

Research Article

Fighting Termination of Investigation Using Universal Sweeping Methods PMH Lawsuit

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ORCIDDwi Wahyono: <https://orcid.org/0009-0003-8783-8796>**Abstract.**

Police officers must act professionally, carefully, and cautiously when stopping an investigation from a report from the public, by stating that they did not find a criminal act in the report, so as not to harm the law that is just. Legal efforts to fight the act of stopping the investigation when there are indications that it is not carried out professionally, carefully, and cautiously, even if it is felt that there is an interest of the investigator or the investigator's superior or a certain party who has very strong economic or political power, is not regulated by Law Number 8 of 1981 concerning Criminal Procedure Law. This study aims to find a legal breakthrough to fight the termination of the investigation in a case that is indicated as a criminal act. This study was conducted with a legislative and conceptual approach. From analyzing the results of the discussion, it can be seen that a lawsuit for unlawful acts based on Article 1365 of the Civil Code can be used as a court order to 'force' investigators to continue the investigation process to the investigation stage, so that justice, which is the crown of law enforcement, can be achieved.

Keywords: act lawsuit, law, investigation, unlawful

1. Introduction

Indonesia is a constitutional state based on law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia that "Indonesia is a state of law." Law is a collection of regulations consisting of norms and sanctions that are closely related to human life or the entire community that refers to a very important system in the implementation of a series of law enforcement powers by law enforcement institutions, because all life lived by humans must be limited by law (Soedarto, 2000). This is also based on the fact that many individuals tend to ignore rules and regulations, thus becoming a threat to public order and security because it can give rise to criminal acts (Dubrovin, V. V., 2009).

Crime is a social phenomenon whose existence and development cannot be separated from and is always related to political, economic, social and cultural problems

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dw.59@unissula.ac.id**Published:** 3 November 2025Publishing services provided by
Knowledge E

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Selection and Peer-review under the responsibility of the 8th Legal International Conference and Studies Conference Committee.



in society (Muladi & Diah Sulistyani, 2016). Nowadays, almost every day we hear about various crimes that occur in Indonesia. To overcome these crimes, a criminal policy is needed. According to Peter Hoefnagels, criminal policy is a rational effort made by humans to overcome crime. The process of overcoming crime in Indonesia is supported by the criminal justice system. The criminal justice system is a crime control system consisting of police institutions, prosecutors, courts, and correctional institutions for convicts. In the criminal justice system, the subsystems must be integrated with each other (police, prosecutors, judiciary, and criminal enforcement) so that they can realize the objectives of criminal policy, namely social welfare and social defense (Barda Nawawi Arief, 2014).

Every legal object, whether society or legal entity, can violate the law, which in turn can harm third parties. In this case, the author emphasizes one of the legal subjects, namely people (*naturlijkpesoon*), who are then referred to as victims due to the actions of the suspect for certain reasons (Aaron, Thomas J., 1960). Certain things can be unlawful acts, the same person, either intentionally or due to human negligence resulting in losses to other parties or other people. Law Number 8 of 1981 concerning the Criminal Procedure Code, hereinafter the Criminal Procedure Code, stipulates the definition of a witness (victim), namely a person who can provide information for the purposes of investigation, prosecution and trial of a criminal case that he himself heard and experienced himself (KUHAP).

Fredrich Julius Stahl also revealed that there are at least 4 elements of the *rechtsstaat*, namely: 1. Guarantee of human rights, 2. The existence of a division of power, 3. The government is based on laws and regulations, and 4. The existence of an independent state administrative court. To support the implementation of the law, the government forms law enforcement officers, as in criminal law the law is divided into formal criminal law and material criminal law, what is meant by formal criminal law is the law that regulates how to punish someone who violates criminal regulations (is the implementation of Material Criminal Law). (Sayuti, 2011).

On that basis, law enforcement officers are absolutely necessary in maintaining Indonesia's sovereignty as a country of law, one of which is the Indonesian National Police (Polri). The duties of police officers throughout the world are basically similar, namely enforcing the law, protecting human lives and property. The police conduct investigations, inquiries and are subject to their policies in considering what steps investigators will take in a short time when faced with a crime for the first time (Surayin, 2004).

