Journal of Social Research

P-ISSN: 2827-9832
E-ISSN: 2828-335x
http://ijsr.internationaljournallabs.com/index.php/ijsr

ARRANGEMENTS FOR THE TERMINATION OF INVESTIGATIONS IN THE PROSECUTION OF CRIMINAL CASES OF DOMESTIC VIOLENCE ACCORDING TO LAW NUMBER 8 OF 1981 CONCERNING THE CRIMINAL PROCEDURE LAW (CASE STUDY OF THE EAST DUMAI POLICE)

Dona Antonio, Risdalina, Indra Kumala Sari M
Faculty of Hukum, Labuhanbatu University
dadonaantonio@gmail.com, ***risdalinasiregar@gmail.com***, ***indrakumalsarim@gmail.com***

ABSTRACT

Law No. 23 of 2004 concerning Domestic Violence in article 1 paragraph 1 states that the integrity and harmony of a happy, safe, peaceful and peaceful household is the dream of everyone in the household. This study aims to find out and analyze the arrangements for stopping investigations in the prosecution of criminal cases. As well as knowing and analyzing about knowing the process of stopping investigations in domestic violence criminal cases. This research belongs to the normative type of research. So it can be known that investigators as members of the Police, in principle, have discretionary authority. Termination of investigation is a discretionary policy of law enforcement with the requirement that if the perpetrator reneges on the peace agreement by repeating the violent crime, it will be directly processed formally (court). Based on the explanation above, it can be concluded that investigators as members of the Police, in principle, have discretionary authority.

Keywords: Termination of Investigations, Criminal Cases, Domestic Violence

INTRODUCTION

Law Number 23 of 2004 concerning Domestic Violence, states that the integrity and harmony of a happy, safe, peaceful, and peaceful household is the dream of everyone in the household.

Thus, everyone within the scope of the household in carrying out their rights and obligations must be based on religion. This needs to continue to be developed in order to build household integrity.

To realize this wholeness and harmony, it is very dependent on everyone in the household, especially the level of quality of behavior and self-control of each person in the household.

The integrity and harmony of the household can be disturbed if quality and self-control cannot be controlled, which in the end can occur domestic violence so that insecurity or injustice arises against people within the scope of the household which can lead to acts of domestic violence (domestic violence).

The reality is that there are still women victims of domestic violence who try to hide the problems of domestic violence they experience because they feel ashamed of the social environment and do not want to be considered a failure in the household.

The mindset that considers that what happens in the family, even if it is an act of violence, is entirely a problem of 2 private households often makes the victim reluctant to complain about the violence that has befallen him.

Victims feel taboo and think it will open up their own family disgrace, especially in cases related to sexual violence.

Moreover, there is a thought that if you report the case to the police, the complainant can become a double victim which means that the victim must always repeat the unpleasant acts that have happened to him, starting with the Police until the court hearing so that it tends to add suffering/pressure to the victim (Soeroso, 2010).

Many people argue that domestic violence is an internal matter of the family within the household.

People who see or hear of domestic violence do not want to interfere in other people's domestic affairs.

Whereas everyone who sees and hears or knows the occurrence of domestic violence must make efforts according to their ability to prevent criminal acts from occurring or notify the authorities and law enforcement officials such as police, advocates, etc.

Domestic violence according to Article 1 paragraph (1) of Law No. 23 of 2004 concerning the Elimination of Domestic Violence is "any action against a person, especially a woman, resulting in physical, sexual, psychological, and/or domestic misery or suffering including threats to commit acts, coercion, or unlawful deprivation of liberty within the scope of the household".

The National Police of the Republic of Indonesia is one of the government institutions that serve as the spearhead of law enforcement in Indonesia.

The task carried out is not light because it will deal with the community. Law enforcement, not only must the public be aware of the law and obey the law but more meaningful in the implementation of the law as it should be and those who violate it must also be acted upon according to applicable legal procedures and provisions.

Polri as law enforcement in charge of maintaining order and ensuring public security, maintaining state safety, and maintaining the safety of people, objects, and the community including providing protection and assistance and giving and striving for the observance of citizens and the public to all forms of regulations.

