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Effectiveness of the Implementation of Termination of Investigation of Criminal Acts of Assault Based on Restorative Justice (Case Study of Nabire District Court)

Hardiansyah[1)] & Andri Winjaya Laksana[2)]
[1)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: hardiansyah.std@unissula.ac.id
[2)]Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Semarang, Indonesia, E-mail: andriwinjayalaksana@unissula.ac.id

Abstact. *In the General Guidelines of State Policy (GBHN) regarding law, it is stated that "legal material must be able to be used as a basis to ensure that society enjoys legal certainty, legal order, and legal protection based on justice and truth, and provides a sense of security and comfort." In compiling a scientific work, data is needed that can be accounted for its truth. This can be done by conducting research in a certain environment or scope in order to obtain accurate and factual data in accordance with the objectives desired by the author. For this reason, in this study the author uses the following research methods: In this study, three main approaches were used, namely the case approach, the concept approach, and the comparative approach, each of which has specific goals and benefits in the analysis. Current Mechanism for Termination of Investigation in Criminal Cases of Assault The mechanism for terminating investigations into criminal assault cases in Indonesia is regulated in Article 109 paragraph (2) of the Criminal Procedure Code, which gives investigators the authority to terminate investigations if insufficient evidence is found, the incident being investigated is not a criminal act, or the investigation is terminated by law.*

Keywords: *Criminal; Investigation; Mechanism; Termination.*

1. Introduction

Indonesia is a country of law. This is stated firmly in the explanation of the 1945 Constitution of the Republic of Indonesia (UUD 1945) that "The Republic of Indonesia is based on law (rechstaat)",[1] not based on mere power (machstaat).

[1]Muhammad Baharuddin and Akhmad Khisni, Effectiveness of Pleidooi by The Supreme Of Criminal Murder, Law Development Journal, Vol. 2 No. 2, June 2020, p. 10

As a country of law, Indonesia has characteristics that tend to assess people's actions based on applicable legal regulations. In the context of government, law holds the highest position. A country of law is defined as a country that includes various aspects of regulations that are binding and have strict sanctions if violated. In social life, there are rules in the form of written and unwritten laws, which if violated by citizens will be subject to sanctions, both physical and non-physical. These sanctions, both written and unwritten, are known as norms. These norms include legal norms, religious norms, customary norms, moral norms, and norms derived from customary law.

"Legal protection" will be able to provide a sense of security and peace with the certainty of the law. "Legal protection" and "legal certainty" are two inseparable things. Legal protection cannot be felt without legal certainty. Legal protection cannot be obtained without legal certainty. On the contrary, with the establishment of legal certainty, legal protection will provide benefits to the community. The legal certainty referred to here is that the application of the law can be accepted by the majority of the community or the majority of the population. Law enforcement in criminal law also includes punishment as a formulation of justice enforcement. Law enforcement can be felt which is based on public opinion is commensurate with the error. The words "commensurate with the error" are an elaboration of the legal apparatus both in the formulation of laws and in their enforcement or application.[2]

2. Research Methods

In compiling a scientific work, data is needed that can be accounted for its truth. This can be done by conducting research in a certain environment or scope in order to obtain accurate and factual data in accordance with the objectives desired by the author. For this reason, in this study the author uses the following research methods: In this study, three main approaches were used, namely the case approach, the concept approach, and the comparative approach, each of which has specific goals and benefits in the analysis.

3. Results and Discussion

3.1. Current Mechanism for Termination of Investigation in Criminal Cases of Assault

Termination of investigation in criminal cases, including assault, is part of the investigator's authority which is regulated normatively in Indonesian criminal procedure law. Based on the provisions of Article 109 paragraph (2) of the Criminal Procedure Code, investigators can terminate investigations if based on the results of the investigation: (a) insufficient evidence is found; (b) the incident is not found to be a criminal act; or (c) the investigation is terminated by law for

[2]Leden Marpaung, 2002, Criminal Acts Against Life and Body, Sinar Grafika Jakarta, p. 1

certain reasons, such as ne bis in idem, the suspect has died, or the case has expired.[3]

The crime of assault as an ordinary crime (not a complaint crime), in principle, must still be followed up even without a complaint from the victim. This is because violations of a person's physical integrity are a form of threat to public order, so the state has an interest in processing it. However, in judicial practice, termination of the investigation can still occur for formal or material legal reasons. Some of these are the failure to fulfill the minimum requirement of two pieces of evidence, errors in classifying legal events, or because there are reasons for forgiveness and justification according to criminal law.[4].