The Indonesian National Police (Polri) is an institution formed by the state to create order and security in society, both in terms of prevention, eradication or prosecution. When viewed in criminal procedure law, namely in article 1 point 1 of the Criminal Procedure Code, investigators are officers of the Republic of Indonesia state police or certain civil servants who are given special authority by law to conduct investigations. While in point 4 of article 1 of the Criminal Procedure Code it is stated that investigators are officers of the Republic of Indonesia state police who are given authority by this law to conduct investigations. From the explanation of the two articles, it can be said that the Police Institution is an institution that is given authority by the state which is expected to be able to assist in the process of resolving cases of crime and criminal violations (Munib, MA., 2018). The implementation of police duties has also been arranged in Law Number 2 of 2002 concerning the Indonesian National Police. Based on Law Number 2 of 2002, the duties of the Police can be seen based on article 13, namely:

- a. Maintaining public security and order,
- b. Enforcing the law,
- c. Providing protection, care and services to the community.

Furthermore, in order to prevent criminal acts against the community, the police have the authority regulated in Article 15 paragraph (1) letters (a) to (j), and Article 16 paragraph (1) letters (a) to (l) and paragraph (2). The community wants police who are always ready to protect the community from various kinds of disturbances. The community has the perception that every police officer can resolve the disturbances experienced with the best possible results, so that every member of the Police is required to know whether or not the community's perception of the actions they consider to be criminal acts is true. The process of examining whether or not a criminal act has occurred can be known through the investigation process, but before the investigation is carried out, an investigation process is carried out by investigators (Leden marpaung, 2009).

Investigation is a series of actions by investigators to search for and discover an event that is suspected to be a criminal act in order to determine whether or not an investigation can be carried out according to the procedures regulated in this law (KUHP), which is a rule to protect the interests, property and dignity of humans in order to realize justice. If in the investigation process no legal facts are found that there is a crime, the investigator must stop the investigation. Therefore, investigators must act professionally, carefully, cautiously and objectively so that there is no negative reaction from the reporter.

Meanwhile, both formal laws in the form of Law Number 8 of 1981 concerning Criminal Procedure Law and Regulation of the Chief of Police Number 6 of 2019 concerning Criminal Investigation do not regulate in a single article to correct or control or fight against 'termination of investigation' which is indicated not to be carried out professionally, carefully, cautiously and objectively, even those that are felt to have the interests of the investigator or the investigator's superior or certain parties who have very strong economic or political power. Therefore, the problem that will be described in this study is how to fight the act of terminating an investigation in a case that is indicated as a criminal act?.

2. Methods

This study was conducted with a statutory approach and a conceptual approach. The statutory approach was conducted by analyzing and reviewing laws and regulations related to the investigation and inquiry process as well as various legal rules used as the focus of the study (Said Sampara et al, 2017). Meanwhile, the conceptual approach is carried out in order to explore theories about concepts and understanding, especially those related to the research theme, namely efforts to resist the unjust act of terminating the investigation by the Indonesian Republic Police.

3. Result and Discussion

In a country of law, there is a principle that there are laws and regulations that govern every process of trying a crime. One of them is regarding investigation. Investigation itself is an action taken before any other action in the context of investigating a crime such as confiscation, search, arrest, detention and so on. Investigation is carried out to determine whether an event suspected of being a crime is true before finally proceeding to the investigation stage. Investigation itself has the principle of protecting and guaranteeing human rights because an event does not necessarily appear clearly as a crime. Once it is true that the event is considered a crime, it can be determined to proceed to the investigation stage (Muabezi, Zahermann Armandz., 2017).

In Chapter I, Article 1, point 5 of the Criminal Procedure Code (KUHP), it is regulated that:

“Investigation is a process of action to find and prove an event that is still suspected to be a criminal act in order to determine whether or not to continue a series of investigation processes in accordance with this law.”

Based on the statement above, it can be interpreted that the investigation process is a series of actions that are first carried out to prove whether or not a criminal act has occurred which can only be carried out by the Police Officers of the Unitary State of the Republic of Indonesia before an investigation in accordance with Article 1 number 4.

Investigations are conducted for the purpose of seeking, finding and proving that there has been an event/action that is still suspected of being a criminal act. After it is found that the event is a crime that is a criminal act, from here the investigator can determine and continue or not to carry out the investigation process. In addition, investigations are carried out with the aim of testing the truth of information that can be in the form of a report (complaint) or a direct incident captured by the authorities so that it can be used as evidence to be continued in further action. If the investigation process is not carried out first, it is feared that it will cause errors such as errors in arrest because investigators do not examine and test optimally from reports or cases that are still suspected of being a criminal act, so that if there is no evidence, the authorities also cannot search, arrest, confiscate, detain, summon, examine, and submit files to the public prosecutor before a series of investigation processes are carried out.

