitutional Court Number 84/PUU-IX/2011, it is stated that the issue of criminalization and decriminalization of an act must be in accordance with the criminal politics adopted by the Indonesian nation, namely whether the act is contrary to the fundamental values that apply in society and by society. deemed appropriate or inappropriate to be punished in order to provide for the welfare of society. The assessment of the reprehensible nature of an act as an element of unlawfulness must be assessed from an objective perspective, in the sense of whether the act that is criminalized and considered against the law is also an act that is censured by society.[13] In this regard, according to Harison Citrawan, analysis of the impact of human rights [14] is necessary and absolutely necessary in the process of forming laws and regulations.[15]

An investigation is a series of investigative actions to search for and discover an incident that is suspected of being a criminal act in order to determine whether or not an investigation can be carried out according to the methods regulated in this law. (Vide Article 1 point 5 of the Criminal Procedure Code)

The mechanism for terminating investigations has not yet been regulated in the Criminal Procedure Code, this is the main reason for the National Police Chief to issue the S.E. Chief of Police for Terminating Investigations as a reference for terminating investigations and as a reference for investigators in terminating investigations. The National Police of the Republic of Indonesia has authority in the form of discretion, in considering the use of its authority based on its own assessment, which is carried out when it is urgently needed, and does not conflict with legislation and the police professional code of ethics (Sadjijono, 2008). The National Police Chief's Circular is categorized as a policy regulation (beleidsregel) (Agus Riyanto, 2015). Circular letters have the same position as announcements, technical guidelines (technical instructions), operational guidelines (implementation instructions), guidelines, official notes or other similar terms. Policy regulations are policy regulations that are determined by the administration itself (A.D. Belinfante & Boerhanoedin Soetan Batoeah, 1983). Because the body or official that forms a policy regulation does not have the authority to make regulations (wetgevende bevoegheid), a policy regulation is not a binding legal regulation. [16]

V. CONCLUSION

Based on the results of the research above, the author can conclude the following:

1. Termination of investigations by the Police is not within the domain of pre-trial institutions, because there are no laws and regulations that regulate this, unless the case is stopped at the investigation stage.
2. The steps for carrying out this Pretrial Application are to reveal the facts of the trial which are open to the public, regarding the truth of legal facts, legal opinions, and evidence of legal documents, so that the facts of the trial will be widely spread to the public through mass media news both in print and online, so be it The community itself is the judge, who can judge justice and truth in the case. The press as social control and public participation in comments on social media as an element of democracy, can be a means of enforcing the law.

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