In the formal legal aspect, the termination of the investigation can be based on the principle of by law. For example, if the suspect dies before the trial process begins, then in accordance with the principle of lex neminem cogit ad vana (the law does not force to do something in vain), the investigation must be stopped. Likewise, in the case where the same case has permanent legal force (nebis in idem), then a re-investigation can no longer be carried out, because it is contrary to the principle of legal certainty.[5]

However, the investigator's discretion to stop the case must still be limited by the principles of accountability and proportionality. Termination of investigation must be accompanied by adequate objective evidence and stated in the Examination Report (BAP). In addition, the investigator is required to notify the public prosecutor and the reporter in writing. If the reporter does not accept the decision, then he has the right to file a pretrial motion to test the validity of the termination of the investigation as regulated in Article 77 of the Criminal Procedure Code.[6]

In practice, the Nabire District Court Decision Number 67/Pid.B/2024/PN Nab provides an important example of the dynamics of stopping and reopening investigations in assault cases. In this case, investigators initially stopped the investigation on the basis of insufficient evidence and the existence of peace between the perpetrator and the victim. However, after the victim filed an objection and a case conference was held, the investigators together with the prosecutor's office decided to continue the legal process to the prosecution stage. In their decision, the panel of judges emphasized that peace does not immediately eliminate the criminal process because assault is an ordinary crime

[3]Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP), Article 109 paragraph (2).
[4]Barda Nawawi Arief, Anthology of Criminal Law Policy (Jakarta: Prenada Media, 2021), p. 115.
[5]Lilik Mulyadi, Basic Principles of Criminal Procedure Law in Judicial Practice (Bandung: Citra Aditya Bakti, 2022), p. 239.
[6]Andi Hamzah, Indonesian Criminal Procedure Law (Jakarta: Sinar Grafika, 2022), p. 202.

that must still be processed in the public interest.[7]

On the other hand, pretrial functions as a form of judicial supervision of the actions of investigators and public prosecutors. If the reporter or victim feels disadvantaged by the decision to terminate the investigation, he or she has the right to file a pretrial motion with the local district court. The pretrial judge will then assess whether the basis for terminating the investigation has fulfilled the formal and material legal elements. This provides a guarantee that the investigation is not terminated arbitrarily or for certain interests that violate substantive justice.[8]

In the case of assault, it is important to emphasize that even though reconciliation between the perpetrator and victim has been achieved, it does not automatically eliminate criminal responsibility. In the context of ordinary crimes, reconciliation can only be used as a mitigating consideration in the trial process, not as a basis for terminating the investigation. This is emphasized in various jurisprudence, including the Decision of the Nabire District Court Number 67/Pid.B/2024/PN Nab, which explicitly rejects the defendant's defense based on reconciliation, and orders that the legal process continue in order to ensure the upholding of law and justice.[9]

Therefore, termination of investigation must be positioned as an exceptional legal step, not as a routine policy or a response to social pressure alone. Investigators have an ethical and professional responsibility to ensure that every decision taken, including termination of investigation, is based on legal facts and not on compromises that could damage the integrity of the criminal justice system. The principle of due process of law must be maintained, including the victim's right to obtain legal certainty and justice through a legitimate and open legal process.

1) Reasons for Termination of Investigation

Termination of investigation in the Indonesian criminal procedure system is a form of limited discretion that can only be carried out based on legal reasons that have been determined in a limited manner in Article 109 paragraph (2) of the Criminal Procedure Code (KUHAP). There are three main reasons that can legally be the basis for terminating an investigation.

a. There is not enough evidence (Onschuldpresumptie).

Termination of investigation can be done if the investigator concludes that the evidence collected does not meet the minimum requirement of two valid pieces

[7]Decision of the Nabire District Court Number 67/Pid.B/2024/PN Nab, pp. 4–10.
[8]Andi Hamzah, Indonesian Criminal Procedure Law (Jakarta: Sinar Grafika, 2022), pp. 204–205.
[9]Decision of the Nabire District Court Number 67/Pid.B/2024/PN Nab, pp. 7–9.

of evidence as stipulated in Article 184 of the Criminal Procedure Code. This principle is also closely related to the principle of presumption of innocence which places a person as innocent before a court decision has permanent legal force[1]. Inadequate evidence must be tested objectively through a case title and not solely based on the investigator's subjective assessment.

b. The incident under investigation is not a criminal act.

The investigation may be stopped if the results of the examination show that the reported incident does not fulfill the elements of a crime as regulated in the laws and regulations. An example is in a situation of forced defense (noodweer) as regulated in Article 49 of the Criminal Code, or in a condition where the perpetrator cannot be held legally responsible for reasons of mental disorder as regulated in Article 44 of the Criminal Code[2]. In cases like this, even if an act occurs that is detrimental to the victim, criminal law cannot be applied to the perpetrator because of justification or forgiveness.

c. The law does not allow the investigation to continue (By Law).