Investigation is not a series that is combined with an investigation, but rather a different action process but the function carried out is still part of the investigation. Investigation is a stand-alone method but is still in a sub of an investigation because investigation is a process before another action such as arrest, search, and others.

3.1. Legal Basis for Investigation by the Police

In the context of criminal justice, the gateway to upholding law and justice (access to justice) is through investigation and inquiry. This begins with a Report or Complaint submitted to law enforcement officers. Then based on the Report or Complaint, further action is taken in the form of an investigation conducted by the Investigator. The Investigation and Inquiry process is regulated in detail in Chapter XIV concerning Investigation, namely Articles 102-136 of the Criminal Procedure Code.

Article 1 number 5 of the Criminal Procedure Code explains that an investigation is a series of investigator actions to search for and find an event suspected of being a

criminal act in order to determine whether or not an investigation can be carried out according to the methods regulated by law. The results of this investigation can come from various sources, including public reports, findings by police officers, or information from other sources. If the results of the investigation indicate sufficient initial evidence to suspect a criminal act, the investigation can be continued (Valentino Aquila De Wahyu, Aurelia Eka Junita, Amanda Destiana, Krisna Agus Setyabudi, Farrah Nidau Daini, and FX. Hastowo Broto Laksio, 2024).

Every member of the investigation in carrying out their duties and activities must always adhere to the 3 (three) principles of law enforcement, namely legality, necessity, and proportionality in carrying out criminal investigation activities. The legal basis that regulates is as follows:

a. Article 1 point 5 of the Criminal Procedure Code.

Article 1 point 5 of the Criminal Procedure Code states that the purpose of the investigation is:

1) To seek information and evidence to determine whether a reported or complained about event is a criminal act or not.

2) Complete the information and evidence that has been obtained to make it clear before further action is taken.

3) Preparation for the implementation of action and/or inspection.

b. Article 4 of the Criminal Procedure Code.

c. Article 5 of the Criminal Procedure Code.

d. Article 9 of the Criminal Procedure Code.

e. Article 102 of the Criminal Procedure Code.

f. Article 103 of the Criminal Procedure Code.

g. Article 104 of the Criminal Procedure Code,

According to Article 104 of the Criminal Procedure Code, the objectives of the investigation are:

1) Preliminary in order to prepare for the investigative actions to be taken.

2) Preventing Human Rights Violations.

3) Addressing Early Use of Coercive Measures.

4) Avoiding investigators from the potential risk of legal action arising precisely because of the investigative actions carried out.

5) Limit and supervise the implementation of investigations so that they are carried out openly.

h. Article 105 of the Criminal Procedure Code,

i. Article 111 of the Criminal Procedure Code

There are 2 different perspectives in viewing the function and authority of investigators, Yahya Harahap, SH, in his book divides the function and authority of investigators based on the law and investigator's orders. If based on the law, the function and authority of investigators are contained in article 5 of the Criminal Procedure Code (KUHP) including 4 parts, namely: (Diah Resti Vilani, Niken Kurnia Yunita, Ahmat Luqman Nanda and David Aldo Wijaya., 2023).

1. Receiving reports and complaints

The investigator will process a complaint or report of an event suspected of being a criminal act to law enforcement officers for investigation. A report or complaint has been explained in article 1 number 24 in conjunction with article 25 of the Criminal Procedure Code (KUHP). Based on Article 1 number 24 of the Criminal Procedure Code which states that "A person with the rights and obligations under the Law who submits a notification of an event that is still suspected of being a criminal act in the form of a report can be submitted to an authorized law enforcement officer."

The Criminal Procedure Code (KUHP) in Article 1 number 25 states that "Notification is a complaint which is a form of application or request by the complaining party to law enforcement officials who have been authorized by law to carry out their duties in taking action in accordance with applicable law".

In the next stage, an investigation is carried out if the authorized law enforcement officer has received a request in the form of a complaint or report, then the law enforcement officer who is tasked as an investigator is obliged to review, examine, and process the incident which is still suspected of being a criminal act.

2. Seeking information and evidence

If the incident reported by the interested party has been proven to be a criminal act, then the next task of the investigator is to collect facts and data in accordance with the criminal event that occurred. Based on the data and facts obtained, the investigator can determine whether a report of the incident is a criminal act or not. Then the facts and evidence obtained by the investigator will become material for the investigator in carrying out the investigation.

3. Ordering a suspected person to stop

This is contained in Article 5 of the Criminal Procedure Code (KUHP) which is to examine and ask for the identity of a suspected person and ask the suspected person to stop. From this article it can be understood that to examine a suspected person, the investigating officer, namely the police, does not need to request a special warrant or other letter because this action is reasonable for the investigating officer to do on a suspected matter. If the police have difficulty in this matter, then the path that can be taken in accordance with the law is that the investigating officer prepares a warrant to present or a warrant for the arrest of the suspected person before the investigator.

