

Application of the Principle of Restorative Justice to the Termination of Investigation Warrant (SP3)

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Abstract

The purpose of this study is to find out how to apply the principle of restorative justice to the warrant for termination of investigation (SP3). The research method used is a normative legal research method. The legal sources used are from the Legislation and secondary legal materials along with other legal sources.

Keywords

restorative justice;
investigator; termination
of investigation



I. Introduction

Justice is actually everyone's dream. Every citizen who feels that his rights are not being fulfilled or violated, has the same right to fight for it through efforts to obtain his rights. Apart from the individual efforts themselves, the state also has a role to play in supporting and maintaining a sense of justice, comfort and security for all its citizens. Therefore, apart from regulations, law enforcement officers are the state's tools to enforce justice.

In a series of law enforcement processes in a criminal case, the intervention of law enforcement officers, especially when the investigation and investigation process is vital. So that the continuity of investigations and investigations in a criminal case is very important, and law enforcement must swiftly investigate and resolve a case. In other words, the success of the state in upholding justice also depends on law enforcers, especially in this case investigators, investigators, and public prosecutors.

As for state institutions that have the authority to carry out investigations other than certain Civil Servants, the Indonesian National Police (Polri) can also carry out their functions to uphold justice in the midst of people's lives. In the National Police Chief Regulation (Perkap) number 6 of 2019 concerning Criminal Investigation, Investigators are Police officers who are authorized by law to conduct investigations. Not infrequently, an investigation process encounters problems/interferences or is even stopped without a clear reason from the investigator. Investigators will essentially seek investigative action by collecting evidence so as to make a criminal act clear and find a suspect in a case, this is as stated in point (2) Article (1) of Law Number 8 of 1981 (KUHAP).

Termination of the investigation of a criminal case is the authority possessed by the investigator in dealing with a case that is considered no longer necessary to continue at the next stage of law enforcement. The law gives the investigator the authority to stop an investigation, namely the investigator has the authority to act to stop an investigation that has already been started. As in the case of criminal cases according to Decision no. 6/Pid.Prap/2022/PN Srg which was tried at the Serang District Court, where a company reported an alleged crime of embezzlement in office to the Jawilan Police, Serang, Banten. The Reporting Party in this case feels that he does not get his rights and justice as he wants to fight for because the Investigator issued an Investigation Termination Order or SP3 which according to the Reporter does not comply with the requirements, resulting in the case of alleged criminal acts being reported to be hampered, it can even be said to be

discontinued to be investigated. . So that the idea arises of why an investigation can be stopped and how it is implemented on the basis of the principles of Restorative Justice.

II. Research Method

Referring to the title and formulation of the problem, the research method used is a normative legal research method. The legal sources used are from the Legislation and secondary legal materials along with other legal sources.

III. Results and Discussion

Starting from the alleged embezzlement committed by workers from PT. Power Block Indonesia named Apip Hidayat. The company that supplies the goods in the form of light bricks finds that the goods ordered by the *customer* do not match what was requested. So *General Manager* of the company, Donny Widiyantanto, reported his suspicions about Apip Hidayat to the Jawilan Sector Police in Serang, Banten. He suspected that Apip had committed embezzlement in office or through his capacity as the party responsible for the light brick order.

The local police issued a letter on the alleged crime report submitted by Donny, so that the police conducted a re-enactment. This incident involved 2 people, namely Ahmad Subur Burhan and Muhammad Akbar, respectively, as drivers and freight forwarders who were contacted by Apip Hidayat. According to Ahmad's statement, he was asked to transport *rejected* goods and other types of goods, so that the goods sent as a whole were suspected to have been mixed with those not provided by PT. Power Block Indonesia which results in the delivery of goods that are not in accordance with the order as it should be. So where are the goods that have been prepared to be shipped and should be received by the buyer? This is what the company wants to know and it is suspected that there has been embezzlement in the office.