The role of the police in the event of domestic violence is very important because when police receive reports of domestic violence, they must immediately explain the rights of victims to services and assistance.

In addition, it is also very important for the police to introduce their identities and emphasize that domestic violence is a crime against humanity so it is the duty of the Police to protect victims.

For justice seekers (whistleblowers, victims, even suspects/ defendants) of course, open information about what and why the investigating police decide something related to the handling of criminal acts is very important.

The general public or particularly justice seekers should at all times be able to know (or be informed) why a case could be lost.

The disclosure of information about it should be part of the responsibility of the police, not only as investigators but especially also as part of the civilian government responsible for criminal law enforcement.

Polri as an investigator because of its obligations has authority as stipulated in Article 7 paragraph (1) of the Criminal Procedure Code (KUHAP), furthermore this authority is also regulated in Article 16 paragraph (1) of Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia.

Handling domestic violence crimes sometimes the police take action to stop investigations because of the issuance of SP3.

The law mentions in a limited way the reasons that investigators can use as a basis for stopping an investigation. The mention or outlining of these reasons is important because it avoids the tendency of the investigating officer.

With this outline, the law expects that in exercising the authority to terminate the investigation, the investigator tests it on the prescribed grounds.

Not all of them are legally accountable, and at the same time provide a basis for parties who object to the lawfulness or invalidity of the termination of the investigation.

Likewise, for pretrial, the outlining of the reasons for the termination is a cornerstone in the examination of the pretrial hearing. If there is a request for examination of whether or not the investigation is valid or not.

Since the issuance of SP3, many people think that the police still lack optimal performance in handling domestic violence crimes in Indonesia.

METHOD

The research method used in this study is a normative legal research method. Normative legal research is legal research carried out by examining library materials or secondary data (Soekanto, 2007).

According to Peter Mahmud Marzuki (2010), normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced.

In this type of legal research, often the law is conceptualized as what is written in legislation or law is conceptualized as a rule or norm that is a benchmark for human behavior that is considered appropriate (Amiruddin, 2012).

RESULTS AND DISCUSSION

1.1 Arrangements for the Termination of Investigations in the Prosecution of Criminal Cases

For the Police, the legal basis of the authority to issue SP3 is not (only) the provisions of Article 109 of Law Number 8 of 1981 concerning the Criminal Procedure Code.

Even though Article 109 paragraph (2) of the Criminal Procedure Code stipulates the formal reasons for issuing SP3. For investigators from the police force, the provisions are more important and the distance is not too far.

Therefore, the concrete reference that regulates their behavior is the Police Chief Regulation Number 14 of 2012 concerning the Management of Criminal Investigations. And the Regulation of the Head of the National Police CID Regulation of the Head of the Criminal Investigation Agency of the National Police of the Republic of Indonesia Number 2 of 2014 concerning Standard Operating Procedures for Organizing Criminal Investigations.

The provisions of Article 76 paragraph (1) of Perkap 14/2012 stipulate that the termination of the investigation as referred to in Article 15 letter ,is carried out if:

a. There is not enough evidence;

If the investigating police do not obtain enough evidence to prosecute the suspect or the evidence obtained by the investigating police is insufficient to prove the suspect's guilt before the trial, the investigator has the authority to decide on the termination of the investigation.
The size of when and when an investigation should be terminated is determined by the availability of at least two valid pieces of evidence.

The two pieces of evidence in question must show, firstly, that a criminal act has been committed, and secondly that there is a suspect who is a perpetrator who is guilty of committing the crime.

The investigating police in this case must pay attention to the provisions of Article 183 of the Criminal Procedure Code which affirms the principle of "minimum limit of proof" (there are at least two pieces of evidence). Valid evidence based on the provisions of Article 184 paragraph (1) of the Criminal Procedure Code is witness statements, expert testimony, letters, instructions, and statements of the accused. Meanwhile, the definition of "sufficient evidence" can also be seen authentically in the provisions of Article 1 number 22 of PerKap 14/ 2012, namely: "Evidence in the form of a Police Report and 2 (two) valid evidence, which is used to suspect that a person has committed a criminal act as a basis for detention." So if it is viewed by the investigating police that in the case the evidence is not sufficient, the investigation of the case will be stopped. However, if in the future the investigating police (on their own initiative or at the urging/request of interested parties) can succeed in collecting sufficient evidence, then the case that has been stopped reopening Harahap (2002) means that the case is not stopped lastly. This is most likely also related to the chances of additional evidence or new evidence being found.