4. Other actions according to law

Other actions according to law are actions that take responsibility for all actions as long as they do not conflict with the law and can be carried out under compelling circumstances. Apart from that, other actions according to law may be taken if the function and authority at the request of the investigator are in the form of:

- a. A prohibition to leave a place, seizure, arrest, search
- b. A letter check
- c. Taking a picture of someone and taking fingerprints
- d. Bringing a suspected person to be brought before an investigator

Furthermore, regarding the implementation of investigative activities, it has been regulated in Article 5 of the Chief of Police Regulation (Perkap) Number 6 of 2019 concerning Criminal Investigation, which consists of 7 stages of criminal procedure law to seek the truth, including:

a) Crime Scene Management (TKP)

Crime scene management is carried out in order to collect all information from witnesses/victims/closest people to get a picture of the modus operandi of the crime that occurred and to find evidence, a clue, find the identity of the suspect, and witnesses or victims are needed to continue the investigation to the next stage.

b) Observation (Observation)

Observation or what is commonly known as observation is an activity carried out to monitor an object such as a suspected person, environment or place to obtain clarity and complete previously known facts and evidence and to seek information needed in the investigation process.

c) Interview

Interviews are conducted to complete previous information. In addition, interviews are also conducted to obtain information from several parties so that investigators can obtain

answers to events reported as criminal acts, either through open or closed interviews. This interview contains questions about 5W + 1H including what, who, where, when, why, and how.

d) Surveillance

Tailing is the act of following a person suspected of being a suspect or perpetrator of a crime. In addition to tailing a perpetrator suspected of committing a crime, investigators also monitor all movements of the activities, environment, habits, and distribution networks of the crime.

e) Undercover

Undercover is a method of gathering information or evidence secretly, usually done by infiltrating a specific target environment. The main purpose of undercover is to uncover the truth of a case or crime that is difficult to reach by normal means.

f) Undercover buy

Isis is a special technique in investigating narcotics crimes, where a police officer goes undercover as a buyer in a dark narcotics transaction, with the intention of arresting a person and the evidence they have.

g) Controlled delivery

Control delivery is a form of handover (goods: narcotics) under supervision is a special technique to uncover narcotics crimes where the police work together with one of the perpetrators as an informant, so that when the narcotics are received by people involved in the distribution of narcotics, evidence of the narcotics can be seized. Some call this technique a sting operation, because investigators must enter the network, then from within slowly spread poison to damage the network.

h) Tracking

Tracking functions as an act of searching or following the location of the perpetrator or someone suspected of using modern information technology. Through tracking, investigators work with Interpol/institutions/agencies/an agency related to tracking suspected criminal acts.

i) Document Research and Analysis (For certain cases)

Document analysis and research are only conducted in certain cases. Document analysis is conducted by checking documents that have been suspected of being related to criminal acts. This document research is also used to determine the background of the modus operandi of an event suspected of being a crime.

From the explanation above, it can be concluded that all tasks, authorities, and functions of the investigation are as evidence and to seek the truth in material form. The authority of the investigator also includes the authority of the investigator officer. Therefore, in addition to having the authority to investigate, each investigator also has the capability to carry out investigations. The authority of the investigation is now limited to conducting investigations. In the legal field, police officers who are assigned to conduct investigations by their superiors or leaders as investigators are given the task of conducting investigations. Officials who conduct investigations at the National Police are called detective investigators, and the investigation itself is called an investigation/detective (Adtila Prawoko, Ab'& Syukur, Neni Susilowati, Muhammad Ihsan Musyaffa, Fitri Aulia Hannan Nisa., 2024).

JG Brouwer argues that attribution is the authority given to a government organ (institution) or state institution by an independent legislative body. This authority is original, which is not taken from previously existing authority. The legislative body creates independent authority and not an expansion of previous authority and gives it to the competent organ (JG Brouwer & Schilder, 1998). So based on JG Brouwer, of course, if we discuss the authority and duties of the Police in carrying out its function as law enforcers, it should be based on the norm of authority that is born in its basic provisions, namely Law of the Republic of Indonesia Number 2 of 2002 concerning the National Police of the Republic of Indonesia, because the norm of authority is the basis for the legitimacy of an action in carrying out its duties and functions as law enforcers so that the authority should not be in conflict between law enforcers, because basically the authority is obtained from laws and regulations which are formal legality, meaning that which gives legitimacy to the action, then the substance of the principle of legality is authority, namely the authority obtained from laws and regulations which in this case is to terminate the investigation into a case.