After conducting an investigation and requesting information from existing witnesses, on November 9, 2021 through Letter number: B-6009/M.6.10/E.oh.1/2021 after the holding of the case title, the file was returned by the Serang District Attorney and the company is asked to complete some of the requested documents such as the results of the audit to find out related to some items that are suspected to have been embezzled. However, the letter also explained that Apip Hidayat had the status of a suspect. The return of the file is intended for the Whistleblower to complete the file and conduct an audit of the company to find out more clearly about the actual events and losses experienced by the company. Not long ago, a Notification on the Progress of Investigation Results was issued which contained the delivery of case files, the return of case files or P-19, and additional examination of witnesses. However, on April 6, 2022, the Whistleblower found the issuance of a Termination of Investigation Order (SP3) which, according to information from the Police, stated that the issuance of the letter was for the sake of the law because of *Restorative Justice*.

In fact, up to the issuance of the SP3, no request for reconciliation was submitted by the suspect to the Reporting Party. The complainant, who in this case did not accept the issuance of the said letter, finally sued the local Police to the Serang District Court through a pre-trial process. But in the end, the Whistleblower, who in this case is the pre-trial applicant, was rejected for several reasons, namely, first from a formal point of view, the power of attorney included did not state the purpose of submitting the pre-trial, and then the applicant was late in attaching a power of attorney to the court. On the other hand, the

respondent, who in this case is the local Police, stated that the Prosecutor's Office should also be involved or have a role because the provision of SP3 was also based on the results of a joint case with the local District Attorney.

From the evidence attached to both the applicant and the respondent, there are discrepancies. This is contained in the decision, which states that the evidence attached by the Petitioner in the form of Notification of Termination of Investigation Number: SPPP/01/IV/2022/Sector dated April 06 and the Order for Termination of Investigation along with the Decision Letter on Termination of Investigation is not appropriate or in other words, it is different from the evidence of the same letter than the respondent which in this case is the Police who issued the SP3. This is of course an oddity. But this matter was not explored and questioned by the Judge. According to the judge, if there is an error in the context in the SP3 it does not materially affect the letter.

The investigators and the Prosecutor's Office have also conducted a case. As stated in Perkap number 6 of 2019 concerning Criminal Acts Investigation Article 9 paragraph (2) The results of the case title that decide:

- a. Is a criminal act, proceed to the investigation stage;
- b. Does not constitute a crime, the investigation is terminated; and
- c. Cases of criminal acts that are not under the authority of the National Police Investigator, the report shall be submitted to the competent authority.

In this case, the Reported Party also expressed its objections to the reported parties, which should also be from the Prosecutor's Office. Because the Prosecutor's Office returned the file and asked for the file to be completed. According to the statement from the reported party, apart from the absence of reporting for the Prosecutor in charge of this case, the Prosecutor also admitted that he had repeatedly submitted the request to complete the file immediately, but neither received a response nor received a positive response from the complainant. The Prosecutor's Office has also conducted a case, which resulted in the return of the file. In terms of investigative authority, the case being investigated is not a special crime, so it is the authority of the National Police Investigator. Criminal investigation activities consist of:

- Investigation;
- commencement of the investigation;
- Forced effort;
- Inspection;
- Determination of the suspect;
- Filing;
- Submission of case files;
- Submission of suspects and evidence; and
- Termination of investigation.

The reporter as referred to feels that the termination of the investigation is unfounded, and inconsistent with *Restorative Justice*. For that beforehand, what are the conditions for the issuance of a warrant for the termination of investigation. According to Article 109 Paragraph (2) of the Criminal Procedure Code, the termination of an investigation can be carried out if there is not enough evidence, then if the case being investigated turns out to be not a criminal act, and because it was stopped for the sake of law, in this case if the case has been processed previously or even has been decided, or the suspect dies, or has expired.

If you look at the provisions on the conditions for stopping an investigation, in the event that there is not enough evidence, the investigation process is still ongoing and it cannot be said that there is not enough evidence, it's just that it has not been found clearly.