In practice, it was revealed that investigating police rarely used the excuse of insufficient evidence. The reason they are reluctant to use this is to prevent the impression (of the authorized superiors who are authorized to assess their performance or the whistleblower) that they are not working optimally in searching and finding evidence.
As a result, many cases later, instead of being in SP3 because of lack of evidence, seemed to be left (hanged). The term commonly used is in the *ice box* (Focus Group Discussion with members of the Police, 2015)
The term *ice box* is also known as a cold case which means that the case is cold because it is not continued and it is not clear the final result of the settlement process (Nasional, 2015).

b. The incident did not constitute a criminal offense;

If from the results of the investigation, the investigating police argue that what is alleged against the suspect (reported) is not a criminal act as regulated in the Criminal Code or other criminal rules (offenses outside the Criminal Code), the investigator has the authority to stop the investigation.

In reality, it is not so easy to find out whether an act committed by a person falls within the scope of a criminal act or is not a criminal act (entering into the scope of civil law or administrative law).

Sorting criminal cases from non-criminal cases (being solely administrative law matters) is also complicated by the many and variety of acts regulated in administrative law (requiring recommendations, permits, or dispensations that can be written or unwritten) which are often argued to eliminate the unlawful element of the acts committed.

The illustration of this is a case of environmental pollution or spatial planning violations (Silalahi, 1996).

All criminal acts of pollution and destruction of the environment can lose their unlawful nature due to the existence of permits (which can even be taken care of later *post-factum*) or simply neglect by state administration officials.

In cases of pollution and/or environmental destruction, the legal/non-legal determination of acts (meaning also the presence/absence of criminal acts) is also dependent on the presence/absence of permits (exceptions to general prohibitions) issued by the government (Law Number 32 of 2009 concerning Environmental Management, n.d.).

Similar problems arise in the field of spatial planning (Law Number 26 of 2007 concerning Spatial Planning, n.d.). The use of space (for buildings or other purposes) is always presupposed to have obtained permission from the government and this permit can even be followed to remove the punishable nature of the deed.

For example, in the form of a building without being equipped with permits or whose permits are in the process of being managed.

In such a case, the termination of the investigation or non-follow-up of community reports about alleged violations of criminal law is likely to occur because the investigator or the Police are reluctant to make missteps or doubts regarding the presence/absence of a permit that determines the nature of the crime.

In addition, many activities in the civil sector (buying and selling; borrowing and borrowing of goods) are related to criminal acts (fraud-embezzlement, even defamation or unpleasant acts).

In particular, it can be mentioned here the intersection between default or tort and fraud-embezzlement. Cases like this often arise and employers (who are bound by civil contracts) often use or "abuse" the investigator's authority (including the authority to use coercive efforts) as a means of suppressing the debtor or who commits defaults.

Likewise, those who feel that they have suffered losses (material or immaterial) due to unlawful acts (for example criticized through electronic media). This opens the opportunity for the person concerned to report the defaming party on the basis of a criminal defamation act, or based on an unpleasant act, simply so that the insulter/polluter is summoned and examined by the police or then, as the final target, sentenced to imprisonment by a criminal court.

The civil and criminal case between Prita Muliasari vs. RS Omni (and the Prosecutor's Office) that occurred in 2008-2009 is the best illustration of this. It is also alleged that the "abuse" or "use" of discretionary authority in the course of investigations for other purposes outside the criminal law (business interests, including collecting debts from delinquent debtors or taking hostages or simply out of the offense and for the sake of maintaining honor) occurs due to the stalling and slowness of civil litigation.

Not helping is the unpopularity of out-of-court dispute resolution (mediation and arbitration).

c. For the sake of the law, because:
   (1) The suspect died;
   (2) The case has expired;
   (3) The complaint was dismissed (specifically for complaints); and
   (4) The crime has obtained a judge's ruling that has permanent legal force (*nebis in idem).*

In practice, formal reasons such as those previously presented can be referenced. The reason that there is not enough evidence nor is it a criminal case at any time can be reopened often arises whenever new evidence is found that indicates otherwise.