3.2. Termination of Investigation in a Case

Investigation is the first step in a criminal case. Investigation is a series of procedures used by detectives to find and locate an incident they believe to be a crime, as well as to determine whether the incident actually occurred and gather evidence to identify the perpetrator and provide clues to the crime. Law enforcement officers, such as the police, investigate cases to gather evidence that may indicate a crime has occurred. This evidence can be in the form of testimony, documents, or clues.

In seeking information on a crime, investigators must be guided by the provisions of the Criminal Procedure Code in force in Indonesia, namely Law No. 8 of 1981, because the investigation process is the initial step that regulates all stages of criminal proceedings. The investigation stage is very important for the entire investigation process and this stage is also important for the criminal procedure process afterward.

Basically, the investigation aims to find “material events” that are suspected of being criminal acts. The results of the investigation are stated in the investigation report which is studied, understood, analyzed/processed so that it is useful information for the purposes of the investigation. Based on Article 1 number 5 of the Criminal Procedure Code concerning the legal definition of Investigation, it can be said that the Investigation stage is carried out within the framework of the Investigation process. In addition, there is also a continuity between the Investigation process and the Investigation. This is in accordance with the provisions of Article 1 number 5 of the Criminal Procedure Code, especially in the phrase “...determining whether or not an Investigation can be carried out...”. The continuity of the Investigation process with the Investigation is also seen in Article 102 paragraph (3) of the Criminal Procedure Code, that for actions that have been carried out by an Investigator, the Investigator is required to make a report and report it to the Investigator in the same jurisdiction.

Every incident that is known, reported, complained to the Police or investigators is not necessarily a crime. For that, an investigation process is needed to determine whether the incident is a crime or not. If it is a crime, the investigator in accordance with his/her obligations has the authority to carry out investigative actions according to the method specified in the Criminal Procedure Code. On the other hand, if it is not a crime, then the investigator has no legal obligation/the Criminal Procedure Code does not provide the authority to act as an investigator (Samosir, Djisman., 2013). In other words, there must be a cessation of the investigation.

However, in some cases, it is possible that the investigation will be stopped not because the investigator did not find a crime, but rather the termination of the investigation is indicated to have been carried out because the investigator was unprofessional, careless, or even because there was an interest coming from above the investigator, also from other parties who have very large economic or political power who want the case not to be raised to the investigation level. And the impact of this is that the reporting party suffers a loss by not getting the desired justice.

In order to fight for justice, both the Criminal Procedure Code and other regulations (Chief of Police Regulation Number 6 of 2019) do not provide an opportunity to fight against the 'termination of investigation', very different from the incident of 'termination of investigation' which the Criminal Procedure Code provides the door to test the validity or otherwise of the termination of investigation by the investigator (vide: Article 77 letter a) through the pretrial institution.

A legal breakthrough is needed to combat the act of 'stopping the investigation' by using the omnibus move of a lawsuit for unlawful acts (PMH) based on Article 1365 of the Burgerlijk Wetboek, where the judge's decision can later force investigators to raise the investigation to the level of investigation, and the results of the investigation of the case file are sent to the public prosecutor, the public prosecutor sends it to the court to test the truth in order to obtain justice (*res judicata pro veritate habetur*).

An unlawful act, which causes loss to another person, requires the person whose fault it is that the loss occurs, to compensate for the loss (Civil Code, Burgerlijk Wetboek), with indicators:

- a) contrary to the legal obligations of the perpetrator;
- b) contrary to the subjective rights of others;
- c) contrary to morality;
- d) contrary to propriety, accuracy and caution.

4. Conclusion

Based on the description above, it can be concluded that normatively, the regulation of criminal justice in Indonesia is regulated in Law No. 8 of 1981 concerning Criminal Procedure Code (KUHAP). KUHAP. In the process of terminating the investigation by investigators in certain cases that are indicated as not being carried out professionally, carefully, cautiously and objectively, even those that are felt to have the interests of the investigator or the investigator's superior or certain parties who have very strong economic or political power are not regulated by the KUHAP. In order to provide a sense of justice for reporters who long for justice, a legal breakthrough is needed to fight the 'termination of investigation' as mentioned above by filing a civil lawsuit for unlawful acts (PMH), the decision of which is used as the basis for reopening the investigation process that has been terminated and raising it to the stage of criminal investigation.

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