Termination of investigation can also be done for formal or principle reasons, namely when the law expressly prohibits the continuation of the investigation. This includes several conditions such as:

a. *Same as the same*, namely when the same case has been decided by the court and has obtained permanent legal force as regulated in Article 76 of the Criminal Code.

b. *Expired*, namely when the prosecution period has expired as regulated in Article 78 of the Criminal Code.

c. The suspect has died, based on the principles of criminal law which state that criminal responsibility is individual and cannot be transferred to heirs, as stated in Article 77 of the Criminal Code[3].

These reasons are limited and must be proven administratively and accompanied by official notification to the public prosecutor and the reporting party or victim. In the event of an objection to the termination decision, the injured party may take pretrial remedies as regulated in Articles 77 to 83 of the Criminal Procedure Code.

2) Procedures and Authorities

Legally, termination of investigation is a form of discretion held by investigators in the criminal justice system in Indonesia. This provision is regulated in Article 109 paragraph (2) of the Criminal Procedure Code (KUHAP), which states that if an investigator terminates an investigation for legal reasons, then the decision must be notified in writing to the public prosecutor, the reporter, and/or the

parties concerned in the case.[10]. This notification serves as a mechanism for transparency and accountability, as well as a form of respect for the rights of victims or reporters to know the progress of the case.

If the reporter or related party does not accept or feels disadvantaged by the investigator's decision to stop the investigation, the Criminal Procedure Code provides legal space through a pre-trial mechanism. This is regulated in Article 77 letter a of the Criminal Procedure Code, which states that the district court has the authority to examine and decide on the validity or otherwise of the termination of the investigation carried out by the investigator.[11]. Thus, the pretrial institution functions as a judicial control over investigators' actions that are considered to have the potential to deviate from legal procedures or do not meet the principles of justice. In Romli Atmasasmita's view, "pretrial control is a measuring tool for the integrity of the investigation as an initial process of criminal justice, so it must be based on the principles of legality and accountability"[12].

3) Related Jurisprudence

Jurisprudence plays an important role in forming legal standards related to the termination of investigations in criminal justice practices in Indonesia. Although the Criminal Procedure Code (KUHAP) has provided a normative basis for investigators to terminate investigations as stated in Article 109 paragraph (2), in its implementation this authority must be subject to the principles of legality, sufficiency of evidence, and the interests of justice. In this context, the pretrial institution has a strategic position as an instrument of judicial supervision of investigators' discretion in order to prevent abuse of authority.[13].

One important precedent in this case is the Decision of the Bandung District Court Number 04/Pid.Prap/2017/PN.Bdg, which expressly annulled the investigator's decision to stop the investigation. In his considerations, the judge stated that the investigation process should have continued because there was sufficient initial evidence to bring the case to the prosecution stage. The judge considered that the termination of the investigation in the case was a form of violation of the principle of due process of law and was a disregard for the reporter's right to obtain justice.[14]. This decision strengthens the principle that the authority to terminate an investigation is not an absolute right of the investigator, but must be carried out objectively and based on strict legal parameters.

[10]Republic of Indonesia. (1981). Law Number 8 of 1981 concerning Criminal Procedure Law.
[11]Andi Hamzah. (2008). Indonesian Criminal Procedure Law. Jakarta: Sinar Grafika.
[12]Atmasasmita, R. (2001). Legal Reform, Human Rights & Law Enforcement in Indonesia. Bandung: Mandar Maju.
[13]Arief, Barda Nawawi. (2008). Selected Chapters on Criminal Law. Jakarta: Prenada Media.
[14]Decision of the Bandung District Court Number 04/Pid.Prap/2017/PN.Bdg.

A similar decision was also issued by the Supreme Court in case Number 12 K/Pid/2011. In its decision, the Court stated that the termination of the investigation which was not based on legal reasons as referred to in Article 109 paragraph (2) of the Criminal Procedure Code, namely because there was insufficient evidence, the alleged incident did not constitute a criminal act, or by law constituted an act which was legally flawed and therefore could be cancelled by the court.[15]. This decision emphasizes the importance of caution and integrity in the application of discretion by investigators to prevent violations of the principle of substantive justice.

The most recent relevant case study is the Nabire District Court Decision Number 67/Pid.B/2024/PN Nab, which again strengthens the legal position that termination of investigation must be legally accountable. In this case, the pretrial judge granted the plaintiff's request after assessing that the investigator did not have sufficient legal basis to stop the investigation process. Although the investigator stated that there was insufficient evidence, the trial revealed that there was a number of relevant pieces of evidence available, including witness statements, visum et repertum, and other clues that were deemed sufficient to bring the case to the prosecution stage.[16].

Thus, jurisprudence not only serves as a reflection of fair judicial practices, but also as a normative bridge between written legal norms and the demands of justice that develop in society. It plays a transformational role in strengthening the principles of the rule of law, as well as encouraging the renewal of the criminal procedure system that is more humanistic, accountable, and in favor of substantive justice.