Beyond that, another reason (not found in the above rule of law) is the existence of a peace agreement between the two parties followed by the revocation of the case or the "omission of the file" with the aim of eliminating the administrative traces of the reporting or complaint.

Peace agreements can arise because in principle cases are civil cases (accounts receivable, for example) and police interference is needed because they have the authority to apply coercive efforts (arrest, detain,) that arise in the context of investigative investigations.

This policy support is a commodity that can be offered to consumers who can afford to pay and want to solve any legal problems and do not need to be suspected of criminal acts.

The investigator in this case is abused as a seller of services and in that process no longer protects and serves the interests of the general public *(to protect and to serve)* as mandated in his position as a developer of government functions.

In addition, it is often heard that the term is politicized. In this case, criminal law enforcement actions – including those carried out by the Police – are considered to be carried out solely for short-term purposes, that is, to advance the political interests of a group of people.

Politicians in Indonesia often use "police services" or at least threats to be processed by the police to strengthen their bargaining position in front of the public or punish members of the public who accuse them of corruption.

The police interference described above is principally aimed at forcing the other party (opponent) to sit down together and reach an agreement (peace) which will undoubtedly be followed by the issuance of SP3 or the ejection.

If it is interpreted negatively, the peace can be made by the "person" of the Police in the event that the complainant actually has other purposes (collecting debts and using the Police as a suppressor, or simply to punish the reported person for offending self-esteem or simply embarrassing the complainant), or the complainant is a complaint.

On the other hand, if it is interpreted positively, then according to Bekto Suprapto, peace can be carried out by the Police in order to enforce customary law (which for certain cases based on the area of occurrence) is felt to be fairer.

Another possibility is that the case in question is a case of domestic violence (KDRT). In cases like this, the Police investigator issued SP3 on the grounds that, among other things, the complainant had reconciled with the reported person, because the complainant wanted his family to remain intact, the reported person admitted guilt, the complainant promised not to repeat his actions based on the affidavit he had signed before the police investigator and subsequently the complainant withdrew his testimony as a witness and as a victim (and that means also there is no longer sufficient evidence).

Of the 3 reasons above that are relevant to the discussion here is the reason that there is not enough evidence and the event does not constitute a criminal offense. Compared to sp3's reasoning for the sake of the law (decided based on objective facts that are beyond the control of the investigator). So the other two reasons are only possible for police investigators to decide based on findings in the field. The investigator for all 2 of the above (beyond reason for the sake of law) must obviously weigh the facts at hand and within the scope of the authority conferred by the law, assess, and decide.

Dismissing SP3 on the basis of two reasons involves the use of discretionary authority and therefore is also vulnerable to abuse *(abuse de Droit).*

Here is not specifically discussed the issuance of a Model A2 Notice of Investigation (SP2HP). The point of this letter is that the case cannot proceed to the level of investigation.

This possibility is open when the community complaint from the beginning is clearly not a criminal act or the case is too "light" so that it can be resolved directly by the Police, who often also act as mediators or peacemakers for social conflicts that occur in society.

1.2 The Process of Stopping Investigations in Domestic Violence Crimes Cases

Institutionally, the settlement of domestic violence through penal mediation can be carried out if it meets the formal requirements as specified in the Police Circular Letter Number 8 / VII / 2018 concerning the Application of Restorative Justice in the Settlement of Criminal Cases, namely:

1. The existence of a peace request for both parties (whistleblower and reported)
2. A statement of peace (akta dading) and dispute resolution of the litigants (whistleblower, reported, family, and representatives of community leaders are known to the investigator's superiors.
3. Minutes of Additional Examination of litigants after the settlement of restorative justice.
4. Recommendations for special case titles approving restorative justice settlements.
5. The perpetrator does not object to the liability of damages or is made voluntarily.
6. Restorative justice can be applied to common crimes that do not inflict human casualties.