To find out what is meant by the definition of "sufficient evidence", referring to article 183 of the Criminal Procedure Code, it is stated that the principle of the minimum limit of evidence is at least 2 (two) valid pieces of evidence, namely:

- a. Witness testimony;
- b. Expert Statement;
- c. Witness;
- d. Instruction;
- e. Defendant's Statement.

Investigators will essentially try to uncover the facts and evidence when a criminal act occurs with the aim of finding the suspect. Through the statements of the witnesses, no information has been found that gives clues to who is believed to be the main suspect who caused the loss through the said crime.

However, referring to the letter issued by the local Prosecutor's Office, it states that the case in question has also advanced to the investigation stage and a party has been designated as a suspect, which means that in the process from investigation to the investigation, at least elements of the existence of an investigation have been found. criminal act. An Investigation Termination Order can be issued by an Investigator, on the basis that the investigation is closed for the sake of law, including for the following reasons:

- a. *Nebis in idem*

A person can no longer be prosecuted for the second time on the basis of the same act. The case concerned has been tried and the case has been decided by a judge or court competent for that matter in Indonesia, and the decision has obtained permanent legal force.

- b. The suspect dies

The investigation must be stopped if the suspect dies. And the case cannot be delegated to other people such as the child or family of the suspect. In the science of criminal law, criminal responsibility is a personal or individual responsibility, meaning that it cannot be imposed on others.

- c. Expiration After exceeding a certain time limit, a criminal act cannot be prosecuted on the grounds that the crime has passed the time limit or has expired, (Article 78 of the Criminal Code). Logically, if a person who has committed a crime has removed the authority to sue before a court session, of course it is useless to carry out an investigation and examination of that person. Therefore, if the investigator finds a situation like this, he must immediately stop the investigation and examination. The expiration period referred to in Article 78 of the Criminal Code, among others: The expiration

- of one year for all violations and for crimes committed with printing equipment;
- After a period of six years for a crime punishable by a fine, imprisonment or imprisonment not exceeding three years in prison;
- Twelve years have passed for all crimes punishable by a prison sentence of more than three years;
- Eighteen years pass for all crimes punishable by the death penalty or life imprisonment;

- e. Or for a person who at the time of committing a crime has not yet reached the age of eighteen years, the expiration period referred to in points 1 to 4, is reduced to one third.
- d. The law or article on which the claim is based has been revoked or declared to have no validity based on a court decision;

- e. Not a crime or the defendant was under the age of 8 years at the time of committing the crime.
- f. There are no criminal complaints.
- g. Suspect suffers from mental illness A person with mental illness, either continuously or permanently, is legally unable to account for his actions. It cannot be known with certainty whether his actions were carried out consciously or whether he understood the consequences of his actions. Regarding this matter, it is regulated in Article 44 of the Criminal Code which reads:
 - (1) Whoever commits an act that cannot be held accountable to him because his soul is disabled in growth or is disturbed due to illness, will not be punished.
 - (2) If it turns out that the act cannot be held accountable to the perpetrator because his mental growth is impaired or is impaired due to illness, the judge may order that the person be admitted to a mental hospital for a maximum of one year as a probationary period.

From the terms of termination of the investigation above, the reporting party did not find a definite reason according to the law. The investigator also stated that the issuance of this Order to Terminate Investigation was based on *Restorative Justice*.

If it is based on *Restorative Justice*, the investigator in this case should invite the suspect and also the victim together and involve the community in general, in order to reach a meeting point and the best peace solution that can be conveyed and heard by both parties. Because actually law enforcement through *Restorative Justice* is an effort to protect witnesses and victims.

The form of implementing the concept of *Restorative Justice* is usually done by holding mediation between the suspect and the victim to negotiate a mutual agreement in resolving cases. In some cases, the perpetrator is asked to pay a sum of money to the victim and the victim apologizes so that the case does not go to court. A *win-win solution* that accommodates the interests of victims and suspects. There are many other alternatives that can be used as a form of implementation of this concept. In implementing the concept of *Restorative Justice*, POLRI investigators use the discretionary powers granted by law.