4. Termination Based on Restorative Justice

In the dynamics of the development of Indonesian criminal law, the Restorative Justice approach has begun to occupy an important position as an alternative for resolving cases, especially for minor crimes such as simple assault as regulated in Article 352 of the Criminal Code (KUHP). One of the normative bases that encourages the use of this approach is the Circular Letter of the Chief of Police Number SE/2/II/2021, which provides guidelines for law enforcement officers in resolving criminal cases through peaceful mechanisms, as long as they meet certain requirements.[17].

In the SE Kapolri it is emphasized that resolving cases through a Restorative Justice approach is possible if several conditions are met, namely: (1) the crime

[15]Supreme Court Decision Number 12 K/Pid/2011.
[16]Decision of the Nabire District Court Number 67/Pid.B/2024/PN Nab.
[17]Indonesian National Police. (2021). Circular Letter of the Chief of Police Number SE/2/II/2021 concerning Ethical Cultural Awareness in Solving Problems in Society. Jakarta: Indonesian National Police.

committed does not cause serious injury or result in death; (2) it is not a crime that is committed repeatedly; and (3) a peace agreement has been reached between the perpetrator and the victim, accompanied by an apology and good faith to restore social relations.[18]. This provision provides a basis for investigators to stop investigations, not merely for formal reasons such as insufficient evidence, but as a form of recognition of the values of social recovery.

The effectiveness of the Restorative Justice approach in practice can be analyzed through the Case Study of the Nabire District Court Decision Number 67/Pid.B/2024/PN Nab. In this case, the investigator decided to stop the investigation on the basis of peace between the reporter and the accused in a case of minor assault. However, in the pretrial motion, it was revealed that the termination of the investigation was carried out without a valid procedure, and without any official documentation regarding the peace agreement. Furthermore, the victim stated that he had never agreed to a peaceful settlement and still wanted the case to be processed legally.[19].

The panel of judges in the decision considered that the termination of the investigation carried out by the investigator was contrary to the provisions of Article 109 paragraph (2) of the Criminal Procedure Code and was not in line with the principle of Restorative Justice as regulated in the SE Kapolri. The judge stated that there was no authentic evidence regarding the peace agreement, and no explicit agreement was found from the victim. Therefore, the pretrial motion was granted, and the investigator was ordered to continue the investigation process.[20].

From this case study, it can be concluded that the implementation of Restorative Justice as a basis for termination of investigation still faces serious challenges in practice, especially related to aspects of documentation, transparency, and the validity of the victim's consent. Although conceptually this approach offers a more humane solution in resolving minor cases, its effectiveness is highly dependent on the professionalism of law enforcement officers, active participation from all parties involved, and a strong and sustainable judicial oversight mechanism.

In addition, Restorative Justice must be viewed as a participatory justice process, where victims are not only objects in the administration of justice, but as subjects who have full rights to agree or reject peace, especially if the settlement is considered not to reflect the sense of justice that should be. Therefore, more comprehensive technical guidelines and ongoing training for investigators are

[18]Ibid
[19]Decision of the Nabire District Court Number 67/Pid.B/2024/PN Nab.
[20]Ibid

needed to prevent the misuse of this approach as a shortcut in handling cases.[21].

In the context of updating criminal procedural law, it is appropriate that the mechanism for terminating investigations based on Restorative Justice be explicitly regulated in the Draft Criminal Procedure Code (RKUHAP). This regulation must emphasize procedural aspects, clarity of victim participation, and oversight mechanisms by the public prosecutor or court to ensure accountability and integrity of the investigation process.

However, the application of the Restorative Justice approach in law enforcement practices in Indonesia still encounters various obstacles, both structurally and culturally. Structurally, the Criminal Procedure Code has not accommodated the termination of investigations based on Restorative Justice as a legitimate legal reason. Article 109 paragraph (2) of the Criminal Procedure Code only recognizes three reasons for terminating an investigation, namely insufficient evidence, not a criminal act, and by law. This raises legal problems when the termination of an investigation is carried out only based on a circular, which is non-legislative in nature.[22].

Furthermore, the legal culture in the environment of law enforcement officers and society tends to place the criminal justice process as the only way to resolve cases, so that termination of investigation after the prosecution stage is considered difficult or even taboo. This condition illustrates that the existing legal culture still places formal legalism as the main paradigm in criminal law enforcement.

3.2. Weaknesses in the Current Investigation Termination Mechanism in Criminal Assault Cases and What Solutions Are There to Overcome These Weaknesses.