Penal mediation is one of the options implemented to solve domestic violence cases. There must be special attention from the police because it concerns the issue of professional responsibility which demands foresight and responsiveness to catch problems that exist in the field.

Penal mediation is one of the methods that are good enough to be applied so that the percentage of case resolution through the courts can be suppressed and minimized by allowing the integrity of the households of the parties who are threatened with rupture due to violence.

Penal mediation is one of the instruments to achieve the concept of restorative justice. It is the parties who determine the value of justice they want, not the judiciary ().

Penal mediation is a suitable dispute resolution method for handling domestic violence cases in Indonesia.

The majority of people still prioritize peaceful settlement in dispute resolution, especially in family disputes because harmony and family integrity are priorities in the culture of Indonesian society which continues to be maintained.

This model in theory is called *victim-offender oriented (Vom),* a model of solving criminal cases in a win-win solution by involving parties related to criminal acts. However, of

the many advantages of penal mediation, this method also has several disadvantages, such as the perpetrator's lack of follow-up to the agreement that has been made, the postponement of the trial of criminal acts that have been committed, and the verdict due to the penal mediation process. The amount of time it takes to participate in the penal mediation process (when using *shuttle mediation).*

CONCLUSION

Based on the explanation above, it can be concluded that investigators as members of the Police, in principle, have discretionary authority.

This authority arises and is regulated in laws and regulations: written sources of law in a formal sense (Government Administration Law, Police Law, and Criminal Procedure Code) and beleidsregels (policy rules made by the Police to regulate and limit the use of the discretionary authority of investigators:

In the form of standard operating procedures). It should be added that the existence of standard operating procedures relating to the investigation process does not necessarily negate the discretionary authority that exists with police investigators.

Faced with allegations of criminal acts, they should possess and enjoy the freedom of wisdom (beleidsvrijheid) and freedom of judgment (beordelingsvrijheid).

Especially when dealing with norms that are not always clear. Vagueness or obscurity In addition, the peace agreement between the perpetrator and the victim and his family as a result of penal mediation has legal consequences for the law enforcement process in the form of stopping the investigation process of domestic violence crimes that are currently occurring.

Because the peace deed agreed upon by the parties is a legal product that has the binding legal force to be respected and executed by the parties in order to provide legal certainty for the status of the case in the future.

Termination of investigation is a discretionary policy of law enforcement with the requirement that if the perpetrator reneges on the peace agreement by repeating the violent crime, it will be directly processed formally (court).

This requirement aims to provide protection efforts for the security and safety of victims post-peace.

REFERENCES

Amiruddin, H. (2012). Zainal Asikin, Pengantar Metode Penelitian Hukum. *Jakarta: Rajawali Pers*.

Harahap, M. Y. (2002). *Pembahasan permasalahan dan penerapan KUHAP: Pemeriksaan sidang pengadilan, banding, kasasi, dan peninjauan kembali*.

Marzuki, P. M. (2010). Penelitian Hukum, Kencana Prenada Group. *Jakarta. h, 35*.

Nasional, K. K. (2015). Cold Cases: Apa dan Bagaimana. *KOMPOLNAS, Jakarta*.

Peraturan Kapolri Nomor 14 tahun 2012 tentang Manajemen Penyidikan Tindak Pidana.

Peraturan Kepala Bareskrim Polri Peraturan Kepala Badan Reserse Kriminal Kepolisian Negara Republik Indonesia Nomor 2 Tahun 2014 tentang Standar Operasional Prosedur Pengorganisasian Penyidikan Tindak Pidana.

Silalahi, D. (1996). *Hukum lingkungan: dalam sistem penegakan hukum lingkungan Indonesia*.

Soekanto, S. (2007). *Penelitian hukum normatif: Suatu tinjauan singkat*.

Soeroso, M. H. (2010). *Kekerasan dalam rumah tangga dalam perspektif yuridis-viktimologis*. Sinar Grafika.

Undang-undang Nomor 23 tahun 2004 tentang kekerasan dalam Rumah Tangga.

Undang-Undang Nomor 26 Tahun 2007 tentang Penataan Ruang.

Undang-Undang Nomor 32 Tahun 2009 tentang Pengelolaan Lingkungan Hidup.