The things mentioned above that make the Whistleblower in this case do not agree with the SP3 that has been issued, because apart from being material, the formal procedure for stopping the investigation must also pay attention to prior notification to the victim or the complainant. In this case, the victim feels that there is no notification or request for approval to stop the investigation. In addition, if referring to the applicable regulations, SP3 also requires approval from the Head of the Resort Police and the local area.

The basic principle of *Restorative Justice* is the existence of recovery for victims who suffer as a result of crime by providing compensation to victims, peace, perpetrators doing social work or other agreements. From the investigation process to the ongoing investigation, no one paid attention to the restoration of the victim's rights or at least to restore the condition of the victim's loss as before.

The opinion of experts regarding *Restorative Justice is to provide* an opportunity for perpetrators and victims to restore their relationship and at the same time provide an opportunity for perpetrators to come up with certain means to repair the losses suffered by the victims. Retributive justice places a major emphasis on punishing perpetrators for what they did. Distributive justice places a major emphasis on the rehabilitation of criminals. Meanwhile, restorative justice emphasizes the responsibility of the perpetrator as an effort to restore the suffering of the victim without compromising the interests of rehabilitation of the perpetrator as well as creating and maintaining public order.

Taufik Rachman is of the opinion that it is appropriate that during the investigation and pre-prosecution process if no minimum evidence is found, the Police or the Public Prosecutor (JPU) should stop the criminal case, because it will be useless if it is brought before the Assembly. The reason that can be put forward when using the basis that in a case there is not enough evidence is the release of the defendant according to the provisions of Article 191 paragraph (1) of the Criminal Procedure Code which reads: set free. However, in this case, the final stage of the investigation process is still waiting for the results of the audit and statements from witnesses, even in this case it is still unclear who the main suspect is. So that it cannot be said that the evidence is not found, but the evidence has not been found.

IV. Conclusion

An Investigation Termination Order (SP3) is a termination issued on the basis as stipulated in the laws and regulations regarding the conditions for the termination of an investigation of a criminal act. However, in this case, the meaning of these conditions was not clearly stated by the investigator. As for the fact that stronger evidence has not been found to conclusively find the perpetrators, it is as if this investigation has not been thoroughly investigated and further investigation is still needed. If the investigation is terminated on the basis of Restorative Justice, then from the victim's perspective, law enforcement agencies should provide understanding and try to protect the rights of the victim if at least the rights of the victim cannot be restored.

In addition to the responses given through the pre-trial process, the reported party emphasizes errors from the formal side of the complainant such as the contents of the power of attorney, the power of attorney, and the delay in filing the power of attorney which must be delegated to the clerk of the Court where the judicial process takes place. On the other hand, The local prosecutor's office also has a hand because the case has been carried out.

From the pre-trial trial, formally the petition needs to be considered again by the applicant, but the results of the pre-trial should be able to maximize through the material side, that there has been a termination of the investigation and the applicant in this case wants to know clearly which conditions are used as the basis. as a termination of this investigation in accordance with the provisions of the Criminal Procedure Code (KUHP).

Apart from that, the discrepancy in the evidence of the letter, especially SP3 which is attached between the Petitioner and the Respondent, raises questions because how the letter, which essentially has the same title, in the Judge's decision stated that the contents were different. So the letter from which party is the real letter? Although in this case the judge did not dig further, this occurrence seemed odd because the truth-seeking process had not been completed to its material roots.

In this case is actually only seeking justice, if restorative justice itself cannot restore the rights or losses that have been experienced by the victim, at least before the issuance of SP3, the investigator conveys first and does not immediately stop the investigation. Restorative justice should also pay attention to how the opinions of both parties, in this case the victim feels that they are not heard and also the opinion of the victim is not considered first.

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