Formally, investigators cannot show the existence of official documents, such as a valid peace agreement report signed by the parties, which is the basis for terminating the investigation. In fact, in accordance with the provisions of the Circular Letter of the Chief of Police Number SE/2/II/2021, a peaceful resolution of the case can only be carried out if there is a voluntary agreement between the perpetrator and the victim, accompanied by an apology and commitment from the perpetrator to restore social relations. [23] . Without valid written documentation, the act of terminating an investigation becomes vulnerable to

[21]Marlina. (2009). Juvenile Criminal Justice in Indonesia: Development of the Concept of Diversion and Restorative Justice. Bandung: Refika Aditama.
[22]Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law (KUHAP), State Gazette of the Republic of Indonesia 1981 Number 76.
[23]Indonesian National Police. (2021). Circular Letter of the Chief of Police Number SE/2/II/2021 concerning the Implementation of Restorative Justice in Handling Criminal Cases. Jakarta: National Police Headquarters.

manipulation and raises doubts about the integrity of the legal process being carried out.[24]

Furthermore, substantively, the process of terminating the investigation in the case did not obtain explicit approval from the victim. In the pretrial process that was submitted, the victim firmly expressed objections to the settlement of the case through amicable means, and wanted the legal process to continue to the prosecution stage. This situation reflects that the approach used does not heed the principle of participatory justice, which is the main foundation of Restorative Justice. This principle demands active involvement and voluntary approval from all parties affected by the crime, especially the victim.[25].

Another obstacle that also strengthens the invalidity of this mechanism is the absence of a legislative legal basis that explicitly regulates the termination of investigations on the basis of Restorative Justice. Article 109 paragraph (2) of the Criminal Procedure Code only recognizes three reasons for terminating investigations, namely: insufficient evidence, the act does not constitute a crime, and by law. Thus, the use of the restorative approach does not have a strong normative basis in the applicable criminal procedure law, because it only relies on the Circular Letter, which in the hierarchy of national legal norms occupies a position below the law.[26].

The problems that occurred in the decision show that the Restorative Justice approach, although in principle promising the restoration of social relations, still requires significant strengthening in terms of regulations, operational procedures, and monitoring mechanisms. Without an adequate legal and technical framework, the use of this approach is feared to be misused, and actually harm the principle of justice that is the soul of the criminal law system itself.

As a solution to these weaknesses, it is necessary to establish imperative regulations, either in the form of laws or government regulations, which regulate in detail the mechanism for terminating investigations based on Restorative Justice. These regulations must at least include procedures for implementing penal mediation, forms and formal evidence of peace agreements, mechanisms for actively involving victims, and external verification procedures by authorized institutions, such as the prosecutor's office or independent supervisory institutions. In addition, it is necessary to increase the capacity of investigators through training on restorative communication and penal mediation techniques,

[24]Andriani, S. (2023). Restorative Justice in Indonesian Criminal Law: Theory and Practice. Jakarta: Prenada Media.
[25]Lubis, M. (2020). “Evaluation of the Implementation of Restorative Justice in the Investigation of Minor Crimes.” Journal of Law and Development, 50(3), 311–328. https://doi.org/10.21143/jhp.vol50.no3.2671
[26]Law of the Republic of Indonesia Number 8 of 1981 concerning Criminal Procedure Law.

to ensure that this approach is truly implemented professionally, responsibly, and in accordance with the principles of restorative justice.[27].

1. Substantial and Procedural Weaknesses

One of the fundamental weaknesses in the implementation of the Restorative Justice-based investigation termination mechanism is the absence of valid formal documentation regarding the peace agreement between the perpetrator and the victim. In the case handled by the Nabire District Court with Number 67/Pid.B/2024/PN Nab, which concerned the defendant Irhanas Sasarary alias Anas who was charged with the crime of assaulting Nurlaela Homba, the investigator stated that a peace agreement had been reached between the two parties. However, no official documents were found, such as a peace report or a written statement from the victim stating their agreement to the termination of the investigation. The absence of this document indicates a violation of the principles of accountability and transparency in the legal process, and has the potential to weaken the legal validity of the termination of the investigation carried out. This certainly raises doubts about the sustainability of the legitimate and fair investigation termination mechanism according to applicable law.[28]

In addition to substantial weaknesses, there are also weaknesses in the procedural aspect. One of them is the absence of standards or standard procedures regarding the form and substance of peace documentation in the process of terminating an investigation. Without clear regulations regarding standards for peace documentation, not only is the peace settlement process carried out without clear supervision, but it also has the potential to open up loopholes for abuse of authority by investigators. This is where the role of the prosecutor's office as a public prosecutor becomes crucial, because they have a supervisory function to ensure that the termination of the investigation is carried out legally and fairly. Without verification or supervision from the prosecutor's office, this practice can open the way for abuse of power, which in turn can lead to the practice of impunity, especially in cases of minor to moderate crimes, such as the abuse that occurred in this case.[29]

The violent incident that occurred on March 27, 2024 began when the defendant, Irhanas Sasarary alias Anas, was watching television at home. At the same time, the defendant received a message via Facebook from a woman, which was seen by the victim witness, Nurlaela Homba. The message triggered jealousy and anger in the victim witness, but the defendant ignored the anger

[27]Rahman, F. (2023). "The Urgency of Penal Mediation Training for Law Enforcement Officers." Journal of Restorative Law, 2(2), 145–162.
[28]Winarno, B., & Siahaan, F. (2020). Principles of Restorative Justice in the Criminal Justice System in Indonesia. Jakarta: Pustaka Keadilan.
[29]Setiawan, H. (2019). Prosecutorial Supervision in Restorative Justice: Indonesian Criminal Law Perspective. Yogyakarta: Pustaka Pelajar.

and continued his activities. After work, the defendant went to consume alcoholic drinks of the bobo type with his friends. That evening, the defendant returned home to Jalan Kelapa Dua, Kalibobo Village, Nabire Regency.[30]

This incident illustrates the escalation of violence that occurs due to emotional tension triggered by jealousy, exacerbated by the defendant's consumption of alcohol. This adds complexity to abuse cases, where violence is not only rooted in interpersonal tensions, but is also influenced by external factors such as alcohol. This incident is a clear example of how domestic violence can develop from simple verbal confrontations to serious physical abuse.[31]

2. Positive Legal Vacuum

In the framework of positive Indonesian law, legitimate reasons that can be used as a basis for terminating an investigation are explicitly regulated in Article 109 paragraph (2) of the Criminal Procedure Code (KUHAP). This article states that investigators can stop an investigation if they conclude that there is insufficient evidence, the incident being investigated does not constitute a crime, or the investigation cannot be continued by law.[32]. However, there is not a single provision in the Criminal Procedure Code that explicitly regulates the termination of an investigation based on reconciliation between the perpetrator and the victim, or a restorative justice approach as an alternative to resolving criminal cases.

In practice, termination of investigation based on a restorative approach generally refers to the provisions in the Circular Letter of the Chief of Police (SE Kapolri) Number SE/8/VII/2018 concerning the Implementation of Restorative Justice in the Settlement of Criminal Cases, as well as Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice[33]. Although these two legal instruments provide an administrative framework for law enforcement officers, it should be noted that in terms of the hierarchy of legal norms, circulars and regulations of the Chief of Police do not have an equal standing with laws as stipulated in Article 7 of Law Number 12 of 2011 concerning the Formation of Legislation.[34]

The lack of integration between normative provisions in the Criminal Procedure Code and the policy approach regulated through non-legislative legal

[30]Dwiastuti, M. (2022). Case Study of Domestic Violence in Indonesia. Surabaya: Media Pustaka.
[31]Ginting, A. (2023). The Impact of Alcohol in Domestic Violence: Psychological and Legal Perspectives. Medan: Publisher of the University of North Sumatra.
[32]Republic of Indonesia. (1981). Criminal Procedure Code (KUHAP). Law Number 8 of 1981.
[33]Indonesian National Police. (2021). Regulation of the Indonesian National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. Jakarta: Indonesian National Police.
[34]Republic of Indonesia. (2011). Law Number 12 of 2011 concerning the Formation of Legislation. State Gazette of the Republic of Indonesia 2011 Number 82.

instruments has the potential to create a legal vacuum and legal uncertainty in its implementation. The absence of a legal basis at the level of a law to accommodate the termination of investigations based on Restorative Justice can give rise to legitimacy problems in law enforcement practices. In such conditions, the authority of investigators to terminate cases on the basis of peace becomes vulnerable to subjective assessments and potential abuse of power by certain officers, especially in cases involving social pressure or an unbalanced power relationship between the perpetrator and the victim.[35]

3. Lack of Supervision and Evaluation

One of the critical issues in the implementation of Restorative Justice-based investigation termination is the absence of adequate monitoring and evaluation mechanisms. Until now, there has been no provision that explicitly requires investigators to report or verify the results of peace agreements to institutions that have higher authority, such as the prosecutor's office or the court.[36]. The absence of this reporting mechanism results in minimal control over the validity and legality of the peace process which is used as the basis for terminating the investigation.

This lack of supervision not only impacts the legal aspect, but also has the potential to cause substantive injustice to victims. In the ideal Restorative Justice approach, the resolution of cases through peace must take place voluntarily, participatively, and transparently, and be supervised by the authorities so that there is no intimidation, pressure, or manipulation of victims. [37] Without institutional oversight, this process can turn into a means of one-sided compromise that is detrimental to the victim and contradicts the goals of restorative justice itself, which is to prioritize restoration, not just administrative resolution.[38]

Therefore, it is important to build an integrated monitoring system in the implementation of Restorative Justice, including by requiring reporting to the prosecutor's office and the courts and involving external monitoring institutions,

[35]Simanjuntak, S. (2020). Critique of the Legitimacy of Termination of Investigation in the Restorative Approach. Journal of Law and Development, 50(3), 491–510. https://doi.org/10.21143/jhp.vol50.no3.1234
[36]Indonesian National Police. (2021). Regulation of the Indonesian National Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. Jakarta: Indonesian National Police.
[37]Zehr, H. (2002). The Little Book of Restorative Justice. Intercourse: Good Books.
[38]Simanjuntak, S. (2020). Critique of the Legitimacy of Termination of Investigation in the Restorative Approach. Journal of Law and Development, 50(3), 491–510. https://doi.org/10.21143/jhp.vol50.no3.1234

in order to ensure accountability and integrity of the legal process.[39]

In addition to the absence of reporting and verification mechanisms, weaknesses in supervision are also evident from the absence of indicators or evaluative benchmarks used to assess the success or failure of the peace process in the context of criminal investigations. In many cases, including the Nabire District Court case, investigators only relied on verbal statements or informal agreements as the basis for terminating the investigation without conducting a comprehensive assessment of the legitimacy of the process or its impact on the victim.[40]In fact, within the framework of Restorative Justice, the success of a peace is not only measured by the achievement of a peace agreement, but also by the extent to which the process restores the victim's losses, improves social relations, and prevents the recurrence of criminal acts.[41]. Without an objective and measurable evaluation system, the implementation of Restorative Justice risks becoming a mere formality that only benefits the perpetrator or the authorities, while the interests of the victim are neglected.[42] Therefore, regulations are needed that regulate comprehensive evaluation and monitoring mechanisms, both internally by the police and externally through the role of independent institutions and civil society participation.[43]

4. Solutions That Can Be Offered

a. Codification of Restorative Justice Mechanisms in the Criminal Procedure Code

The fundamental and long-term normative solution is the need for explicit recognition of the mechanism for terminating investigations based on Restorative Justice through codification in the revised Criminal Procedure Code (KUHAP). Currently, the KUHAP only regulates three reasons for terminating investigations as stated in Article 109 paragraph (2), namely because there is insufficient evidence, the incident is not a criminal act, or by law.[44]. The absence of a Restorative Justice approach in the law has resulted in a positive legal vacuum and raised doubts about the legal legitimacy of terminating investigations based solely on peace. The codification should include provisions

[39]Rahardjo, S. (2019). Progressive Law: Law for Humans, Not the Other Way Around. Yogyakarta: Genta Publishing.
[40]Lestari, WD (2022). Supervision of Termination of Investigation Based on Restorative Justice in the Police. Journal of Law and Criminology, 3(2), 128–140.
[41]Zehr, H. (2002). The Little Book of Restorative Justice. Intercourse: Good Books.
[42]Daly, K. (2006). The Limits of Restorative Justice. In D. Sullivan & L. Tifft (Eds.), Handbook of Restorative Justice (pp. 134–145). New York: Routledge.
[43]Nugroho, A. (2023). Restorative Justice and Challenges of Its Implementation in Indonesia: Regulatory and Institutional Studies. Journal of Law and Justice, 12(4), 701–718. https://doi.org/10.25216/jhp.12.4.2023.701-718
[44]Republic of Indonesia. (1981). Criminal Procedure Code (KUHAP). State Gazette of 1981 Number 76.

on the formal and material requirements of the process of terminating investigations, the obligation to document peace agreements, verification and validation mechanisms by prosecutors or judges, and guarantees of the victim's right to reject a peaceful settlement if it is not considered fair or restorative.[45].

b. Standardization of Procedures and Protocols for Handling Restorative Justice

In practice, there is an urgency to establish standard operating procedures (SOPs) that regulate case resolution through the Restorative Justice approach. The SOP must be a standard guideline for investigators so that the implementation of Restorative Justice is not carried out haphazardly or by ignoring the principles of justice. This standardization at least includes penal mediation procedures carried out by neutral and independent parties, the preparation of standard peace agreement forms that can be used as written evidence, and the obligation to record and report the results of the peace into a national information system or database that can be monitored by other law enforcement agencies.[46]. Without clear SOPs, the Restorative Justice process is at great risk of creating legal uncertainty and opening up loopholes for manipulative practices.

c. Involvement of Independent Institutions and Public Prosecutors

It is important to strengthen the external oversight function in the Restorative Justice mechanism. In this case, the prosecutor's office as the case controller based on the principle of dominus litis has a strategic position to verify every termination of the investigation based on peace between the perpetrator and the victim.[47]. In addition, the involvement of independent penal mediation institutions, such as legal aid institutions, civil society organizations, or certified mediators, will prevent conflicts of interest and ensure the neutrality of the mediation process. The involvement of external actors can also function as a control tool and a driver of accountability, which has so far been a weak point in the implementation of Restorative Justice by investigators unilaterally.[48].

d. Increasing the Capacity of Law Enforcement Officers

Another structural solution is strengthening the capacity of human resources in the police and prosecutors. Law enforcement officers need to receive regular

[45]Nugroho, A. (2023). Restorative Justice and Challenges of Its Implementation in Indonesia: Regulatory and Institutional Studies. Journal of Law and Justice, 12(4), 701–718. https://doi.org/10.25216/jhp.12.4.2023.701-718
[46]Lestari, WD (2022). Standard Operating Procedures in Handling Restorative Justice by the Police. Journal of Law and Criminology, 3(2), 128–140.
[47]Prasetyo, A. (2021). Dominus Litis in the Indonesian Criminal Justice System: A Review of the Role of Prosecutors in RJ. Progressive Law Journal, 16(3), 341–356.
[48]Daly, K. (2006). The Limits of Restorative Justice. In D. Sullivan & L. Tifft (Eds.), Handbook of Restorative Justice (pp. 134–145). New York: Routledge.

training on the principles of Restorative Justice, penal mediation techniques, communication ethics in handling victims, and protection of victims' rights in every legal process. The low level of understanding of the officers regarding the basic values of Restorative Justice can cause this approach to be misinterpreted as merely an alternative for a quick solution (shortcut), not as a means of fair and comprehensive recovery.[49]. Therefore, the training does not only focus on procedural aspects, but also on internalizing the values of justice, empathy, and reconciliation.

From the legal culture side, the lack of understanding and acceptance of the community towards the concept of restorative justice also becomes an obstacle. The legal culture that still places formal justice as the only solution creates resistance from the parties, both victims and perpetrators.

To overcome these weaknesses, several steps need to be taken. First, revise or establish new legal norms in the Criminal Procedure Code or special regulations that explicitly regulate the termination of investigations based on restorative justice. Second, strengthen the legal structure through the preparation of technical guidelines and training of law enforcement officers so that discretion is used proportionally and transparently. Third, develop a legal culture through community legal education and disseminate the concept of restorative justice widely in order to gain social support.

3.3. Effectiveness of Termination of Investigation in Criminal Cases of Assault Based on Restorative Justice?

The effectiveness of the mechanism for terminating investigations in cases of criminal assault based on Restorative Justice basically depends on several important variables, namely the existence of an adequate legal framework, the quality of the implementation of penal mediation, the active participation of victims, and supervision from the competent authorities. In the context of Indonesian criminal law, the application of Restorative Justice has gained a place through various institutional policies, especially since the issuance of the Regulation of the Republic of Indonesia National Police Number 8 of 2021 concerning the Handling of Criminal Acts Based on Restorative Justice[50]. However, from a legal normative perspective, the Criminal Procedure Code as the main criminal procedure law has not explicitly accommodated the mechanism for terminating investigations based on this approach.[51]. This raises a dilemma between progressive institutional policies and the principle of legal certainty which demands a strong normative basis in the implementation of law enforcement.

[49]Zehr, H. (2002). The Little Book of Restorative Justice. Intercourse: Good Books.
[50]Regulation of the Republic of Indonesia National Police. (2021). Regulation of the Chief of Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice.
[51]Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP).

Restorative justice programs in New Zealand are even facilitated directly by the state, through Restorative Justice Providers, who work with the courts and prosecutors. This approach is considered very effective in reducing recidivism rates, improving social relations, and providing a more substantive sense of justice for both victims and perpetrators.

Compared to Indonesia, both Canada and New Zealand have provided a clear legal and institutional framework for restorative justice-based investigation termination. In Indonesia, this approach is still at the level of internal police policy (such as Perpol Number 8 of 2021), and has not been explicitly accommodated in the Criminal Procedure Code as formal law. This is a structural weakness that hinders the effectiveness of restorative justice-based investigation termination.

Learning from these two countries, Indonesia needs to strengthen the substance of the law by including restorative justice norms in the Criminal Procedure Code or separate laws, forming supporting structures such as neutral mediation facilitators, and building a legal culture that encourages restoration rather than retaliation.

4. Conclusion

Current Mechanism for Termination of Investigation in Criminal Cases of Assault The mechanism for terminating investigations into criminal assault cases in Indonesia is regulated in Article 109 paragraph (2) of the Criminal Procedure Code, which gives investigators the authority to terminate investigations if insufficient evidence is found, the incident being investigated is not a criminal act, or the investigation is terminated by law. In its development, along with the emergence of a paradigm of restorative justice law enforcement, the mechanism for terminating investigations can also be carried out based on the Restorative Justice approach, as accommodated in the Regulation of the Chief of Police Number 8 of 2021 concerning Handling of Criminal Acts Based on Restorative Justice. This mechanism places the interests of victims, perpetrators, and the community as the main orientation by emphasizing the restoration of social relations.

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